COMMISSION

COMMISSION DECISION

of 9 December 1992

on Italian Decree-Law No 14 of 21 January 1992 relating, *inter alia*, to the overall refinancing of the aid measures provided for by Law No 64 of 1 March 1986 on special aid to the Mezzogiorno

(Only the Italian text is authentic)

(93/254/EEC)

THE COMMISSION 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

(1) By letter dated 24 January 1992 the Commission, having seen press reports according to which various aid measures had been taken, *inter alia*, on the refinancing of the aid scheme set up by Law No 64 of 1 March 1986 on special aid to the Mezzogiorno, asked the Italian authorities whether they could confirm such information. The aid to enterprises provided for by Law No 64 of 1 March 1986 had been declared compatible with the common market, subject to certain conditions, by Commission Decision 88/318/EEC taken pursuant to Article 93 of the EEC Treaty on 2 March 1988 [1]. The volume of finance earmarked for the scheme was Lit 120 000 billion (ECU 72 billion), plus tax concessions. The aid scheme was to end on 31 December 1993.

In reply, the Italian authorities sent the Commission the text of Decree-Law No 14 of 21 January 1992 (Official Gazette of the Italian Republic No 16/3, 21 January 1992), which contains the following provisions :

— Article 1 provides for the refinancing of the reduction in social security contributions provided for by the Law on the Mezzogiorno,

— Article 2 provides for the State defrayal of social security contributions, involving a further reduction in social security contributions for firms in the Mezzogiorno,

— Article 6 provides for the overall refinancing of the aid measures envisaged in the Law on the Mezzogiorno.

(2) By letter of 25 June 1992 [2] the Commission informed the Italian Government that it had decided to initiate proceedings pursuant to Article 93 (2) of the EEC Treaty in respect of the three abovementioned provisions, which it deemed incompatible with the common market within the meaning of Article 92 of the Treaty and ineligible for any of the derogations provided for therein. The Italian Government was invited to submit its comments within one month of notification of the letter, while the other Member States and interested third parties were also invited, by means of a notice published in the *Official Journal of the European Communities*, to submit their comments.

[1] OJ No L 143, 10. 6. 1988, p. 37.

[2] OJ No C 240, 19. 9. 1992, p. 7.

By letter dated 8 October 1992 the Italian authorities informed the Commission that Articles 1 and 2 of the Decree-Law had retroactively become ineffective because they had not been converted into law within the time limit imposed by the Italian Constitution. Since their substance was reproduced in draft Law No 1536 of 8 September 1992, notified pursuant to Article 93 (3) of the EEC Treaty, the Commission took the view, in so far as those two provisions were concerned, that the proceedings initiated by its decision of 25 June 1992 no longer served any purpose. It decided at the same time to initiate fresh proceedings pursuant to Article 93 (2) in respect of draft Law No 1536. consequently, this Decision does not cover the provisions of the Law on the Mezzogiorno relating to the reduction in social security contributions. No other Member State or interested party submitted comments within the period allowed.

(3) The measure provided for in Article 6 of the Decree-Law, relating to the overall refinancing of the aid measures envisaged in the Law on the Mezzogiorno, was reproduced in several decree-laws without being converted into law by the Italian Parliament. By letter of 30 July 1992 the Italian authorities asked the Commission to allow them to delay submission of their comments pursuant to Article 93 (2) so that they could include therein the amendments made to the text of the Decree-Law which was to be submitted to Parliament for conversion and on which the Commission could have adopted its final decision pursuant to Article 93 (2) of the EEC Treaty. The text in question was adopted by the Italian Government on 22 October 1992 as Decree-Law No 415 (Official Gazette of the Italian Republic No 249/3, 22 October 1992), and the Italian authorities submitted their comments to the Commission on 27 November 1992. No other Member State or interested party took the opportunity to submit comments.

II

(4) The refinancing under scrutiny amounts to Lit 24 000 billion (ECU 14 350 million) earmarked for aid to enterprises.

In its decision of 25 June 1992 the Commission noted that Italy had failed to fulfil its obligations pursuant to Article 10 of Commission Decision 88/318/EEC (OJ No L 143, 10. 6. 1988, p. 37), which established the conditions under which the Law on the Mezzogiorno was declared compatible with the common market. Pursuant to that Article, the Italian authorities should have informed the Commission each year of, *inter alia,* the total amount of tax aid granted, broken down by region and by economic sector. The information provided was not broken down in that way.

