COMMISSION DECISION

of 16 October 2002

on the scheme by which Italy plans to aid employment in the Region of Sicily

C 56/1999 (ex N 668/1997)

(notified under document number C(2002) 3738)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2003/195/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 88 of the EC Treaty [1],

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

Whereas:

I. PROCEDURE

(1) By letter No 6307 of 19 September 1997, the Italian authorities notified the Commission, in accordance with Article 88(3) of the Treaty, of Article 11(1) of Sicilian Regional Law No 16 of 27 May 1997 (Regional Law No 16/97). The Law was to enter into force subject to the Commission's prior authorisation under Articles 87 and 88 of the Treaty. The scheme was accordingly entered in the register of notified aid under number N 668/1997.

(2) The Commission requested additional information in letters dated 24 October 1997 and 1 April 1998, and the Italian authorities replied by letter of 11 May 1999.

(3) By letter dated 10 August 1999, the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [3]. The Commission invited interested parties to submit their comments on the aid.

(5) On 15 February 2000 a meeting took place in Brussels between the Commission departments and the Italian authorities in the course of which the Italian authorities stated that they intended to submit comments on the decision to initiate the procedure in this case as soon as the Court of Justice had delivered judgment on Italy's application for the annulment of Commission Decision 2000/128/EC of 11 May 1999 concerning aid granted by Italy to promote employment [4]. That Decision declared that a scheme of assistance towards the hiring of employees under training and work experience contracts, and the conversion of those contracts into open-ended contracts, was incompatible with the Community rules.

(6) On 7 March 2002, by its Judgment in Case C-310/99 Italy v Commission [5] the Court of Justice dismissed Italy's application.

(7) In the case at issue here the Commission received no comments from interested parties.

(8) By letter of 24 June 2002, the Commission told the Italian authorities that if it did not receive information or observations within twenty days of the date of that letter it would take a decision on the basis of the information in its possession.

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[1] OJ L 83, 27.3.1999, p. 1.
[2] OJ C 27, 29.1.2000, p. 13.
[3] See footnote 2.
[4] OJ L 42, 15.2.2000, p. 1.
[5] Not yet reported.

(9) The Commission received no such observations or information.

II. DESCRIPTION

(10) Article 11(1) of Regional Law No 16/97 concerns the financing in 1997 and 1998 of an aid scheme (NN 91/A/95) introduced by Article 10 of the Regional Law of 15 May 1991, No 27, which the Commission authorised on 14 November 1995, and which was to have expired at the end of 1996.

(11) The scheme provides in the first place for a grant of 30 % of gross remuneration for employees hired under training and work experience contracts (contratti di formazione e lavoro); the grant is available for the entire duration of the contract. The percentage rises to 50 % of gross remuneration if the employee belongs to any of a number of disadvantaged groups: young people unemployed for three years or more, handicapped people, and former drug addicts.

Secondly, the scheme provides for grants of 50 %, 40 % and 25 % of the employee's gross remuneration if the fixed-term training and work experience contract is converted into an open-ended contract; the grant is available for the first three years of the open-ended contract. Those percentages rise to 60 %, 50 % and 50 % if the employee belongs to any of a number of disadvantaged groups: once again unemployed people, handicapped people, and former drug addicts. These grants are given only if at least 50 % of the employees hired under training and work experience contracts are then kept on under open-ended contracts.

(12) The scheme is available to businesses in the Region of Sicily which are engaged in the distributive trades, craft industry, tourism, manufacturing or agriculture.

III. ASSESSMENT OF THE AID

1. Do the measures constitute aid?

Form and intensity of the aid

(13) In order to assess whether the measures provided for in the scheme constitute State aid within the meaning of Article 87(1) of the Treaty, it has to be determined whether they confer an advantage on the recipients, whether that advantage derives from state resources, whether they affect competition, and whether they are liable to affect trade between Member States. The first requirement for the applicability of Article 87(1) of the Treaty is that the measure must confer an advantage on certain specific undertakings. It has to be determined whether the recipients receive an economic advantage they would not have received under normal market conditions, or whether they avoid costs which they would normally have had to bear out of their own financial resources, and whether this advantage is conferred on a specific category of undertaking. In the case at issue here the Italian authorities allow firms located in one region of the country, namely Sicily, to be paid grants towards the hiring of employees under training and work experience contracts, and towards the conversion of those contracts into open-ended contracts; the authorities thus take over part of the firms' labour costs, which are normal expenditure incurred in their own interest, and confer a financial advantage that improves their competitive position. In addition, these measures favour firms operating in specific areas of Italy, because they are not available to firms outside those areas.

(14) The second requirement for the applicability of Article 87 is that the planned measures must be paid for by the State or out of State resources. In the present case the use of State resources is shown by the fact that the cost of the measure is borne by the public budget.

(15) The third and fourth conditions for the applicability of Article 87(1) of the Treaty require that the aid distort or threaten to distort competition, and that it be liable to affect trade between Member States. The measures at issue here favour firms operating in lines of business open to competition, strengthening their financial position and freedom of action as compared with competitors who do not qualify. If that effect makes itself felt in intra-Community trade, then trade between Member States is affected. The Court of Justice has held, for example in Case 102/87 France v Commission ([6]), that such measures distort competition and affect trade between Member States if the recipient firms export part of their output to other Member States, and that if they do not themselves export, domestic output is nevertheless favoured, because firms in other Member State have less opportunity to export their products to the firms' home market.

