COMMISSION DECISION

of 27 November 2002

on the premium scheme for tour operators in Greece

(notified under document number C(2002) 4488)

(Only the Greek text is authentic)

(Text with EEA relevance)

(2003/262/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 called on interested parties to submit their comments pursuant to the provisions cited above [1],

Whereas:

I. PROCEDURE

(1) By letter of 26 September 2001, received by the Commission on 1 October 2001, the German Ministry of Finance made inquiries regarding what appeared to be a premium scheme for tour operators applying in Greece. More specifically, the German authorities asked the Commission whether the scheme, if any, comprised a State aid element, and if so whether Greece had notified it.

(2) By letter D/54388 of 24 October 2001 to the Greek Permanent Representation, the Commission requested information on the premium scheme to enable it to assess its compatibility with the State aid rules. The Greek authorities responded to that request by letter dated 21 November 2001 from the Greek Permanent Representation, received by the Commission on 27 November 2001, and at a bilateral meeting on 11 February 2002. The information supplied by the Greek authorities indicated that the scheme had been put into effect before the Commission had taken any decision on it, and the scheme was accordingly entered in the register of unnotified aid measures.

(3) By letter SG(2002) D/229610 of 26 April 2002, the Commission informed Greece that it had studied the information supplied by the Greek authorities, and that in accordance with Articles 87 and 88 of the EC Treaty and Articles 61 and 62 of the EEA Agreement it had decided to initiate the procedure laid down in Article 88(2) of the Treaty. The Commission asked Greece to submit its comments and to supply any information that might be relevant to an assessment of the measure within one month of the date of reception of the Commission's letter.

(4) The Commission's decision to initiate the formal investigation procedure in respect of the scheme was announced in the *Official Journal of the European Communities* [2]. The notice asked interested parties to submit their comments to the Commission within one month of the date of publication.

(5) By letter of 7 June 2002 from the Greek Permanent Representation, received by the Commission on 13 June 2002, the Greek authorities submitted their observations.

(6) The Commission did not receive comments from any other interested parties.

II. DESCRIPTION OF THE MEASURE

(7) The scheme was put into effect by Decision No 503820/18-10-01 of the Chairman of the Greek Tourist Office (EOT); it provides that tour operators bringing foreign tourists to Greece in the periods from mid-October to

[1] OJ C 129, 31.5.2002, p. 13.

[2] See footnote 1.

the end of November and from the beginning of March to mid-April of each year are to receive a premium of EUR 40 per tourist. The scheme was announced by means of calls for expressions of interest on markets of relevance to Greek tourism, and applies from autumn 2001 until spring 2004. It may be extended to cover the whole of the low season if it is found that that would be justified by the number of tourists carried in winter.

(8) The Greek authorities stated that the scheme was intended to make up for the seasonal nature of tourist demand for destinations in Greece, and to increase the number of tourists arriving in off-peak periods. They took the view that the scheme would reduce the prices charged to consumers, and therefore that it did not comprise aid to tour operators. The Greek authorities nevertheless stated that no premiums had yet been paid.

(9) In view of the characteristics of the scheme in question, the Commission in the first place observed that any advantages to recipient firms could be considered at two levels: that of the tour operators themselves, and that of businesses in the tourism industry in Greece.

(10) As far as tour operators were concerned, the Commission noted that there was no guarantee that all tour operators would be eligible for the premiums, or that premiums would be granted irrespective of the means of transport used. The scheme seemed to be addressed exclusively to package tour operators who offered organised tours on certain markets which were considered to present an interest. There was no provision for agreement between the responsible authorities and the tour operators concerned, so that there did not seem to be any guarantee either that the premium would result in an equivalent reduction in the prices charged to tourists. But it could not be ruled out that the scheme would confer direct financial advantages on certain firms.

(11) Turning to businesses in the tourism industry in Greece, the Commission noted that, as it had emphasised in Decision 1999/99/EC concerning Sicilian Regional Law No 25/93 on measures to promote employment [3], businesses in the tourism industry would in any event gain an indirect advantage as a result of the granting of the premiums, in the form of an increase in demand. The Commission accordingly took the initial view that such premiums might strengthen the financial position and scope for action of businesses in the tourism industry in Greece in relation to competitors not benefiting under the measure.

