COMMISSION DECISION

of 2 March 2005

on the aid scheme implemented by Italy for the reform of the training institutions

(notified under document number C(2005) 429)

(Only the Italian version is authentic)

(Text with EEA relevance)

(2006/225/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 the decision C(2003)793fin [1], by which the Commission decided to initiate the procedure laid down in Article 88(2) of the Treaty, in respect of the aid C22/2003 (ex NN168/2002),

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

Whereas:

I. PROCEDURE

(1) By letter dated 27 May 2002, registered on 31 May 2002 (A/14263), the Commission received a complaint concerning the Decision No 57-5400, of the Regional Executive of the Region Piemonte, of 25 February 2002.

(2) A request for information was addressed to the Italian authorities by letter D/55115 of 13 September 2002. The complainant, who has been informed of the follow-up given to the complaint by letter of the Commission D/55127 of 16 September 2002, submitted additional information by letter A/38090 of 05.11.2002.

(3) By letter No 12998 of 24 October 2002, registered on 8 November 2002 (A/38204), the Italian authorities replied.

(4) By letter dated 21.03.2003 (SG(2003)D/229057), 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 scheme at hand, implemented not only by Piemonte Region but almost all over the Country.

(5) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* [2]. The Commission called on interested parties to submit their comments.

(6) By letter of 06.06.2003 (A/33954), the Commission received comments from interested parties. They were transmitted to Italy by letter D/55630 of 04.09.2003. A demand for prorogation of the delay for reply was sent by Italy by letter A/37007 of 10.10.2003. By letter A/37736 of 11.11.2003 Italy submitted its comments.

(7) After a meeting between the Italian authorities and the Commission's Services, which took place on 16 April 2003, the comments of Italy to the opening of proceedings were submitted by letter of 13.06.2003 (A/34148).

(8) By letter of 18.12.2003 (D/58151) the Commission asked Italy for further information to be submitted.

(9) The Italian authorities asked, by letter A/31204 of 19.02.2004, for a prorogation of the deadline, which was accepted by the Commission (D/51435 of 26.02.2004), and supplied the requested elements by letters A/32487 of 07.04.2004 and A/32628 of 14.04.2004.

II. DETAILED DESCRIPTION OF THE AID

(10) According to the complainant, illegal aid would have been awarded to certain training institutions, active on the territory of the Region Piemonte, pursuant to Decision No57-5400, of the Regional Executive of the Region Piemonte, of 25 February 2002, which would have been put into effect in contravention of Article 88(3) of the Treaty.

[1] OJ C110 8.5.2003, p. 8.

[2] See footnote 1

(11) Nevertheless, it soon came out, from the documentation attached to the reply of the Italian authorities to the request for additional information of the Commission (A/38204), that the Decision 57-5400/2002, which resulted in the complaint, only constituted the implementing rule, as regards the Piemonte Region, of the national Ministerial Order(decreto ministeriale) 173/2001 (hereinafter referred to as MO 173/2001), and particularly of one of its sub-programmes, i.e. "grants for payment of past burdens".

(12) Aid provided by the above mentioned sub-programme is mainly targeted to reimburse debts of the training institutions for financial burdens and bygone wage costs. It is provided in the form of non-repayable grants. In receipt of aid are training institutions, constituted in different forms, both profit-making and no-profit; large enterprises are not excluded.

(13) Further sub-programmes are also provided for by MO 173/2001 as follow:

(a) "incentive to voluntary departure of personnel"

(b) "adaptation of buildings and equipment to compulsory security standard and for improvement of access to disabled"

(c) "improvement of information equipment"

(d) "training of trainers, in order to comply with the accreditation requirements"

(14) The Italian authorities confirmed, by letter A/38204 of 8 November 2002, that the aid at hand has been granted through a national fund, of the global amount of 180 billion ITL (about EUR 93 million €), implemented and distributed among the Italian Regions by MO 173/2001. The latter is the implementing rule of national law 388 of 23 December 2000, "Disposizioni per la formazione del bilancio annuale e pluriannaule dello Stato (legge finanziaria 2001)" (hereinafter refered to as law 388/2000), stipulating at Article 118(9), the reform of the Italian training institutions in view of their certification.

(15) By the same letter, it has been confirmed that the aforementioned measure was not deemed, by the Italian authorities, to constitute State aid, as in their view it was intended to support non-market activities of general interest.

