COMMISSION DECISION

of 7 February 2007

on aid scheme C 34/2005 (ex N 113/2005) under Law No 17/2004 (Article 60) of the Region of Sicily which Italy is planning to implement

(notified under document number C(2007) 284)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2007/493/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 those provisions [1] and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter of 9 March 2005, the Italian authorities, acting pursuant to Article 88(3) of the EC Treaty, notified the Commission of an aid measure under Article 60 of Regional Law No 17/2004 laying down planning and financial provisions for 2005.

(2) By letters of 29 March and 10 June 2005, the Commission requested further information on the measure notified.

(3) The Italian authorities replied by letter of 18 May 2005 following a reminder from the Commission dated 27 April 2005 and by letters of 12 July and 14 July 2005.

(4) By letter of 21 September 2005, the Commission informed Italy of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the measure.

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

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

(7) By letter of 10 November 2005, registered as received by it on 15 November 2005, the Italian authorities asked the Commission to suspend the procedure pending the ruling by the Court of Justice in Case C-475/2003 concerning the compatibility of the Italian regional tax on productive activity (IRAP) with Article 33(1) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment [3]. The Commission accepted the request by letter of 2 August 2006. On 3 October 2006 the Court of Justice declared the IRAP to be compatible with Article 33(1) of Directive 77/388/EEC [4].

(8) By letter of 8 May 2006, registered as received by it on 11 May, the Italian authorities informed the Commission about an amendment to Article 60 of Regional Law No 17/2004, stating that the measure was subject 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 (the *de minimis* Regulation) [5] not only until authorisation by the Commission but also 'in the case of a negative decision being adopted by the Commission'.

II. DESCRIPTION OF THE MEASURE

II.1. Objective of the measure

(9) According to the Italian authorities, the measure is designed to promote the setting up of new companies and to narrow the gap between companies in Sicily and companies located in other regions of Italy where the standard of living is abnormally low or where there is serious underemployment within the meaning of Article 87(3)(a) of the EC Treaty.

[1] OJ C 82, 5.4.2006, p. 71.
[2] See footnote 1.
[3] OJ L 145, 13.6.1977, p. 1.
[4] Case C-475/2003 *Banca popolare di Cremona Soc.coop.arl* v *Agenzia Entrate Ufficio Cremona*, not yet published.
[5] OJ L 10, 13.1.2001, p. 30.

(10) Moreover, the measure in question is aimed at improving investment prospects in Sicily by raising security levels and preventing criminal behaviour.

II.2. **Legal basis of the measure**

(11) Article 60(1) of Regional Law No 17/2004 provides for a reduction in the rate of IRAP by 1 % in 2005, 0.75 % in 2006 and 0.5 % in 2007 for cooperatives (more precisely, 'società cooperative a mutualità prevalente') as defined in the Italian Civil Code ([6]).

(12) Article 60(2) of Regional Law No 17/2004 extends the same benefit to private security firms as defined in Royal Decree No 773/1931 of 18 June 1931, which defines the conditions under which entities and private persons may be authorised by the provincial prefect ('prefetto') to provide security services for movable and immovable property and private investigation services ([7]).

(13) Reductions in the IRAP rate are decided by the Region of Sicily by virtue of the power to modify the rate conferred on all regions in Italy under the relevant national legislation ([8]).

II.3. **Budget for the measure**

(14) The Italian authorities estimate that the budgetary impact of Article 60 will be around EUR 2 million for the entire period 2005-2007.

II.4. **Cumulation**

(15) The measure in question may be cumulated with aid received under other local, regional, national or Community schemes to cover the same eligible costs.

II.5. **Duration of the measure**

(16) Regional Law No 17/2004 entered into force on 29 December 2004, but Article 60 states that the measure is subject to the *de minimis* Regulation until authorisation by the Commission. By letter of 16 May 2006, the Italian authorities stated that the measure was subject to the *de minimis* Regulation also in the case of a negative decision being adopted by the Commission.