The Commission took the view in its decision of 25 June 1992 that the compatibility of the overall refinancing of aid on the scale envisaged by the Law on the Mezzogiorno could not be assessed without knowing the distorting effects and the advantages, in terms of development, in each of the components of the aid that had been in operation for seven years. Given the opacity of the past and future situation, the Commission cannot declare the refinancing of the scheme, as it has been implemented hitherto, to be compatible with the common market.

The Commission also stated in the abovementioned Decision that its declaration on the compatibility of the Law on the Mezzogiorno was limited to the period of validity of that Law, which was to end on 31 December 1993. The spreading of the refinancing beyond that date, as envisaged by Decree-Law No 14 of 21 January 1992, was consequently incompatible with the common market.

III

(5) The Italian authorities stress in their comments that they intend to make fundamental changes to the principles governing application of the Law on the Mezzogiorno during the period covered by the refinancing, which will end on 31 December 1993. They state that the only payments to be made beyond that date are those already committed, and that all decisions to grant aid are to be taken before the deadline laid down by the Law.

The planned changes should enable the Commission to take the view, even in the absence of information on tax aid granted in the past, that the aid scheme as refinanced can be deemed compatible with the common market.

(6) Decree-Law No 415 of 22 October 1992, which introduces the principles underlying those changes into Italian law, together with the written comments submitted by the Italian Government, are evidence of the changes that the Italian authorities intend to make through the law converting the Decree and through the general implementing provisions to be adopted, *inter alia,* by CIPE and CIPI. Those changes involve in particular:

— specifying that all aid granted to a firm in the context of the Law on the Mezzogiorno must be calculated and expressed in terms of net grant equivalent, so as to ensure that all operations are fully transparent,

— reducing the ceilings for the intensity of aid to productive investment and varying them according to differences in the level of development of the area concerned and the size of the recipient firms, so as to favour the development of small and medium-sized firms within the ceiling applicable in each area. The individual ceilings should be laid down by decisions of CIPI and CIPE, when the scheme is put into effect, on instructions from the government,

— reserving, within those individual ceilings, the highest aid intensity to new initiatives and ruling out or significantly reducing aid for extensions and restructuring operations. This policy should also find concrete expression through the decisions of CIPE and CIPI,

— converting the tax exemptions provided for by the Law on the Mezzogiorno (Article 14 (4) and (5) of Law No 64 of 1 March 1986 and Articles 102 (1) and (2) and 105 of Presidential Decree No 218 of 6 March 1978) into tax credits calculated in advance by reference to the investments made by each recipient firm. The credits are to be taken into account in calculating the net grant equivalent of the total aid granted to the firm for the purpose of ensuring that the aid ceilings allowed for the area and the size of the firm concerned are not exceeded,

— clarifying the rules on the overlapping of aid under different schemes, so as to ensure that the Commission's guidelines on the matter are properly applied,

— providing for the possibility of extending the geographical scope of these measures, or of other regional measures to be defined, to other areas in difficulty not covered by the Law on the Mezzogiorno. Those areas have yet to be defined.

Transitional provisions will govern a number of aid applications already pending on the date of entry into force of Decree-Law No 363 of 14 August 1992 and will enable the aid scheme as approved by the Commission Decision of 2 March 1988 to be applied to them.

IV

(7) The measures refinanced by the Italian authorities, the nature of which was examined by the Commission in Decision 88/318/EEC, constitute — for the reasons set out therein, all of which are valid here — aid within the meaning of Article 92 of the EEC Treaty. They are therefore caught by the prohibition enshrined in that Article and their refinancing can be deemed compatible with the common market only where it qualifies for one of the exemptions provided for therein.

Although these measures were deemed by the Commission Decision of 2 March 1988 to qualify for exemption on account of their regional development objectives, the lack of information on their actual application, particularly in the case of operating aid and tax aid, prevents the Commission from assessing the distorting effects of refinancing a system that has become opaque and consequently declaring such refinancing compatible with the common market.

(8) The situation could be different, however, if the aid scheme provided for by Law No 64 of 1 March 1986 were to be applied in a radically different manner from in the past, in particular so as to facilitate the transition to a more fundamental reform of aid to the Mezzogiorno, to be carried out on expiry of the Law in line with the principles underlying the abovementioned amendments.

(9) The Commission is, however, unable to comment here on the compatibility with the common market of any extension of the operation to areas other than those specified in the Law on the Mezzogiorno until such time as those areas have been precisely identified. Pursuant to Article 93 (3) of the EEC Treaty, the Italian Government must therefore notify its detailed extension plans in good time to allow the Commission to comment on the planned measures before they are put into effect.

