II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 11 May 1999

concerning aid granted by Italy to promote employment

(Notified under document number C(1999) 1364)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2000/128/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having given interested parties notice to submit their comments in accordance with the abovementioned provisions [1] and having regard to those comments,

Whereas:

I. PROCEDURE

(1) By letter No 3081 dated 7 May 1997 from the Permanent Representative's Office, the Italian authorities notified the Commission, in accordance with Article 88(3) of the EC Treaty (formerly Article 93(3)), of a draft law subsequently approved by Parliament (Law No 196 of 24 June 1997) concerning measures to promote employment [2]. As it concerned a plan to grant aid, the draft law was entered in the register of notified aid under N 338/97. The Commission requested further information by letter No 52270 of 4 June 1997, to which the Italian authorities replied by letter dated 11 September 1997 from the Prime Minister's Office and letter No 7224 dated 28 October 1997 from the Permanent Representative's Office. Following the information received, the investigation was extended to other aid schemes connected with this package, i.e. Laws Nos 863/84, 407/90, 169/91 and 451/94, which govern training and work experience contracts. As the aid they provide for has already been granted, the laws in question were entered in the register of non-notified aid under NN 164/97.

(2) Investigation of the case was pursued by further Exchanges of Letters and meetings. The Commission sent letters Nos 55050 of 6 November 1997 and 51980 of 11 May 1998; the Italian authorities sent letters Nos 2476 of 10 April 1998 and 3656 of 5 June 1998. Meetings were held in Rome on 27 November 1997, 3 March 1998 and 8 April 1998.

(3) By letter of 17 August 1998, the Commission informed the Italian Government of its decision to initiate the procedure under Article 88(2) of the EC Treaty (formerly Article 93(2)) in respect of aid granted since November 1995 to promote employment through fixed-term training and work experience contracts provided for in Laws Nos 863/84, 407/90, 169/91 and 451/94. The Italian Government was also informed in the same letter of the decision to initiate the Article 88(2) procedure in respect of aid for converting training and work experience contracts into open-ended contracts under Article 15 of Law No 196/97.

[1] OJ C 384, 10.12.1998, p. 11.
[2] Official Journal of the Italian Republic No 154, 4 June 1997.

(4) The Commission Decision initiating the procedure was published in the *Official Journal of the European Communities* ([3]). The Commission invited interested parties to comment on the measures in question.

(5) The Italian Government set out its comments in a letter dated 4 November 1998. The Commission requested further details by letter of 1 February 1999, to which the Italian Government replied by letter dated 5 March 1999.

(6) The Commission received comments from the Italian General Confederation of Industry (Confindustria) in a letter of 11 January 1999 and forwarded them by letter of 21 January 1999 to the Italian Government for its response.

(7) By letter dated 1 February 1999, the Commission also invited Confindustria to provide further details and information; these were provided by letter of 22 February 1999. The most recent information from Confindustria was sent by letter of 31 March 1999 ([4]).

II. ITALIAN LEGAL BASIS FOR THE AID

II.1. Training and work experience contracts

(8) The training and work experience contract was introduced in 1984 by Law No 863/84. This was a fixed-term contract, including a training period, for the employment of unemployed persons of up to 29 years of age. Employers were exempt from paying social security contributions for two years in respect of persons employed under this type of contract. The reduction was applied in a generalised, automatic, indiscriminate and uniform manner throughout the country.

(9) The implementation arrangements for this type of contract were changed in 1990 by Law No 407/90, which introduced a regional variation in the aid, by Law No 169/91, which raised the maximum age of eligible employees to 32, and by Law No 451/94, which introduced the one-year training and work experience contract and set a compulsory minimum number of training hours.

(10) Under these laws, the training and work experience contract is a fixed-term contract for the employment of young people aged between 16 and 32. The age limit may be raised at the discretion of the regional authorities. There are two types of training and work experience contract:

— the first type concerns activities requiring a high level of training. The contract has a maximum duration of 24 months and must provide for at least 80 to 130 hours of training to be given at the workplace for the full period of the contract,

— the second type must last no more than 12 months and include 20 hours of training.

(11) The main feature of the training and work experience contract is that it provides the employee with a training programme conferring a specific qualification. Training programmes are usually drawn up by consortia of firms or trade associations and approved by the employment office, which checks whether, at the end of the training period, the employee has actually received the training required.

(12) Employers who take people on via training and work experience contracts benefit from reductions in social security contributions. The reductions allowed for the period of the contract are:

— 25% of contributions normally due, for firms located in areas other than the Mezzogiorno,

— 40% for firms in the commercial and tourism sector, with fewer than 15 employees, established in areas other than the Mezzogiorno,

— total exemption for craft firms and firms in areas where the level of unemployment is above the national average.

(13) In order to qualify for these reductions, the employer must not have reduced staff numbers in the previous 12 months, except where he is taking on employees with a different qualification. The employer must also have kept on (with an open-ended contract) at least 60% of employees whose training and work experience contract expired in the previous 24 months.

([3]) See footnote 1.

([4]) The information consists solely of official statistics published by the Istituto Nazionale di Statistica (ISTA) 'Forze di lavoro media 1997' and 'Formazione universitaria e mercata del lavora' and by the Organisation for Economic Cooperation and Development ('Uno sguardo sull'educazione', 1997). The statistics provided by Confindustria consist solely of those data reproduced in the form of graphs.

(14) For training and work experience contracts of the second type (lasting one year), reductions are also subject to the condition that the contract be converted into an open-ended contract. The reductions apply only after conversion and for a period equal to the period covered by the training and work experience contract.

(15) The Italian authorities maintain that this is an aid scheme to promote youth employment. In their view, the Italian market has particular features which make it necessary to increase to 32 the age limit of 25 usually applied for this category.

(16) In its Decision initiating the Article 88(2) procedure in respect of the measures in question, the Commission took the view that the aid to employment under training and work experience contracts clearly has the following features:

— it does not necessarily concern the recruitment of workers who have not yet obtained employment or who have lost their previous job, as this is not required by Italian law,

— it does not contribute to the net creation of new jobs within the meaning of the guidelines on aid to employment [5] since there is no obligation to increase the workforce, despite the ban on redundancies in the preceding period,

— it does not encourage firms to take on certain groups of workers experiencing difficulties entering or re-entering the labour market. Given the very high age limit (32), which can be raised even further by the regional authorities, the aid is not aimed at young people as the Italian authorities claim.

II.2. **Conversion of training and work experience contracts into open-ended contracts**

(17) Article 15 of Law No 196/97 stipulates that firms in Objective 1 areas which, on expiry, convert training and work experience contracts of the first type (two years) into open-ended contracts enjoy exemption from social security contributions for a further year. They must return any aid received if they dismiss the employee within 12 months of the end of the assisted period.

