COMMISSION

COMMISSION DECISION

of 13 May 2003

on the aid scheme which Italy is planning to implement to promote employment in the Region of Sicily

(notified under document number C(2003) 1484)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2003/739/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 7666 of 26 June 2000 (A/35346 of 29 June 2000), the Italian authorities notified the Commission, pursuant to Article 88(3) of the Treaty, of the refinancing for the period 2000-2006 of employment aid scheme N 692/97, approved by the Commission on 25 February 1998 [3], and of changes to the scheme. Scheme N 692/97 had come to an end because the appropriation of some EUR 76,5 million approved by the Commission for the period 1997-1999 had been fully used up.

(2) Since a suspensive clause made the scheme's entry into force explicitly subject to prior approval pursuant to Article 87 et seq. of the Treaty, the scheme was entered in the register of notified aid under number N 428/2000.

(3) Additional information was requested by Commission letters dated 31 August 2000 (D/54509), 30 March 2001 (D/51384), 28 May 2001 (D/52158), 16 November 2001 (D/54755) and 7 February 2002 (D/50529), to which the Italian authorities replied by letters Nos 1593 of 8 February 2001 (A/31192), 4129 of 27 March 2001 (A/33708), 10255 of 19 September 2001 (A/37368), 11847 of 3 October 2001 (A/37873), 1003 of 22 January 2002 (A/30514), 4873 of 18 April 2002 (A/32946) and 5439 of 29 April 2002 (A/33234).

(4) A meeting between the Italian authorities and the Commission was held in Brussels on 16 January 2002.

(5) By letter SG(2002) D/230509 of 4 July 2002, the Commission informed Italy that it had decided not to raise any objections to part A of the scheme, which provides aid for job creation not linked to investment, but to initiate the procedure laid down in Article 88(2) of the Treaty in respect of part B of the scheme, concerning aid for job creation linked to investment.

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

[1] OJ L 83, 27.3.1999, p. 1.
[2] OJ C 242, 8.10.2002, p. 2.
[3] OJ C 130, 28.4.1998, p. 15.
[4] See footnote 2.

(7) The Commission received no comments on the scheme from interested parties.

(8) Since Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment [5] entered into force on 3 January 2003, the Commission informed the Italian authorities by letter of 31 January 2003 (D/50666) that the aid scheme in question would be assessed in accordance with the provisions of that Regulation, pursuant to Article 11(2) thereof.

(9) The Commission accordingly granted the Italian authorities a one-month extension to allow them to submit any comments.

(10) The Commission received no such comments.

II. DESCRIPTION OF THE SCHEME

Objective

(11) The scheme is designed to create jobs in a region, Sicily, where the standard of living is abnormally low and there is serious underemployment.

Legal basis

(12) The aid scheme is based on the following statutory provisions adopted by the Region of Sicily:

— Regional Law No 30/1997,

— Article 9(3) of Regional Law No 24/2000 and Article 6 of Regional Law No 17/2001, which extend the scope of the scheme,

— Regional Law No 9/2000, which provides for the refinancing of Regional Law No 30/1997 for the year 2000,

— Article 18(1) of Regional Law No 32/2000, which provides refinancing for Regional Law No 30/1997 for the period 2001-2006.

Duration and budget

(13) The measure is to expire on 31 December 2006. Its total budget is approximately EUR 554 million.

Recipients

(14) Any company active in any sector, with the exception of the steel industry, which operates in Sicily and hires certain categories of worker on an open-ended basis is eligible.

Aim

(15) The measure is designed to promote job creation. It has two parts: part A concerning job creation not linked to investment and part B concerning job creation linked to investment.

Form and intensity of the aid

(16) Aid is granted in the form of a total exemption from social security contributions for a maximum period of six years with a view to promoting the recruitment on open-ended contracts of the following categories of worker:

— apprentices,

— unemployed persons requiring training,

— the long-term unemployed (out of work for more than 24 months),

— other categories of unemployed person,

— the disabled and rehabilitated drug addicts,

— workers on 'mobility list' redeployment schemes,

— workers who have been drawing on the *Cassa integrazione* (wages guarantee fund) for at least 24 months.