V

(10) In view of the foregoing and subject to the abovementioned reservation concerning the extension of the geographical coverage, the Commission takes the view that the guidelines emerging from Decree-Law No 415 of 22 October 1992 and the comments submitted by the Italian Government are such as to make the scheme compatible with the common market, despite the lack of transparency regarding past operations, provided that those guidelines are translated into practice in a significant and verifiable manner. Adoption of the law converting the Decree and any other legislative measures, as well as decisions of CIPI and CIPE, are appropriate means of translating the guidelines into practice.

In this context, aid should clearly be granted only to firms in the provinces that can still qualify for application of the Law on the Mezzogiorno, with due regard to the time limits laid down in this connection in Commission Decision 88/318/EEC. It should be noted that the aid referred to in Article 3 of that Decision may be granted until 31 December 1992 and that, in the provinces referred to in Article 4 of the Decision, aid was in any event no longer to be granted after 30 December 1990. It should further be stressed that Article 9 of the Decision, concerning sectoral limitations and exclusions, and all the other provisions thereof which are not affected by this Decision, continue to apply.

(11) On aid to productive investment the Commission takes the view that, given the aid intensities allowed in regions of the Community whose socio-economic situation is comparable to that of the Mezzogiorno, the following maximum aid intensities, reflecting the different economic conditions obtaining in the three zones into which the Mezzogiorno is divided pursuant to recital 1 of Commission Decision 88/318/EEC, can be deemed compatible with the common market:

— in zone A, 65 % net grant equivalent (nge) for small and medium-sized enterprises (SMEs), as defined in the Community guidelines on State aid for SMEs adopted by the Commission on 20 May 1992 [1], and 50 % nge for other firms,

— in zone B, 55 % nge for SMEs falling within the above definitions and 40 % nge for other firms,

— in zone C, 40 % nge for SMEs falling within the above definitions and 25 % nge for other firms.

(12) In the light of past experience, the Commission takes the view that the intensity of aid for research should also be reduced and, pursuant to the Community framework for State aid for research and development [2], differentiated according to the type of research and the size of the firm. Such aid can consequently be deemed compatible with the common market up to a maximum gross intensity of:

— 60 % for basic research and 35 % for applied research carried out by SMEs as defined in the Community guidelines on State aid for SMEs,

— 50 % for basic research and 25 % for applied research carried out by other firms.

(13) On the tax aid, the Commission considers that modification of the scheme, so as to convert tax reliefs into tax credits determined in advance by reference to the investment made by the recipient firm and taken into account in calculating the net grant equivalent for the purpose of ensuring that the abovementioned ceilings are not exceeded, is such as to render the aid transparent and, under the conditions shown above, compatible with the common market.

National measures modifying the system of tax aid along these lines must clearly be adopted at the earliest opportunity and not later than 31 December 1992. Such measures should apply to all aid applications subject to this Decision, with the exception of those covered by Article 5 thereof.

(14) As regards the rules on the overlapping of aid under different schemes, the Commission stresses that the rules on compatibility were brought to the attention of Member States, in particular through its communication of 21 December 1978 on regional aid systems [3] and its communication on the cumulation of aids for different purposes [4].

The Italian authorities must, therefore, comply with these rules if the aid under examination is to be compatible with the common market.

[1] OJ No C 213, 19. 8. 1992, p. 2.

[2] OJ No C 83, 11. 4. 1986, p. 2.
[3] OJ No C 31, 3. 2. 1979, p. 9.
[4] OJ No C 3, 5. 1. 1985, p. 2.

(15) As regards the transitional application of the aid scheme hitherto implemented to certain pending applications, the Commission would point out that a declaration to the effect that an aid scheme is compatible with the common market also concerns the amount of the budget earmarked for the scheme, and the Member State implementing it must avoid creating situations that could conflict with this status of the scheme. Any domestic situations that conflict with the limitation of the approved budget must be settled internally by the Member State concerned, and the Commission cannot be forced to deem a refinancing operation to be compatible with the common market where it is not. Although the Commission's practice is generally to give favourable consideration to refinancing operations (see its communication of 2 July 1992 on the accelerated clearance of certain aid schemes) (1), this does not apply where, as in the case in point, the Commission informs the Member State in good time that the opacity of a scheme would not allow it to be refinanced.

The Commission can, however, take the view that, in the context of amendments to the implementing rules, the limited refinancing of a scheme in its original form can be justified if it is aimed at facilitating initiatives which have widespread effects on the development of a region. It can treat in this way initiatives planned under programme contracts or initiatives in respect of which the administrative examination and approval procedure has been completed or, in the absence of such a procedure, those whose implementation is highly advanced and which can thus be expected to produce their beneficial effects on development of the region within a short period.