(18) The Commission noted when initiating the procedure that the aid does not appear to meet all the conditions laid down by the Community guidelines on aid to employment. The Commission is thus obliged to conclude that the aid is for maintaining jobs and, as stipulated in the Community guidelines in question, such aid constitutes operating aid.

III. **COMMENTS FROM OTHER INTERESTED PARTIES**

(19) The other interested parties which submitted comments are represented by Confindustria.

III.1. **Training and work experience contracts**

(20) Confindustria noted that the aid scheme in question has not changed substantially as a result of the series of amendments, and it remains generally applicable. It was simply a question of adjusting to the scale of the problems involved. The amendments introduced by Laws Nos 169/91 and 451/94 have not, it claimed, altered the 'general and uniform' nature of the scheme in the sense that the measures are applicable irrespective of the sector and geographical area concerned. Nor has the 'automatic' and 'indiscriminate' nature of the measures been altered, as they continue to be objective and non-discretionary with regard to the eligibility of the recipients of the aid concerned.

(21) The only measure which could alter the general nature of the scheme would be Law No 407/90, which gives some firms larger reductions according to their location. The effects of the amendment would be limited to the loss of uniformity of the scheme as the other factors remain unchanged.

According to Confindustria, removal of the regional variations, which would obviate the need for the measure owing to the unequal distribution of unemployment in the different regions of Italy, should result in closure of the file for non-applicability of Article 87 of the EC Treaty. As a result, the Commission's examination should essentially focus on this aspect of the new rules on training and work experience contracts.

Confindustria therefore shares the Commission's view that the aid is constituted by the differential part — with regard to the general 25% reduction in social

[5] OJ C 334, 12.12.1995, p. 4.

security contributions applicable throughout the country — of the reduction in contributions for firms operating in certain regions.

(22) The different level of assistance by size of firm is, according to Confindustria, due to the greater financial weakness of some firms compared with others and to the fact that those firms make proportionally the largest contribution to new job creation. Such parameters are not being sufficient, according to Confindustria, to conclude that the successive legislative provisions confer sectoral selectivity on such aid within the meaning of Article 87(1) of the Treaty, inasmuch as all sectors engaged in productive activity benefit from the same treatment. The more favourable treatment of service industries is, it is claimed, granted according to the type of employment and does not confer advantages on some firms in relation to their competitors.

(23) According to Confindustria, aid that varies according to size of firm is, moreover, compatible in every case with the intensities provided for in the Community guidelines on State aid for small and medium-sized enterprises ([6]).

(24) Confindustria also states that it would not be possible to separate the three elements referred to in points 12.1 and 12.3 of the Commission letter of 17 August 1998 ([7]) because, to some extent, the various characteristics necessarily overlap. It would not be easy in practice to establish when unemployed persons were recruited or even to distinguish between that condition and the net creation of jobs.

(25) Nor, according to Confindustria, is there any justification for stating that training and work experience contracts are not aimed at the net creation of jobs as the law does not provide for the obligation to increase the workforce. Such a claim must not diminish the importance of objective monitoring of the Italian labour market, where training and work experience contracts constitute an essential instrument.

(26) As regards the age limit for 'young persons' Confindustria notes that it cannot be uniform in all countries. Eurostat data on employment in Europe in 1995 not only support that claim but also show that, in the age group challenged by the Commission, Italy has a higher unemployment rate than the European average. The number of unemployed persons in the 29 to 32 age group is, furthermore, identical to that of the 25 to 29 age group: this justifies the need to provide employment aid for the entire 25 to 32 age group.

Table 1

Unemployment in Europe by age group — 1995

(from data supplied by Confindustria)

Age group	Europe (EU 15 average)	Italy
20 to 24	20,8	31,7
25 to 29	13,4	17,7
30 to 34	10,1	10,9

Source: Eurostat.

(27) Confindustria also compared the 15 to 29 age group with the 25 to 34 group: it states that, whilst there is a significant gap in the regions of northern Italy between the unemployment rate in the 15 to 24 age group (49,7%) and that in the 25 to 34 group (40,4%), the difference is much smaller in the regions of southern Italy, where unemployment is 45% for those aged 15 to 24 and 45,5% for those aged 25 to 34. It concludes that unemployment in southern Italy remains high even after the age of 25.

Table 2

Jobseekers aged 15 to 39 — percentages by age group and geographical distribution

(April 1995)

	15 to 19	20 to 24	25 to 29	30 to 34	35 to 39
North	13,0	36,7	26,0	14,4	10,0
Central	10,4	37,0	26,0	16,7	9,9
South	12,3	32,7	28,6	16,9	9,5
Italy	12,1	34,5	27,5	16,2	9,7

Source: ISTAT.

(28) As regards young persons with a university degree (25 to 34 group), the difference between unemployment in Italy and the EU average is even greater: compared with an EU average of 8,9%, unemployment among young graduates in Italy is 20,4%.

([6]) OJ C 213, 23.7.1996, p. 4.
([7]) See footnote 1.

Table 3

Unemployment in Europe in the 25 to 34 age group by level of education — 1995

(from data supplied by Confindustria)

Level of education	EU 15 average	Italy
University graduates	8,9	20,4
Secondary school leavers	9,6	12,8
Students completing compulsory education	17,2	14,6

Source: Eurostat.

(29) Confindustria comments that youth unemployment affects a very wide age range and especially those who, even if they have a university degree, have difficulties in obtaining stable employment on the labour market. This is particularly true in the Mezzogiorno, where the age limit of 25 appears to be too restrictive.

(30) The training and work experience contracts are intended to provide the technical and theoretical know-how to allow the workers to find employment on the labour market. The lack of flexibility in the application of the guidelines as regards the definition of 'young persons' seems inexplicable. Confindustria challenges the Commission's reasoning, which defines the training and work experience contracts as operating aid. It underlines the lack of correlation between the (possible) exclusion of some beneficiaries (those over 25) from the 'young persons' category and the fact that training and work experience contracts are not serving their intended purpose and therefore constitute operating aid.

(31) Confindustria also states that certain sociological studies show that young persons aged 29 to 32 face specific problems in obtaining employment, with employers usually preferring, all qualifications being equal, to recruit younger candidates. The difficulty for them in both cases is to find their first job: in Italy, young university graduates seeking employment are often aged over 25. University studies are completed on average at the age of 23 to 25, and men still have their military service to carry out. The statistics provided by Confindustria show that 75% of Italian students are over 25 when they graduate from university, whilst 26,8% is the median age for 50% of graduates.

(32) The statistics on the average time spent finding employment indicate, according to Confindustria, that youth unemployment is not limited to those under 25, since the number of unemployed between 25 and 32 is the same as those under 25.