(16) Italy also pointed out the certification system to be implemented was, at least de facto, tied to the reform of the training institutions, by means of the agreement of May 2000, between central Government and Italian regions, pursuant to the provision of Article 17 of the law of 24 Juin 1997, No 196 (hereinafter referred to as law 196/97). This formulation was confirmed by Article 118, par.9 of law 388/2000 and implemented by MO 173/2001.

(17) According to Italy, training institutions funding was intended to remove the correspondent organisation shortcomings of the beneficiaries, possibly susceptible to undermine the success of the certification process. As a matter of fact, only the certificated training agencies have been, in principle, allowed to implement training activities financed by public resources from July 2003 onward.

(18) On the other hand, the training institutions were already free to supply "private" training -which is to say market training services on a competitive basis- since 1997, further to the evolution of the relevant legal national framework (namely the "pacchetto Treu"; national law 144/99 and the State-Regions agreement of March 2000) and in several cases indeed implemented it.

(19) Nevertheless, according to Italy, the measure under scrutiny would not result in a competitive advantage, as it is intended to preserve the expertise and know-how of the "historical" agencies (for example, at least 3 to 5 years running covenant with the funding public body are asked to be eligible for aid) and was necessary at that stage to make them fulfil the conditions set down for certification in order to keep them carrying on training, on a liberalized market. In addition, these agencies, operating mostly at local (sub regional) level, would be, in its opinion, incapable to affect trade.

(20) As it concerns the enforcement of the measure under assessment over the territory of the Country, according to the information supplied by Italy, the Regions Friuli Venezia Giulia, Sicily and Campania have not implemented at all the scheme at hand. Sardinia and the Autonomous Province of Trento put the measure into effect pursuant to 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 ([3]), while Toscana and Umbria did the same them after the opening of proceedings on the present case. Only the Autonomous Province of Bolzano was not allowed any funding under M.O. 173/2001 and consequently did not implement the measure at all. Some other regions actually implemented only part of the sub-measures in cause.

([3]) O.J. L10 of 13.01.2001, p.30

III. GROUNDS FOR INITIATING THE PROCEDURE

(21) First of all, the Commission observed that only training agencies were in receipt of the aid, granted from a fund expressly conceived by a national rule. In addition they were selected on the basis of specific criteria, stipulated by the Regions, thus the measure was to be considered selective and implying public expenditure.

(22) Secondly, the Commission expressed strong doubts as to whether vocational training in its whole, could be considered as a non-market activity of general interest, as pointed out in the beginning by the Italian authorities. In that respect, the Commission took the view that these contributions were able to improve the financial situation of the recipients of the aid, as they reduced the costs that the beneficiaries would have normally had to bear by themselves.

(23) Finally, although training is likely to constitute a limited object of intra-community exchanges, it could not be excluded that some training companies were active at the community level. These undertakings might be interested to enter the Italian training market.

(24) The Commission therefore considered that the measure might constitute State aid within the meaning of Article 87(1) of the Treaty.

(25) Provided it had to be qualified as State aid, the measure at hand should have been assessed on the basis of the provisions of the Treaty and of the other relevant Community rules.

(26) In this respect, the Commission took the view that just part of the aid for the adaptation of premises and equipment, might benefit of an exemption, provided it referred to additional costs of employment of disabled workers. Likewise, aid under the sub-programme "training of trainers" might benefit of an exemption, as long as it met the criteria laid down in Commission Regulation (EC) No68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid ([4]).

(27) On the contrary, at that stage of the dossier, all the other measures had to be qualified, to the Commission's mind, as operating aid, hence not susceptible to be granted any exemption, under any provisions of the Treaty.

IV. COMMENTS FROM INTERESTED PARTIES

(28) Comments from interested parties has only been submitted to the Commission by an Italian training agency, allegedly active at least at national level, which is also a beneficiary of the measure taken into consideration.

(29) While it is of the opinion that the Italian rules for accession to the training market are the same for national and other Community undertakings, it also points out that the operational units of the training institutions are requested, in order to be charged with training supported by public funding, to have reached an efficiency threshold in the activity carried on in the past and to have a close link with the productive and social environment, according to criteria established by the Regions. This is why no foreign training agency would have been able to fulfil the conditions set down.

