COMMISSION DECISION

of 16 October 2002

on the aid scheme by which Italy plans to reduce the energy costs of small and medium-sized enterprises in the Region of Sardinia

(notified under document number C(2002) 3715)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2003/228/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 13305 of 30 October 2001, the Italian authorities notified, pursuant to Article 88(3) of the Treaty, a draft scheme of aid for small and medium-sized enterprises (SMEs) in the Region of Sardinia.

(2) The scheme was to enter into force only after prior authorisation under Articles 87 and 88 of the Treaty, and it was accordingly entered in the register of notified aid measures under number N 759/2001.

(3) The Commission requested additional information by letter dated 30 November 2001. After a reminder was sent to them on 24 January 2002, the Italian authorities replied by letter No 2236 of 20 February 2002.

(4) By letter dated 26 April 2002, 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.

(5) 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.

(6) The Commission received no comments from interested parties.

II. **DESCRIPTION**

Object

(7) Because there is no natural gas distribution network in Sardinia, firms on the island have to pay more for energy than firms in other parts of Italy where there is such a network.

(8) In order to compensate SMEs in Sardinia for the extra cost of using more expensive energy sources, the scheme would provide for the grant of aid in the form of tax credits.

(9) The scheme is designed to meet regional development objectives.

Legal basis

(10) The legal basis is Article 145(9) of Law No 388/2000 of 23 December 2000 and the draft interministerial decree of the Ministry of Economic Affairs and the Ministry of Production Activities concerning the conditions and procedures for granting tax aid to SMEs in the Region

[1] OJ L 83, 27.3.1999, p. 1.
[2] OJ C 132, 4.6.2002, p. 6.
[3] See footnote 2.

of Sardinia to compensate them for non-implementation of the natural gas distribution programme.

Duration and budget

(11) The scheme, which has a budget of EUR 10,3 million, covers the energy costs borne by firms in 2000 and 2001.

Recipients

(12) The recipients are SMEs within the meaning of Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises ([4]) located in Sardinia and belonging to the agri-foodstuffs, textiles, clothing, paper, chemicals, petrochemicals, building materials, glass, ceramics and mechanical engineering sectors.

Objective of the scheme

(13) The scheme would provide operating aid, in that the aid is intended to reduce firms' routine energy costs.

Form and intensity of the aid

(14) The aid is to be granted in the form of tax credits amounting to no more than 60 % of the cost of buying liquid fuels (combustible oils and LPG).

III. DOUBTS RAISED BY THE COMMISSION IN THE ARTICLE 88(2) PROCEEDINGS

(15) As part of the procedure under Article 88(2) of the Treaty, the Commission expressed doubts as to whether the handicap identified by the Italian authorities was a structural handicap within the meaning of the guidelines on national regional aid, and whether the aid available under the scheme was justified in terms of its contribution to regional development.

(16) The Commission received no observations either from the Italian authorities or from other interested parties.

IV. ASSESSMENT

1. Do the measures constitute State aid?

(17) 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.

(18) 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. The granting of tax credits to firms located in one region of Italy, Sardinia, does confer an economic advantage on the recipients, because tax credits reduce the amount of tax that firms would otherwise have to bear. The measures favour firms operating in specific areas of Italy, because they are not available to firms outside those areas.

(19) 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 terms of State resources the measures involved here generate a negative quantity, a sum not collected by the public authorities, because the granting of tax credits reduces tax revenue.

(20) 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 do threaten to distort competition, because they strengthen the financial position and freedom of action of the recipient firms 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* ([5]), 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.

([4]) OJ L 107, 30.4.1996, p. 4.

([5]) [1988] ECR 4067.

(21) 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.

2. **Lawfulness of the scheme**

(22) The measures have not yet entered into force, and the Commission accordingly finds that the Italian authorities have complied with the obligation to notify laid down in Article 88(3) of the Treaty.

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

(23) 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).

(24) 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.

(25) As the aid is operating aid, the Commission has to consider whether it qualifies for exemption under Article 87(3)(a) of the Treaty.

Eligibility of the region

(26) On 1 March 2000 the Commission approved the Italian regional aid map for the period 2000 to 2006, delimiting the regions qualifying for exemption under Article 87(3)(a) of the Treaty ([6]). In accordance with that map Sardinia is a region eligible for aid under the exemption.