Table 4

Distribution by age of university graduates ('laureati' in Italy) (1995)

(from data supplied by Confindustria

Country	Age in the first quartile	Median age	Age in the third quartile	Usual age
Austria	25,6	27,3	29,6	22 to 25
Belgium (Flemish Community)	20,5	22,0	23,3	22 to 24
Denmark	26,5	28,2	30,5	25 to 27
Finland	26,1	27,6	29,9	25 to 26
Iceland	24,7	26,0	28,0	25,0
Italy	25,5	26,8	28,7	23,0
Netherlands	23,8	25,3	28,0	23,0
New Zealand	21,7	22,7	24,7	23,0
Norway	23,8	25,2	27,5	24,0
Spain	23,9	25,3	41,0	23,0
Sweden	25,3	26,3	29,4	23 to 24

Source: OECD.

(33) Confindustria also stated that the average time spent finding employment increased with age. This is particularly true of graduates, who on average remain unemployed for 14 months in the 15 to 24 age group, 20 months in the 25 to 29 age group and 37 months in the 30 to 39 age group. As regards the total number of jobseekers, unemployment lasts 24 months for the 15 to 24 age group. The period of unemployment rises to 36 months in the 25 to 29 age group and to 37 months in the 30 to 39 age group.

Table 5

Jobseekers by age group and length of unemployment — average for 1997

(from data supplied by Confindustria)

1 000

Period of unemployment	Age group 15 to 24	Age group 25 to 29
Less than 1 month	55	27
2 to 3 months	79	39

Period of unemployment	Age group 15 to 24	Age group 25 to 29
4 to 5 months	51	33
6 to 11 months	146	69
12 to 13 months	245	116
24 months and over	432	353
Information not available	19	14
Total	1 038	652

Source: ISTAT.

Table 6

Average number of months spent seeking work per person (1997)

(from data supplied by Confindustria)

Age group	University graduates	Total
15 to 24	14	24
25 to 29	20	36
30 to 39	37	37
40 to 49	34	34
50 and over	30	32

Source: ISTAT.

(34) The data supplied by Confindustria concerning university graduates in 1992 show that, three years after gaining their diplomas, over 50% had not yet found stable employment and 23% were still seeking employment and that 93% of those under 24 and 45,7% of those between 25 and 34 lived with their parents. According to Confindustria, this is because being jobless acts as a barrier to independence for young people over the age of 25.

(35) As regards the selectivity of the measures in question, Confindustria considers that the contradiction in the Commission's reasoning on the non-applicability of the regional exemptions. If the Commission considers that the aid consists of the additional aid for training and work experience contracts concluded by firms in less-favoured regions, it cannot deny that the measure qualifies for regional exemption on the ground of its general nature. The Commission's finding that the aid is constituted by the regional-specificity differential as compared with the general measure is not consistent with its statement ([8]) that the aid is not restricted to the areas eligible for derogation as it applies to the country as a whole. Examination of the derogations provided for in the Treaty should therefore be carried out with regard to this part of the benefit.

(36) Confindustria also states that the Commission has not given sufficient reasons for its finding that the measures to overcome the structural handicaps of less-developed regions are inadequate. If the view is that the aid should be examined under Article 87(3) and not under the guidelines on aid to employment, Confindustria points out that there is no reason why the aid, which is tied to a costly vocational training programme and is commensurate with the seriousness of the structural problems, should not qualify for exemption.

(37) According to Confindustria, the employer's commitment to provide training acts as a counterpart to the aid granted ([9]). It represents a contribution which is not related to the initial investment but takes the form of financial and organisational efforts to set up the training courses. The employment aid guidelines provide that aid must be accompanied by training or retraining of the worker concerned.

(38) According to Confindustria, there are insufficient grounds for the Commission's doubts when it states that 'the aid does not qualify for the regional derogations under Article 87(3)(a) and (c), as it is not investment aid'. Since this provision is given as the legal basis in point 20 of the employment aid guidelines, Confindustria does not understand why the measures in question do not qualify for exemption simply because they do not consist of investment aid. In the present case, the initial investment would be replaced by a budgetary and organisational commitment by the employer.

III.2. **Aid for the conversion of training and work experience contracts into open-ended contracts**

(39) Confindustria disputes the fact that aid for the conversion of training and work experience contracts into open-ended contracts constitutes operating aid. As

([8]) Point 12.6 of the Commission letter of 17 August 1998 (see footnote 1).

([9]) In support of this argument, Confindustria refers to the judgment of the Court of Justice in Case 730/79, *Philip Morris* v *Commission* [1980] ECR 2671.

to the reasoning, it refers to the comments made regarding such contracts (see recitals 20 to 38).

IV. COMMENTS FROM THE ITALIAN AUTHORITIES

IV.1. Training and work experience contracts

(40) According to the Italian authorities, training and work experience contracts are one of the most important instruments providing access to the labour market and an essential part of the Government's efforts to combat unemployment and encourage the employment of persons aged between 16 and 32. They are particularly useful in southern Italy, where unemployment is especially severe. The Italian authorities pointed out that training and work experience contracts are aimed at fostering the entry or re-entry into the labour market of those who, because of their age or for other reasons, experience difficulties in obtaining employment.

(41) As regards the 16 to 25 age group, the Italian authorities do not consider that the measures in question give rise to any problems of incompatibility with the Treaty as that age group should be regarded as an underprivileged category. Accordingly, there is no need to comply with the net job creation requirement over a given period.

(42) The Italian authorities also justify the application of the measures in question to the 26 to 32 age group on the ground that the latter constitutes a category experiencing specific difficulties: persons in that age group have either been unemployed for a long time or can be treated in the same way as those under 26 because of the special employment situation in Italy.

(43) In support of their arguments, the Italian authorities stress that, according to the statistics for the period 1994 to 1996, 34,3% of those aged 25 to 32 were registered as unemployed in 1994, 33,1% in 1995 and 32,8% in 1996. In the Mezzogiorno the percentages are higher (39%), 37% and 36,4%). On the basis of these statistics, the percentages of persons registered as unemployed (liste di collacamento) in the 19 to 24 age group are lower than those in the 25 to 32 age group (31,7%, 31,1% and 30,8% in these same years). The Italian authorities forwarded the data for the 25 to 32 age group (Table 7) by letter of 5 March 1999.

Table 7

Percentages of persons aged 25 to 32 registered as unemployed (liste di collocamento)

(data supplied by the Italian authorities)

	Italy	Mezzogiorno
1994	34,3	39
1995	33,1	37
1996	32,8	36,4

Source: Provincial Employment Office.

(44) The Italian authorities also pointed out that young university graduates reached the labour market at a relatively advanced age (27 on average) and that they formed a large proportion of the 30 to 34 age group. By letter of 5 March 1999, the authorities also specified that the labour market entry age meant the age at which jobseekers find their first job (the labour market access period is defined as the period between obtaining a degree and finding employment for the first time). The Italian authorities also point out that a university degree does not give access to occupations for which a State examination is necessary. Of total university graduates, 42,3% are aged 27 to 34, 4,4% are aged over 35 and 15,8% are aged 23 to 24. At the time of the survey, 33% of graduates were not working. In the Mezzogiorno the corresponding percentage was 46,6%.