V. COMMENTS FROM ITALY

(30) According to Italy, the measure at hand does not affect trade between Member States, as the certification system (sistema di accreditamento), which is based on objective criteria laid down in regional implementing rules, does not establish any barrier or limit to the establishment right of agencies coming from other regions or MS.

(31) Moreover, to the Italian authorities' mind, the newcomers would not be damaged by the aid allowed to the Italian agencies which are supposed to be already in trouble to serve their own area, as confirmed by the losses suffered in the past, the measure under examination was intended to compensate for. Thus, in particular, aid in the form of compensation for losses suffered in the past, engendered by the implementation of vocational training, the training institutions were entrusted with, given in the framework of the public educational system, would not constitute aid in the meaning of Art.87§1, according to Italy.

(32) Furthermore, in Italy's view, there would be no interest for foreign undertakings to enter the Italian "public" training market, because of its lack of profitability. This would be proved inter alia by the need for the aid under examination.

(33) Finally, non-profitable vocational training, subsidised by public resources, not directly paid by the beneficiaries, given in the framework of the public educational system, should not be qualified as market activity, in Italian authorities' opinion, an this in particular in the light of the case law "Humbel" ([5]) and "Wirth" ([6]).

([4]) O.J. L10 of 13.01.2001, p.20, and amended by Commission Regulation (EC) No363/2004 of 25 February 2004 (OJ L63 of 28.02.2004,p.20)

([5]) judgment of the Court of 27 September 1988 on the case C263/86, E.C.R. 1988, p.5365, points 9-10; 15-18

([6]) judgment of the Court of 7 December 1993 on the case C109/92, E.C.R. 1993, p.I-6447

(34) Piemonte region, while agreeing that the measure is selective and involves State resources, denied that advantage and effects on intra-community trade were involved. With regard to the former, it took the view that the grants allowed only represented the compensation for services provided by the training agencies, as long as training supplied in the framework of public education is at stake; concerning the latter, in its opinion there is no training services trade among MS, the major obstacles being represented by language and lack of link to the territory. On the contrary a community market of the "private" training (i.e. competitive market training services), in its mind, can indeed exist.

(35) In any event, no prejudice would be brought to the newcomers by these measures, as they would have not had to undertake the costs the beneficiaries of the aid were obliged to face in the past. And, even if this advantage would be proved, it would be, in the view of the Region Piemonte, matter of distortion of a merely local market, so that, in its opinion, Art.87(1) would not be applicable.

VI. **ASSESSMENT OF THE AID**

(36) The Commission's analysis concerns the aid scheme constituted by the general measures in question, and not individual grants of aid to particular subjects. Since the opening of the procedure, the Italian authorities have been fully aware of the Commission's doubts concerning the scheme. If they considered that some particular cases should have been assessed on an individual basis, they should have had informed the Commission of their specific features and provided all the information needed for an individual assessment to be made.

VI.1. **Existence of aid under Article 87(1) of the EC Treaty**

(37) Article 87(1) of the EC Treaty states that "any 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 shall, insofar as it affects trade between Member States, be incompatible with the common market".

(38) The aid under scrutiny is realised through the grant of public resources from a fund of 180 billion ITL (about 93million EUR) which was expressly conceived by a national rule and shared among almost all the Italian regions, as it comes out from the annexe to the MO 173/2001. Therefore there is public fund expenditure.

(39) Only training agencies are beneficiaries of the aid scheme. Furthermore the recipients of the aid are selected on a regional basis, in the light of the available budget and of possible additional criteria, in respect of each Italian region, thus the selectivity of the measure is twofold.

(40) The presence of selectivity and public resources have been also confirmed by Italy, in its observations.

VI.1.1 *Presence of economic activity*

(41) It has first to be underlined that, in general terms, "the concept of undertaking, in the context of competition law, covers any entity engaged in an economic activity, regardless of the legal status (e.g. non-profit-making) and of the entity or the way in which it is financed" and that "any activity consisting in offering goods and services on a given market is an economic activity" ([7])

(42) This view was also expressed in the 1996 ([8]) and 2000 ([9]) communications by the Commission on services of general interest in Europe as well as in the Commission report to the Laeken European Council ([10]).

(43) As regards in particular the distinction between services of an economic nature and services of a non-economic nature, it has been recently underlined by the Commission (see in particular point 44 of the green paper on SGI ([11])), quoted, among others in the white paper on SGI ([12]) that any activity consisting in offering goods and services on a given market is an economic activity. Thus, economic and non-economic services can co-exist within the same sector and sometimes even be provided by the same organisation. The internal market, competition and state aid rules apply to the former.

