II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 18 July 2001
on the State aid implemented by Italy in favour of the port sector

(notified under document number C(2001) 2346)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2001/834/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 regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [1], and in particular Article 14 thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above [2] and having regard to their comments,

Whereas:

I. PROCEDURE

(1) The transformation of the Italian port sector has been an ongoing process since 1983. It has required in-depth structural reform following the abolition of the old regime based on exclusive rights granted to dock-work companies and to port undertakings formed exclusively of Italian national workers, which the Court of Justice judged, by preliminary ruling, to be incompatible with the EC Treaty in its judgment of 10 December 1991 [3], known as the 'Port of Genoa Judgment'.

(2) Following that judgment the Italian authorities have adopted a series of legislative measures designed to bring the regime into line with Community law. Compliance of these measures with Articles 82 and 86 of the Treaty has been examined by the Commission under infringement procedure 99/2048 (formerly infringement procedure 92/2221) [4].

[1] OJ L 83, 27.3.1999, p. 1.
[2] OJ C 281, 19.10.1993, p. 10 and OJ C 339, 12.11.1996, p. 6, for Case C-27/93; OJ C 108, 17.4.1999, p. 2, for Case C-81/98.
[3] Judgment of the Court of 10 December 1991, Case C-179/90 *Merci convenzionali porto di Genova SpA* v *Siderurgica Gabrielli SpA* [1991] ECR I-5889.
[4] Commission Decision (97/744/EC) of 21 October 1997 pursuant to Article 90(3) of the EC Treaty on the provisions of Italian ports legislation relating to employment (OJ L 301, 5.11.1997, p. 17).

(3) Under the various legislative acts reforming the port sector, substantial aid has been granted over the years, notably to facilitate the departure of redundant dock-workers, to bring the social security arrangements in line with the standard system for employees in Italy and to cover the operating losses of the port undertakings and dock-work companies.

(4) The Commission has twice initiated the procedure under Article 88(2) of the Treaty in respect of this aid. The present final decision, based on Article 88 of the Treaty, rules on both proceedings jointly, since they both concern aid granted to the Italian port sector for the same purposes.

CASE C-27/93 (EX NN 103/92)

(5) By letter of 25 May 1992, Italy notified a draft decree law ([5]), which was later converted into Law No 428/92 ([6]), concerning aid in favour of port undertakings and dock-work companies. Supplementary information was provided by letters of 31 July 1992 and 15 January 1993. Since the Commission subsequently learnt that most of the aid had in fact already been paid, the measure was considered to be 'non-notified aid'. Further aid measures in favour of port undertakings and dock-work companies were subsequently implemented by Laws 236/93 ([7]), 84/94 ([8]), 343/95 ([9]) and 647/96 ([10]).

(6) By letters dated 16 February 1994, 16 and 20 January 1995, 31 March 1995, 22 and 24 May 1995, 13 June 1995, 14 July 1995, 23 August 1995, 6 September 1995, 5 and 19 October 1995, 21 December 1995, 26 February 1996, 30 July 1996, 2 March 1996, 14 May 1996, 30 July 1996, 8 August 1996, 7 October 1996, 10 January 1997, 17 January 1997, 27 March 1997 and 6 May 1997, Italy provided the Commission with supplementary information.

(7) Meetings were also held between the Commission and the Italian authorities on 17 June 1992, 4 March 1993, 5 and 6 April 1993, 5 and 11 June 1993, 4 October 1993, 18 January 1994, 8 June 1994, 5 May 1995, 23 November 1995, 12 December 1995, 30 January 1996, 17 April 1996, 19 July 1996, 5 and 6 December 1996, 12 March 1997, 4 June 1997, 11 December 1997 and 18 February 1998.

(8) By letters dated 3 September 1993 and 23 June 1996, the Commission informed Italy of the decisions to initiate and extend, respectively, the procedure under Article 88(2) (ex Article 93(2)) of the Treaty in respect of the measures referred to in paragraph 5. Those decisions were duly published in the *Official Journal of the European Communities* ([11]). Interested parties were invited thereby to submit their comments on the aid.

CASE C-81/98 (EX N-421/97)

(9) By letter of 27 May 1997, Italy notified the Commission of aid envisaged under a new draft decree law on other provisions regarding ports ([12]), which was later converted into Law No 30/98 ([13]). By letters dated 27 November 1997, 11 March 1998, 28 May 1998, 10 June 1998, 17 July 1998 and

([5]) See footnote 2. Decree-Law No 370 of 7 September 1992 deferring urgent measures provided for by employment law.
([6]) Law converting Decree-Law No 370/92. See footnote 5.
([7]) Conversion into law, with amendments, of Decree-Law No 148/93 on urgent measures in support of employment.
([8]) Law reforming port legislation.
([9]) Conversion into law, with amendments, of Decree-Law No 287/95 on extraordinary and urgent measures in favour of the port sector and shipping companies.
([10]) Conversion into law, with amendments, of Decree-Law No 535/96 on urgent measures for the port, maritime, dockyard and shipping sectors as well as aid to guarantee certain air connections.
([11]) See footnote 2.
([12]) See footnote 10.
([13]) Conversion into law, with amendments, of Decree-Law No 457/97 on urgent provisions to develop the transport sector and boost employment.

17 November 1998, Italy provided the Commission with supplementary information. Meetings took place on 11 December 1997, 24 July 1998 and 23 September 1998 between the Commission and the Italian authorities.

(10) By letter of 21 January 1999, the Commission informed Italy of its decision, *inter alia*, to initiate the procedure under Article 88(2) of the Treaty in respect of aid to the port undertakings and dock-work companies, to reserve its position with regard to public support for the port authorities and to request further details about the public support envisaged for dredging purposes.

(11) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ([14]). The Commission invited interested parties to submit their comments on the aid.

(12) By letter of 21 April 1999, the Commission asked Italy to provide supplementary information to that provided in part by letters dated 1 June, 28 September and 25 October 1999. Meetings were also held between the Commission and the Italian authorities on 17 September 1999 and 26 November 1999.

INFORMATION INJUNCTION

(13) Further examination of the information received reinforced the Commission's initial doubts, particularly as regards the exact amounts of aid granted and the precise beneficiaries of that aid.

(14) On 12 July 2000, the Commission took the decision to enjoin Italy to submit all the necessary information to assess the compatibility with the common market of the schemes in favour of the Italian port sector. Details were requested notably about the amount of public financial support granted to the port undertakings and dock-work companies under Laws No 428/92, No 236/93, No 84/94, No 343/95, No 647/96 and No 30/98 (see recitals 5 and 9 of this Decision) and the allocation criteria applied. The information requested was due within one month of notification of the Commission's decision. After being notified of the decision on 14 August 2000, the Italian Government asked for an extension of the deadline by one month to reply to the injunction, which the Commission accepted.