Table 8

Age at which university degree (laurea) is awarded — 1995

(from data supplied by the Italian authorities)

Age	< 23	24	25	26	27	28	29	30 to 34	35 to 39	> 40	Total
%	4,0	11,8	18,8	18,7	14,3	10,2	6,5	11,3	2,7	1,7	100

Source: ISTAT.

(45) The Italian authorities also state that unemployment among graduates in the 25 to 39 age group is 12,4%, i.e. higher than unemployment among persons of the same age but with only a lower secondary school leaving certificate (10,9%) or a secondary school leaving certificate (10,8%) and with more time to deal with the problems of finding a first job. According to the Italian authorities, higher unemployment among graduates is due essentially to the initial difficulties of gaining entry to the labour market. The difficulties are even greater in the south of Italy owing to fewer job opportunities and a more difficult transition from school to work. Unemployment rates in those regions for university graduates are, however, lower than those for young persons with a secondary school leaving certificate (17,4% compared with 20,7%).

Table 9

Unemployment rates in the 25 to 39 age group, by type of study certificate

(from data supplied by the Italian authorities)

	Italy	Mezzogiorno
First degree (laurea)	12,4	17,4
Lower secondary leaving certificate	10,9	20,7
Higher secondary leaving certificate	10,8	20,7

Source: ISTAT.

(46) The Italian authorities point out that the 25 to 39 age group faces a particularly long wait before finding employment, and the data show an increase for the period 1995 to 1997.

Table 10

Average number of months spent seeking employment, per person (1997)

(from data supplied by the Italian authorities)

Age group	1995	1996	1997
15 to 24	22	23	24
25 to 29	33	34	36
30 to 39	33	36	37
40 to 49	31	34	34
50 and over	30	31	32
Average	28	30	32

Source: ISTAT.

(47) Other statistics provided by the Italian authorities show that in southern Italy the time spent by graduates in finding a job rose from 36,3 months in 1995 to 39 months in 1996 and 44,3 months in 1997, compared with a national figure of 26,8 months, 27,9 months and 28,3 months respectively.

(48) The Second Report on youth for 1997 published by the Istituto *Nazionale di Statistica* (ISTAT) shows that, in the 15 to 24 age group, 65% of unemployed persons required more than one year to find employment (the long-term unemployed), whereas 14% and 19% stated that they had looked for employment for between six and 11 months and for less than six months respectively. According to those data, long-term unemployment affects 46% of total redundancies and 74% of those seeking their first job. In the 25 to 34 age group, the level of long-term unemployment is 78%, whilst 15% of the unemployed say they have been looking for employment for less than six months and 11% for between six and 11 months. In this group, long-term unemployment affects 55% of the total number of unemployed who were made redundant and 86% of persons looking for their first job.

(49) The Italian authorities also furnished statistics on single persons in order to identify the number still living with their parents and to strengthen their argument for extending the age limits applied to 'young people'. The statistics show that single persons aged between 15 and 24 accounted for 29,2% of the population in 1995, 1996 and 1997. If the 'young people' category is extended to the age of 34, the percentages rise to 36,6% (1995), 37,1% (1996) and 37,4% (1997).

(50) According to a survey conducted by Censis (32nd report on the social situation in Italy in 1998), families are essential in helping family members to cope with difficulties encountered in the areas of remuneration and work. In 1995, 87% of those aged 20 to 24 still lived with their parents, whilst, the figure was 56% in the 25 to 29 age group.

Table 11

Proportion of single persons in the total population

(from data supplied by the Italian authorities)

Age group	1995	1996	1997
≤ 14	15,3	15,3	15,3
15 to 19	6,7	6,7	6,7
20 to 24	7,2	7,2	7,2

Age group	1995	1996	1997
25 to 29	5,2	5,5	5,7
30 to 34	2,2	2,4	2,5

Source: The Ministry of Labour.

(51) The Italian authorities point out that unemployment in 1995 was very high in the south and in the islands. In the 25 to 39 age group, it exceeded 50%, and in the next age groups it was manifestly higher than in the north and the centre.

Table 12

Unemployment by age group and area (north, centre, Mezzogiorno and islands) (1995)

(from data supplied by the Italian authorities)

Area	15 to 19	20 to 24	25 to 29	30 to 34	35 to 39
North	24,2	18,1	8,9	5,2	4,1
Centre	34,9	33,7	17,2	9,8	6,4
South and islands	56,4	55,0	34,0	21,1	13,3

Source: The Ministry of Labour.

(52) The picture is similar in 1996 and 1997, with unemployment levels higher in southern Italy. Even over time, the trend reveals differences between the north, the centre and the south. In the northern regions, the fall in unemployment is constant for those aged 15 to 19 (24,2% in 1995 and 22,7% in 1997) and 20 to 24 (18,1% in 1995 and 17,3% in 1997). Central Italy is characterised by an increase in unemployment in the 25 to 29 age group, whilst in the southern regions the rate is lower only in the 15 to 19 age group. Unemployment in the 24 to 29 age group, for example, rose from 34% in 1995 to 36,5% in 1997.

(53) The Italian authorities also state that the surveys published in the Second Report on young people show that, out of a total of 2 805 000 jobseekers in 1997, 37% are aged 15 to 24 and 38% aged 25 to 34. Overall, 75% of jobseekers are aged 15 to 34. The most striking characteristic is that 54% of those unemployed and aged 15 to 34 are seeking their first job.

(54) The Italian authorities also presented data concerning unemployment rates by age group, by level of studies and by area. In the northern and central regions there are no significant differences in unemployment according to the level of qualifications, whereas in the south there are stronger disparities: 12,5% unemployment among those with a doctorate or a specialisation, and 34% among graduates and university students.

Table 13

Unemployment by age group and qualifications in southern Italy (1995)

(data supplied by the Italian authorities)

Age group	Doctorate or specialisation	First degree (laurea)	Shorter first degree (laurea breve)	Qualified for admission to university	Not qualified for admission to university	Secondary leaving certificate	Primary leaving certificate	Total
15 to 19	0,0	0,0	0,0	44,2	25,5	20,0	22,2	24,2
20 to 24	0,0	25,0	25,0	24,5	15,3	13,9	12,0	18,1
25 to 29	0,0	23,9	12,5	7,9	7,4	7,5	12,8	8,9
30 to 34	0,0	7,9	6,7	3,7	4,7	5,4	9,3	5,1
35 to 39	0,0	2,5	0,0	2,5	3,5	5,1	6,9	4,0
Total	0,0	10,6	8,3	10,2	9,1	8,8	9,9	9,5

Source: The Ministry of Labour.

(55) The Italian authorities stress that the unemployment trend shows an increase in 1995, 1996 and 1997, with more significant peaks in the centre and the south. The south also has more marked differences in unemployment levels according to qualifications.