(44) On the contrary, internal market and competition rules do not apply to non-economic activities and therefore have no impact on services of general interest to the extent that these services indeed constitute non-economic activities. With regard to national education the European court of Justice ruled that the State, in establishing and maintaining such a system, is not seeking to engage in gainful activity but is fulfilling its duty towards its own population in the social, cultural and educational field ([13]).

([7]) see judgments in joined Cases C-180/98 to C-184/98 Pavlov and others [2000] ECR I-6451, paragraphs 74 and 75.
([8]) OJ C281 of 26.09.1996, p.3.
([9]) OJ C17 of 19.01.2001, p.4.
([10]) COM(2001) 598fin
([11]) COM(2003) 270 of 21.5.2003
([12]) COM(2004) 374fin.
([13]) see footnote 5

(45) Judgement Humbel in particular stipulates that courses taught in a technical institute under the national education system cannot be regarded as services for the purposes of Article 50 of the EC Treaty. Actually the first paragraph of the latter Treaty provides that only services "normally provided for remuneration" are to be considered to be services within the meaning of the Treaty.

(46) Judgement Wirth ([14]) confirms the findings of the Court in Case Humbel, according to which the essential characteristic of remuneration lays in the fact that it constitutes consideration for the service in question, and is normally agreed upon between the provider and the recipient of the service. In the same judgment the Court considered that such a characteristic was absent in the case of courses provided under the national education system.

(47) More in general, according to the case law of the Court of Justice, many activities conducted by organisations performing largely social functions, which are not profit oriented and which are not meant to engage in industrial or commercial activity, will normally be excluded from the Community competition and internal market rules ([15]).

(48) In the case at hand, it resulted, from the information supplied by Italy, that the activity carried out by the training institutes concerned was twofold. On the one hand they assured institutional, social targeted vocational training, they had been entrusted with, addressed to individuals, delivered in the framework of public education system and paid by the State or its regions on the basis of the mere reimbursement of certain eligible costs. On the other hand they were entitled to, and, in several cases, indeed exploited market training activities, addressed both to undertakings and their employees and individuals, paying a market price. Accordingly, an obligation to separate the accounts, related to these two fields of activity, had been imposed by Italy to the beneficiaries.

(49) Thus, the former can be considered not to involve any economic activity. This would result in the activity in cause not being subject to the competition and internal market rules, thus not falling under the scope of Article 87(1).

(50) Nevertheless the Commission notes that recent case law also shows that the concept of economic activity is an evolving concept linked in part to the political choices of each Member State. Member States may decide to transfer to undertakings certain tasks traditionally regarded as falling within the sovereign powers of States. Member States may also create the conditions necessary to ensure the existence of a market for a product or service that would otherwise not exist. The result of such state intervention is that the activities in question become economic and fall within the scope of the competition rules.

(51) In its judgment in "Ambulanz Glockner" ([16]) case, the Court pointed out that the transport of patients is an activity offered against remuneration by various operators on the market for emergency transport services and patient transport services. In the case in point, these services were provided by non-profit making bodies. However, the Court recalled that these particular characteristics are not such as to rule out classification as an undertaking within the meaning of Article 87 of the EC Treaty in cases where those bodies carry out an economic activity.

(52) In its judgment on "Henning Veedfald" ([17]) case, the Court ruled that the manufacture within a hospital of a substance used in the course of a medical service at the hospital constitutes an economic activity. The fact that the service is not paid for directly by the patient but is financed from public funds does not affect its classification as an economic activity.

(53) This approach has been confirmed in two other Court judgments ([18]), in which certain Member States argued that medical services did not constitute economic activities on the ground that the patient receiving treatment in a hospital needs not necessarily to pay for the services provided. The Court ruled that medical activities are economic activities, irrespective of whether the services need not to be paid for directly by the patients but by the public authorities or sickness funds.

(54) Moreover, the presence of an element of solidarity does not necessarily rule out the possibility of carrying out an activity in a profit making capacity. Some operators may agree to take such aspects of solidarity into account in the light of other benefits they may obtain from intervening in the sector under consideration. Conversely, non-profit-making entities may compete with profit-making undertakings and may, therefore, constitute undertakings within the meaning of Article 87 of the EC Treaty.

