II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 28 May 1991

concerning aid granted to enterprises in the Friuli-Venezia Giulia region

(Only the Italian text is authentic)

(91/500/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having given notice to the parties concerned to submit their comments pursuant to Article 93,

Whereas :

I

By letter of 14 April 1988 the Commission asked the Office of the Italian Permanent Representative, pursuant to Article 93 (3) of the EEC Treaty, for information concerning the refinancing of certain aid schemes for industry and craft businesses provided for in Law No 3 of 30 January 1988 of the Friuli-Venezia Giulia region.

By letter dated 1 June 1988, the Italian authorities indicated their position in regard to the measures in question.

By letter dated 1 September 1988, the Commission informed the Italian authorities that the refinancing of the aid schemes in force should be notified in accordance with Article 93 (3) of the EEC Treaty and that it had therefore decided to consider the refinancing in question as unnotified aid.

By letter dated 7 November 1988, the Office of the Italian Permanent Representative transmitted the additional information requested.

Having learnt that other unnotified regional aid had been granted in two of the region's provinces (Gorizia and Trieste) under National Law No 26 of 29 January 1986, the Commission informed the Italian Government by letter of 14 March 1989 that these aids would be examined in conjunction with the aids to industry and craft businesses refinanced by Law No 3 of 30 January 1988 of the Friuli-Venezia Giulia region.

II

By letter of 24 July 1989, the Commission authorized several aids refinanced under Regional Law No 3/88, in particular those relating to craft businesses, and at the same time informed the Italian Government of its decision to initiate the Article 93 (2) procedure in respect of the following measures :

(a) *Regional Law No 3/88*

— Article 39 : increase in the equity capital of Friulia SpA,

— Article 40 : refinancing of the special fund for Friulia SpA,

— Article 41 : increase in the equity capital of Friulia Lis SpA,

— Article 42 : refinancing of the revolving fund for economic initiatives (FRIE) provided for in National Law No 908 of 18 October 1955 and Law No 8 of 23 January 1970,

— Article 43 : interest subsidy on investment by industrial undertakings (Regional Law No 25 of 11 November 1965),

— Article 44 : leasing aid for industrial undertakings,

— Article 45 : capital grants for investment by industrial undertakings,

— Article 46 : applied research ;

(b) *National Law No 26/86*

— Articles 2 and 4 : exemption from tax and social charges in the provinces of Trieste and Gorizia,

— Article 6 (b) : refinancing of the Trieste Fund provided for in Article 70 of Law No 1 of 31 January 1963,

— Article 6 (c) : refinancing of the Gorizia Fund provided for in Article 5 (4) of Law No 700 of 27 December 1975,

— Article 7 : refinancing of the endowement fund provided for in Article 12 of Presidential Decree No 102 of 6 March 1978.

In accordance with Article 93 (2) of the Treaty, a notice was published in the *Official Journal of the European Communities* inviting interested parties to submit their comments (1).

The Commission initiated the Article 93 (2) procedure in respect of the measures provided for in Articles 39 and 41 of Law No 3/88 since it had not received the regular reports on the activities of the two regional financial undertakings Friulia and Friulia-Lis and was therefore unable to determine whether the proposed capital increases were compatible with the common market.

With regard to the measures provided for in Article 40 of Law No 3/88, the opening of the procedure was prompted in particular by the failure on the part of the Italian authorities to fulfil their undertaking (2) not to refinance the special fund of Friulia SpA which had in the past granted aid that was incompatible with the common market.

With regard to the other measures, the procedure was initiated as the Commission was unable to apply the exemption provided for in Article 92 (3) (c) of the EEC Treaty.

Those measures either introduced or refinanced the following aids :

(a) direct investment aid which could in some cases be combined with other aid (3) :

— reduced-interest loans or interest subsidies granted to firms in the region with a gross intensity of approximately 21 % (FRIE and Regional Law No 25/65),

— capital grants of up to 20 % of investment costs under the regional measures (Regional Laws No 30 of 23 July 1984 and No 45 of 31 October 1986) limited to certain agreas (4) and up to 30 % under the national measures (Gorizia and Trieste Funds) ;

(b) operating aid granted to the provinces of Gorizia and Trieste in the form of relief from corporation tax and partial relief from social charges (Articles 2 and 4 of Law No 26/86) ;

(c) leasing aid amounting to 20 % of the purchase price of machinery and/or equipment by small and medium-sized enterprises (SMEs) (Regional Law No 63 of 6 December 1973) ;

(d) aid for applied research amounting to between 20 % and 70 % of eligible costs (Regional Law No 47 of 3 June 1978 and Law No 45 of 31 October 1986 ; endowment fund provided for in Article 12 of Decree No 102/78).