(15) Italy responded to the information injunction by letter of 12 October 2000. A meeting between the Commission and the Italian authorities to discuss that letter was also held on 25 October 2000.

(16) Following representations from the Commission with the Italian authorities, Italy has come into line with Community law by amending its legislation in the port sector (see recital 25 of this Decision). Accordingly, the Commission decided, on 23 May 2001, to close the infringement procedure 99/2048 (see recital 2).

II. **DESCRIPTION OF THE AID**

BACKGROUND

(17) The aid granted by Italy concerns port handling operations in all Italian ports. Port operations means the activities listed in Article 16(1) of Law No 84/94, i.e. the loading, unloading, embarkation, disembarkation, storage and transhipment of all types of goods.

([14]) See footnote 2.

(18) At the time of the Port of Genoa Judgment ([15]), the market for port operations, as regulated by the *Codice della Navigazione* (Italian shipping code), took the form of a dual monopoly in Italy:

— on the one hand, port undertakings (generally controlled by the port authority) had the monopoly for the organisation of port operations. These undertakings were granted an exclusive right to carry out port operations; in practice, although several undertakings were granted the right in each port, the right was always limited to a specific market segment (various goods, containers, fresh produce, etc.) which justifies the conclusion that it was in effect an exclusive right (on the reference market); however, these undertakings were not authorised to use their own workforce to carry out the operations,

— on the other hand, dock-work companies had the monopoly for carrying out port operations: in each port, an association of dock-workers constituted as a dock-work company was granted the exclusive right to supply (to the undertakings referred to in the first indent) the necessary labour to carry out the port operations in question,

— in addition, it was prohibited for a vessel to load or unload using its own crew.

(19) Furthermore, under Italian social legislation ([16]), dock-workers were subjected to a particular social security system which was separate from the general social security system operated by the *Istituto Nazionale di Previdenza Sociale* (INPS (National social security institute)). That system was based on a mutual insurance fund supplied by contributions from the dock-work companies. It established for the dock-workers social rights and obligations that did not correspond to the general rights and obligations for employees under the general social security administration in Italy ([17]).

(20) In the Port of Genoa Judgment, the Court of Justice examined specifically the question of port operations involving ordinary freight at the Port of Genoa and found that the port undertakings in question had a legal monopoly over a substantial part of the common market (for the sectors of organisation and performance of dock work respectively).

(21) It then concluded that the port undertakings enjoying exclusive rights in accordance with the procedures laid down by the national rules in question had occasion, as a result, either to demand payment for services which had not been requested, to charge disproportionate prices (infringements under Article 82(a) of the Treaty), to refuse to employ modern technology (which has the effect of limiting technical development within the meaning of Article 82(b)), thereby increasing the cost of operations and lengthening the time, or to grant price reductions to certain consumers and at the same time to offset such reductions by an increase in the charges to other consumers ([18]) (which is contrary to Article 82(c)).

Infringement procedure

(22) After the Port of Genoa Judgment, the Commission, finding that Italy had not amended its legislation, sent the Italian Government on 31 July 1992 a letter of formal notice under Article 90(3) (now 86) of the Treaty requesting it to state the measures it intended to take in this respect.

(23) In response to the Commission's letter, the Italian Government adopted, in succession, a decree-law, renewed eight times, as converted into Law No 84/94 on port reform, then a further decree-law amending that law, which was renewed some fifteen times, most recently on 21 October 1996, as converted into Law No 647/96 (see recital 5).

([15]) See footnote 3.
([16]) Law No 26 of 17 February 1981 establishing the Port Management Fund and repealing Law No 161 of 22 March 1967.
([17]) Resulting from long-established work and social practices in Italian ports, such as, *inter alia*, regulation of working hours, holidays, professional sicknesses, total wage bills, minimum wages for inactivity periods, pension rights or reimbursement of social contributions in case of workers' departures.
([18]) Port of Genoa Judgment, see footnote 3, point 19.

(24) On 7 May 1997 the Commission sent a further letter of formal notice to the Italian Government in view of the fact that the Italian ports legislation referred to in point 23 was still incompatible with Community law. By Decision 97/744/EC [19] the Commission established that some of the provisions contained in Law No 84/94 were incompatible with the dual provision of Article 86(3) in conjunction with Article 82 of the Treaty [20].

(25) Subsequently, the Italian Government adopted a number of measures for aligning port legislation with Community law. The new legislative framework for port activities in Italy was completed by Law No 186 of 30 June 2000 [21], which removes the last remaining exclusive rights conferred on port undertakings and dock-work companies. On 6 February 2001, the Italian authorities adopted the implementing regulation of this Law [22]. Following the entry into force of this regulation, the Commission closed the infringement procedure referred to above.

Economic context

(26) At the end of the 1980s, the Italian port sector was in difficulties. On the one hand, it was overburdened by the number of active dock-workers (more than 21 000). On the other hand, the repercussions on the sector of the international crisis in the maritime sector had been particularly severe. The returns of the port undertakings and dock-work companies were insufficient to maintain the existing workforce under the prevailing labour intensive working conditions. The economic situation of the dock-workers' associations and undertaking was further aggravated in 1991 when the Court of Justice ruled, in the Port of Genoa Judgment, that the Italian legislation on ports was incompatible with the Treaty. Both factors, the economic crisis and the legal requirement, led the Italian government in 1992 to undertake a major structural reform of the port sector, a sector vital for its economy.

(27) Under the Italian Civil Code, the dock-workers companies' were mutual undertakings (labour cooperatives) with a mission to provide its members with opportunities to work for fair pay and not to provide a return on shareholders' equity. The protection guaranteed by the exclusive rights referred to in paragraph 18 allowed the port undertakings and dock-work companies to pursue labour intensive objectives rather than purely market-oriented ones, with a large number of workers remaining inactive but whose costs had to be borne by the companies.

(28) The presence of such a large number of workers, all of them in dock-work companies, was a major obstacle to the introduction of effective competition in the sector. Simply abrogating the exclusive rights of the port undertakings and dock-work companies would not have resolved the matter by itself.

AID MEASURES

(29) In the context of the structural reform of the port sector, the Italian government has granted aid to cover losses of the former port undertakings and groups, reduce the number of dock-workers active in ports and reimburse the social security charges and benefits of those workers.

(30) The aid measures examined under State aid proceedings C-27/93 and C-81/98 were contained in the laws opening that sector to competition. The Italian authorities have indicated that those measures were adopted in the context of that reform and that they were necessary to avoid the economic collapse of the Italian ports following the abolition of the old legal framework.

[19] See footnote 4.
[20] Articles 90(3) and 86 respectively of the Treaty.
[21] Amending Law No 84/94 on port operations and the supply of temporary port labour.
[22] Decree No 132 of 6 February 2001 'Regulation laying down binding criteria for the regulating of port services by the port and maritime authorities, in line with Article 16 of Law 84/1994' Italian Official Gazette of 19 April 2001.

