II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 13 May 1998

on State aid granted by Italy by way of tax relief under Law No 549/95 to firms in the motor vehicle, shipbuilding and synthetic fibres industries and to steel firms covered by the ECSC Treaty

(notified under document number C(1998) 1434)

(Only the Italian text is authentic)

(Text with EEA relevance)

(1999/148/EC, ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Articles 92 and 93 thereof,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry [1], and in particular Article 6(5) thereof,

Having given interested parties notice to submit their comments [2], and having regard to those comments,

Whereas:

I

By letter dated 5 March 1996 from the Office of the Italian Permanent Representative to the European Union, the Italian authorities notified the Commission of Law No 549 of 28 December 1995 (hereinafter 'the Law'), which, *inter alia,* grants tax relief to certain firms.

The Law provides for investment aid in the form of tax exemptions on reinvested profits. The scheme applies to all firms in Objective 1, 2 or 5(b) areas and to microenterprises outside such areas. Microenterprises are defined as firms which, in the tax period following that in progress on 12 June 1994, generated a turnover of less than ITL 5 billion and which have a workforce of not more than 20.

Under the Law, 50 % of reinvested profits are exempt from tax. Eligibility for this relief is restricted to profits intended for the financing of investment carried out in 1996 that exceeds the average amount of investment carried out in the previous five years. Eligible investment is investment in new plant, investment for the extension and modernisation of an existing establishment and investment in the purchase of new capital goods, including capital goods acquired through leasing contracts.

A ministerial circular dated 14 February 1997 spelled out the provisions of the Law with regard to the definition of eligible firms, the aid intensities allowed, the methods for calculating the aid, and eligible expenditure.

[1] OJ L 338, 28. 12. 1996, p. 42.
[2] OJ C 268, 4. 9. 1997, p. 4.

Those provisions stipulate that:

— firms covered by the Community definition of small or medium-sized enterprises (hereinafter 'SMEs') given in the Community guidelines on State aid for SMEs ([3]) and other firms in the Objective 1, 2 or 5(b) areas which are eligible for the derogations provided for in Article 92(3)(a) and (c) qualify for the aid,

— of the firms in the Objective 1, 2 or 5(b) areas that are not eligible for the derogations provided for in Article 92(3)(a) and (c), only those that are covered by the Community definition of SMEs qualify for the aid,

— in the other areas to which the Law applies, both microenterprises as defined in the Law and SMEs qualify for aid.

Since the only sectors excluded from the scope of the Law were banking and insurance, the Commission had to conclude that it did not contain any provisions on aid to sensitive sectors.

In their letter of 13 February 1997 the Italian authorities stated among other things that, in implementing the Law, they did not intend to comply with the Community rules governing the motor vehicle and synthetic fibres industries and steel firms covered by the ECSC Treaty. No details were given in this respect regarding the shipbuilding industry. The Italian authorities appeared to take the view that the Community provisions relating to sensitive sectors were not applicable, since the scheme was horizontal in nature. They considered that those provisions applied only where a scheme had sectoral objectives.

In view of the foregoing and while generally approving the Law in the light of the Community rules on regional aid, the Commission informed the Italian Government, by letter of 21 May 1997, of its decision to initiate proceedings pursuant to Article 6(5) of Decision No 2496/96/ECSC and Article 93(3) of the EC Treaty in respect of application of the aid scheme in question in sensitive sectors such as the steel, motor vehicle, shipbuilding and synthetic fibres industries.

II

As part of the proceedings the Commission invited the Italian Government to submit its comments, and informed the other Member States and interested parties by publishing a notice in the *Official Journal of the European Communities* ([4]).

([3]) OJ C 213, 13. 7. 1996, p. 4.
([4]) See footnote 2.

In response to that notice, four interested parties and one Member State submitted comments to the Commission: the International Rayon and Synthetic Fibres Committee (letter of 12 September 1997), British Steel (letter of 15 September 1997), the UK Steel Association (letter of 16 September 1997), Wirtschaftsvereinigung Stahl (letter of 25 September 1997) and Denmark (letter of 2 October 1997).

In their comments, the interested parties and Denmark expressed support for the Commission's decision to initiate proceedings.

By letter of 24 October 1997 the Commission passed on the above comments to the Italian authorities. As of 20 April 1998, the Italian authorities had not made any formal reply to that letter or to the letter of 21 May 1997 by which the Commission had informed them of its decision to initiate proceedings.

III

The measures in question constitute aid to firms since they have the effect of selectively reducing, for the recipients, the costs normally borne by competing firms. Furthermore, only certain firms qualify for these reductions, more specifically firms located in Objective 1, 2 or 5(b) areas, microenterprises as defined in the Law, and SMEs.

The aid, granted in the form of tax relief, consequently distorts competition between firms and is liable to affect intra-Community trade.

As regards the application of the Law to steel firms covered by the ECSC Treaty, Article 4(c) of that Treaty stipulates that subsidies or aids granted by States in any form whatsoever are recognised as incompatible with the common market for coal and steel and must accordingly be abolished and prohibited within the Community. The only derogations that might possibly be granted from that general ban are listed exhaustively in Decision No 2496/96/ECSC. These are aid for research and development (Article 2), aid for environmental protection (Article 3) and aid for closures (Article 4).

The Italian authorities have not relied on any of these derogations to justify the application of the State aid measures concerned to the steel industry. It is furthermore clear from the file that none of the above derogations can apply to the aid in question.

Neither does the Law lay down any limit in respect of the nature and purpose of the investments qualifying for tax relief.