The Italian authorities submitted observations to the Commission by letter dated 14 October 1989. The comments may be summarized as follows :

(a) the aids in question should be assessed on the basis not only of the level of socio-economic development recently attained in the Friuli-Venezia Giulia region but also on that of the region's economic development in the last 10 years ;

(b) the analysis should also take account of the more general measures introduced by the Italian Government under National Law No 828 of 11 November 1982. In view of the special status of the Friuli-Venezia Giulia region, the Italian authorities allocated special funds to enable it to adopt measures aimed at :

— the development of productive activities in the area affected by the 1976 earthquake and in the mountainous areas of the Pordenone and Udine provinces,

— the economic recovery of the Trieste and Gorizia provinces and the southern part of the area characterized by declining industries ;

(c) the effect of the aids in question on trade between Member States should be assessed solely on the basis of the actual application of the various schemes ;

(1) OJ No C 300, 29. 9. 1989, p. 4.
(2) See closure of State aid procedure No C/3305/73.
(3) The Law in question does not expressely prohibit combination with other aid.
(4) Upland areas, provinces of Trieste and Gorizia, industrial areas of Aussa-Corno and S. Vito al Tagliamento and some areas of Bassa Friulana and Sanvitese.

(d) the intensity of the leasing aid was reduced in 1989 to 15 %, a level which the Commission had authorized in 1982. This aid, aimed in particular at facilitating the modernization of SMEs in the area in question, has only a limited impact on competition.

On 31 January 1990, the Italian authorities also sent the Commission a summary report on the activities of Friulia SpA and Friulia-Lis SpA in the period 1983 to 1989 and pointed out that no aid for applied research is granted to firms from the fund provided for in Article 7 of Law No 26/86 which is intended only to finance fundamental research.

On 25 March 1991 the Italian authorities sent the Commission the text of Law No 12 of 18 March 1991 of the Friuli-Venezia Giulia region aimed at bringing regional industrial aid measures into line with Community rules.

III

The measures described above constitute State aids within the meaning of Article 92 (1) of the Treaty as they are liable to distort competition and adversely affect intra-Community trade by improving the recipient's return on his investment in relation to Community competitors not benefiting from such aid.

In particular, the aid affects trade between Member States since part of the production of the firms concerned is exported to other Member States ; in addition, where such firms do not export, domestic production is favoured since the ability of firms in other Member States to export their products to the Italian market is restricted [1].

Aid also adversely affects trade by influencing firms' decisions on where to locate. To the extent that aid leads a firm to choose a location in an assisted area or to move from one Member State to another, the production at the new site and the supply of products from that site alter the flow of intra-Community trade.

In view of the foregoing, the aids in question are caught by the general ban in Article 92 (1) of the Treaty. As they were not notified in advance to the Commission in accordance with Article 93 (3), they are in breach of the procedure and hence illegal.

IV

The measures forming the subject of this procedure are aimed at encouraging economic development in certain areas of the Friuli-Venezia Giulia region ; some are also aimed at the development of certain activities such as research.

The compatibility of the regional aid should be assessed in the light of the exemptions provided for in Article 92 (3) (a) and (c) of the Treaty.

The exemptions require that the aid should serve specific Community objectives rather than simply serving the interests of the Member State or the aid recipient. They must also be applied restrictively and may in particular be invoked only when the Commission is satisfied that market forces alone would be insufficient to make recipients adopt behaviour that would serve one of the objectives provided for in Article 92.

The invoke the exemptions in the case of aid that did not serve such an objective would be to allow trading conditions between Member States to the affected and competition to be distorted without any compensatory contribution to the Community interest.

Regional aid

In applying the principle set out above in its scrutiny of regional aid schemes, the Commission must satisfy itself that the regions concerned are suffering from problems that are sufficiently serious, on a Community-wide comparison, to require the grant of aid at the level proposed. The scrutiny must show that aid is necessary if the objectives specified in Article 92 (3) (a) or (c) of the Treaty are to be attained. The Commission has discretionary powers for this purpose which it exercises by focusing on the socio-economic situation of a region in its Community context.