(55) As a consequence the Commission can not exclude that some activities carried out by the training institutions, even in the case of vocational training given in the framework of the public education system, were to be qualified as economic activities.

([14]) see footnote 6
([15]) see footnote 6
([16]) judgment of 25 October 2001, on case C475/99, point 19, ECR 2001, I-09089
([17]) judgment of 10 May 2001, on case C-203/99, ECR 2001, I-3569
([18]) judgments of 12 July 2001 on cases B.S.M. Smits/Stichting Ziekenfonds, C-157/99 [2001] ECR I-5473) and Abdon Vanbraekel, C-368/98 [2001]ECR I-5363

(56) Should the latter be the case, Art.86(2) of the Treaty - undertakings entrusted with the operation of services of general economic interest – would apply. The quoted provision states that such undertakings are subject to the rules of the Treaty, an in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. It further stipulates that the development of trade must not be affected to such an extent as would be contrary to the interest of the Community.

(57) Accordingly, given the training institutions were entrusted with a public service mission, within the framework of the relevant national and regional rules, by means of binding acts, i.e. through the covenants entered into among Italian regions and training institutions, and there was no risk of overcompensation, i.e. as aid could not exceed the amount of the relevant costs, according to the separate accounting established, an exemption can be accorded pursuant to Article 86(2) of the Treaty.

(58) On the contrary, the Commission draws the conclusion that the presence of economic activity is sufficiently proved with respect to the second type of activity listed at point 48 above, and this on the basis of the data supplied by the Italian authorities themselves.

VI.1.2 *Distortion of competition and effects on trade*

(59) In order to fall within the scope of Article 87, aid must distort or threaten to distort competition, insofar trade between Member States is affected. As far as State aid is concerned, these two conditions are often linked.

(60) As it concerns, in particular, intra-community trade, the Court of First Instance ([19]) recalled that when financial aid strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid. This is so where the undertaking receiving the aid is actively involved in trade between Member States or participates in contracts awarded following a tendering procedure in several Member States.

(61) Moreover, aid may also be of such a kind as to affect trade between Member States and distort competition even if the recipient undertaking, which is in competition with undertakings from other Member States, does not itself participate in cross-border activities. Where a Member State grants aid to an undertaking, internal supply may be maintained or increased, with the consequence that the opportunities for undertakings established in other Member States to offer their services to the market of that Member State are reduced.

(62) Thus, neither direct participation to the export activities by the recipients ([20]), nor proof of actual exchanges, in the same market segment, between Member States are necessary to prove the affectation of trade. In addition, neither the relatively small amount of aid nor the relatively small size of the recipient allow to draw, *a priori*, the conclusion that trade is not affected.

(63) In this respect, the Commission notes that in the case under examination, some of the beneficiaries are active at least at regional or supra-regional (sometimes national) level and have a sizeable economic turnover which is deemed to allow them to bridge the barriers to training services supply being spread over the community market. Furthermore, the Commission observes that some beneficiaries are already active at a supra-national level.

(64) Thus, in particular, a single recipient of the aid is already operating in some Member States like Belgium (4 seats), France (7 seats), Germany (4 seats) and U.K. (1 seat), non Member States (Switzerland) and non European Countries (Argentine) as well. It is furthermore partner in the "Exemplo" international network, composed by 14 European Training agencies, which is intended to reach some targets as knowledge sharing, benchmarking, cooperation in the framework of the European projects, the development of a specific market segment for e-commerce and on-line training.

(65) In the light of the above and as far as the effects on trade are at stake, the Commission comes to the conclusion that the qualification of State aid, in the meaning of Art.87§1 of the EC Treaty, with respect to the measures at hand, is to be confirmed, as intra-community trade is indeed susceptible to be affected.

VI.2. **Assessment of the legality of the aid**

(66) The Commission observes that the notification obligation pursuant to Article 88(3) of the EC Treaty has not been fulfilled in the present case.

([19]) judgment of 29 September 2000, on case T-55/99,'*Confederacion Espanola de Transporte de Mercancias*', [2000] ECR II-03207.

([20]) see among others judgment of 13.7.1988 on case 102/87 French Rep v/s CCE, ECR 1988, p.04067 and judgment of 24.7.2003 on case C280/00 Altmark, ECR 2003, p.07747, points 77 and 78.

