II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 7 February 2007

on the aid scheme under Law No 21/2003 (Articles 14, 15 and 16) of the Region of Sicily C 31/2005 (ex N 329/2004) which Italy is planning to implement

(notified under document number C(2007) 285)

(Only the Italian version is authentic)

(Text with EEA relevance)

(2007/498/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 28 July 2004, the Italian authorities notified Articles 14, 15 and 16 of Regional Law No 21 of 29 December 2003 (hereinafter referred to as 'Regional Law No 21/2003'). By letter of 22 September 2004, the Commission requested further information. By letter of 24 January 2005, the Italian authorities requested a deadline extension which was accepted by the Commission by letter of 25 January 2005.

(2) By letter of 26 January 2005, the Italian authorities stated that the aid provided for in Articles 14 and 15 is being implemented under 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 [2] pending clearance by the European Commission.

(3) By letter of 29 March 2005, the Commission asked the Italian authorities for further information. Following a reminder sent to them on 27 April 2005, the Italian authorities submitted the requested information by letters of 18 May and 2 June 2006.

(4) Further information was requested by letter of 10 June 2005. The Italian authorities replied by letters of 12 July and 14 July 2005.

(5) By letter of 6 September 2005, the Commission informed Italy of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty and Article 62 of the EEA Agreement in respect of the measure.

(6) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* [3]. The Commission invited interested parties to submit their comments on the aid.

[1] OJ C 263, 22.10.2005, p. 30.

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

[3] See footnote 1.

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

(8) By letter of 10 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 ([4]). The Commission accepted the request by letter of 18 October 2005. The Court of Justice has subsequently declared the IRAP to be compatible with Article 33(1) of Directive 77/388/EEC ([5]).

(9) By letter of 10 May 2006, the Italian authorities informed the Commission about an amendment to the measures provided for in Articles 14 and 15. By means of this amendment, the measures are implemented under the *de minimis* Regulation also 'in the case of a negative decision being adopted by the Commission'.

II. DESCRIPTION OF THE MEASURE

(a) Legal basis of the measure

(10) Articles 14, 15 and 16 of Regional Law No 21/2003.

(b) Objective of the measure

(11) 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.

(12) Moreover, the measure in question is aimed at fostering the integration of the economy of the European Union with the economies of the countries which signed the Final Declaration of the Barcelona Euro-Mediterranean Ministerial Conference on 27 and 28 November 1995 (Barcelona Conference).

(13) The measure comprises two schemes: Articles 14 and 15 of Regional Law No 21/2003 provide for an exemption from IRAP for certain companies, and Article 16 of the same Law provides for the setting up of the Euro-Mediterranean Financial Services and Insurance Centre.

(14) Articles 14 and 15 provide for a five-year exemption from IRAP for certain new companies that started operations in 2004 and for certain existing companies.

(15) Article 14 provides for successive five-year exemptions from IRAP (as from the start of operations) for:

(a) companies in the tourism sector, the hotel sector and the craft sector, companies in the cultural sector, agri-food companies and ITC companies that started operations in 2004;

(b) all industrial companies starting operations in 2004 with a turnover of less than EUR 10 million.

(16) Article 15 provides for successive five-year exemptions as of 2004 from IRAP payable on the share of the tax bases exceeding the average for the years 2001 to 2003 for all existing companies, except those operating in the chemical and petrochemical sectors.

(17) Only companies having cumulatively their registered office, their administrative headquarters and their place of business in Sicily are eligible for the aid scheme.

(18) Article 16 establishes the Euro-Mediterranean Financial Services and Insurance Centre, which comprises subsidiaries or associated enterprises of credit institutions, real estate brokerages, trust companies, insurance companies and finance companies that collect funds on international markets for use exclusively outside of the territory of the Italian State with non-residents. Active within the Centre are also companies providing intermediation and assistance services for international trade. A monitoring committee has been appointed by the President of the Region of Sicily with the task of granting and withdrawing authorisation for companies to operate within the Centre.