Article 92 (3) (a) allows exemptions for aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious under-employment.

In its communication on the method for the application of Article 92 (3) (a) and (c) to regional aid published in *Official Journal of the European Communities* No C 212 of 12 August 1988, the Commission defined regions that had an abnormally low standard of living or serious under-employment as NUTS level II areas [2] (regions in Italy) with a GDP/PPS (purchasing power standards) equal to or less than 75% of the Community average.

[1] See Judgment of 13 July 1988 in Case 108/87 [1988 ECR 4067].

[2] Nomenclature of Statistical Territorial Units of the European Community.

Since Article 92 (3) (a) is not applicable in the case in point, the per capita GDP/PPS of the Friuli-Venezia Giulia region being considerably greater than 75 % of the Community average, the analysis was based on the method for the application of Article 92 (3) (c) to regional aid. That Article provides that aid to facilitate the development of certain economic areas may be authorized where it does not adversly affect trading conditions to an extent contrary to the common interest.

The effects of regional aid on trading conditions may be considered compatible with the common interest if the Commission is satisfied that the recipient region is experiencing sufficiently serious difficulties in relation to the Community average ; that, without the aid, market forces alone would not eliminate such difficulties and, lastly, that the aid would not unduly distort competition in particular sectors.

To that end, the Commission has established for all the Member States thresholds for structural unemployment and per capita gross domestic product to be applied in a first stage of analysis to determine whether a region may benefit from regional aid under Article 92 (3) (c). The different thresholds for the Member State are calculated on the basis of their respective positions in relation to the Community average and are more stringent for the more developed Member States. The thresholds for Italy are currently fixed at 85 % of the national average GDP per capita and 110 % of average national unemployment levels.

In a second stage of analysis, the Commission takes account of various other relevant factors, some of which may have been communicated by the Member State concerned.

The analysis is based on the availability of harmonized NUTS level III statistics. Consequently, unless there are duly substantiated reasons, the analysis of the areas eligible for aid is based on a level which in the case of Italy is that of the province.

It emerged from the first stage of the method that the four provinces of the Friuli-Venezia Giulia region, i.e. Udine, Pordenone, Gorizia and Trieste, did not qualify for regional aid since their per capita GDP was higher than 85 % of the national average and their unemployment levels lower than 110 % of the national average.

The analysis based on other economic indicators in accordance with the second stage of the method of applying Article 92 (3) (c), however, showed that there was justification for retaining regional aid in the provinces of Gorizia and Trieste since the level of unemployment in those provinces, although falling, is relatively high compared with most other provinces in Northern Italy.

In addition, analysis of the economic structure reveals a level of dependence on declining industries, particularly shipbuilding, which is still relatively high despite the serious losses they have incurred in recent years.

These factors, together with the relative geographic isolation of the two provinces in question, indicate that their economy would still be vulnerable to any cyclical reversal, particularly if all the aids to investment were to be prohibited immediately.

In view of the foregoing, the Commission has decided not to object to the granting of regional aid in the two provinces in question.

The aid in question should nevertheless be in proportion to the gravity of the socio-economic problems encountered ; on the basis of the most recent figures available on unemployment (1987 to 1990) an aid levels authorized for other regions under Article 92 (3) (c), the Commission considers that an aid intensity of 15 % gross may be regarded as compatible with the common market in the provinces of Gorizia and Trieste [1].

The tax exemption and relief from social charges pursuant to Articles 2 and 4 of Law No 26/86 to assist firms in these provinces constitute operating aid incompatible with the common market. Under the method described above, this type of aid may be authorized only for regions entitled to regional aid within the meaning of Article 92 (3) (a) of the Treaty.

As the immediate abolition of these aids could have negative effects on the economy of the two provinces, the Commission has decided temporarily to authorize the application of these aid measures until 30 July 1992.

[1] In its assessment, the Commission took particular account of the fact that the level of 30 % net grant equivalent which is the maximum intensity authorized under Article 92 (3) (c) is applicable from 1991 in the province of Frosinone, which is experiencing far more serious socio-economic problems than the two provinces in question.

As regards the provinces of Udine and Pordenone, it emerged from the second stage of the analysis that the Commission could not authorize, even temporarily, the continued application of the regional aid measures as the unemployment level in the two provinces is considerably lower than the national average (1) and the industrial base is essentially made up of extremely dynamic SMEs in sectors not faced with any substantial problem.