(67) Having not been previously notified to the Commission as regards its compatibility with the State aid rules, the aforementioned scheme has been put into effect in contravention of Article 88(3) of the Treaty. It is consequently unlawful.

VI.3. **Assessment of the compatibility with Article 87 of the EC Treaty**

Grants for payment of past burdens

(68) While the sub-programme "grants for payment of past burdens" could in principle qualify as "de minimis" ([21]), as neither the sectors which are not covered by the "de minimis" Regulation, nor aid to export related activities or contingent upon the use of domestic goods are taken into consideration by the scheme, it has to be stressed that the amount of the aid often exceeds the ceiling of 100 000€.

(69) Thus, the Commission holds the view that the measure under consideration could not be deemed to be in compliance with the "de minimis" Regulation. Furthermore, the Italian authorities did never invoke the qualification of the scheme at hand as "de minimis".

(70) As the present sub-programme does not take in consideration any of the eligible costs laid down at Article 4, point 7, letters a) to f) of the Regulation on training aid ([22]), it could not be granted an exemption on the basis of the above mentioned Regulation. Furthermore, it has not been qualified as training aid by the Italian authorities themselves.

(71) If the aid is assessed on the basis of 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 ([23]), the Commission notes that no investment aid is foreseen by the present sub-programme, either in tangible or in intangible assets. On the contrary it just aims to reduce the current expenses, through the granting of aid related to past burdens, to be qualified as operating aid, which does not normally enjoy a favourable prejudice by the Commission.

(72) In particular, the grant of operating aid, not linked to any extra-cost engendered by the accomplishment of a mission of public service, is susceptible to result in a decrease of the general costs the undertakings have normally to bear by themselves.

(73) As a matter of fact, operating aid may exceptionally be granted only in regions eligible to the derogation of Article 87(3)(a),provided that requirements set down at point 4.15 of the regional aid guidelines ([24]) are met. In the case at hand, it is to be stressed that the relevant national rule is applicable, unchanged, over the whole territory of the Member State, without any distinction aiming to bridge regional gaps.

(74) The Commission takes the view that the scheme under consideration does not satisfy any of the above mentioned requirements. In addition, neither the SME Regulation nor the regional aid guidelines have been invoked by the Italian authorities with respect to a possible compatibility of the scheme.

(75) Furthermore, the aid in question does not seem to promote any other horizontal Community objective according to Article 87(3)(c) of the Treaty, such as research and development, employment, environment or rescue and restructuring, within the meaning of the relevant guidelines, frameworks and regulations.

(76) The derogations laid down at Article 87(2) (a) to (c) ([25]) of the Treaty are clearly not applicable in the present file. The same conclusion may be drawn with respect to the exemptions set down at Art.87(3), letters b) and d) ([26]).

Concerning sub-programmes "incentive to voluntary departure of personnel" and "improvement of information equipment"

(77) The reasoning applied with respect to sub-programme "grants for payment of past burdens" is also applicable for these sub-programmes.

([21]) see footnote 3
([22]) see footnote 4
([23]) O.J. L10 of 13.01.2001, p.33
([24]) Guidelines on national regional aid, published in the O.J. C74 of 10.03.1998, p.9.
([25]) Article 87(2) stipulates that the following aid shall be compatible with the common market: (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned; (b) aid to make good the damage caused by natural disasters or exceptional occurrences; (c) aid granted to the economy of certain areas of the Federal Republic of Germany…
([26]) Article 87(3) declares compatible with the common market b) aid to promote the execution of an important project of common European interest; c)"aid to remedy a serious disturbance in the economy of a Member State", and d) "aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest".

(78) In fact, the Commission takes the view that the most part of these aids have to be qualified as operating aid; hence they can not be granted any exemption.

(79) In particular, aid to encourage voluntary resignations of the employees, which appears to confer an undue competitive advantage to the extent that it allows training agencies in receipt of aid to decrease artificially their personnel costs with respect to their competitors is not deemed to qualify for any exemption, either in the light of Commission Regulation No2204/2002 of 12 December 2002, on the application of Articles 87 and 88 of the EC Treaty to State aid for employment ([27]) or on the basis of any other relevant rule.

(80) Likewise, the expenses for the improvement of information equipment are not susceptible to qualify for an exemption, as they neither constitute an initial investment in the meaning of the SMEs Regulation ([28]), nor represent a tool for the regional development, in the sense of the guidelines on national regional aids ([29]).