(12) On that basis, and in view of the fact that the aid would be continuing and would result in a reduction in the current expenditure of firms, the Commission took the initial view that the aid had to be regarded as operating aid. The Guidelines on national regional aid ('the Guidelines') state that 'Regional aid aimed at reducing firms' current expenses (operating aid) is normally prohibited. Exceptionally, however, such aid may be granted in regions eligible under the derogation in Article 87(3)(a) of the Treaty provided that it is justified in terms of its contribution to regional development and its nature and its level is proportional to the handicaps it seeks to alleviate. It is for the Member State to demonstrate the existence of any handicaps and gauge their importance. Operating aid must be limited in time and progressively reduced' (point 4.15 of the Guidelines) [4].

(13) The Commission took the view that the Greek authorities had not supplied any information that would allow it to conclude that the premiums for tour operators were justified in terms of their contribution to regional development and their nature, or that the level of the aid was proportional to the handicaps it sought to alleviate. Similarly, it appeared difficult to conclude that the scheme complied with the requirement that operating aid be gradually reduced. The Commission also noted that, in the event that part of the premiums granted were to be retained by tour operators, and some of those tour operators were outside Greece, the effect might be that aid was being granted in regions not eligible for exemption under Article 87(3)(a) of the Treaty. The Commission was therefore unable at that stage to conclude that the premium scheme for tour operators was compatible with the relevant provisions of the Guidelines; the Commission consequently had to doubt whether the scheme was compatible with the Treaty.

(14) The Commission also questioned the compatibility of the scheme with the general ban on export aid, which was spelt out and repeated in point 4.17 of the

[3] OJ L 32, 5.2.1999, p. 18.

[4] OJ C 74, 10.3.1998, p. 9; amendments OJ C 258, 9.9.2000, p. 5.

Guidelines. The premiums were granted to tour operators who directly or indirectly, depending on the type of package, offered products supplied by tourist enterprises in Greece, chiefly hotels and restaurants, on the international market. The measure was expected to increase the number of tourists, and hence the income of businesses in the tourism industry, and it therefore could not be ruled out at that stage that its implementation might involve aid to intermediaries operating in distribution, in this case tour operators, in proportion to their results in the export of a particular product, in this case tourism products.

III. OBSERVATIONS SUBMITTED BY THE GREEK AUTHORITIES

(15) In the observations they have submitted in the formal inquiry procedure, the Greek authorities begin by stressing that Greece, although it is highly developed in terms of tourism, has not yet succeeded in diluting the entirely seasonal character of tourist demand, and that its dependence on tour operators is greater than that of other European competitors, especially because of the distance that separates Greece from its main markets. According to the Greek authorities, this explains why steps to attract demand outside the tourist period were included in the Operational Programme for Competitiveness which was approved by the Commission for the period 2000 to 2006.

(16) The Greek authorities say that they did not believe that the premium scheme for tour operators could comprise a State aid component, which is why they did not notify it to the Commission.

The adoption of a system of this kind was absolutely necessary in response to the competition from non-Community countries in the Mediterranean area, which were financing European tour operators to enable them to offer tourist packages at more advantageous prices.

Again according to the Greek authorities, the scheme does not favour certain undertakings in particular, as all tour operators that meet the requirements for eligibility laid down by the scheme are entitled to the premiums automatically, and the premiums are granted irrespective of the means of transport used (on this point the Greek authorities also take the view that the reduction in the prices of tourist packages would be to the benefit of consumers, because they could be guided to new destinations only by offering very low prices).

(17) Although they are convinced that a scheme of this kind is the only solution that would allow them to achieve their objectives, the Greek authorities in any event state that no premiums have yet been paid over: the debts towards tour operators that have been incurred in the meantime will be paid in accordance with the requirements of Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid [5].

IV. ASSESSMENT

(18) As required by the formal inquiry procedure, the Commission has examined the observations submitted by the Greek authorities.

(19) As regards the nature of the scheme under consideration, the Commission takes the view that the premiums constitute State aid for purposes of Article 87(1) of the EC Treaty and Article 61(1) of the EEA Agreement. They are granted out of State resources, are available only in a particular industry, and confer a selective advantage on firms in the tourism industry by reducing the expenses they would otherwise have to bear themselves; and, as the tourism industry is open to international competition, they may affect trade between Member States and threaten to distort competition by favouring certain undertakings.