(56) They also point out that the training that has to be provided under the training and work experience contracts should be viewed as a compensatory contribution required of firms. Training is not, the authorities claim, limited to the minimum number of hours required by law but includes apprenticeships. They also note that, in several cases, the vocational training or retraining aid is not covered by Articles 87 and 88 of the Treaty. Where, however, the measures are covered by Article 87(1), they are viewed favourably by the Commission.

(57) The Italian authorities provided data on the calculation of the cost of training and its effect on the benefits enjoyed by the employers: on the basis of maximum aid (based on a 100% reduction in social security contributions) per year and per worker of ITL 11 282 256 (EUR 5 826,80), the estimated training cost is ITL 1 575 000 (EUR 813,42). In addition, there is the cost of training while on the job.

(58) The situation following the increase by regional authorities in the maximum age of 32 is as follows: 35 in Lazio, 38 in Calabria, 40 in Campania, Abruzzo and Sardinia, and 45 in Basilicata, Molise, Apulia and Sicily.

(59) Lastly, the Italian authorities stressed the temporary nature of the aid, which has a maximum duration of two years.

IV.2. **Aid or the conversion of training and work experience contracts into open-ended contracts**

(60) The Italian authorities state that the aid scheme is consistent with the Community guidelines, as they help to maintain jobs created. The stabilisation of training and work experience contracts is, they claim, equivalent too the net creation of jobs since conversion would change temporary jobs into stable ones. Workers recruited on training and work experience contracts would not have to be included among the workforce of the firm concerned in order to check whether new jobs had actually been created. The authorities also point out that, in the absence of such measures, employers would use other forms of fixed-term contract.

(61) They point out that this interpretation was endorsed by the Commission when it approved the aid scheme introduced under Sicilian Regional Law No 30 of 7 August 1997 ([10]).

V. **ASSESSMENT**

V.1. **Training and work experience contracts**

V.1.(a) *Assessment of the aid content of the training and work experience contracts*

(62) Training and work experience contracts governed by Law No 863/84 did not constitute aid within the meaning of Article 87(1), but a general measure. The aid was applicable to all firms in a uniform, automatic and non-discretionary manner and on the basis of objective criteria.

(63) The amendments made in 1990 by Law No 407/90 modified the nature of the measures. The new provisions varied the reductions according to the location of the recipient firm and the sector to which it belonged. This meant that some firms received greater reductions than those granted to its competitors.

(64) Selective reductions which favour certain firms in a particular Member State, whether the selectivity operates at individual, regional or sectoral level, constitute, for the differential part of the reduction, State aid within the meaning of Article 87(1) of the Treaty, i.e. aid which distorts competition and could affect trade between Member States.

This differential benefits firms which operate in particular areas of Italy as the aid was not granted to firms in other areas.

(65) 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

([10]) State aid N 692/97.

the aid. Whenever this effect extends to intra-Community trade, the latter is impaired by the aid.

(66) In particular, such aid 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 ([11]).

(67) For the above reasons, the measures under examination are normally prohibited under Article 87(1) of the EC Treaty and Article 62(1) of the EEA Agreement and may be deemed compatible with the common market only if they qualify for one of the derogations provided for by those instruments.

(68) As to form, the scheme should have been notified to the Commission at the draft stage in accordance with Article 88(3) of the EC Treaty. In the absence of such notification by the Italian Government, the aid is unlawful under Community law on grounds of failure to comply with Article 88(3) of the Treaty and may be considered compatible with the common market only if it qualifies for exemption under the Treaty.

V.1.(b) *Compatibility of the training and work experience contracts*

(69) Having concluded that the measures in question constitute State aid within the meaning of Article 87(1) of the Treaty, the Commission must determine whether they are compatible with the common market under Article 87(2) and (3).

(70) With regard to applicability of the derogations provided for in the Treaty, the Commission takes the view that the aid does not qualify for the derogations under Article 87(2) because it is not aid having a social character within the meaning of Article 87(2)(a), aid to make good the damage caused by natural disasters or exceptional occurrences within the meaning of Article 87(2)(b) or aid that is covered by Article 87(2)(c). Nor does the aid qualify for the regional derogations under Article 87(3)(a) and (c) since it is not investment aid. For obvious reasons, the derogations under Article 87(3)(b) and (d) are not applicable either.

(71) The guidelines on aid to employment ([12]) specify that the Commission is normally favourably disposed towards aid:

— for the unemployed,

and

— to create new jobs (net creation) in SMEs and in regions eligible for regional aid,

or

— to encourage firms to take on certain groups of workers experiencing particular difficulties entering or re-entering the labour market, at national level; in this case there is no need for net job creation, provided that the post falls vacant following voluntary departure and not redundancy.

(72) The guidelines also stipulate that the Commission must make sure that 'the level of aid does not exceed that which is necessary to provide an incentive to create jobs' and that the job is a stable one.

(73) The Community guidelines also stipulate that the Commission may also approve aid to maintain jobs provided that it is limited to areas eligible for exemption under Article 87(3)(a) and satisfies the conditions laid down for operating aid. The rules specify that this type of aid must be limited in time, degressive and designed to overcome structural handicaps and to promote lasting development, in accordance with the rules governing sensitive sectors.

(74) On the basis of the information obtained in the course of these proceedings, the Commission considers that aid for employment under training and work experience contracts has the following features:

— it is not aimed solely at the recruitment of persons seeking their first job or still unemployed after losing their previous job, as this is not required by Italian law,

— it is not aimed at the net creation of new jobs within the meaning of the Community guidelines on aid to employment ([13]), even though the firms must not have dismissed any staff over the preceding period,

— it is aimed at the employment of specific categories of workers experiencing difficulties entering or

([11]) Judgment of 13 July 1988 in Case 102/87 [1988] ECR 4067.

([12]) See footnote 5.

([13]) See footnote 5.

re-entering the labour market. In view of the very high age limit (32), it is necessary to determine whether the observations of the Italian authorities and of other interested parties concerning the definition of 'disadvantaged' categories are consistent with the guidelines on employment aid. The definition of the age limits for 'young persons' is thus essential from the standpoint of compatibility of the scheme with the common market.

(75) The aid scheme in question is intended to assist workers aged 16 to 32 who, according to the Italian authorities, should be regarded as including disadvantaged persons experiencing difficulties entering or re-entering the labour market, either because they fall within the 'young persons' category or because they are long-term unemployed.

(76) The Commission notes that the guidelines do not stipulate any age limit for young persons. However, as already stated when the Article 88(2) procedure was initiated ([14]), the Commission notes that measures to assist young people at both Community and Member State level concern young people under the age of 25 ([15]). The guidelines are confirmed by the International Labour Office, which, in its report on employment and young people, defines the latter as belonging to an age group ranging from 15 to 24 ([16]). The report states that the operational definition of young people varies considerably from one country to another, according to cultural and institutional factors. In industrialised countries and in eastern European countries with an economy in transition, the lower limit generally corresponds to the end of compulsory schooling. The upper limit, however, is more variable ([17]).