(19) These companies enjoy the following benefits:

(a) 50 % reduction in the rate of IRAP for revenue generated within the Centre,

(b) exemption from duties on regional concessions,

(c) fixedrate discount on registration duty, mortgage tax and cadastral duties,

([4]) OJ L 145, 13.6.1977, p. 1.
([5]) Case C-475/2003 of 3 October 2006 Banca popolare di Cremona Soc.coop.arl v Agenzia Entrate Ufficio Cremona, not yet published.

(d) exemption from corporate tax on revenue generated in Sicily ([6]) in connection with activities conducted within the Centre.

(20) The tax benefits available under the scheme are granted only in respect of transactions with third countries that signed the Barcelona Declaration of 27 and 28 November 1995 ([7]).

(21) The precise location of the Centre within Sicily and the criteria for granting authorisation to carry on business at the Centre is to be determined in the implementing regulations.

(22) The measures stem from the implementation by the Region of Sicily of the tax autonomy granted by Articles 36 and 38 of the Sicilian Regional Statute, which ranks as a constitutional act.

(c) **Budget for the measure**

(23) The Italian authorities estimate that, once they have introduced the above clauses, the budgetary impact of Articles 14 and 15 will be around EUR 170 million (EUR 120 million and EUR 48 million respectively) between 2004 and 2009. They have not provided any estimate of the impact of Article 16.

(d) **Duration of the measure**

(24) Regional Law No 21/2003 entered into force on 30 December 2003, but the coming into force of Articles 14, 15 and 16 is explicitly subject to clearance by the European Commission.

(25) By letter of 26 January 2005, the Italian authorities informed the Commission that the aid provided for in Articles 14 and 15 was implemented under the *de minimis* Regulation, pending clearance by the Commission. Subsequently, by letter of 10 May 2006, they stated that the aid provided for in Articles 14 and 15 was implemented under the *de minimis* Regulation also 'in the case of a negative decision being adopted by the Commission'.

(26) The measure provided for in Article 14 has applied with effect from 2005. The Italian authorities have undertaken to apply it for five tax years.

(27) The measure provided for in Article 15 is also being applied for five tax years, from 2004 to 2009.

(28) The measure provided for in Article 16 applies from the entry into force of the measure until the tax year following that in which the free trade area referred to in the Barcelona Declaration is effectively put in place (2010).

III. **GROUNDS FOR INITIATING THE PROCEDURE**

(a) **Articles 14 and 15: IRAP exemptions**

(29) In its letter of 6 September 2005, the Commission took the view that the notified aid 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 a financial advantage on certain categories of undertaking in terms of a reduced tax burden and since it might distort competition and affect trade at Community level.

(30) One of the reasons for initiating the procedure was that the Commission had doubts as to whether the aid provided for in Articles 14, 15 and 16 of Regional Law No 21/2003 was compatible with the single market.

(31) First of all, the Commission had doubts whether the measure fulfilled the conditions set out in the Guidelines on national regional aid ([8]) ('the Guidelines'). In fact, according to the notification, the measure would grant operating aid to Sicilian companies meeting the criteria indicated at points 14 and 17 and to companies operating in the Euro-Mediterranean Financial Services and Insurance Centre.

([6]) To be precise, Sicily would assume, within the meaning of Article 8(2) of Law No 212/2000 of 27 July 2000 laying down provisions on the status of the rights of the taxpayer (Official Gazette No 177 of 31 July 2000), the corporate tax debt payable by beneficiaries with their tax domicile outside of Sicily. Revenue from corporate taxes paid by Sicilian companies accrue to the Region of Sicily.

([7]) The 'third countries' in question are Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, Syria, Tunisia, Turkey and the Palestinian Authority.

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

(32) 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 and whether the aid would be justified in terms of its contribution to regional development.