(16) The measures at issue are therefore in principle banned by Article 87(1), and can be considered to be compatible with the common market only if they qualify for one of the exemptions laid down in the Treaty.

([6]) [1988] ECR 4067.

2. **Compatibility of the measures with the common market**

(17) After determining that the measures under examination constitute State aid caught by Article 87(1) of the Treaty, the Commission has to consider whether they can be declared compatible with the common market under Article 87(2) and (3).

(18) The Commission takes the view that the aid does not qualify for the exemptions in Article 87(2): it is not aid having a social character of the kind referred to in Article 87(2)(a), nor is it aid intended to make good the damage caused by natural disasters or exceptional occurrences of the kind referred to in Article 87(2)(b), nor does it satisfy the tests of Article 87(2)(c). For obvious reasons the exemptions in Article 87(3)(b) and (d) are not applicable either.

(19) As the aid is aid to employment, the Commission has to consider whether it qualifies for exemption under Article 87(3)(a) and (c).

(20) In line with the guidelines on aid to employment ([7]), the Commission is generally favourably disposed towards aid in respect of people who have never had a job or who have lost their previous job, if the aid is intended for the creation of new jobs (net job creation) in SMEs and in regions eligible for regional aid, and likewise towards aid to encourage firms to take on certain groups of workers experiencing particular difficulties entering or re-entering the labour market anywhere in the country. In the latter case it is enough that 'the post falls vacant following voluntary departure and not redundancy'.

(21) The guidelines on aid to employment state that 'The Commission will make sure that the level of the aid does not exceed that which is necessary to provide an incentive to create jobs', and will satisfy itself that there is some degree of stability in the jobs created.

(22) The guidelines state that on certain conditions the Commission may also authorise aid to maintain jobs, provided it is confined to regions eligible for exemption under Article 87(3)(a), and provided it satisfies the conditions for operating aid. Such aid must be limited in time and progressively reduced, must be designed to overcome structural handicaps and to promote lasting development, and must comply with the rules governing sensitive industries.

(23) The measures provided for in this scheme:

(a) are not aimed solely at people who have never had a job or who have lost their previous job;

(b) are not intended for net job creation within the meaning of the guidelines on aid to employment, because the recipient firm is under no obligation to increase the number of employees as compared with a reference period;

(c) are not aimed solely at encouraging firms to take on certain groups of workers experiencing particular difficulties entering or re-entering the labour market.

(24) The Commission concludes that the aid can be considered aid to maintain jobs, and in accordance with point 22 of the guidelines on aid to employment can be treated as operating aid. It has to be determined, therefore, whether it satisfies the tests for the admissibility of operating aid described in recital 23 of this Decision.

Eligibility of the region

(25) On 1 March 2000 the Commission approved the Italian regional aid map for the period 2000-2006, delimiting the regions qualifying for exemption under Article 87(3)(a) of the Treaty ([8]). In accordance with that map Sicily is a region eligible for aid under the exemption.

(26) The aid at issue here is indeed confined to a region qualifying for exemption under Article 87(3)(a) of the Treaty, and is limited in time, but it is not being progressively reduced.

(27) The measures were introduced in 1991, and had thus been in force for six years at the time when a two-year extension was proposed. Eligible costs and aid intensities remained unchanged over the six years for which the scheme had been authorised, and the two-year extension now being considered would not reduce the aid in any

([7]) OJ C 334, 12.12.1995, p. 4.

([8]) OJ C 175, 24.6.2000, p. 11.

way from what it was in the six years preceding: the aid measures proposed for the year 1998 are identical to those proposed for 1997, and both are identical to those in force in 1991—1996.

(28) This is a separate scheme which comes on top of the national scheme for training and work experience contracts provided for in Laws Nos 863/84, 407/90, 169/91 and 451/94; among other things that scheme provided for total exemption from social security contributions for firms located in areas where the level of unemployment was above the national average.

(29) Decision 2000/128/EC declared that in this respect the training and work experience scheme was incompatible with the common market, because it was not aimed at the creation of jobs in the recipient firm for persons who had not yet found employment or had lost their previous employment, and was not intended to encourage the employment of workers experiencing particular difficulties in entering or re-entering the labour market. The Commission asked that the incompatible aid which had already been unlawfully paid be recovered from the recipients. No such recovery has yet taken place.

(30) The aid scheme at issue here, therefore, does not satisfy the tests of the guidelines on aid to employment.

IV. **CONCLUSIONS**

(31) On the basis of the assessment set out in point III.2, the Commission must find that the aid scheme provided for in Article 11(1) of Regional Law No 16/1997 is incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The aid scheme which Italy plans to implement under Article 11(1) of the Sicilian Regional Law No 16 of 27 May 1997 is incompatible with the common market.

The scheme may accordingly not be implemented.

Article 2

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

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 16 October 2002.

For the Commission

Mario MONTI

Member of the Commission