(31) Furthermore, the Italian authorities argued that, at the time that the aid was granted, the port undertakings and dock-work companies were not undertakings under private law but cooperatives under the Italian Civil Law Code without any business function, thus amounting to mutual undertakings. The transformation of the port undertakings and dock-work companies was not achieved until 1995. In so far as the transformation had not yet taken place at the time, the Italian authorities submit that the port undertakings and dock-work companies should not be considered as undertakings within the meaning of Article 87(1) of the Treaty.

Case C-27/93

(32) The decision to initiate the procedure under Article 88(2) of the Treaty in 1993 covers measures laid down in Article 1(2) of Italian Law No 428/92 ([23]). The procedure concerned ITL 60 000 million to cover operating losses of the port undertakings as of 31 December 1991, ITL 90 000 million to wind up the mutual fund and ITL 33 000 million to cover the social security costs of the dock-workers. The aid to abolish the mutual fund and to cover social security costs was authorised on condition that the amount may not be exceeded and that the social security arrangements for dock-workers had be brought into line with the standard system for employees ([24]).

(33) In the meantime, and without prior notification, Italy provided financial support to the port sector of ITL 8 510 million under Law 236/93 ([25]) and ITL 22 000 million under Law No 84/94 ([26]) for charges of the Earnings Supplement Fund (*Cassa Integrazioni Guadagni* (CIG)).

(34) When it became clear that the Italian authorities had provided further aid to the port sector, the Commission decided, in 1996, to extend the procedure previously initiated, to cover subsequent aid granted, which included ([27]):

— ITL 400 billion to assist the transformation process of the port undertakings and dock-work companies (ITL 300 billion personnel costs in pre-retirement schemes, and ITL 100 billion to cover operating losses as at 31 December 1994) under Law No 343/95 ([28]), and

— ITL 1 740 billion for the pre-retirement of 1 050 employees (900 employees of the dock-work companies and 150 of the port authorities) and various other types of alleged social aid under Law No 647/96 ([29]).

Case C-81/98

(35) This procedure concerns additional government aid, notified to the Commission under Article 88(3) of the Treaty (see recital 9 of this Decision), intended to cover operating losses and personnel expenses, mostly redundancy (pre-retirement) schemes of the port undertakings and dock-work companies.

(36) The decision to initiate the procedure under Article 88(2) of the Treaty covers measures laid down in Articles 8 and 9 of Italian Law No 30/98 ([30]). As regards Article 8, the Commission did not consider public financing of ITL 9 000 million to the municipality of Piombino, ITL 20 000 million to the port authority of Genoa and financing to the port authority of Ancona for port infrastructure as State aid since the beneficiaries do not constitute undertakings under Article 87(1) of the Treaty.

([23]) See footnote 6. The criteria and ways of implementing the aid measures contained in Law No 428/92 were established by Ministerial Decree of 29 January 1993.
([24]) Commission Decision to initiate the procedure in case C-27/93 (ex NN 103/92). See footnote 2.
([25]) See footnote 7.
([26]) See footnote 8.
([27]) At the time of the extension of the procedure, the exact amount of aid granted under the various legislative instruments was unclear.
([28]) See footnote 9. The aid measures are established in Article 1(2)(a) and (b) and 1(2)(c) respectively of the Law. The criteria and ways of implementing the aid measures under Article 1(2)c, cancellation of operating losses, were established by Ministerial Decree of 13 May 1996.
([29]) See footnote 10.
([30]) See footnote 13. The criteria and ways of implementing the aid measures under Article 9 of that Law were established by Ministerial Decrees of 2 April, 23 September and 19 October 1998, 21 April and 14 December 1999 and 5 October 2000.

(37) As regards Article 9 of Italian Law No 30/98, the Commission initiated the procedure with regard to new aid granted to the port undertakings and dock-work companies, reserved its position regarding financial support to port authorities for personnel redundancies and requested more information about the ITL 120 billion allocated to individual ports for dredging activities.

(38) In the above proceedings, the Commission repeatedly asked the Italian authorities to provide detailed information about the recipients of the aid, the purposes of that aid and the exact amounts granted for the different purposes. The Commission also asked the Italian authorities to provide information about the different measures undertaken in the reform of the port sector, and, in particular, the restructuring plan guiding that reform, in order to examine the compatibility of the aid measures linked to the reform with the common market.

(39) In response to the Commission's requests for an overall and detailed description of the reform and of the measures adopted thereby, the Italian authorities provided at this stage information that was fragmentary and incomplete. A financial report was provided in April 1998 for the five major Italian ports of La Spezia, Ravenna, Livorno, Trieste and Venice ([31]).This report provided some information covering the period 1993 to 1996 which revealed that the past performance of those ports was poor and that the current economic situation in several port undertakings and dock-work companies was worrisome. The report, however, did not include any relevant information about the expected future viability of the port undertakings and dock-work companies, and nor was any information provided about the situation in the biggest Italian port, Genoa.

(40) Another report, submitted on 1 June 1999, provided some supplementary data for the years 1997 and 1998 and included, for the first time, information about the port of Genoa. Subsequently, a third document giving an update of the economic outlook for the six major Italian ports (Ravenna, La Spezia, Trieste, Livorno, Venice and Genoa) until 2001 was transmitted. That report was accompanied by an opinion from Ernst & Young.

(41) Concerning the port undertakings and dock-work companies in other Italian ports ([32]) that have received aid, the information provided was extremely limited, and no overall description of the measures intended under the reform was provided.

Outcome of the information injunction

(42) On 12 October 2000, the Italian authorities answered the information injunction launched on 12 July 2000. The information provided in response to the injunction highlighted a number of facts that were previously unclear. On the basis of that information, it is now possible to establish a detailed breakdown of the aid amounts actually granted to the different beneficiaries and for the different purposes foreseen in each of the laws under examination.

(43) In particular, it is now clear that the aid under those laws was granted not only to port undertakings and dock-work companies, but also to the port authorities and to the maritime sector. Only the aid granted to the port undertakings and dock-work companies and port authorities comes into question in Cases C-27/93 and C-81/98.

(44) The following tables show the aid amounts suspected at the time of the information injunction and the aid actually granted by category of aid and beneficiary.

([31]) Prepared by the consultant METIS on behalf of ANCIP (*Associazione Nazionale Imprese Portuali* — National association of port undertakings and dock-work companies) which represents the above five ports.

([32]) There are 140 ports listed for commercial traffic in Italy, 37 of which handle 80 % of total Italian traffic (source: Report of an Inquiry into the Current Situation in the Major Community Sea Ports by the European Sea Ports Organisation ESPO; November 1996).