(17) The scheme runs for three tax years, from 2005 to 2007.

III. **GROUNDS FOR INITIATING THE PROCEDURE**

(18) In its letter of 21 September 2005, the Commission took the view that the notified scheme constituted State aid within the meaning of Article 87(1) of the EC Treaty since state resources are involved, since it is selective through being targeted at particular sectors and/or particular categories of undertaking, since it confers an advantage on such undertakings relative to other undertakings that provide the same services and since it might distort competition and affect trade at Community level.

(19) One of the reasons for initiating the procedure was that the Commission was not able to rule out the possibility that the effects of the measure on intra-Community trade would be contrary to the common interest, considering also that, under the scheme, the beneficiaries are not required to offset such distortions.

(20) The Commission also had doubts whether the measure fulfilled the conditions set out in the Guidelines on national regional aid ([9]) ('the Guidelines'). In fact, according to the notification, the measure would grant operating aid to Sicilian cooperatives and to security firms.

(21) In point 4.15 of the Guidelines, operating aid may be granted if the measure is justified in terms of its contribution to regional development and its nature and if its level is proportional to the handicaps it seeks to alleviate. In this regard, the Commission doubted whether the Italian authorities had succeeded in justifying the granting of operating aid by demonstrating the existence of any handicaps and gauging their importance.

(22) The Commission doubted whether the operating aid provided for in Article 60(1) of Regional Law No 17/2004 was compatible with the common market on the grounds that it would contribute to the creation of new firms and reduce the gap between Sicilian firms and firms operating elsewhere in Italy. In this respect, it noted that the link between the lowering of IRAP for all cooperatives and the creation of new firms in Sicily is unclear and left unexplained by the Italian authorities.

([6]) See *Titolo VI del Libro* V of the Civil Code, as amended by Article 8 of Legislative Decree No 6/2003 of 17 January 2003.

([7]) See *Titolo IV* of Royal Decree No 773/1931 of 18 June 1931, as subsequently amended. The provincial prefect can refuse the licence also on the basis of the number and importance of existing entities.

([8]) Legislative Decree (IRAP) No 446 of 15 December 1997.

([9]) OJ C 74, 10.3.1998, p. 9.

(23) In the notification, the Italian authorities argued that Sicilian firms are structurally disadvantaged because Sicily is an outermost island remote from the 'continental economic centres'. The Commission observes here that the outermost regions are exhaustively listed in Declaration 26 on the outermost regions of the Community, annexed to the Treaty on the European Union ([10]). Moreover, the aid does not seem to be tailored to tackling the problems associated with the island status of Sicily because it is unrelated to the extra costs due to insularity, like transport costs.

(24) Furthermore, the Italian authorities claimed that the prevalence of micro enterprises resulted in higher financing costs and greater labour intensity; labour and debt costs constitute a large part of the IRAP's tax base, thereby placing Sicilian firms at a disadvantage. The Commission noted that, even if the problem facing the Sicilian economy was the high ratio of micro enterprises and its consequences, a general IRAP reduction for cooperatives of all sizes would not address the issue because it was not targeted at micro enterprises. Nor should the aid be granted only to micro cooperatives.

(25) The Commission also stressed that differences in effective tax rates such as those referred to by the Italian authorities are present for every tax and are implicit in their nature. This does not, however, seem to be a sufficient reason to grant state aid differentiated by type of enterprise and, in the present case, the Italian authorities did not provide concrete evidence that cooperatives are excessively penalised by high effective rates of IRAP.

(26) Moreover, the Commission doubts the robustness of the data used by the Italian authorities to demonstrate that the 'normal' Sicilian firm with a turnover of less than EUR 10 million and fewer than 10 workers operating in industry, except for the chemical and petrochemical sectors, and in the ITC and tourist sectors pays a higher rate of IRAP than a comparable 'normal' company operating in Lombardy. In actual fact, as Article 60(1) of Regional Law No 17/2004 provides aid to cooperatives of all sizes and in all sectors, the use of data that concern only firms with a turnover of less than EUR 10 million and fewer than 10 workers operating in industry, except for the chemical and petrochemical sectors, and in the ITC and tourist sectors does not seem to demonstrate the proportionality of the measure in question.

