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(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 3 June 1998

concerning Sicilian Regional Law No 25/93 on measures to promote employment (Articles 51, 114, 117 and 119)

(notified under document number C(1998) 1713)

(Only the Italian text is authentic)

(Text with EEA relevance)

(1999/99/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

After giving notice to the parties concerned, in accordance with the aforementioned Article, to submit their comments,

Whereas:

I

(1) By letter No 3416 of 2 May 1997 [1], the Commission informed the Italian Government of its decision to initiate proceedings pursuant to Article 93(2) of the Treaty in respect of aid referred to in Articles 51, 114, 117 and 119 of Sicilian Regional Law No 25/93. In the same letter it asked the Italian Government to submit its comments within 30 days of being notified of the letter and asked interested parties to submit their comments within 30 days of the date of publication of the letter.

[1] OJ C 204, 4. 7. 1997, p. 10.

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(2) The Italian Government submitted its comments by letters from the Permanent Representative's Office No 4319 of 30 June 1997, No 6799 of 10 October 1997, No 7072 of 22 October 1997 and of 6 May 1998.

No other Member State or interested party submitted comments to the Commission.

III

(3) The aid referred to in the letter of 2 May 1997 is set out below.

(4) Article 51 of Sicilian Regional Law No 25/93 provides for the refinancing of an aid scheme for cooperatives introduced by Regional Law No 36/91 up to an amount of ITL 24 billion (ECU 12,7 million). After refinancing, the following forms of aid will be available:

(a) under Article 8(1), grants to cooperatives of up to 50 % of eligible expenditure, subject to a ceiling of ITL 150 million (some ECU 78 000);

(b) under Article 8(2), loans at an interest rate of 4 % to cooperatives to finance that part of the investment not covered by grants under Article 8(1);

Those grants and loans are available for investment in the construction, modernisation, expansion and development of production facilities, for investment in safeguarding and creating jobs, and for expenditure on plant and machinery. The maximum intensity of the aid must not exceed the maximum intensities laid down for Sicily [1] according to the size and location of the firm.

(c) under Article 14(1), loans at an interest rate of 4 % for a period of not more than 24 months to finance working capital;

(d) under Article 14(2), loans at an interest rate of 4 % (for a period of 15 years, including a two-year grace period) and leasing agreements at an interest rate of 7.5 %. The same type of investments and expenditure as those covered by Article 8(1) and (2) are eligible for such aid.

(5) Article 114 of Regional Law No 25/93 authorises IRCAC (Instituto Regionale per il credito alle cooperative — regional agency providing credit to cooperatives) to grant to cooperatives in the hotel and tourist trade and in agri-tourism the subsidised loans referred to in Article 14(2) of abovementioned Regional Law No 36/91 so as to enable them duly to settle their debts to public bodies at national and regional levels and to banks. This assistance is limited to debts contracted before 30 June 1993.

(6) The scheme is also open to firms in the leisure and sports sector which have contracted loans under the regional laws and are experiencing financial difficulties as a result of the decline in the number of visitors.

(7) Article 117, which modifies an aid scheme established under Regional Law No 46/67, provides for grants covering 20 % of costs which are aimed at promoting tourist transport by charter flights and are available to tour operators who hire aircraft for carrying tourists to Sicily.

(8) Grants are also available, again to cover 20 % of transport costs, to Italian and foreign travel agencies for providing tourist travel as part of inclusive tours and for carrying tourists by rail or sea.

(9) The eligibility conditions are set out in Sicilian Regional Circular No 15353 of 14 October 1993 and on the grant application form. The grants are provided only where the tourists carried spend at least six nights in Sicily. Tour operators and travel agencies are required to supply the administration with the name of the establishment where the tourist is staying. The competent administrations are to enter into agreements with these tourism businesses to ensure that the amounts of aid they receive are reflected in equivalent reductions in the rates they charge to tourists.

Tour operators and travel agencies are required to present the necessary documentation to enable the administration to check the unit cost of transport per passenger (invoice showing the cost of transport, number of passengers carried, etc.). They must also produce the necessary documentation to allow the administration to check that they have passed on the grants they have received in the form of equivalent reductions in the rates they charge to tourists. They are also required to publicise the Sicilian scheme in their brochures, informing tourists of the benefits to them.

(10) The annual budget allocated to the scheme is ITL 15 billion (ECU 7,7 million).

(11) Article 119 provides for loans to be granted at a rate of 4 % to travel agencies and other operators providing unscheduled road transport services. The loans are intended to finance working capital and are granted up to a ceiling of ITL 150 million. A subsidiary guarantee can also be provided by the Region of Sicily.

The budget allocated for 1993, 1994 and 1995 is ITL 3 billion.