(17) The same type of aid is also available for:

— the conversion of fixed-term employment contracts into open-ended contracts,

— the conversion of fixed-term training and work experience contracts into open-ended contracts.

(18) Aid is granted subject to the following conditions:

— there must not be any job cuts over the 12 months preceding the recruitment,

— the recruitment must involve the creation of new jobs in relation to the size of the company's workforce during the six months preceding the recruitment. Where training and work experience contracts and other fixed-term contracts are converted into open-ended contracts, the workers concerned must not be counted in the company's workforce if the conversion relates to the same workers.

[5] OJ L 337, 13.12.2002, p. 3.

(19) The Italian authorities have estimated the average level of aid at 45 % of the worker's gross wages.

III. DOUBTS RAISED BY THE COMMISSION WHEN IT DECIDED TO INITIATE THE PROCEDURE LAID DOWN IN ARTICLE 88(2) OF THE TREATY

(20) In the decision to initiate the procedure laid down in Article 88(2), the Commission assessed part B of the scheme, which provides aid for net job creation linked to investment, in the light of the guidelines on national regional aid ([6]), the criteria laid down by Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises ([7]), the Community guidelines for State aid in the agriculture sector ([8]) and the Community guidelines for the examination of State aid to fisheries and aquaculture ([9]).

(21) The doubts raised by the Commission when it decided to initiate the procedure laid down in Article 88(2) of the Treaty focused on:

(a) the initial nature of the investment to which the jobs created are linked. The Commission doubted whether the aid for job creation provided for in the scheme was concerned solely with jobs linked to the implementation of an initial investment project within the meaning of points 4.11 to 4.14 of the guidelines on national regional aid and Article 2(c) of Regulation (EC) No 70/2001;

(b) the intensity of the scheme: the Commission also doubted whether the aid intensity of the scheme, which could be calculated in relation to wage costs as defined in point 4.13 of the guidelines on national regional aid, complied with the regional ceilings for Sicily laid down in the Italian regional aid map for 2000-2006 (35 % nge + 15 % gge for SMEs);

(c) compliance with the rules on the cumulation of aid laid down in points 4.18 to 4.21 of the guidelines on national regional aid and Article 8 of Regulation (EC) No 70/2001;

(d) observance of the principle of necessity for the aid within the meaning of point 4.2 of the guidelines on national regional aid and Article 7 of Regulation (EC) No 70/2001;

(e) compliance with the principle that, with a view to ensuring that the productive investment aided is viable and sound, the recipient's contribution to its financing is at least 25 %, as required by point 4.2 of the guidelines on national regional aid and Article 4(3) of Regulation (EC) No 70/2001;

(f) in the case of agriculture, fisheries and aquaculture, compliance with points 4.1 and 4.2 of the Community guidelines for State aid in the agriculture sector or the corresponding provisions of the Community guidelines for the examination of State aid to fisheries and aquaculture.

(22) No comments were received either from the Italian authorities or from interested parties on the doubts raised by the Commission.

IV. ASSESSMENT

Do the measures constitute aid?

(23) 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.

(24) 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. By allowing firms located in one region of the country, namely Sicily, to receive aid for promoting employment in the form of exemptions from social security contributions, the Italian 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.

(25) The second requirement for the applicability of Article 87 is that the aid must be granted by the State or out of State resources. In the present case the use of State resources takes the form of revenue forgone by the public authorities: the exemption of certain firms from the payment of social security contributions reduces the tax revenue accruing to the State.

([6]) OJ C 74, 10.3.1998, p. 9.
([7]) OJ L 10, 13.1.2001, p. 33.
([8]) OJ C 28, 1.2.2000, p. 2.
([9]) OJ C 19, 20.1.2001, p. 7.