(77) The statistics provided by the Italian authorities and Confindustria show that unemployment levels in Italy are high, even after the age of 20 to 24.

(78) Although unemployment is highest in southern Italy, it cannot be said that the percentage of jobseekers is higher in the 25 to 34 age group than in the 15 to 24 age group. The Commission also notes that the percentages provided by Confindustria for the two age groups do not correspond to the data it provided (Table 2). According to Table 2 but Table 12, the percentage of jobseekers seems, on the contrary, to fall considerably in the 25 to 29 age group compared with those aged 20 to 24. This trend is discernible throughout the country and is confirmed by other statistics which compare unemployment rates in Italy with the European average (Table 1).

(79) The data supplied by the Italian authorities (Table 7) show that there is a higher percentage of registered jobseekers in the 25 to 32 age group than in the 19 to 24 age group. They also give percentages of registered unemployed that are higher than the rates calculated by Eurostat (Table 1). The difference is due to the fact that the statistics compiled by Eurostat are based on the ILO definition of unemployment, which is based on three criteria: persons must be unemployed, be actively seeking employment and be prepared to start work in two weeks. These criteria, however, are not applied for inclusion in the registers of jobseekers, which generally include persons who are not actively seeking employment (e.g. students who have not yet completed their studies).

(80) In the opinion of the Commission, the data on unemployment rates, even as regards their distribution over time, must be compared with other data, such as the average time spent by unemployed persons seeking employment and the average age at which a university degree is obtained.

(81) With regard to the first factor, i.e. average jobseeking time, it is worth noting that this increases with age, to reach 37 months in the 30 to 39 age group (Table 6). These data go some way towards explaining the structural nature of unemployment. The Italian authorities pointed up this characteristic of the Italian labour market, especially as it is more marked in the south, where unemployment is higher (Table 11). As regards average jobseeking time in the different age groups, the Italian authorities referred to the results of ISTAT's Second Report on youth for 1997 (see recital 48). The report shows in particular that 65% of unemployed persons aged 15 to 24 stated that they had been seeking employment for over a year (long-term unemployed); that figure rose to 68% for those aged 25 to 34. On the basis of that information, the Commission therefore concludes that the trend should be examined from the standpoint of structural unemployment and in terms of the raising of the age limit for the definition of 'young persons'.

([14]) See footnote 1.
([15]) Point 12.3 of the Commission letter of 17 August 1998 (see footnote 1).
([16]) International Labour Office Report on youth employment drawn up for the Conference of Ministers responsible for youth, 8 to 12 August 1998, Lisbon, point 1.1.
([17]) Ibid.

(82) Long-term unemployment (more than a year without a job) is one of the most important characteristics of structural unemployment and it was taken into account in the guidelines on aid to employment. Together with young people, the long-term unemployed are one of the most underpriviliged categories referred to in the guidelines. The large number of young people available for work and their — in many cases — advanced level of education (university degree) further complicates the situation of the long-term unemployed, who, being often less skilled or possessing increasingly obsolete skills, find themselves at a disadvantage on the labour market in comparison with young, often more skilled jobseekers.

(83) According to the data presented by the Italian authorities and Confindustria, young graduates obtain their degrees at a relatively advanced age. The statistics on the age at which a first degree (laurea) is obtained show that the percentage of persons obtaining a degree increases up to the age of 25 and falls after the age of 26 (Table 8). Most are awarded their degrees at the ages of 24 (11,8 %), 25 (18,8 %), 26 (18,7 %) or 27 (14,3 %). The relatively advanced age at which a degree is obtained results in late entry to the labour market. A comparison of the Italian situation with that in other Member States reveals an average age of 26,8 in Italy against a European average of 25,7.

(84) If the maximum age for young persons is taken as 24, then clearly a large number of university graduates cannot benefit from the labour market incentives aimed at them. Only those obtaining their (long-cycle) degree at 23 or under, i.e. 4 %, would benefit from measures limited to persons up to the age of 24. On the other hand, those obtaining their (long-cycle) degree at 24, i.e. 11,8 %, will have very little time to benefit from those measures. It is worth noting in this connection that the Italian authorities stated that the average age of graduates entering the labour market is 27. Entry means the age at which they started their first job, the labour market access period being the period between obtaining a degree and finding employment for the first time. The jobseeking period is thus more than one year for those obtaining their degree under the age of 23, 24, 25 and 26. This phenomenon has relatively serious consequences for the professional life of the young graduate owing to the fact that, as stressed by the ILO, a prolonged period of unemployment at the start of working life can have a lasting effect on future work prospects. The views of the ILO relate to entry to the labour market of 'young persons' of up to 24 years of age and are based on the fact that unemployment at the start of a career can damage productive potential permanently ([18]). Taking account of the age at which the degree is awarded, that 'critical' age shifts in the case of graduates and no longer corresponds to the 20 to 24 age group.

(85) In view of the foregoing, the Commission considers that, solely as regards university graduates, the statistics and the institutional factors relating to the length of studies justify the structural nature of the unemployment affecting the 25 to 29 age group.

(86) The Commission notes that aid for employment under training and work experience contracts makes two positive contributions to an Italian labour market experiencing severe structural and youth employment difficulties. The first consists in the training provided for in the contracts, whilst the second consists in the condition attached to the scheme that employment on training and work experience contracts is not authorised where a firm has not retained in employment at least 50 % of workers whose training and work experience contracts expired in the preceding 24 months. The condition is apparently intended as a further incentive to firms to maintain the jobs for longer.

(87) The compensatory contribution in the form of training provided by the employer must be taken into account in assessing the intensity of the aid granted to him. It represents a financial and organisational input which must not, however, be viewed as an initial investment. The latter is defined in the guidelines on national regional aid as 'an investment in fixed capital relating to the setting-up of a new establishment, the extension of an existing establishment, or the starting-up of an activity involving a fundamental change in the product or production process of an existing establishment' ([19]). Aid to job creation linked to the carrying-out of an initial investment project is one of the forms of investment aid provided for in the guidelines on national regional aid.

(88) In addition, the condition imposed in the guidelines on aid to employment, namely that 'the post falls vacant following voluntary departure and not redundancy' ([20]), is met inasmuch as the Italian legislation under examination makes it a condition that there be no

([18]) Report drawn up by the ILO for the conference of Ministers responsible for youth, 8 to 12 August 1998, Lisbon, point 1.5 (see footnote 16).

([19]) OJ C 74, 10.3.1998, p. 9.

([20]) See footnote 5.

redundancies. Accordingly, as stated in the guidelines, 'there is no need for net job creation' in the case of underprivileged categories.