Table 1

Schemes in favour of the Italian port sector — aid amounts suspected in the information injunction

	Million ITL
C-27/93 (Law No 428/92)	60 000
C-27/93 (Law No 236/93)	8 510
C-27/93 (Law No 84/94)	22 000
C-27/93 (Law No 343/95)	400 000
C-27/93 (Law No 647/96)	1 740 000
C-81/98 (Law No 30/98)	288 000
Total	2 518 510

Table 2

(information submitted after the injunction)

Schemes in favour of the Italian port sector — aid amounts foreseen and actually granted (all aid schemes)

(in million ITL)

	Appropriations	Commitments
C-27/93 (Law No 428/92)	60 000	53 028
C-27/93 (Law No 236/93)	8 510	8 510
C-27/93 (Law No 84/94)	22 000	22 000
C-27/93 (Law No 343/95)	372 000	323 172
C-27/93 (Law No 647/96)	1 772 482	1 297 851
C-81/98 (Law No 30/98)	330 680	203 999
Total	2 688 672	1 908 560

Table 3

(information submitted after the injunction)

Schemes in favour of the Italian port sector — aid amounts foreseen and actually granted by category of beneficiary (all aid schemes)

(in ITL million)

Beneficiary	Appropriations	Commitments
Port undertakings and dockers associations	1 717 137	1 350 048
— Social Security	398 595	233 174
— Departure of dock-workers	1 058 542	863 846
— Operating aid	260 000	253 028
Port Authorities	599 535	363 278
Maritime Sector	249 000	195 234
Total	2 565 672	1 908 560

(45) To sum up, following the information injunction the Commission has established that the aid under the various laws was granted not only to port undertakings and dock-work companies, but also to the port authorities and to other beneficiaries in the maritime sector. The overall aid granted to dock-work companies and to dock-workers between 1992 and 1998 totals ITL 1 350 048 million, which is substantially lower than the amount (ITL 2 518 510 million) initially estimated by the Commission. The aid was provided to protect the social security benefits of workers (ITL 233 174 million), to enable reductions in the workforce (ITL 863 846 million) and to cover the operating losses of the port undertakings (ITL 253 028 million).

(46) This final decision in Cases C-27/93 and C-81/98 only covers the measures providing financial assistance to port undertakings, to dock-work companies to which Italian dockers belonged until 1994 and to dock-workers themselves thereafter. This has no bearing on any action taken, or to be taken, by the Commission regarding the financing provided to port authorities and to beneficiaries in the maritime sector.

III. **COMMENTS FROM INTERESTED PARTIES**

Case C-27/93

(47) Following the decision by the Commission in 1996 to extend the procedure that had been initiated in 1993, the German Government submitted its comments by letter of 12 December 1996. The German Government stated that substantial and repeated support by Member States for restructuring did indeed merit critical examination by the Commission under Article 87 of the Treaty. At the same time, public support for certain social measures and for the financing of port infrastructure should not, in its view, be considered as State aid, unlike the financing of superstructures.

(48) The Commission forwarded the comments from the German Government to Italy by letter of 16 April 1997. The Italian Government replied to those comments by letter of 13 May 1997.

Case C-81/98

(49) Following the Commission decision to initiate the procedure, the German Association of Ports (*Zentralverband der Deutschen Seehafenbetriebe* (ZDS)) submitted its comments in a letter of 12 May 1999. According to ZDS, the activities of the port authorities, which determine whether they are to be considered as undertakings under Article 87(1) of the Treaty, are unclear. At the same time, it supported the Commission's decision to initiate the procedure regarding aid to the port undertakings and dock-work companies.

(50) The Commission forwarded the comments of the ZDS to Italy by letter of 27 May 1999. The Italian Government submitted a reply to those comments by letter of 28 July 1999.

IV. **ASSESSMENT OF THE AID**

A. *Applicability of Article 87(1) of the Treaty*

(51) Under Article 87(1) of the Treaty, aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, insofar as it affects trade between Member States, is incompatible with the common market.

(52) The successive legislative measures adopted by the Italian authorities in support of the structural reform of the port sector have included a number of aid measures in respect of which the Commission twice had to open the procedure provided for by Article 88(2) of the Treaty.

(53) The serious doubts surrounding the nature and compatibility with Article 87(1) of the aid implemented by means of Laws No 428/92, No 236/93, No 84/94, No 343/95, No 647/96 and No 30/98 stemmed from the following:

— the aid is financed through State resources, i.e. either by the State itself (central/regional/local government) or indirectly through the setting-up of funds, such as the *Cassa Integrazione Guadagni Straordinaria*, *Casa estiva di Dovadole* (see recital 74 of this Decision) and the *Fondo di gestione* (see recital 81) or payments through private bodies acting upon State guidance, thereby imposing a burden on the State budget;

— the aid given is selective in its character as it favours the provision of certain services by the dock-work companies operating in Italian ports. In the field of cargo handling, i.e. loading/unloading and storage of cargo, undertakings within the same port and in other ports compete for trade;

— following the Port of Genoa Judgment, other private cargo handling undertakings had to be allowed to operate in the Italian ports in competition with the port undertakings and dock-work companies. The aid granted by the State clearly distorts or threatens to distort competition by favouring those undertakings and companies. Depending on its final destination, there is often a choice between different ports for the loading and unloading of the cargo carried by the vessels. As a result, the port undertakings and dock-work companies in the ports concerned, including those operating in the major Italian ports which handle international traffic, are actually or potentially competing for traffic with cargo-handling undertakings in other Italian and Community ports. As such, there is an effect on trade between Member States.

(54) Furthermore, even if at the time the aid was granted the port undertakings and dock-work companies had not faced significant competition from third parties, the Commission is of the view ([33]) that one of the likely effects of the aid measures in question was to influence the cost of port operations. As the Court of Justice found, the distortion of competition arising from the extra expense of port unloading operations is capable, by reason of its effect on the prices of the goods, of affecting imports and hence of affecting trade between Member States ([34]).

Legal status of the port undertakings and dock-work companies

(55) Irrespective of the actual legal status of the port undertakings and dock-work companies which, by providing the manpower, were instrumental in the activities of port undertakings, it has to be remembered that any entity engaged in economic activities of a commercial nature is considered to be an undertaking under Community competition law ([35]). Therefore, the argument of the Italian authorities that State aid rules did not apply to port undertakings and dock-work companies is not valid and cannot be accepted.

(56) The Italian authorities invoke exemption from competition rules regarding the particular legal status of dock-work companies, since the exemption under Article 86(2) of the Treaty is clearly not applicable in this case as port undertakings and/or companies are not entrusted with the operation of a service of general economic interest because of the lack of specificity in the nature of their activities ([36]).