([10]) See footnote 27 to the Guidelines (see footnote 9).

(27) Other doubts related to the information submitted by the Italian authorities to show that the operating aid provided for in Article 60(2) of Regional Law No 17/2004 is compatible with the common market.

(28) In the notification the Italian authorities argued that Article 60(2) of Regional Law No 17/2004 would help to improve investment prospects in Sicily by raising security levels and preventing criminal behaviour. They stressed that the average Sicilian security firm pays a higher rate of IRAP than the average firm operating elsewhere in Italy because the labour costs/net output value ratio for Sicilian security firms is on average higher than elsewhere in Italy and because of the rigidity of Sicilian labour market, which is characterised by low manpower turnover.

(29) In this connection, the Commission claims that the existence of a link between Article 60(2) of Regional Law No 17/2004 and the improvement in investment prospects in Sicily by raising security levels as well as the reasons for the higher costs of Sicilian security firms relative to firms operating in other regions of Italy are not sufficiently explained. It does not seem that, compared with the labour market in other regions of Italy, the Sicilian labour market has characteristics such as to justify higher wages in this sector.

(30) Furthermore, the Commission doubts that the arguments presented by the Italian authorities asserting that the provincial prefect may impose price restrictions on services provided in the sector ('tariffe di legalità') as well as the necessity of rewarding the professionalism of workers in the sector have to be taken into account. The Commission is of the opinion that these reasons do not explain the impact of differences in 'tariffe di legalità' on the increase in labour costs in Sicily.

(31) The Commission has therefore explained that it considered a more thorough analysis of the issue to be necessary. Such an analysis would need to include any comments made by interested third parties. Only after considering such comments could the Commission decide whether the measure proposed by the Italian authorities affects trading conditions to an extent contrary to the common interest.

IV. COMMENTS FROM ITALY

(32) The Commission received no comments from the Italian authorities or from interested third parties to allay the doubts raised when the formal investigation procedure was initiated.

V. ASSESSMENT OF THE MEASURE

V.1. Legality

(33) By notifying the aid scheme with a standstill clause and implementing it under the *de minimis* Regulation pending authorisation from the Commission, the Italian authorities have complied with the procedural requirements of Article 88(3) of the EC Treaty.

V.2. State aid character of the scheme

(34) The Commission considers that the measure constitutes State aid within the meaning of Article 87(1) of the EC Treaty for the following reasons:

V.2.1. *Presence of state resources*

(35) The measure involves the use of state resources in terms of tax revenues forgone by the Region of Sicily and corresponding to the reduced tax liability of the beneficiary.

V.2.2. *Economic advantage*

(36) The measure confers on the beneficiary an economic advantage resulting from the reduction in the effective tax burden, which translates into a financial advantage in terms of a reduced payment of tax from which the firms benefit immediately in the years when the reduction is applied.

V.2.3. *Presence of selectivity in that the measure favours 'certain undertakings or the production of certain goods'*

(37) The national legislation on the IRAP establishes that all regions have the power to increase or reduce the basic tax rate of 4.25 % by up to one percentage point in either direction; this reflects a symmetrically applied tax system in which all regions are equally entitled, both legally and in practice, to increase or reduce the tax and which does not in itself entail State aid.

(38) The Commission has previously decided [11] that these limited powers to adjust the tax rate are symmetrical in nature provided that the individual regions do not use their powers to apply, within their margin of autonomous discretion, tax rates that differ between sectors and between taxable persons and do not constitute State aid. This finding is not invalidated by the ruling in Case C-88/2003 *Azzorre* [12].