Concerning sub-programmes "adaptation of buildings and equipment to compulsory security standard and for improvement of access to the disabled'" and "training of trainers"

(81) Aid for the adaptation of buildings and equipment to compulsory security standard may not be allowed any exemption under any of the State aid rules in force at present, for the reasons outlined at points 68 to 76 above.

(82) On the contrary, the part of the aid for the adaptation of premises and equipment, referring to additional costs of employment of disabled workers, may benefit of an exemption, under the Employment Regulation ([30]), in particular Art.6, par.2, letters (a) and (c).

(83) Likewise, aid under sub-programme "training of trainers" can enjoy an exemption, in the light of the training Regulation ([31]).

VII. **CONCLUSIONS**

(84) To the extent that vocational training making part of the public education system given to individuals, as set out at previous points 44-49, and according to the separate accounts maintained, is not considered to be an economic activity, aid granted vis-à-vis costs related to such activity does not fall under the provision of Art.87(1) of the Treaty, thus not qualifying as State aid.

(85) On the other hand, should some activities carried out in the framework of the public education system, be considered as an economic activity, further to the evolution of the concept of economic activity as highlighted at points 50 to 55 above, they can be granted an exemption under Article 86(2) of the Treaty.

(86) On the contrary, aid towards costs engendered by market activities fulfils all the requirements to be qualified as State aid, thus falling under the provision of Art.87(1) of the Treaty.

(87) The Commission regrets that, having been implemented, to the extent it constitutes State aid in the sense of Article 87(1), in breach of Article 88(3) of the Treaty, the aid scheme for the reform of the training institutions is consequently unlawful.

(88) Sub-programmes "adaptation of buildings and equipment to compulsory security standard and for the improvement of access to the disabled", for the part concerning additional costs of employment of disabled workers, and "training of trainers" may be granted an exemption pursuant respectively to Commission Regulation (EC) No2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment ([32]) and Commission Regulation (EC) No68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid ([33]).

(89) Aid granted pursuant to sub-programmes "grants for payment of past burdens", "incentive to voluntary departure of personnel", "improvement of information equipment", "adaptation of buildings and equipment to compulsory security standard and for the improvement of access to the disabled'" -for the part concerning adaptation to compulsory security standard- are incompatible with the common market.

([27]) O.J. L337 of 13.12.2002, p.3.
([28]) see footnote 23
([29]) see footnote 24
([30]) see footnote 27.
([31]) see footnote 4
([32]) see footnote 27
([33]) see footnote 4

(90) The commission observes that "de minimis" Regulation No 69/2001 ([34]) could in principle apply to all the measures concerned, as neither the sectors which are not covered by the regulation itself, nor aid to export related activities or contingent upon the use of domestic goods are taken into consideration. Consequently, provided all the requirements of Regulation (EC) No 69/2001 are met, and in particular the threshold of 100 000 EUR in any relevant three years period, is observed with respect to the single beneficiaries, the aid allowed pursuant to the measures at hand can be qualified as "de minimis" aid, thus not falling under the provision of Article 87(1) of the Treaty.

(91) This Decision concerns the aid scheme in question and must be implemented immediately. It is the Commission's long established practice, in accordance with Article 87 of the EC Treaty, to require recovery from the recipient of aid which under Article 88 of the EC Treaty, has been unlawfully granted and is incompatible. This practice has been confirmed by Article 14 of the Council Regulation (EC) No 659/1999 ([35]).

(92) Commission also notes that a decision on aid schemes is without prejudice to the possibility that individual measures may not consitute aid (because the individual grant of aid is covered by the de minimis rules) or may be deemed, wholly or partially, compatible with the common market on its own merits (for instance, by virtue of a block exemption regulation).

(93) In the light of Article 14(2) of the Council Regulation (EC) No 659/1999, the aid to be recovered pursuant to a recovery decision shall include interest at an appropriate rate fixed by the Commission. Interest shall be payable from the date on which the unlawful aid was at the disposal of the beneficiary until the date of its actual recovery.

(94) The interest shall be calculated in conformity with the provisions laid down in Chapter V of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([36]).

(95) To this end, Italy shall enjoin to the potential beneficiaries of the scheme, within the two months of this decision, to reimburse the aid with the interests as specified below. The total recovery shall be completed at the latest at the end of the first fiscal year following the date of notification of the present decision.