Operating aid

(27) Point 4.15 of the guidelines on national regional aid ([7]) states that regional aid aimed at reducing a firm's current expenses is normally prohibited. Exceptionally, however, such aid may be granted in regions eligible under the derogation in Article 87(3)(a), provided that it is justified in terms of its contribution to regional development and its nature, and provided its level is proportional to the handicaps it seeks to alleviate.

(28) Point 4.17 of the guidelines states that operating aid of this kind must be both limited in time and progressively reduced.

(29) Although the region where the aid at issue is to be granted is an area eligible for exemption under Article 87(3)(a), the Commission is unable to conclude on the basis of the information supplied by the Italian authorities that the aid is justified in terms of its contribution to regional development and its nature, and that its level is proportional to the handicaps it seeks to alleviate.

(30) Firstly, the aid provided for in the scheme, which replaces a scheme that applied in 1998 and 1999 under the *de minimis* rule, is intended to offset operating costs already borne by firms in 2000 and 2001. The fact that the period has already ended means that the aid cannot be necessary to compensate for structural handicaps, and that it cannot have an incentive effect. Moreover, given the period to which the scheme relates, the transitional nature of the measure has not been demonstrated.

(31) Secondly, the Commission is unable to conclude that the criteria applied for selecting recipient industries, the form taken by the aid or the aid's duration are suited to alleviating the type of handicap identified, or that the level of aid is proportional to that handicap, as the aid does not seem to be limited to the additional costs actually borne by the firms. Nor can the Commission conclude that the aid available under the scheme is to be progressively reduced.

(32) As regards the necessity of the measures in question as a means of contributing to the socioeconomic development of Sardinia, the Italian authorities have not provided information on the lack of economically viable energy sources that might be alternatives to natural gas, and the Commission consequently cannot conclude that the handicap identified by the Italian authorities, namely the lack of a natural gas distribution network, constitutes a genuine structural factor hampering the region's socioeconomic development.

(33) The Italian authorities argue that the lack of such a network obliges firms to have recourse to more expensive energy sources; it may indeed constitute a factor contributing to economic disequilibrium, in so far

([6]) OJ C 175, 24.6.2000, p. 11.
([7]) OJ C 74, 10.3.1998, p. 9.

as the demand for a good, natural gas, is not satisfied by the supply of that good. But it will be possible to satisfy the demand once the infrastructure needed for natural gas distribution has been built and made available to businesses, which, under the plan for the creation of a methane gas distribution network on the island (Programma di metanizzazione della Sardegna), is provisionally scheduled to take place by the end of 2006.

(34) The Commission therefore cannot conclude that the handicap identified by the Italian authorities is a structural handicap within the scope of the guidelines on national regional aid, and that the aid available under the scheme is justified in terms of its contribution to regional development.

Production, processing and marketing of products listed in Annex 1 to the Treaty

Agriculture

(35) Under point 3.7 of the Community guidelines for State aid in the agriculture sector ([8]), the guidelines on national regional aid do not apply to the agricultural sector.

(36) Under point 3.5 of the same guidelines, unilateral State aid measures which are simply intended to improve the financial situation of producers but which in no way contribute to the development of the sector are considered to constitute operating aid which is incompatible with the common market.

(37) The aid provided for under the scheme at issue is of this kind, and is consequently incompatible with the common market.

Fisheries and aquaculture

(38) Under point 1.5 of the guidelines for the examination of State aid to fisheries and aquaculture ([9]), the guidelines on national regional aid do not apply to the fisheries and aquaculture sector.

(39) Under the third indent of the fourth paragraph of point 1.2 of the same guidelines, State aid which is granted without imposing any obligation on the recipients and which is intended to improve the situation of undertakings and increase their business liquidity constitutes operating aid which is incompatible with the common market.

(40) The aid proposed under the scheme at issue is of this kind, and is consequently incompatible with the common market.

V. **CONCLUSIONS**

(41) On the basis of the assessment set out in section IV.3, the Commission must find that the aid scheme to reduce the energy costs of SMEs in the Region of Sardinia is incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The aid scheme provided for in Law No 388/2000 by which Italy plans to reduce the energy costs of small and medium-sized enterprises in the Region of Sardinia 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

([8]) OJ C 28, 1.2.2000, p. 2.
([9]) OJ C 19, 20.1.2001, p. 7.