(39) However, in the case notified, the Region of Sicily has not limited its intervention to the margin of autonomous discretion established by national law but has used its power to introduce for certain sectors and taxpayers tax rates that are different from, and lower than, the standard regional tax rates. In fact:

(a) Article 60(1) of Regional Law No 17/2004 confers an advantage only on Sicilian cooperatives, thereby excluding from the possible beneficiaries under the scheme Sicilian firms operating in all sectors and not in the form of cooperatives.

(b) Article 60(2) of Regional Law No 17/2004 confers an advantage in that the measure favours the economic activity consisting in providing security services. Firms providing such services also offer the following services: (i) transport, escort and temporary deposit of valuable goods or persons; (ii) guarding of property; (iii) management of specialized archives; and (iv) production of security equipment and systems. The Commission considers that some of these services can be provided by firms which are not private security firms within the meaning of Royal Decree No 773/1931.

V.2.4. *Distortion of competition*

(40) In accordance with settled case law [13], for a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.

(41) The Commission observes that the measures contained in Article 60(1) and (2) of Regional Law No 17/2004 seem to distort competition and affect trade between Member States because they have the effect of relieving beneficiaries of a burden that they would otherwise have to bear.

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[11] Commission Decision C(2005)4675 of 7 December 2005 — State aid case N 198/05 — 'Tax aid for job creation in assisted areas, IRAP reductions — Law No 80/2005, Art. 11b', against which the Commission raised no objections (OJ C 42, 18.2.2006, p. 3).

[12] Judgment of the Court of 6 September 2006, *Portuguese Republic* v *Commission of the European Communities*, not yet published.

[13] Case T-214/95 *Het Vlaamse Gewest* v *Commission* [1998] ECR II-717.

(42) In the present case, according to the information provided by the Italian authorities, the beneficiaries are cooperatives (Article 60(1)) of all sizes operating in all sectors. Therefore, the cooperatives compete with other undertakings on markets open to competition so that Article 60(1) potentially distorts competition and affects trade under settled case law. Similarly, the Commission considers that the measure contained in Article 60(2) distorts competition and affects trade between Member States.

(43) Accordingly, the Commission concludes that the proposed scheme constitutes State aid.

V.3. **Compatibility**

(44) In so far as the measure constitutes State aid within the meaning of Article 87(1) of the EC Treaty, its compatibility must be assessed in the light of the exemptions provided for in Article 87(2) and (3). The exemptions in Article 87(2), which concern aid having a social character granted to individual consumers, aid to make good the damage caused by natural disasters or exceptional occurrences and aid granted to certain areas of the Federal Republic of Germany, do not apply in this case. The measure cannot be considered to be an important project of common European interest or to remedy a serious disturbance in the Italian economy, as provided for in Article 87(3)(b). Nor can the measure qualify for the exemption under Article 87(3)(c), which provides for authorisation to be granted for aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent that is contrary to the common interest. Lastly, the measure does not have as its objective the promotion of culture and heritage conservation as provided for in Article 87(3)(d).

(45) Article 87(3)(a) provides for the authorisation of aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. Sicily is a region eligible for that exemption.

(46) In its decision to initiate the formal investigation procedure, the Commission explained the reasons, summarised in paragraphs 18 to 31, why it doubted that the measure could qualify for the exemption in Article 87(3)(a). In the absence of any comments from Italy or interested third parties, the Commission can simply note that these doubts are confirmed.

VI. **CONCLUSION**

(47) The Commission concludes that the measure notified by Italy and described in paragraphs 11 to 17 is not compatible with the common market and is not covered by any of the exemptions laid down in the EC Treaty. The measure must therefore be prohibited. According to the Italian authorities, the aid has not been granted and so there is no need to recover it,

HAS ADOPTED THIS DECISION:

Article 1

The aid scheme which Italy is planning to implement under Article 60 of Regional Law No 17/2004 constitutes State aid.

The aid referred to in the preceding paragraph is incompatible with the common market and may not therefore be implemented.

Article 2

Italy shall inform the Commission, within two months of the 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, 7 February 2007.

For the Commission

Neelie KROES

Member of the Commission