Aid to research

These aids were anlysed in the light of the exemptions provided for in Article 92 (3) (c) concerning aid to facilitate the development of certain activities, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

The Commission considers that aid to applied research could qualify for exemption if the maximum intensities laid down for this type of aid in the Community framework for State aids for research and development (2) are complied with.

Friulia SpA and Friulia-Lis SpA

Friulia SpA was set up mainly with public capital in order to facilitate economic development in the region by acquiring minority shareholdings (usually 35 % of the capital) in small firms with good development prospects.

Friulia-Lis SpA was also set up mainly with public capital in order to promote the development of SMEs in the region through the leasing of plant and machinery.

On the basis of the report received from the Italian authorities, it may be concluded that the capital increases provided for in Artices 39 and 41 of Regional Law No 3/88 do not finance aid which is incompatible with the common market. The Commission must, however, continue to be able to monitor aid granted by Friulia-Lis on the basis of annual reports to ensure the necessary transparency;

As regards the refinancing of the special endowment fund of Friulia SpA provided for in Article 40 of Regional Law No 3/88, it should be noted that the Regional Council can order the fund to be used according to economic or social requirements (Article 1 of Law No 22 of 13 May 1975). The Italian report shows that the fund was effectively used to finance ailing enterprises through the acquisition of shareholdings, subsidized loans and the provision of technical and administrative assistance.

Although in most cases these measures appear to have had a positive effect, at 30 June 1989 there were eight companies facing bankruptcy proceedings and three others in difficulty out of a total of 68 enterprises receiving assistance from Friulia's special endowment fund. The assistance given to these companies without any real future was reflected in the relatively large provisions for contingencies in the companies' balance sheets and in abnormally low operating results.

Concentrated for the most part in sensitive sectors, these measures thus transferred, without any real justification, the social or industrial problems in question from one Member State to another, providing only temporary relief to the recipient enterprises since the measures were not accompanied by the immediate application of a sound restructuring plan in accordance with the guidelines on rescue aid communicated by the Commission to the Member States in the Eighth Report on Competition Policy (point 228). They must therefore be considered incompatible with the common market pursuant to Article 92 (1) of the EEC Treaty.

Comments by the Italian authorities

As regards the general comments initially presented by the Italian authorities, it should be emphasized that according to the method for the application of Article 92 (3) (c) to national regional aid, the socio-economic position of the region is to be assessed on the basis of the last five years for which statistics are available (3). The Commission regards this period as sufficient to detect the existence of any regional disparity, especially bearing in mind the need to take account of structural unemployment in the region (first stage of the method) and its development (second stage of the method).

Secondly, the question of assessing the regional aid measures in the context of the general action taken following the 1976 earthquake does not seem relevant since, even if Law No 828/82 provided the resources to finance a large part of the regional aid measures to date, this does not affect the assessment of their compatibility with the common market since such assessment does not take account of the origin of the funds used.

In addition, as the earthquake took place several years ago, it would be difficult to use it to justify maintaining regional development aid as a measure accompanying reconstruction aid.

(1) 4,6 % in Udine and 5,2 % in Pordenone as against 10,2 % for Italy as a whole (1990-Eurostat).
(2) OJ No C 83, 11. 4. 1986.
(3) The European indices used in the method are in fact calculated on that basis.

As regards the argument concerning the effective application of the different schemes, it should be pointed out that even if the intensity of the aid granted under some of the schemes in question (notably aid to research) was lower than the maximum provided for by the Law, the level exceeds those authorized by the Commission and the aids are therefore not compatible with the common market.

As regards the aid to research granted from the fund referred to in Article 7 of National Law No 26/86, the Commission considers that it is not caught by Article 92 (1) of the EEC Treaty as it concerns only fundamental research not carried out in an enterprise.

The Commission also examined Law No 12 of 18 March 1991 of the Friulia-Venezia Giulia region aimed a bringing regional aid for industry into line with Community rules. It modifies aid schemes such as those refinanced under Articles 39, 40, 41, 43, 44, 45 and 46 of Regional Law No 3/88.

The Commission considers that, as a result of that Law, the aid schemes of the Friuli-Venezia Giulia region against which it initiated the procedure are now compatible with the common market pursuant to Article 92 (3) (c).