(57) However, the Court of Justice has also ruled that 'the concept of worker within the meaning of Article 48 of the Treaty presupposes that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration. That

([33]) As already stated in recital 22 of Decision 97/744/EC (see footnote 4).
([34]) Port of Genoa (see footnote 3), point 22.
([35]) See Port of Genoa Judgment, point 14 et seq.
([36]) See Port of Genoa Judgment, points 27 and 28.

description is not affected by the fact that the worker, whilst being linked to the undertaking by a relationship of employment, is linked to other workers by a relationship of association' ([37]).

(58) It should be noted that workers associated with dock-work companies performed the work in question for and under the direction of the port undertakings. As interpreted by the case-law of the Court, those workers must be regarded therefore as workers within the meaning of Article 39 of the Treaty ([38]). Dock-workers do not in themselves constitute 'undertakings' within the meaning of Community competition law. Without prejudice to the exact nature of dock-work companies, it has to be said that, even when taken collectively, dockers recognised as such in a port area cannot be regarded as constituting an undertaking ([39]).

Aid categories

(59) The objectives pursued by the aid measures in question were to:

— ensure social security protection of dock-workers,

— reduce the number of dock-workers in the port sector, and

— write off debts and compensate operating losses of port undertakings and dock-work companies.

Whatever the case, the Court of Justice has consistently held that Article 87(1) of the Treaty does not distinguish between State aid measures on the basis of their purpose or target, but defines such measures in terms of their effects.

(60) In their reply to the injunction, the Italian authorities claim that the compatibility with State aid rules of Laws No 428/92, No 236/93, No 84/94, No 343/95, No 647/96 and No 30/98 cannot be examined in abstract terms, but has to take account of the economic context which led to their adoption. That context was marked by structural reform, which has eventually resulted in the gradual introduction of greater competition in the market for the provision of port services in Italy.

(61) In its assessment of the aid measures above, the Commission has taken account of this claim. In the 1996 decision to extend the procedure under Article 88(2) in Case C-27/93, the Commission had already informed the Italian Government that the competition aspects in the infringement procedure were closely linked to State aid.

MEASURES TO ENSURE SOCIAL SECURITY PROTECTION OF DOCK-WORKERS

(62) With regard to measures to ensure social security protection of dock-workers, the Commission considers ([40]) that selective reductions in social security contributions 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.

(63) At the time the formal investigation procedure under Article 88(2) of the Treaty was initiated, there was a strong presumption that the exemption from social security contributions enjoyed by the port undertakings and dock-work companies as a result of the provisions of Laws No 428/92, No 236/93, No 84/94, No 343/95, No 647/96 and No 30/98 constituted a form of State aid that is prohibited in principle by the Treaty. The Commission generally takes the view that firms must themselves bear any costs arising from legal obligations and/or from agreements which they conclude with their employees regardless of whether those obligations and/or agreements relate to the restructuring of the firm or to other aspects implying extra social security contributions.

([37]) See Port of Genoa Judgment, point 13.
([38]) Ex Article 48.
([39]) Case C-22/98 Jean-Claude Becu et al [1999] ECR 1-5665, point 26.
([40]) See Commission Decision of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws No 30/1997 and No 206/1995 (OJ L 150, 23.6.2000, p. 50).

(64) This exemption also appeared to be selective, as it was not granted to companies in other sectors. This conclusion was compounded by the fact that the subsequent aid measures were implemented without previously informing the Commission and that the information provided by the Italian authorities concerning the restructuring of port undertakings and dock-work companies was found to be fragmentary and inconsistent.

(65) Only after the information injunction launched on 12 July 2000 (see recital 12) was the Commission able to determine the exact amounts of aid granted, to establish who had been the recipients of the aid and to clarify, in particular, the nature of the aid provided to port undertakings and dock-work companies and dock-workers. From the information received, the Commission had to review its initial position ([41]) with respect to the measures implemented to ensure the social security protection of dock-workers, for the reasons set out in recitals 66 to 75, following.

(66) First of all, the measures were not adopted to favour either port undertakings or dock-work companies as such (the latter were dissolved in 1994), but rather to protect the social security benefits of dock-workers. Under the old regime, dock-workers were not covered by the Italian general social security system (INPS), but by an ad hoc system based on a mutual fund ([42]) linked to the exclusive rights enjoyed by dock-workers. That system was different in nature to the general INPS system and its management was completely separated from the INPS system.

(67) In 1992, the mutual fund ensuring the viability of the dock-work companies' social security system was abolished. Because of the difficulties of the structural reform and, in particular, the number of workers involved (more than 21 000 dock-workers, around 7 500 of them active, see recital 78, table 4) and the administrative requirements linked to the management by the INPS of those workers, the Italian authorities found it impossible to arrange an immediate transfer to the general social security system. The transfer was further complicated by the litigation brought before the courts by the port undertakings and dock-work companies against the State.

(68) Secondly, the Italian authorities also confirmed that, since the port undertakings had been transformed into commercial undertakings, they had been subject to general social legislation, which regulates the contributions that undertakings in Italy are obliged to make for funding the INPS system.

(69) Thirdly, the measures enacted by the laws in question were aimed at ensuring social security protection for the majority of workers who, until 1994, belonged to the dock-work companies and thereafter remained in the port sector as individual workers. Those measures did not lesson the obligations of the new port undertaking in respect of social charges nor alleviate the charges that they had to pay to the INPS ([43]).

(70) The Italian authorities confirmed that these measures were aimed at covering the direct social benefits and other fringe benefits of the dock-workers, including sickness insurance, accident insurance, insurance against occupational disease, unemployment insurance and maintenance of the pension rights of retired workers. The amounts granted under the above laws were established on the basis of the legally binding social security rights and obligations acquired by dock-workers under the old regime (see recital 19). They cover the period of time between the abolition of the old system for ensuring social protection of dock-workers and the integration of those workers under the standard INPS system, regardless of any employment relationship with the port undertakings (see recital 69, in fine).

([41]) The position initially taken by the Commission is contained in the decision to initiate the procedure C-27/93 (see footnote 2). At that time, the Commission took the view that the social security contributions amounted to State aid that was compatible with the common market.

([42]) *Fondo assistenza sociale lavoratori portuali*, renamed *Fondo gestione istituti contrattuali lavoratori portuali* by Law No 23 of 17 February 1981.

([43]) The new port undertakings employ dock-workers on a casual basis, as needed according to the workload (i.e. the number of workers and days worked are determined by the cargo handling activities which fluctuate in and between ports according to traffic).

(71) Under the transitional social security arrangements, payment of those benefits to dock-workers was made in some cases directly by the INPS and, in other cases, through the intermediary of the port undertakings (before their transformation in 1995) and dock-work companies (before their dissolution in 1994), which advanced the sums to dock-workers on behalf of the INPS and were subsequently reimbursed by that institute ([44]).