The application of the tax exemptions concerned to steel firms covered by the ECSC Treaty must consequently be regarded as illegal since it was not previously authorised by the Commission. It is also incompatible with the common market for coal and steel since it does not qualify for any of the possible derogations allowed by Decision No 2496/96/ECSC.

IV

As regards the application of the aid scheme in question to shipbuilding and ship repair firms, the latter are subject to the special State aid rules laid down in Council Directive 90/684/EEC of 21 December 1990 on aid to shipbuilding ([5]), the validity of which was extended by Council Regulation (EC) No 2600/97 ([6]). Article 11(2)(b) of the Directive stipulates that Member States must notify the Commission in advance of any decision to apply a general or regional aid scheme to the firms covered by the Directive, and must not put such a decision into effect before it is authorised.

Each case in which the Law is applied to shipbuilding or ship repair firms must therefore be notified to the Commission, which alone has the powers to assess whether the aid is in conformity with the rules laid down in Article 6 of the Directive.

As far as the application of the Law to the synthetic fibres industry is concerned, in 1997, in view of the low average rate of productive capacity utilisation in the synthetic fibres industry, the resulting job losses and the risk that any new aid could aggravate the situation and distort competition, the Commission adopted a code on aid to the synthetic fibres industry in order to impose tighter control on the granting of aid by Member States to synthetic fibre producers.

The code has been periodically revised. The current version ([7]) entered into force on 1 April 1996 and expires on 31 March 1999. It replaced the previous version ([8]), which expired on 31 March 1996. A Community code on aid to the industry was therefore in force throughout 1996 and Italy was therefore required by the code to notify any aid which it planned to grant to firms in the industry.

Lastly, as regards application of the Law to the motor vehicle industry, in 1989 the Commission decided to adopt a framework for State aid to the motor vehicle industry ([9]). Because of the increasingly tough competition in the sector, the framework makes the granting of aid subject to stricter rules, so as to ensure that the competitiveness of the Community industry is not distorted by unfair competition. In particular, it requires Member States to notify in advance major aid measures for the motor vehicle industry in accordance with strict rules.

Since 1989 the framework has been renewed four times, in 1991 ([10]), 1992 ([11]), 1995 ([12]) and 1997 ([13]). With reference to the provisions of the Law, therefore, a Community framework was in force throughout 1996 and Italy was required by the framework to notify any aid for an investment project in the motor vehicle industry costing more than ECU 17 million.

Even if the tax exemptions in question could be regarded as compatible with the common market, on the grounds that they fulfil some of the conditions laid down in the relevant sectoral rules, the aid granted in the above sensitive sectors should be declared illegal since it was granted without the prior approval of the Commission, which is exclusively empowered to assess its compatibility.

The Italian authorities must therefore inform the Commission in good time of the individual cases in which they intend to apply the Law to firms in the above sensitive sectors and provide it with all the necessary information and explanations enabling it to assess the compatibility of the aid in the sectors in question. If the Commission were not to receive from the Italian authorities the information required for the purpose of assessing the compatibility of the aid with the common market, it would have to base its assessment on the information in its possession at the time it took its final decision; in view of the misgivings about aid in the sectors concerned which the Commission expressed when it initiated the proceedings, a negative final decision cannot be ruled out at this stage in the procedure.

V

In the light of the foregoing, and in particular Parts III and IV, it must be concluded that the aid granted under the Law by Italy in 1996 by way of tax relief to steel firms and firms in the other sensitive sectors mentioned in this Decision is illegal since it was not notified and, *a fortiori,* was not approved by the Commission before it was

([5]) OJ L 380, 31. 12. 1990, p. 27.
([6]) OJ L 351, 23. 12. 1997, p. 18.
([7]) OJ C 94, 30. 3. 1996, p. 11.
([8]) OJ C 142, 8. 6. 1995, p. 4.
([9]) OJ C 123, 18. 5. 1989, p. 3.
([10]) OJ C 81, 26. 3. 1991, p. 4.
([11]) OJ C 36, 10. 2. 1993, p. 17.
([12]) OJ C 284, 28. 10. 1995, p. 3.
([13]) OJ C 279, 15. 9. 1997, p. 1.

granted. The aid to steel firms covered by the ECSC Treaty is furthermore incompatible with the common market since it does not qualify for any of the possible derogations provided for by Decision No 2496/96/ECSC. On the question of the compatibility of the aid in the other sensitive sectors, the Commission will determine its position when it has received the information that Italy is required to communicate,

HAS ADOPTED THIS DECISION:

Article 1

The State aid granted by Italy under Law No 549/95 by way of tax relief to steel firms covered by the ECSC Treaty is illegal, since it was granted in breach of Article 6(1) of Decision No 2496/96/ECSC.

It is also incompatible with the common market for coal and steel by virtue of Article 4(c) of the ECSC Treaty.

Article 2

Italy shall recover the aid referred to in Article 1 in accordance with the provisions of Italian law relating to the recovery of amounts owed to the public authorities. In order to counteract the effects of the aid, interest shall be charged on the amount of the aid from the date on which it was granted until the date it is reimbursed. The interest rate applicable shall be that used by the Commission to calculate the net grant equivalent of regional aid schemes in the period in question.

Article 3

Italy is required to provide the Commission, within one month of the notification of this Decision, with all the necessary information and explanations enabling it to assess the compatibility with the common market of the State aid granted under Law No 549/95 to firms in the shipbuilding, motor vehicle and synthetic fibres industries.

That aid is illegal, since it was granted in breach of the prior notification requirement laid down in Article 93(3) of the EC Treaty.

Article 4

Italy shall inform the Commission, within two months of the notification of this Decision, of the measures taken to comply herewith.

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels, 13 May 1998.

For the Commission

Karel VAN MIERT

Member of the Commission