(26) 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 threaten to distort competition by strengthening 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. In particular, such measures distort competition and affect trade between Member States if the recipient firms export part of their output to other Member States, and if they do not themselves export, domestic output is nevertheless favoured, because firms in other Member States have less opportunity to export their products to the Italian market ([10]).

(27) 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.

Lawfulness of the scheme

(28) In the light of the information provided by the Italian authorities (see points 1 and 2) showing that the scheme has not yet entered into force, the Commission finds that the Italian authorities have complied with the obligation to notify laid down in Article 88(3) of the Treaty.

Compatibility of the measures with the common market

(29) After determining that the measures under examination constitute State aid according to 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).

(30) 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.

(31) As the aid is aid for job creation, the Commission has to consider whether it qualifies for the regional exemptions in Article 87(3)(a) and (c).

Eligibility of the region

(32) 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 ([11]). In accordance with that map, Sicily is a region eligible for aid under the exemption.

Assessment of the scheme in the light of the guidelines on national regional aid and the criteria laid down by Regulation (EC) No 70/2001

(33) Since no comments were received from the Italian authorities in the course of the procedure laid down by Article 88(2) of the Treaty, the Commission finds that the formal investigation has not brought to light any circumstances capable of dispelling its doubts:

(a) there is no evidence enabling it to conclude with certainty that the aid for job creation provided for in the scheme is concerned solely with jobs linked to the implementation of an initial investment project within the meaning of points 4.11 to 4.14 of the guidelines on national regional aid and Article 2(c) of Regulation (EC) No 70/2001;

(b) there is no evidence enabling it to conclude with certainty that the aid intensity of the scheme, which can be calculated in relation to wage costs as defined in point 4.13 of the guidelines on national regional aid, complies with the regional ceilings for Sicily laid down in the Italian regional aid map for 2000-2006 (35 % nge + 15 % gge for SMEs). The scheme's gross aid intensity, expressed as a percentage of the wage costs for jobs created over a two-year period, amounts to 135 % of wage costs ([12]);

([10]) Judgement of the Court of Justice of the European Communities dated 13 July 1988 in Case 102/87 [1988] ECR 4067, paragraph 19.

([11]) OJ C 175, 24.6.2000, p. 12.

([12]) The Italian authorities have stated that social security contributions represent 45 % of a worker's gross wages. Since the scheme provides for a total exemption from social security contributions for a maximum period of six years, the gross intensity of the scheme is 135 %.

(c) there is no evidence enabling it to conclude with certainty that the rules on the cumulation of aid laid down in points 4.18 to 4.21 of the guidelines on national regional aid and Article 8 of Regulation (EC) No 70/2001 are observed;

(d) there is no evidence enabling it to conclude with certainty that the principle of necessity for the aid within the meaning of point 4.2 of the guidelines on national regional aid and Article 7 of Regulation (EC) No 70/2001 is complied with;

(e) there is no evidence enabling it to conclude with certainty that, with a view to ensuring that the productive investment aided is viable and sound, the recipient's contribution to its financing is at least 25 %, as required by point 4.2 of the guidelines on national regional aid and Article 4(3) of Regulation (EC) No 70/2001;

(f) lastly, there is no evidence enabling it to conclude with certainty that the investment aid is compatible, in the case of agriculture, with points 4.1 and 4.2 of the Community guidelines for State aid in the agriculture sector or, in the case of fisheries and aquaculture, the corresponding provisions of the Community guidelines for the examination of State aid to fisheries and aquaculture.

Assessment of the scheme in the light of Regulation (EC) No 2204/2002

(34) Regulation (EC) No 2204/2002 entered into force on 3 January 2003. Pursuant to Article 11(2) thereof, notifications pending at the time of entry into force of the Regulation are to be assessed in accordance with its provisions.