In accordance with that Law, the Italian authorities :

— abolished the regional aid schemes in force in the provinces of Udine and Pordenone,

— limited the regional aid intensities in the provinces of Gorizia and Trieste to a maximum of 15 % gross,

— limited the level of aid to applied research to the maximum fixed in the Community framework for State aids for research and development,

— limited the application of leasing aid (15 % gross of purchase price) to SMEs employing not more than 250 persons and having a turnover not exceeding Lit 30 billion,

— ensured that aid granted by Friulia SpA from its special endowment fund complies with the Commission communication to Member States on rescue and accompanying aid by making it compulsory to notify the Commission in advance of individual cases.

Law No 12 of 18 March 1991 also provides for general investment aids for SMEs in the region, modifying the aid schemes against which the procedure was initiated and applying the following ceilings :

— 15 % gross for SMEs employing not more than 250 persons and having a turnover not exceeding Lit 30 billion,

— 20 % gross for SMEs employing not more than 50 persons and having a turnover not exceeding Lit 7,5 billion.

These aids, which may be combined with other regional aid authorized for the provinces of Gorizia and Trieste up to a maximum of 10 % may be considered compatible with the common market under Article 92 (3) as they are intended to facilitate the development of certain economic activities without thereby adversely affecting thading conditions to an extent contrary to the common interest.

As a result of the amendments introduced by Law No 12 of 18 March 1991, the Commission considers that the only measures that are still incompatible with the common market within the meaning of Article 92 (1) are :

— the operating aid provided for in Articles 2 and 4 of Law No 26/86 as regards its application after 30 June 1992,

— the regional investment aids granted in the Gorizia and Trieste provinces by the FRIE pursuant to Article 42 of Regional Law No 3/88 and through the Gorizia and Trieste funds provided for in Article 6 (b) and (c) of National Law No 26/86 as their intensity is in excess of 15 % gross,

— the regional investment aid granted through the FRIE in the provinces of Udine and Pordenone.

V

To enable the Commission, as part of the constant review provided for in Article 93 (3) of the Treaty, to monitor the application of the aids authorized, the Italian Government is required to submit by June of each year a report on the aids in question and on the activities of Friulia SpA and Friulia-Lis SpA together with a special report on aid granted from the special endowment fund of Friulia SpA,

HAS ADOPTED THIS DECISION :

Article 1

The refinancing of the aid schemes provided for in Articles 39, 40, 41, 43, 44, 45 and 46 of Law No 3 of the Friuli-Venezia Giulia region of 30 January 1988, as amended by Regional Law No 12 of 18 March 1991, is compatible with the common market in accordance with Article 92 (3) (c) of the EEC Treaty.

Article 2

The regional investment aids granted in the provinces of Gorizia and Trieste through the FRIE under Article 42 of Law No 3 of the Friuli-Venezia Giulia region of 30 January 1988, and through the Gorizia and Trieste funds under Article 6 (b) and (c) of National Law No 26 of 29 January 1986 are compatible with the common market in accordance with Article 92 (3) (c) of the EEC Treaty provided their intensity does not exceed 15 % gross.

Article 3

The regional investment aids granted in the provinces of Udine and Pordenone through the FRIE, under Article 42 of Law No 3 of the Friuli-Venezia Giulia region of 30 January 1988, are incompatible with the common market in accordance with Article 92 (1) of the EEC Treaty.

Article 4

The aid provided for in Articles 2 and 4 of National Law No 26 of 29 January 1986 is incompatible with the common market in accordance with Article 92 (1) of the EEC Treaty. Such aid may, however, be granted temporarily until 30 June 1992.

Article 5

This Decision is without prejudice to compliance with present or future special rules applicable to aid granted in certain sectors.

Article 6

Italy shall inform the Commission within one month of the date of notification of this Decision of the measures it has taken to comply therewith.

Article 7

Italy shall provide the Commission each year before the end of June, with :

— a report on the application of the various aid schemes authorized by this Decision with reference, for each type of aid, to eligible costs, the corresponding aids granted, and the sectors involved,

— a report on the activities of Friulia SpA and Friulia-Lis SpA based on the model already communicated to the Commission for the period 1983 to 1989, indicating the number of employees in each enterprise,

— a special report giving details for each enterprise of aid granted from the special endowment fund of Friulia SpA.

Article 8

This Decision is addressed to the Italian Republic.

Done at Brussels, 28 May 1991.

For the Commission

Leon BRITTAN

Vice-President