The competent authorities informed the Commission by letter No 4319 of 30 June 1997 that the scheme provided for under the measure in question had been repealed by Sicilian Regional Law No 33/96 and that no aid had previously been granted. The proceedings initiated in respect of the scheme therefore no longer served any useful purpose.

IV

(12) The grants for cooperatives refinanced under Article 51 of Regional Law No 25/93 and modified by Article 114 of the same Law fall within the scope of Article 92(1) of the EC Treaty.

[1] That is to say, the maximum intensities set out in the Commission Decision of 1 March 1995 on regional aid in Italy (Aid No 40/95): OJ C 184, 18. 7. 1995, p. 4.

(13) This aid is granted to firms operating in certain areas of Italy which are thus given an advantage over firms located elsewhere.

(14) The aid distorts competition in so far as it strengthens the financial position and opportunities of the recipient firms with respect to competitors who do not receive the aid. It also affects intra-Community trade whenever this effect occurs in that context.

In particular, it distorts competition and affects trade between Member States where the recipient firms export some of their products to other Member States; equally, even where such firms do not export their goods, national production is favoured because firms established in other Member States have less chance of exporting their products to the Italian market ([1]).

(15) The aid influences decisions on the location of recipient firms, and this also affects trade. Since the aid encourages firms to relocate to subsidised areas or to move from one Member State to another, production at the new site and the supply of goods from it alter the patterns of trade between the Member States.

(16) From the above it can be seen that the aid granted under the scheme provided for in Regional Law No 36/91 which was refinanced on the basis of Article 51 of Law No 25/93 and modified by Article 114 of Law No 25/93 falls within the scope of Article 92(1). It is therefore incompatible with the common market, unless it qualifies for one of the derogations provided for in the Treaty. It is also illegal since it was put into effect by the Italian Government before the Commission had given its opinion, notwithstanding the suspensory effect of Article 93(3).

(17) With regard to the refinancing — provided for in Article 51 of Law No 25/93 — of the scheme set up by Regional Law No 36/91 and the modification of one of the measures under Article 114 of Law No 25/93, the initiation of proceedings was justified principally on the grounds of lack of information concerning the basic scheme. It was possible to ascertain from the supplementary information provided by the competent authorities that the scheme introduced by Law No 36/91 had been notified and approved by the Commission in April 1991 ([2]). Furthermore, the information currently at the Commission's disposal justifies the following conclusions.

(18) With regard to the refinancing of aid for productive investment provided for under Article 8(1) and (2) and Article 14(2) of Law No 36/91, the Commission confirms the approval it gave in 1991. Sicily, which suffers particularly serious problems compared with the rest of the Community, qualifies for the derogation under Article 92(3)(a) ([3]). The arrangements for granting the aid are in line with the Community rules on eligible investment expenditure and with the maximum intensities applicable. The aid in question therefore qualifies for the derogation under Article 92(3)(a) in so far as it is intended to promote the economic development of a region where the standard of living is abnormally low and where there is serious underemployment.

(19) With regard to the refinancing of the aid intended to finance working capital under Article 14(1) of Law No 36/91, the Italian Government did not dispute the objections raised by the Commission when it initiated the proceedings. At the time, one of the Commission's observations was that the aid constituted operating aid and did not fulfil the conditions laid down in the Commission's 1988 communication on the method for the application of Article 92(3)(a) and (c) to regional aid ([4]) as it was neither limited in time, nor degressive, nor designed to overcome structural handicaps. These facts were not denied.

(20) The same considerations are valid for the granting under Article 114 of Law No 25/93 of loans provided for in Article 14(2) of Law No 36/91 to firms in the hotel and tourist trade and in agritourism to enable them to settle their debts to

([1]) Judgment in Case 102/87 [1988] ECR 4067 (SEB).

([2]) Aid N 582/90, OJ C 192, 23. 7. 1991, p. 2.
([3]) Commission Decision of I March 1995 (Aid N 40/95).
([4]) OJ C 212, 12. 8. 1988, p. 2.

national and regional bodies and to banks. The competent authorities did not dispute that this measure concerned operating aid. Moreover, it was non-degressive operating aid. Furthermore, given that the aid was granted in respect of expenditure already incurred, it did not in any way act as an incentive to stimulate additional investment.

(21) It its notice on the *de minimis* rule for State aid [1] the Commission stipulated that the ceiling of ECU 100 000 over a three-year period was a threshold figure below which Article 92(1) can be said not to apply, with the result that a measure need no longer be notified in advance under Article 93(3).

The Commission nevertheless laid down the conditions for applying the rule, in particular to ensure that, where aid is given to the same recipient under separate measures covered by the *de minimis* rule, the total amount of the aid does not exceed the threshold set and that, where aid is provided other than in the form of a grant, it has to be converted into its grant equivalent. The *de minimis* rule is of interest primarily to SMEs, but it applies to all recipients irrespective of size.