(35) By letter dated 31 January 2003 (D/50666), the Commission informed the Italian authorities that the aid scheme in question would be assessed in accordance with the provisions of Regulation (EC) No 2204/2002, pursuant to Article 11(2) thereof. It accordingly granted the Italian authorities a one-month extension to allow them to submit any comments. No such comments were received from the Italian authorities.

(36) The scheme in question provides for aid to be granted for job creation linked to the implementation of an investment project within the meaning of Article 2(j) of Regulation (EC) No 2204/2002 ([13]).

([13]) In accordance with Article 2(j), a job is 'linked to the carrying-out of a project of investment' if it concerns the activity to which the investment relates and if it is created within three years of the investment's completion. During this period, the jobs created following an increase in the utilisation rate of the capacity created by the investment are also linked to the investment.

(37) According to the information provided by the Italian authorities when they notified the scheme, the scheme's gross aid intensity, expressed as a percentage of the wage costs for jobs created over a two-year period, amounts to 135 % of wage costs ([14]).

(38) The Commission notes that in cases where jobs are created for workers who have not been previously employed or have lost or were about to lose their previous job (apprentices, the long-term unemployed, unemployed persons requiring training, other categories of unemployed person, workers on 'mobility list' redeployment schemes and workers who have been drawing on the *Cassa integrazione* (wages guarantee fund) for at least 24 months ([15])), the scheme's aid intensity does not comply with the ceiling for regional investment aid in Sicily laid down in the Italian regional aid map for 2000-2006 (35 % nge + 15 % gge for SMEs), as required by Article 4(3) of Regulation (EC) No 2204/2002.

(39) Since that intensity does not comply with the regional ceiling referred to in Article 4(3) of Regulation (EC) No 2204/2002, it is still less in line with the maximum intensity allowed in cases where aid for job creation under Article 4(3) is cumulated with aid for the recruitment of disadvantaged or disabled workers under Articles 5 and 6 of the Regulation. The aid intensity provided for by the scheme for job creation for the long-term unemployed, the disabled and rehabilitated drug addicts does not comply with Article 8(3) of Regulation (EC) No 2204/2002.

(40) As regards the aid for the conversion of fixed-term employment contracts and fixed-term training and work experience contracts into open-ended contracts, since the Italian authorities have not provided any information in the course of the procedure initiated under Article 88(2) of the Treaty, the Commission is unable to find that the amount of such aid, whether granted for job creation or for conversion of the contract, does not exceed the corresponding ceiling for regional aid in Sicily according to the Italian regional aid map for 2000-2006.

([14]) See footnote 12.

([15]) As regards workers who have been drawing on the *Cassa integrazione* for at least 24 months, the Commission notes that their situation is in all respects comparable to that of unemployed workers proper. Since the *Cassa integrazione* is involved above all in restructuring processes that require job cuts, it is highly likely that workers who have been drawing on the fund for 24 months already will be the first to lose their job. A worker who is in a situation of quasi-unemployment through having drawn on the *Cassa integrazione* for more than 24 months should therefore be regarded as effectively unemployed.

(41) Since the Italian authorities have not provided any information in the course of the procedure initiated under Article 88(2) of the Treaty, the Commission is unable to find that the rules on the cumulation of aid laid down in Article 8 of Regulation No 2204/2002 are complied with.

(42) Neither can the Commission find that the principle of necessity for the aid as laid down in Article 7 of Regulation (EC) No 2204/2002 is respected, nor that the recipient contributes at least 25 % to the cost of the investment project as required by Article 4(3) of Regulation (EC) No 2204/2002.

(43) Nor can the Commission find that the investments to which the jobs are linked constitute investments in tangible assets as defined in Article 2(k) of Regulation (EC) No 2204/2002.

V. **CONCLUSIONS**

(44) In the light of the assessment set out in recitals 29 to 43 of this Decision, the Commission finds that the aid scheme to promote employment in the Region of Sicily is incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The aid scheme to promote employment, which Italy plans to implement, 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, 13 May 2003.

For the Commission

Mario MONTI

Member of the Commission