(89) With regard to the selective nature of the aid, the Commission notes that the differential part of the aid exceeding 25% of the reduction in social security contributions is granted by the Italian authorities only to certain types of firm. Such firms are differentiated from the others by sector and size. In addition, the aid intensity varies according to location in Italy. The aid is granted at varying intensities, according to the region concerned, to firms in the commercial and tourism sector with a minimum of 15 employees, to craft industries and to all firms located in areas with unemployment levels higher than the national average. Such measures cannot be regarded as general measures as they do not apply uniformly to the economy as a whole and they favour specific firms and specific sectors ([21]).

(90) The total aid per firm is directly dependent on the number of workers recruited. The Italian authorities have estimated that the maximum amount of aid (overall reduction of 100% in social security contributions, i.e. 25% as general measures applicable throughout the territory and 75% maximum as a subsequent reduction) per annum and per worker employed, net of training costs, amounts to ITL 9 707 256 (EUR 5 013,38). Firms benefiting from the subsequent maximum reduction of 75% would receive ITL 7 280 442 (EUR 3 760,03), whilst firms benefiting only from a subsequent reduction of 15% would receive ITL 2 426 814 (EUR 1 253,34), i.e. an aggregate figure of 40% (see recital 12).

(91) The Commission notes that, solely as regards the aid to encourage the use of training and work experience contracts for workers with particular difficulties in entering or re-entering the labour market, i.e. young people under 25, young graduates up to the age of 29 and the long-term unemployed (out of work for more than a year) or the aid intended to create new jobs, total aid does not exceed the amount needed to promote the creation of new jobs, taking account of the mandatory training content of training and work experience contracts and of the particularly serious unemployment situation in Italy. The Commission also concludes that the amount of aid does not exceed the amount required to encourage job creation in view of the proportionality between the social security contributions qualifying for the reduction and the remuneration of the workers and in view of the fact that the measures meet the needs of the regions concerned.

(92) On the basis of the foregoing, the Commission concludes that only the aid to the creation of new jobs and that specified in the preceding paragraph comply with the relevant guidelines and may therefore qualify for the exemptions laid down for that type of aid.

(93) On the other hand, the Commission takes the view that aid for employment under training and work experience contracts constitutes aid to maintain employment where it is not intended either for the employment of workers experiencing particular difficulties in entering or re-entering the labour market, i.e. persons under 25, graduates under 29 and the long-term unemployed (more than one year without employment), or for the creation of new jobs.

(94) Whilst it is true that, according to the employment aid guidelines, aid to maintain jobs means 'support given to a firm to persuade it not to lay off its workers' ([22]), the aid in this case is not in fact paid to firms to encourage them not to dismiss workers since the aid is granted for employment under training and work experience contracts. As the scheme does not require new jobs to be created but, on the contrary, expressly stipulates that there must be no redundancies, the aid may encourage firms to replace natural wastage. It therefore encourages firms to maintain its workforce without creating new jobs. Thus the aid can be regarded as aid to maintain jobs, which the guidelines on aid to employment treat as similar to operating aid.

(95) Such aid can be authorised only if, under Article 87(2)(b) of the Treaty, it is intended to make good the damage caused by natural disasters or exceptional occurrences. Under certain conditions, aid to maintain jobs may be authorised in regions qualifying for exemption under Article 87(3)(a), i.e. aid to promote the economic development of regions where the standard of

([21]) According to the first survey on State aid in the European Community (1989), 'general measures comprise any interventions that apply uniformly across the economy and which do not favour certain enterprises or sectors', (COM(88) 945).

([22]) See footnote 5.

living is abnormally low or where there is serious underemployment.

(96) The Commission notes in the first place that the aid is not restricted to the areas eligible for exemption under Article 87(3)(a) of the Treaty, as it applies to the country as a whole. It is not degressive or limited in time. As to whether it is likely to help firms overcome structural handicaps and promote lasting development, the Commission has repeatedly warned the Italian Government of the risks of such generalised measures. Its negative stance is based on its conviction that this type of measure has very harmful effects on competition and trade which are not effectively counterbalanced by the Community interest in terms of sustainable development or the removal of structural handicaps.

V.2. **Aid for the conversion of training and work experience contracts into open-ended contracts**

V.2.(a) *Assessment of the aid content of the measures to convert training and work experience contracts into open-ended contracts*

(97) Since the measures concern a one-year extension of the same aid provided for training and work experience contracts and since the aid is even more selective, being limited to Objective 1 areas only, the aid assessment contained in point V.1.(a) is even more relevant to these measures.

(98) Accordingly, it is clear that the measures in question are liable to affect trade between Member States. In view of the aid contained in the measures, it must be concluded that they are caught by Article 87(1) of the EC Treaty and Article 62(1) of the EEA Agreement inasmuch as they constitute State aid which distorts competition to an extent liable to affect intra-Community trade and can be regarded as being compatible with the common market only if they qualify for one of the derogations laid down.

V.2.(b) *Compatibility with the common market*

(99) Having ascertained the aid content of the measures in question under Article 87(1), the Commission must determine whether they are compatible with the common market under Article 87(2) and (3).

(100) As regards the applicability of the exemptions provided for in the Treaty, the comments in point V.1.(b) of this Decision (see recitals 69 to 96) are also applicable to this aid since the measures are similar.

(101) The guidelines on employment aid state that aid to create jobs 'provides employment for workers who have never had a job or who have lost their previous job' and that job creation means 'net job creation, i.e. the creation of an additional job in relation to the (average) workforce (over a period of time) of the firm concerned'.

(102) The same guidelines also state that the Commission will scrutinise the terms of an employment contract, in particular compliance with the obligation to hire workers for an indefinite period or for a sufficiently long period.

(103) The conversion of fixed-term training and work experience contracts into open-ended contracts does not create new jobs as these jobs already exist; they are not, however, stable jobs.

(104) As already stated by the Commission [23], measures concerning the conversion of fixed-term contracts and training and work experience contracts into open-ended contracts cannot be regarded as measures either to create new jobs or to maintain jobs, in view of their particular characteristics relating to the stabilisation of temporary employment. The added value is therefore constituted by the 'net creation of stable jobs' which did not previously exist.

(105) The Commission notes that, whilst the guidelines on aid to employment do not provide for such measures, they refer to the concept of stable employment as a positive factor. It therefore assesses the provisions of employment contracts and takes a favourable view only if they guarantee a certain degree of stability of employment.

(106) In certain cases, therefore, the Commission takes a favourable view of aid to convert fixed-term jobs into open-ended ones. However, as stipulated in the

[23] See State aid N 692/97.

guidelines, a favourable view is subject to a twofold obligation:

— the firm must not have dismissed any employees in the 12 months preceding the conversion,

— the number of jobs must be increased in relation to the number of existing jobs in the six months preceding the conversion, not including the jobs being converted.

(107) The Commission is thus able to ascertain that the aid not only stabilises precarious jobs but brings the added value of a net creation of stable jobs which did not previously exist and hence to verify that it is not simply a matter of replacing an employee made redundant or who has retired.