The Commission therefore considers that it can deem compatible with the common market the fact that some of the Lit 24 000 billion refinancing is earmarked for granting aid, pursuant to the rules implementing the Law on the Mezzogiorno which were approved by Decision 88/318/EEC, to certain firms whose applications were pending on the date when Decree-Law No 363 of 14 August 1992 entered into force. That proportion of the refinancing should not exceed Lit 10 000 billion and should be channelled as a matter of priority towards aid for programme contracts and projects for which the administrative examination and approval procedure has been completed or whose implementation is at a more advanced stage, in which case they must be not less than 30 % implemented. The Commission reserves the right to re-examine the appropriateness of this amount in the light of a report on its allocation to be submitted by the Italian authorities,

HAS ADOPTED THIS DECISION:

Article 1

The Lit 24 000 billion refinancing of the aid measures provided for by Law No 64 of 1 March 1986 on aid to the Mezzogiorno, as envisaged in Decree-Law No 14 of 21 January 1992 and in the recapitulating and amending decree-laws, is hereby approved subject to the conditions laid down in the following Articles.

The aid may be granted only in so far as the various provinces still qualify for aid under Law No 64 of 1 March 1986, with due regard to the deadlines laid down in the Commission Decision of 2 March 1988 on the compatibility of that Law.

The refinancing shall not cover the reductions in social security contributions provided for in Article 1 of Decree-Law No 14 of 21 January 1992.

Article 2

The intensity of aid for productive investment by firms, expressed in net grant equivalent, shall not exceed the following ceilings:

(a) in zone A as defined in the Commission Decision of 2 March 1988 on aid to the Mezzogiorno:

— 65 % for small and medium-sized enterprises (SMEs) as defined in the Community guidelines on State aid for SMEs adopted on 20 May 1992,

— 50 % for other firms;

(b) in zone B:

— 55 % for SMEs as defined in the abovementioned guidelines,

— 40 % for other firms;

(c) in zone C:

— 40 % for SMEs as defined in the abovementioned guidelines,

— 25 % for other firms.

(1) OJ No C 213, 19. 8. 1992, p. 10.

Article 3

The intensity of aid for research shall not exceed the maximum gross ceiling of:

— 60 % for basic research and 35 % for applied research carried out by SMEs as defined in the Community guidelines on State aid for SMEs adopted on 20 May 1992,

— 50 % for basic research and 25 % for applied research carried out by other firms.

Article 4

The tax aid provided for in Article 14 of Law No 64 of 1 March 1986 and Article 102 (1) and (2) and Article 105 of Presidential Decree No 218 of 6 March 1978 shall be converted into tax credits that are in proportion to the investments made by each firm.

These credits shall be taken into account in calculating the net grant equivalent of the total aid for the purpose of ensuring that the ceilings for aid intensity laid down in Articles 2 and 3 are not exceeded; they shall be reduced if necessary to keep the overall intensity of the aid below those ceilings.

The national provisions implementing this Article shall be adopted not later than 31 December 1992. They shall apply to all aid applications covered by this Decision, with the exception of those referred to in Article 5.

Article 5

Within the Lit 24 000 billion refinancing referred to in Article 1, a sum of Lit 10 000 billion may, pursuant to the Commission Decision of 2 March 1988 on the compatibility of the Law on the Mezzogiorno and by way of derogation from Articles 2 and 3 of this Decision, be used for pending aid applications before the Italian authorities on the date of entry into force of Decree-Law No 363 of 14 August 1992.

That amount shall be used as a matter of priority to finance programme contracts and projects for which the administrative examination and approval procedure has been completed or, in the absence of such a procedure, which are at an advanced stage of implementation, in which case they shall be not less than 30 % implemented.

The Italian Government shall submit to the Commission, before 1 July 1993, a detailed written report on the allocation of the amount in question, which the Commission reserves the right to scrutinize.

Article 6

The individual decisions granting the aid shall be taken by the Italian authorities by 31 December 1993.

This Decision does not relate to the refinancing of the reductions in social security contributions provided for by Law No 64 of 1 March 1986, which is the subject of a separate examination.

The provisions of Decision 88/318/EEC on the compatibility of Law No 64 of 1 March 1988 shall continue to apply in so far as they are not affected by this Decision.

Article 7

Italy shall inform the Commission, by 31 January 1993, of the measures it has taken to comply with this Decision.

Article 8

This Decision is addressed to the Italian Republic.

Done at Brussels, 9 December 1992.

For the Commission

Leon BRITTAN

Vice-President