(72) Finally, the measures to ensure social security protection of dock-workers were an essential part of the process of changing the legal status and *modus operandi* of port undertakings and dock-work companies and ultimately to enable the gradual opening-up of the market. These measures were necessary because the Italian general social security scheme did not cover workers in the port sector. Following the abrogation of the old social legislation in the port sector, the measures in question helped to ensure dock-workers the same social protection enjoyed by all workers in other economic sectors.

(73) In this respect it should be recalled that general social security schemes under Member States' labour legislation are not to be regarded as State aid falling within the Article 87(1) insofar as the State deals directly with employees and the company is not involved ([45]). This conclusion is not altered by the subrogation of workers' rights and causes of action to an organisation other than the social security general organisation ([46]).

(74) For the above reasons, the Commission takes the view that:

— the amounts granted for funding the transitional social security insurance scheme for dock-workers (*Cassa Integrazione Guadagni straordinaria* plus *trattamento inidoneità*), totalling ITL 231 920 million, and

— the amounts granted for other social costs (such as the *casa di Dovadola*, a holidays fund), totalling ITL 1 254 million,

were not of direct benefit to port undertakings and dock-work companies and did not have the effect of distorting or threatening to distort competition within the meaning of Article 87(1).

(75) This position is consistent with the Commission's established position ([47]) with respect to measures of this type. Furthermore, the Italian authorities confirmed as requested by the Commission at the moment of initiating the procedure, that the social security arrangements for dock-workers have been definitively brought into line with the standard system for employees in Italy.

MEASURES TO REDUCE THE NUMBER OF DOCK-WORKERS IN THE PORT SECTOR

(76) According to the Guidelines on State aid for rescuing and restructuring firms in difficulty ([48]) Member States' labour legislation may comprise general social security schemes under which redundancy benefits and early retirement pensions are paid directly to redundant employees. 'Where such schemes are available generally without sectoral limitations to any worker meeting predefined and automatic eligibility conditions, they are not deemed to involve aid under Article 87(1) for firms undertaking restructuring. On the other hand, if the schemes are used to support restructuring in particular industries, they may well involve aid because of the selective way in which they are used' (point 3.2.5).

([44]) Part of the aid in question (ITL 160 000 million) was reimbursed by the INPS to certain port undertakings and dock-work companies located in the regionally assisted areas in the south of Italy in accordance with a judgment of the Italian Constitutional Court (Sentenza della Corte Costituzionale n. 261 del 1991).

([45]) See point 3.2.5, paragraph 2, of the Guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 368, 23.12.1994, p. 12).

([46]) See Judgment of the Court of 29 April 1999. Case C-342/96 *Kingdom of Spain* v *Commission* 'Fogasa' [1999] ECR I-2459.

([47]) See, for example, Commission decisions in the maritime and port sectors, in cases NN 98/97 Belgium of 21 January 1998 or C-18/96 France of 2 October 1996 (OJ C 357, 26.11.1996). In the first case, the Commission decided not to raise objections with regard to the ad hoc fund for securing social security benefits of dock-workers. In the second, reductions in social security contributions in connection with reorganising working hours were found not to amount to State aid.

([48]) See footnote 45.

(77) The aid measures implemented by the laws under examination consist of large amounts of aid granted by the Italian authorities to port undertakings and dock-work companies for the declared purpose of reducing the number of economically active dock-workers, all of them associated members of the dock-work companies.

(78) The Italian authorities justify the aid granted on social grounds, pointing out that the reform of the port sector has required a significant reduction in the number of dock-workers. From more than 21 000 active dock-workers in 1983 when the reform begun, the number of active dock-workers was reduced to fewer than 4 000 by the end of 1999.

Table 4

Trend in the number of active dock-workers in Italian Ports

1983	1992	1993	1994	1995	1996	1997	1998	1999
21 899	7 478	6 891	7 046	5 759	4 812	4 545	4 476	3 880

(79) Port undertakings and dock-work companies could never have undertaken the necessary suppression of redundant jobs. As a matter of fact, the port undertakings and dock-work companies seriously resisted attempts by the Italian authorities to reduce their workforce and even went to the courts to try to stop these measures.

(80) Reform of this kind is in line with policy developments in the Community port sector, as explained in the Green Paper on seaports and maritime infrastructure ([49]) and in the draft directive on port services ([50]). The trend has been to shift the provision of commercial cargo handling services from public to private service providers, notably to increase efficiency. To this end, reforms have taken place in a number of Member States to adjust ports to the new requirements as a result of the technological development and intensified competition in the sector.

(81) In regard of the compensation paid for early work-contracts termination (*Trattamento di fine servizio* or TFS), the Italian authorities explained that this was necessary to meet the contractual arrangement for retired dock-workers during the 1984 to 1989 period. This had to be paid from the resources of the Mutual Fund, in accordance with a ministerial circular to cover the financial commitments connected with early retirement. Liquidation of the fund gave rise to a protracted dispute brought by the port undertakings and dock-work companies against the fund liquidators and also against the Italian administration. Following a judgment of the national courts, the Italian Government had to adopt Law No 647/96 setting aside the funds necessary to pay the compensation due to retired dock-workers. This law extends to the profession in question the legal right recognised by Article 2120 of the Italian Civil Code in respect of workers in other sectors.

(82) As indicated in the Community guidelines on State aid for rescuing and restructuring firms in difficulty, 'besides direct redundancy benefit and early retirement provision for employees, general social support schemes are widespread under which the Government covers the cost of benefits that the company provides to redundant workers and which go beyond its statutory or contractual obligations'. As already stated in recital 76, 'where such schemes are available generally without sectoral limitations to any worker meeting predefined and automatic eligibility conditions, they are not considered to involve aid' pursuant to Article 87(1) for firms undertaking restructuring ([51]).

([49]) COM(97) 678 final, 10.12.1997, points 81 and 82.
([50]) Proposal for a Directive of the European Parliament and of the Council on market access to port services, COM/2001/0035 final (OJ C 154 E, 29.5.2001, p. 290).
([51]) See footnote 45.

(83) The information provided by Italian authorities indicates, however, that the beneficiaries of the aid to reduce the number of dockers were the dock-work companies, of which the dockers were associate members until 1994, and the dock-workers themselves thereafter. As already stated in recital 58, dock-workers do not in themselves constitute 'undertakings' within the meaning of Community competition law. The aid measures were not intended for port undertakings which, at the time period the TSF arrangements were concluded, did not have an employment relationship with the dock-workers themselves.

(84) Furthermore, these aid measures were adopted by way of exception because the general social security schemes in force in Italy did not cover the port sector. They were necessary in view of the legal vacuum that affected the sector following the abolishment of the sector-specific social legislation ([52]). Even if those measures were implemented outside the framework of the Italian social security system, they were adopted to protect a category of workers affected by the structural reform of a whole economic sector.