([34]) see footnote 3
([35]) JO L83 of 27.3.1999, p.1.
([36]) OJ, L 140, 30.4.2004, p.1.

(96) Italy shall provide the information requested using the questionnaire attached in annex 1 of the decision, setting up a list of the beneficiaries concerned and indicating clearly the measures planned and already taken to obtain an immediate and effective recovery of the illegal state aid. The Commission asks Italy to submit within the two months of the decision all documents giving evidence that the recovery proceedings have been initiated against the beneficiaries of the illegal aid (such as circulars, recovery orders, etc.).

HAS ADOPTED THIS DECISION:

Article 1

1. Aid granted by Italy, under law 388/2000 implemented by MO 173/2001, vis-à-vis costs related to vocational training activities given to individuals, making part of the public education system, according to the separate accounts maintained, does not fall under the provision of Art.87(1) of the EC Treaty, thus not qualifying as State aid, to the extent that these activities do not qualify as economic activities.

2. Aid referred to at paragraph 1 above, granted vis-à-vis economic activities, carried out in the framework of the public education system, can be granted an exemption under Article 86(2) of the Treaty.

Article 2

1. As long as it falls under the scope of Article 87(1) of the EC Treaty, the aid scheme which Italy has implemented on the basis of national law 388/2000, Art.118, par.9, Ministerial Order (Decreto Ministeriale) No 173 of 30 May 2001, and related implementing rules put into force by the Italian Regions, having not been previously notified to the Commission pursuant to Article 88(3) of the EC Treaty, is unlawful.

2. The aid scheme referred to at paragraph 1 above, is compatible with the common market with respect to subprogrammes "adaptation of buildings and equipment for the improvement of access to disabled" and "training of trainers".

3. The aid scheme, referred to at paragraph 1 above, is incompatible with the common market, with respect to sub programmes "grants for payment of past burdens", "incentive to voluntary departure of personnel", "improvement of information equipment", "adaptation of buildings and equipment to compulsory security standard".

Article 3

1. Italy shall take all necessary measures to recover from the beneficiaries the aid referred to in Article 2, par.3 and unlawfully made available to the beneficiaries.

2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective implementation of the decision.

3. The recovery shall be completed at the latest at the end of the first fiscal year following the date of notification of the present decision.

4. The sums to be recovered shall bear interest throughout the period running from the date on which they were first put at the disposal of the beneficiaries until their actual recovery.

5. The interest shall be calculated in conformity with the provisions laid down in Chapter V of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty.

6. Within a time period of two months from the notification of the decision, Italy shall enjoin to all beneficiaries from the aid mentioned in Article 2, par.3 to reimburse the illegal aid and the interests.

Article 4

The Republic of Italy shall inform the Commission, within two months of the date of notification of this Decision, of the measures already taken and planned to comply with it. It will provide this information using the questionnaire attached in Annex 1 of this Decision.

Italy shall submit within the same period of time, all documents giving evidence that the recovery proceedings have been initiated against the beneficiaries of the illegal aid.

Article 5

This Decision is addressed to the Republic of Italy.

Done in Brussels, 2 March 2005.

For the Commission

Neelie KROES

Member of the Commission

ANNEX

Information regarding the implementation of the Commission Decision C(2005)429

1. **Total number of beneficiaries and total amount of aid to be recovered**

1.1. Please explain in detail how the amount of aid to be recovered from individual beneficiaries will be calculated?

— The principal

— The interests

1.2. What is the total amount of unlawful aid granted under this scheme that is to be recovered (gross aid equivalents; prices of …):

1.3. What is the total number of beneficiaries from which unlawful aid granted under this scheme is to be recovered:

2. **Measures planned and already taken to recover the aid**

2.1. Please describe in detail what measures are planned and what measures have already been taken to effect an immediate and effective recovery of the aid. Please also indicate where relevant the legal basis for the measures taken/planned.

2.2. By what date will the recovery of the aid be completed?

3. **Information by individual beneficiary**

Please provide details for each beneficiary from whom unlawful aid granted under the scheme is to be recovered in the table overleaf.

Identity of the beneficiary	Amount of unlawful aid granted (*) Currency: …	Amounts reimbursed (°) Currency: …

(*) Amount of aid put at the disposal of the beneficiary (in gross aid equivalents; in prices of …).
(°) Gross amounts reimbursed (including interests).