(22) Accordingly, aid under Article 14(1) of Law No 36/91 and aid under Article 14(2), as amended by Article 114 of Law No 25/93, is not in conformity with Community rules governing operating aid. It does not qualify for any derogation and is therefore incompatible with the Treaty for the part not covered by the *de minimis* rule.

V

(23) With regard to the aid provided for in Article 117 of Law No 25/93, the Italian authorities sent the Commission the following observations:

(24) First, they point out that the measure is not discriminatory on grounds of nationality or with regard to the means of transport used. Both Italian and foreign travel agencies and tour operators benefit and all means of transport are covered. The Italian authorities consider, therefore, that there can be no effect on competition in these respects.

(25) Second, in their view, the direct beneficiaries of the grants are the consumers, i.e. the tourists themselves, since the tour operators and travel agents are obliged by law to reduce the rates they charge for transport by an amount equivalent to the grant paid by the Region and thus to pass on in the rates charged all the grants they receive. The tour operators and travel agents thus act simply as intermediaries since they cannot themselves keep any of the aid they receive from the Region.

(26) The Italian authorities therefore consider that, although the measure is undoubtedly aimed at attracting tourists to Sicily, the grants have only indirect effects which are spread over the island's entire tourist industry and economy in general. In their opinion, such advantages, which are in themselves indirect and widespread and cannot be quantified, do not fall within the scope of Article 92(1) of the Treaty.

(27) The Italian authorities have also provided the following information on the tourist industry in Sicily, which, in their view, requires such aid if it is to develop:

Table 1

Data from the Region of Sicily

Year	Nights	Average number of days spent in Sicily
1991	10 820 000	4,2
1992	7 033 000	3,80
1995	9 548 000	3,01
1996	10 228 000	2,99
1997	10 329 000	3,10

[1] OJ C 68, 6. 3. 1996, p. 9.

Table 2

Data for 1996 from the Region of Sicily

Region	Tourists/residents	Tourists/km²	Average stay (days) (1)
Sicily	1,74	344	2,99
Veneto	12,04	2 899	5,10
Friuli-V G	7,97	1 210	5,80
Valle d'Aosta	22,62	821	4,02
Emilia-Romagna	7,17	1 271	4,31

(1) The average stay of tourists in Italy is 4,3 days.

(28) The Commission also has the following additional information concerning the Region of Sicily:

Table 3

Added value at factor cost of the tourist industry as a percentage of the added value of overall economic activity

(1991 data, source: Istituto Tagliacarne)

(%)

Italy	2,8
Trentino	9,7
Valle d'Aosta	7,1
Friuli-V G	3,5
Veneto	3,1
Emilia-Romagna	2,8
Sicily	1,9

(29) In 1996 productivity in the Mezzogiorno (which includes Sicily) was 76,6 % of that of centre-north Italy. Infrastructure endowment in Sicily in 1995 was 69,3 % of the national index (Italy = 100). The unemployment rate in 1996 was 24 % and youth unemployment was 60,1 %. Training courses provided in the Mezzogiorno represent only 22 % of the national total.

(30) As regards the nature of the aid, the Commission notes first of all that:

(a) the measure may be considered non-discriminatory, in the sense intended by the Italian authorities, since there will be no effect on competition with regard to either travel agencies or the means of transport used;

(b) given the scheme's arrangements, the direct effects of the aid in terms of financial advantages are effectively passed on from the travel agencies and tour operators to the consumer, which means that these traders do not gain any direct financial advantage from the aid.

Notwithstanding the observations under (a) and (b), however, the object and the effect of the measure is to encourage tourists to visit Sicily. Tour operators therefore gain an indirect advantage in terms of the increase in demand made possible by the grants.

(31) While the Commission can agree with the Italian Government that the effect of the advantage obtained is indirect, widespread and not quantifiable, it nevertheless considers that it falls within the scope of Article 92(1). This is because the aid benefits only firms operating in certain areas, which therefore enjoy an advantage since the aid is not granted for the transport of tourists outside those areas.

(32) Since the aid influences the choices made by tourists, trade is also affected. In so far as the grants encourage tourists to choose to stay in the areas that benefit, the patterns of tourism in the Community are altered. The aid therefore distorts competition and strengthens the financial position and opportunities of the recipient firms with respect to competitors who do not receive the aid. Whenever this occurs in the context of intra-Community trade, competitors feel the effects.

(33) In the light of the above observations, the Commission therefore considers that the aid in question falls within the scope of Article 92(1). Accordingly, the aid is not compatible with the common market unless it qualifies for one of the derogations provided for in the Treaty. It is also illegal since it was put into effect by Italy before the Commission had given its opinion, notwithstanding the suspensory effect of Article 93(3).