(85) For the above reasons, the Commission takes the view that the aid measures contained in Laws No 428/92, No 236/93, No 84/94, No 343/95, No 647/96 and No 30/98 aimed at covering the social costs linked to the departure of dock-workers, as required in the context of the structural reform of the sector, are not to be regarded as State aid falling within Article 87(1) of the Treaty.

AID TO WRITE OFF DEBTS AND COMPENSATE LOSSES OF THE PORT UNDERTAKINGS

(86) The aid granted for the declared purpose of cancelling debts and compensating losses originating from the commercial trade of port undertakings is State aid within the meaning of Article 87(1) of the Treaty.

(87) Such operating aid favoured the port undertakings as it granted relief on costs which undertakings have to bear as part of their normal activities. For the reasons above, those aid measures risk distorting competition and affecting trade between Member States.

State aid granted illegally

(88) By not notifying the aid measures granted to port undertakings, the Italian Government has also infringed Article 88(3) of the Treaty. The Commission could not present its observations on those measures before they were applied, from 1992 onwards.

B. *COMPATIBILITY OF THE AID MEASURES*

(89) Having established that the measures intended to compensate the operating losses of port undertakings constitute State aid within the meaning of Article 87(1) of the Treaty, the Commission has to examine whether they may be declared compatible with the common market in pursuance of Article 87(2) or (3) of the Treaty. The Court of Justice has already ruled that Article 86(2) of the Treaty must be interpreted as meaning that the Italian dock-work undertaking and/or company 'may not be regarded as being entrusted with the operation of services of general economic interest within the meaning of that provision' ([53]).

(90) As far as Article 87(2) is concerned, the aid does not meet either the conditions laid down in subparagraph (a), which relates to aid of a social character granted to individual consumers, or, of course, the conditions laid down in subparagraph (c).

(91) Neither does the aid qualify for exemption under Article 87(2)(b), since the transformation of an economic sector, required, *inter alia*, because of the incompatibility with Community legislation of certain provisions in the national legislation, cannot be regarded as an exceptional occurrence within the meaning of that provision.

([52]) See Commission Decision 97/21/EC, ECSC of 30 July 1996 on State aid granted in favour of Compañía Española de Tubos por Extrusión SA (OJ 1997 L 8, p. 14). In this instance, the Commission's took the view that the funding of an ad hoc fund securing workers' social security rights (Fogasa) did not contain elements of State aid. That view was confirmed by the Court Judgment of 29 April 1999 in Case C-342/96 [1999]ECR I-2459.

([53]) See Port of Genoa Judgment, point 28.

(92) Article 87(3) specifies other forms of aid which may be regarded as compatible with the common market. Compatibility must be assessed from the standpoint of the Community as a whole and not in a purely domestic context. For the purposes of the proper functioning of the common market and consistency with the principle set out in Article 3(g) of the Treaty, the exceptions in Article 87(3) must be interpreted in the strictest sense.

(93) As regards the exceptions in Article 87(3)(b) and (d), the aid in question is clearly not intended for a project of common European interest or to promote culture and heritage conservation. Nor did the Italian authorities attempt to justify the aid on the grounds that it was granted to remedy a serious disturbance in the Italian economy.

(94) With regard to the derogation in Article 87(3)(a), the Italian authorities did not justify the aid measures in terms of their contribution to regional development. Nor was there any reference to the existence of regional handicaps in the port sector that those measures would have seek to alleviate. Consequently, the conditions for approving the aid measures for regions as referred to in Article 87(3)(a) under the regional guidelines ([54]) are not fulfilled in the present case.

(95) All things considered, the only exemption that could possibly be considered, as indicated by the decision to initiate the formal investigation procedures, is the one provided for in Article 87(3)(c) for 'aid to facilitate the development of certain economic activities [...] where such aid does not adversely affect trading conditions to an extent contrary to the common interest'.

(96) The aid to write off debts and compensate the losses of port undertakings was considered necessary to enable the restructuring of the port undertakings and to enable them to compete under the new market conditions resulting from the reform of the port sector. Such restructuring aid may be considered compatible with the common market if the relevant criteria are met. These criteria are set out in the Community guidelines on State aid for rescuing and restructuring firms in difficulty, which have been in force since 1994, and in the Commission's Eighth Report on Competition Policy ([55]) for the period prior to that. Under both sets of rules, rescue aid may be granted only for the time needed (generally not exceeding six months) to devise the requisite and feasible recovery plan. Restructuring aid may be granted only on the basis of an appropriate restructuring plan.

(97) Although the Italian authorities have continuously referred to the difficulties of port undertakings following the transformation of the port sector (e.g. abolition of dock-work companies, debts inherited from the past as a result of inefficient labour intensive methods), they have never provided the Commission with a proper restructuring plan, within the meaning of the aforementioned Community guidelines, despite numerous letters and requests for information sent to them by the Commission.

(98) The Commission has nonetheless examined the information submitted by the Italian authorities to determine whether the general conditions needed for the Commission to approve the restructuring aid have been met. It appears from the reports that the changes introduced to port undertakings consisted essentially of a structural separation of activities. Insofar as information is available, the port undertakings in each of the five ports (La Spezia, Ravenna, Livorno, Trieste and Venice) covered by the reports provided by the Italian authorities (see recital 40) have been split into two to four enterprises with responsibility for assets, labour and operations respectively. Such splitting has not

([54]) Community Guidelines on national regional aid, OJ C 74, 10.3.1998, p. 9. In accordance with point 6.1 of these guidelines, the Commission will assess the compatibility of regional aid with the common market on the basis of the criteria in force at the time such aid was granted.

([55]) See points 177, 227 and 228.

been undertaken in Genoa. Concerning the five ports, the data for each of these undertakings were thus examined individually. It should, however, be noted that in order to carry out loading, unloading, transhipment, storage and general movement of goods activities, participation of all the different spinoff enterprises is indispensable and for those purposes they are to be considered as one, single undertaking. This is also supported by the fact that spinoff enterprises are controlled by the same majority of shareholders and, according to the information received, the contractual relations between the spinoff enterprises are clearly not made on arm's length terms.

(99) In support of the operating aid granted to port undertakings, the Italian authorities, working on the basis of the data on the six major ports, make a distinction between two time periods:

— in 1993 and 1994, i.e. before the reform, port undertakings and dock-work companies were still public undertakings looking after workers' access to jobs, in accordance with parameters and methods under the old legal regime. During those years, the profitability of port undertakings and dock-work companies was negative in the extreme, with overall losses exceeding ITL 30 000 million even in terms of net result. The Italian authorities justify the settlement of the pre-1995 losses by stating that it was a necessary operation to give the port undertakings and dock-work companies, once their existing business was dismantled, a sufficiently balanced assets/liabilities structure to be able to undertake new business activities;

— the period from 1995 to 1998, during which port undertakings and dock-work companies operated under the new regime as undertakings within the meaning of private law, showed, according to the Italian authorities, a gradual improvement in terms of production margins and operating results, indicating a likely restoration of economic viability of port undertakings and dock-work companies within a few years ([56]). However, as a matter of fact, port undertakings and dock-work companies continued to register losses to the extent that the Italian authorities had to grant further operating aid totalling ITL 100 000 million in 1998.