(108) In view of the foregoing, the Commission concludes that, in the present case, the net job creation requirement is applicable only if the number of employees does not include those in jobs created through fixed-term contracts or jobs not providing sufficient stability of employment.

(109) Accordingly, the Commission considers that only aid for the conversion of training and work experience contracts into open-ended contracts which comply with the obligation to increase the number of jobs in relation to existing jobs in the firm (average over a period preceding the conversion) complies with the guidelines on employment aid and hence qualifies for exemption. The workforce must be calculated excluding staff recruited on fixed-term contracts or jobs not providing sufficiently stable employment.

(110) The Commission considers that the aid intensity should be calculated on the basis of aid granted in the period preceding the conversion. During that period, employers benefited from aid granted for the same workers whose contracts were subsequently converted. Thus, aid was granted in total for three years for each job created. The Commission notes that only in the cases described above was the intensity in proportion to the objective, taking account of the fact that the jobs created are open-ended and unemployment in the areas concerned is particularly severe. For the same reasons as those given above in connection with aid for training and work experience contracts, the Commission considers that the amount of aid does not exceed that which is necessary to provide an incentive to create jobs.

(111) The Commission regards the other cases of aid for the conversion of training and work experience contracts into open-ended contracts which do not comply with the net job creation requirement as aid to maintain employment. As stated in the employment guidelines, such aid constitutes operating aid. For the reasons already given concerning aid for training and work experience contracts, the Commission considers that such aid does not satisfy the conditions for the granting of operating aid.

VI. **CONCLUSIONS**

(112) The Commission concludes that Italy has infringed Article 88(3) by granting non-notified aid for employment under training and work experience contracts that was provided for in Laws Nos 863/84, 407/90, 169/91 and 451/94 and has been granted since November 1995.

(113) On the basis of the analysis set out in points V.1.(a) and V.1.(b) of this Decision, the Commission considers that only the aid granted for the employment of workers who, at the moment of recruitment, had not yet found employment or who had lost their jobs and who, as a result of being recruited, contributed to the net creation of new jobs in the firms concerned is compatible with the common market.

(114) The aid granted to workers experiencing difficulties entering or re-entering the labour market, i.e. after having lost their job, is also incompatible with the common market. The persons concerned are those who, because of their particular characteristics, are in a weak position on the labour market. This is true in particular of persons under 25, graduates up to the age of 29 and the long-term unemployed (unemployed for more than a year). However, in order to benefit from the aid, employers must not have dismissed any staff in the preceding 12 months and must also have retained (on open-ended contracts) at least 60% of the workers whose training and work experience contract ended in the preceding 24 months.

(115) The measures which comply with the *de minimis* rule [24] are not covered by Article 87. Under that rule, the total

[24] Commission notice on the *de minimis* rule for State aid (OJ C 68, 6.3.1996).

amount of aid granted to firms employing persons on training and work experience contracts must not exceed EUR 100 000 over a three-year period. The same notice specifies that the rule does not apply to the industries covered by the ECSC Treaty, to shipbuilding, to transport or to aid towards expenditure in connection with agriculture or fisheries.

(116) All aid for employment on training and work experience contracts which does not comply with the conditions set out in recitals 113 to 115 is incompatible with the common market and must therefore be recovered.

(117) The Commission concludes that Italy has infringed Article 88(3) by granting the aid provided for in Article 15 of Law No 196/97 for the conversion of training and work experience contracts into open-ended contracts.

(118) For the reasons set out in points V.2.(a) and V.2.(b), recitals 97 to 111 of this Decision, the Commission notes that only aid for the conversion of training and work experience contracts into open-ended contracts which complies with the net job creation requirement in the period preceding the conversion is compatible with the common market. The total workforce should be calculated net of workers on contracts that are open-ended or that do not offer sufficiently stable employment (see recital 106).

(119) Measures which comply with the *de minimis* rule ([25]) are not covered by Article 87. The same considerations as those given in respect of training and work experience contracts also apply to these measures (see recital 115).

(120) All the aid for the conversion of training and work experience contracts into open-ended contracts which does not comply with the conditions referred to above is incompatible with the common market and must therefore be recovered.

(121) Where aid that is incompatible with the common market has been granted unlawfully, the Commission may require the Member State concerned to recover the amount in question from the recipients ([26]) in order to restore the status quo. This is the case with regard to the aid which is deemed incompatible with the common market in this Decision and which must be repaid by the recipients.

(122) The aid must be recovered in accordance with the procedures and provisions of Italian law and must include interest from the date on which the aid was granted until the date it is actually repaid, with the rate applied being the reference rate used to calculate the net grant equivalent of regional aid,

HAS ADOPTED THIS DECISION:

Article 1

1. The aid granted unlawfully by Italy since November 1995 for employment under the training and work experience contracts provided for in Laws Nos 863/84, 407/90, 169/91 and 451/94 is compatible with the common market and the EEA Agreement provided that it concerns:

— the creation of jobs in the recipient firm for persons who have not yet found employment or have lost their previous employment within the meaning of the guidelines on aid to employment,

— the employment of workers experiencing particular difficulties in entering or re-entering the labour market. For the purposes of this Decision, workers experiencing particular difficulties in entering or re-entering the labour market shall mean young persons under the age of 25, persons up to the age of 29 and the long-term unemployed, i.e. out of employment for more than one year.

2. Aid for training and work experience contracts which does not satisfy the conditions set out in paragraph 1 is incompatible with the common market.

Article 2

1. The aid granted by Italy under Article 15 of Law No 196/97 for the conversion of training and work experience

([25]) See footnote 24.

([26]) Commission notice of 24 November 1983 (OJ C 318, 24.11.1983, p. 3). See also the Court of Justice judgments in Cases 70/72 of 12 July 1973 *Commission* v *Germany* [1973] ECR 813 and 310/85 of 24 February 1987 *Deufil* v *Commission* [1987] ECR 901.

contracts into open-ended contracts is compatible with the common market and the EEA Agreement provided that it complies with the net job creation requirement as defined in the Community guidelines on aid to employment.

The workforce employed by a firm shall be calculated without taking account of jobs resulting from the conversion and jobs created through fixed-term contracts or not guaranteeing sufficiently stable employment.

2. Aid for the conversion of training and work experience contracts into open-ended contracts which does not satisfy the requirement laid down in paragraph 1 is incompatible with the common market.

Article 3

Italy shall take all necessary measures to recover from the recipients the aid which does not satisfy the conditions of Articles 1 and 2 and has already been unlawfully paid.

Repayment shall be made in accordance with the procedures of Italian law. The amounts to be repaid shall bear interest from the date on which the aid was paid until the date on which it is effectively recovered. The interest shall be calculated on the basis of the reference rate used to calculate the net grant equivalent of regional aid.

Article 4

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

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels, 11 May 1999.

For the Commission

Karel VAN MIERT

Member of the Commission