(34) With a view to assessing the compatibility of the aid, the Commission must first of all point out, as it did when initiating the proceedings, that it constitutes operating aid. At the time, the Commission noted that the measures did not comply with the Community rules on operating aid, specifically those stipulating that the aid must be limited in time, degressive and designed to overcome structural handicaps.

(35) The Commission must take into account the following additional factors. Given the natural beauty and architectural heritage of the island, the tourist industry could play an important role in developing the economy of Sicily, which is one of the less-favoured areas of the Union within the meaning of Article 92(3)(a) of the Treaty. Because of a number of structural factors, such as the underdevelopment of infrastructure and the low level of training, the tourist industry in Sicily has not yet been developed as it deserves to be. As the figures provided by the Italian authorities show (see Table 2), compared with five other Italian regions visited by tourists, Sicily is the least developed in terms of the number of visitors, both in relation to the number of residents (1,75 for Sicily and between 7,17 and 22,62 for the other regions) and per km^2 of land (344 for Sicily and between 821 and 2 899 for the other regions). The figures also show that the number of visitors has not increased since at least 1991 and that the added value of the tourist industry as a proportion of the added value of the economy as a whole is much lower in Sicily than in Italy generally and in the country's other tourist regions. Finally, the average stay of tourists in Sicily (2,99 days) is much shorter than the average for the country as a whole (4,3 days).

(36) As a general rule, the Commission takes the view that development must be based on long-term policies capable of influencing the infrastructure required for that purpose. However, the measures in question can provide a useful addition to structural measures. Firstly, since they apply only if the tourist stays at least six nights in Sicily, the measures should have the effect of prolonging stays by tourists. Secondly, in view of both the economic situation of the island and the structural shortcomings of the sector, the efforts at developing temporarily the Region's tourist potential by means of the measures in question should continue to be supported. Since underpinning demand is likely to be a key factor in improving tourist facilities, the measures can make a useful contribution to improving infrastructure and promoting the development of the sector.

(37) On the basis of the above considerations, the Commission believes that, provided they are limited in time, the aid measures in question are compatible with the common market by virtue of the derogation laid down in Article 92(3)(a). With regard to the limitation in time, an appropriate period is five years from the date on which the proceedings were initiated. The date by which the scheme should be brought to an end is therefore set at 31 December 2002. Since it has been operating since 1967, there can be no question of extending or refinancing it,

HAS ADOPTED THIS DECISION:

Article 1

The refinancing and modification of the aid scheme for cooperatives under Articles 51 and 144 of Sicilian Regional Law No 25/93 is illegal as regards the part not covered by the *de minimis* rule since it was put into effect before the Commission had given its opinion pursuant to Article 93(3) of the EC Treaty.

Article 2

The refinancing of the aid measures under Article 8(1) and (2) and Article 14(2) of Sicilian Regional Law No 36/91 provided for by Article 51 of Law No 25/93 is compatible with the common market by virtue of the derogation laid down in Article 92(3)(a) of the EC Treaty.

Article 3

The refinancing of the aid measures under Article 14(1) of Sicilian Regional Law No 36/91 provided for by Article 51 of Law No 25/93 and the modification pursuant to Article 114 of Law No 25/93 of the aid measure under Article 14(2) are incompatible with the common market for the part exceeding the ceiling of ECU 100 000 over a three-year period fixed by the *de minimis* rule, since the aid measures do not qualify for any of the derogations provided for by Article 92(2) and (3) of the EC Treaty or by Article 61(2) and (3) of the EEA Agreement.

Article 4

Italy shall take the appropriate measures to discontinue forthwith the aid measures referred to in Article 3 of this Decision if the total amount of aid exceeds the ceiling fixed by the *de minimis* rule referred to in that Article.

Italy shall also take measures to recover the aid paid illegally within the meaning of Article 3. The aid shall be paid back in accordance with the procedures and provisions of domestic law, together with interest at the reference rate used to calculate the net grant equivalent of regional aid in Italy, until such time as the aid is effectively recovered.

Article 5

The aid measures provided for under Article 117 of Sicilian Regional Law No 25/93 are illegal since they were put into effect before the Commission had given its opinion in accordance with Article 93(3) of the EC Treaty.

The aid measures referred to in the preceding paragraph are compatible with the common market by virtue of the derogation provided for in Article 92(3)(a) of the EC Treaty for a limited period of five years from the date on which the proceedings were initiated. That period shall end on 31 December 2002. The scheme shall not be extended or refinanced.

Article 6

Italy shall take the appropriate measures to terminate on 31 December 2002 the aid measures referred to in Article 5.

Article 7

The Italian Government is required to inform the Commission, within two months of notification of this Decision, of the measures it has taken to comply with it.

Article 8

This Decision is addressed to the Italian Republic.

Done at Brussels, 3 June 1998.

For the Commission

Karel VAN MIERT

Member of the Commission