(100) All in all, the following conclusions can be drawn from the information available for the period 1993 to 1998 as a whole, as provided by the Italian authorities for the six ports examined in more detail:

— overall, returns on operations among port undertakings are grossly negative and only alleviated through significant and continuous State funding. In addition, losses seem to be largely underestimated, considering the low and even decreasing level of financing expenses (e.g. interest on loans), against an increase in indebtedness, also through accumulated losses;

— even after transformation into commercial undertakings, port undertakings appear to have followed labour intensive practices. Labour costs and social charges constitute an essential part of the negative results steadily registered by the undertakings since 1995;

— as a result, productivity, measured as the ratio between expenditure on assets compared to income generated by them showed an overall negative trend for the ports examined. What does stand out, however, is the considerable increase in assets (mostly purchase of equipment with the help of State aid), although these are not matched by a commensurate move in income;

— on the whole, most of the companies examined operate on weak financial terms, with little ability to meet their current liabilities with readily available funds. As to the positive outlook for the future presented in the reports, this assumption is mostly due to overly optimistic estimates on increases in traffic (demand), i.e. external factors over which the companies have no great influence. Furthermore, these traffic forecasts are not confirmed by other independent sources.

([56]) Despite repeated attempts by the Commission, it has not been possible to establish a coherent and feasible timespan for eventual recovery.

(101) In view of these facts, the economic viability of most of the undertakings for which data has been provided has to be considered doubtful to say the least. There are no grounds for thinking that the operating aid granted has helped to restoring port undertakings to long-term viability.

(102) Nor has it been shown that the other conditions laid down in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty, notably those relating to undue distortion of competition and necessity of the aid, have been met. The aid to write off debts and compensate losses has merely served to maintain the status quo of the port undertakings. It has more likely affected the competitive position of other port operators trying to establish themselves in Italian ports. Furthermore, the aid beneficiaries have not made any significant contribution from their own resources or from external commercial financing to a possible restructuring plan.

(103) For these reasons, the Commission concludes that the criteria provided for in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty have not been complied with. Accordingly, the operating aid provided to port undertakings and dock-work companies by means of:

— Article 1(2) of Law 428/92, totalling ITL 53 028 million,

— Article 1(3) of Law 343/95, totalling ITL 100 000 million, and

— Article 9(4) of Law 30/98, totalling ITL 100 000 million,

is incompatible with the common market, as it does not qualify for exemption under Article 87(3)(c) of the Treaty.

V. **REPAYMENT OF THE AID**

(104) On the assumption that effective competition should be restored in the case of aid measures which are both unlawful and incompatible with the common market, Article 14(1) of Regulation (EC) No 659/1999 provides that 'where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary'. The Commission has accordingly decided that Italy should recover the aid from the beneficiary.

(105) Disregarding the changes affecting the legal status of the beneficiary of the aid as of 1995 and in accordance with Commission practice and the case law of the Court of Justice, aid must be recovered from the firms (the port undertakings) which actually received it. In this respect, no conflicting principle of national law can stand in the way of the full application of Community law ([57]).

(106) The Commission will look together with the Italian Government at how the aid is to be repaid.

VI. **CONCLUSION**

(107) The aid measures under Laws No 236/93, No 84/94, No 343/95, No 428/92, No 647/96 and No 30/98 aimed at covering the general social security benefits of port workers following the abolition of the previously existing mutual scheme do not amount to aid under Article 87(1) of the Treaty. The overall amount of aid paid under those measures totals ITL 233 174 million. Italy has certified that the social security arrangements for dock-workers have been brought into line with the standard system for employees in general.

(108) The aid granted under Laws No 343/95, No 647/96 and No 30/98 to enable the departure of dock-workers between 1992 and 1998 in the context of the structural reform of the sector does not fall under Article 87(1) of the Treaty. The overall amount under those measures totals ITL 863 846 million.

([57]) See Court judgment of 21 March 1991 in case C-303/88 *Italy* v *Commission* [1991] ECR I-1499, point 60.

(109) The Commission finds that Italy has put into effect, in breach of Article 88(3) of the Treaty, the aid granted by the Italian authorities to port undertakings to cancel debts and cover operating losses.

(110) The operating aid provided for by Laws No 428/92, No 343/95 and No 30/98 to cancel debts and settle the losses of port companies and undertakings is incompatible with the common market. A strict approach concerning repeated and substantial aid for restructuring a certain sector is also supported by the German government and the German Association of Ports (ZDS), as indicated in their comments in points 47, 48 and 49. The overall amount of aid paid under those measures totals ITL 253 028 million.

(111) Where aid granted unlawfully is found to be incompatible with the common market, the Commission requires the Member State concerned to recover it from the beneficiaries [58] in order to re-establish the previously existing situation. This applies to the aid found by this Decision to be incompatible with the common market, of which the amount already received will have to be reimbursed by the recipients,

HAS ADOPTED THIS DECISION:

Article 1

The aid of ITL 253 028 million paid to port undertakings by Italy under Article 1(2) of Law No 428/92, Article 1(2)c of Law No 343/95 and Article 9(4) of Law No 30/98, in the form of direct grants to cancel debts and cover losses, is incompatible with the common market.

Article 2

The aid granted by Italy in the form of severance pay and early retirement contributions for the departure of the dock-workers belonging to dock-work companies provided for by Laws No 343/95, No 647/96 and No 30/98 does not constitute aid within the meaning of Article 87 of the Treaty.

Article 3

The measures adopted by Italy in respect of the *Cassa integrazione guadagni straordinaria* (special earnings supplement fund), the *Indennità una tantum a favore di lavoratori inidonei* (invalidity severance pay) and the *Casa di soggiorno di Dovadola* (holiday fund) to preserve dock-workers social security rights under Laws No 236/96, No 84/94, No 343/95, No 647/96 and No 30/98 do not constitute aid within the meaning of Article 87 of the Treaty.

Article 4

Italy shall take whatever steps are necessary to recover from the beneficiaries the incompatible aid referred to in Article 1 and unlawfully made available to them.

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 made available to the beneficiaries until the date on which it is effectively repaid.

The interest shall be calculated on the basis of the reference rate used to calculate the grant equivalent of regional aid.

[58] See Commission communication, published in OJ C 318, 24.11.1983, p. 3.

Article 5

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

Article 6

This Decision is addressed to the Italian Republic.

Done at Brussels, 18 July 2001.

For the Commission
Loyola DE PALACIO
Vice-President