(20) The Commission would point out that all the decisions approving Community intervention under the Structural Funds contain a saving clause referring to State aid. The approval of an operational programme does not release Member States from their obligations in this respect. In addition, the Commission, by letter of 16 July 2001, expressly drew the attention of the Greek authorities to the need to ensure compliance with the competition rules when approving and applying measures to reduce the seasonal character of tourism (measure 5.3 in the Operational Programme for Competitiveness).

[5] OJ L 10, 13.1.2001, p. 30.

Even if, as the Greek authorities contend, there is a danger that tourist preferences may be channelled towards non-Community countries if no countervailing measures are taken by the Member States most affected by international competition, the fact remains that any aid granted by a Member State in the tourism industry may affect trade between Member States. The premiums at issue here would have the effect of influencing the choices made by tourists, encouraging them to favour Greece as a holiday destination, so that Community tourist flows would be altered.

The lack of any distinction between different types of tour operator does not prevent the measure from being directed at a particular industry, or deprive it of its selective character. In addition, as there is no provision for agreement on this point between the responsible authorities and the tour operators concerned, there can be no guarantee that the granting of premiums will in fact lead to a corresponding reduction in the prices tourists are asked to pay. It cannot be ruled out, therefore, that the scheme may confer direct financial advantages on certain undertakings.

(21) In these circumstances, and taking account of the fact that the aid would be continuing and would result in a reduction in the current expenses of firms, the Commission considers that the premiums constitute operating aid; and even if it is granted in a region which until the end of 2006 is eligible in its entirety for the exemption in Article 87(3)(a) of the Treaty, operating aid nevertheless cannot be authorised unless the tests laid down in the Guidelines are satisfied. Specifically, it must be justified in terms of its contribution to regional development and its nature and its level must be proportional to the handicaps it seeks to alleviate. It must also be limited in time and must be progressively reduced.

(22) The Greek authorities have not supplied the Commission with fresh information relevant to an assessment of the appropriateness of the aid in terms of its contribution to regional development, especially in order to show that the aid is proportional to the defined handicaps, and that it will be progressively reduced, and they have not commented on the doubts expressed by the Commission, when it initiated the procedure, regarding the effects of the premium scheme on businesses in the tourism industry, and regarding the possibility that aid might be granted to regions not eligible for exemption under Article 87(3)(a) of the Treaty; the Commission is therefore still unable to conclude that the aid satisfies the tests of point 4.15 of the Guidelines. Consequently, the Commission cannot take the view that the aid is compatible with the common market under the exemption provision in Article 87(3)(a) of the Treaty.

(23) Similarly, the Commission cannot consider the aid as qualifying for any other exemption provided for in the Treaty. As the premiums constitute operating aid, they cannot be considered aid to facilitate the development of certain economic activities or of certain economic areas which does not adversely affect trading conditions to an extent that is contrary to the common interest (Article 87(3)(c)). The aid is not aid having a social character, granted to individual consumers (Article 87(2)(a)); it is not aid to make good the damage caused by natural disasters or exceptional occurrences (Article 87(2)(b)); it is not aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany (Article 87(2)(c)); it is not aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State (Article 87(3)(b)); it is not aid to promote culture and heritage conservation (Article 87(3)(d)); and it does not fall into any other category of aid specified by the Council (Article 87(3)(e)).

(24) Lastly, the Commission nevertheless notes that no premiums have yet been paid out, and that the Greek authorities have undertaken to grant the aid in accordance with the requirements of Regulation (EC) No 69/2001. In addition, the aid scheme can have only indirect effects spread over the whole of the Greek tourism industry, so that it can be concluded that is not directly linked to quantities exported; and in these circumstances the Commission takes the view that there are no grounds to apply Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, which provides that aid unlawfully granted may be recovered from the recipient [6].

V. **CONCLUSION**

(25) The Commission finds that Greece has put the premium scheme for tour operators into effect unlawfully, in breach of Article 88(3) of the Treaty. On the basis of the assessment set out above, and having considered the aid in the light of the Guidelines on national regional aid, the Commission considers that the aid does not meet the requirements for compatibility with the common market,

[6] OJ L 83, 27.3.1999, p. 1.

HAS ADOPTED THIS DECISION:

Article 1

The premium scheme for tour operators put into effect by Decision No 503820 of 18 October 2001 of the Chairman of the Greek Tourist Office (EOT) is incompatible with the common market.

Article 2

Greece shall withdraw the scheme referred to in Article 1.

Article 3

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

Article 4

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 27 November 2002.

For the Commission

Mario MONTI

Member of the Commission