(33) The Commission had doubts that the operating aid provided for in Articles 14 and 15 of Regional Law No 21/2003 could be compatible with the common market and that it would contribute to the creation of new companies and reduce the gap between companies operating in Sicily and companies operating elsewhere in Italy. In this respect, the Commission noted that the link between the lowering of IRAP for beneficiaries (e.g. those covered by Article 15) and the creation of new companies in Sicily is unclear and left unexplained by the Italian authorities. Then, the fact that, in theory, lowering IRAP will increase the number of new companies is not sufficient in itself for the aid to be considered compatible.

(34) In the notification, the Italian authorities argued that the threshold of EUR 10 million was low enough to ensure that Article 14 applied only to SMEs. The Commission argued that Article 14 was only superficially de facto restricted to SMEs because it did not take into account the number of employees and, above all, the fact that the company benefiting from the measure was a 'linked' or 'partner' enterprise within the meaning of the SME guidelines ([9]). Moreover, even if the Italian authorities could prove that only SMEs within the meaning of the guidelines benefit from the measure, the Commission observes that the measure in question still constitutes operating aid.

(35) 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 companies 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 companies of all sizes would not address the issue because it was not targeted at micro enterprises. Moreover, the aid did not seem to be designed to address the problems associated with Sicily's island status in that it is not related to extra costs linked to insularity, such as transport costs. For example, it does not seem evident to the Commission that companies operating in the sectors of tourism, hotels and cultural goods encounter particular disadvantages as a result of being located in Sicily (Article 14).

(36) In addition, the Commission notes that the submissions by the Italian authorities do not contain enough information to guarantee that the aid will be on a declining scale over time. In the example given, it seems that the Italian authorities intend to reduce the proportion of the IRAP exemption. However, this does not guarantee per se that the aid amount will be on a declining scale.

(37) Furthermore, it does not seem to the Commission that, as Article 15 provides aid to companies of all sizes, the use of data concerning only companies with a turnover of less than EUR 10 million and with fewer than 10 employees in the industrial, ITC and tourist/hotel sectors can demonstrate the proportionality of the measure in question.

(38) The Commission argued that the measure seems to be materially selective in that the tax advantages provided for in Articles 14 and 15 exclude from the group of possible beneficiaries various categories of company (see point 56), favouring in particular the tourism, hotel, cultural goods, agri-food and ITC sectors. Moreover, the measure seems to favour existing and new industrial companies with a turnover of less than EUR 10 million but excludes those operating in the chemical and petrochemical sectors.

(39) In their submissions, the Italian authorities stated that companies in the chemical and petrochemical sectors were excluded from the benefit of Article 15 because they were not affected by the high transport costs associated with the island status of Sicily and because the number of companies in those sectors was very small. However, it does not seem to the Commission that companies in all the sectors eligible for the aid measure are affected by high transport costs; moreover, the number of beneficiaries has no influence on the classification of a particular measure as aid.

(40) Lastly, the Commission noted that the measure discriminates between 'Sicilian' and 'non-Sicilian' companies in so far as it prevents companies with their registered office in another Member State benefiting from the aid. It seems to the Commission that there is no objective reason to justify this choice on the part of

([9]) Commission Regulation (EC) No 70/2001 (OJ L 10, 13.1.2001, p. 33). Regulation as last amended by Regulation (EC) No 1976/2006 (OJ L 368, 23.12.2006, p. 85). See in particular, the Annex to the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

the Italian authorities and that this provision of the aid scheme is, therefore, in breach of Article 43 of the EC Treaty. For this reason, too, the Commission observed that the measure cannot be compatible with the common market ([10]). It also noted that the measure confers a selective advantage on Sicilian companies in that only taxable undertakings having cumulatively their registered office, their administrative headquarters and their place of business in Sicily can benefit from the scheme. This does not seem to be the case of all companies that carry on a productive or commercial activity in Sicily and are subject to IRAP on that activity. The Italian authorities did not provide any argument about that aspect in their submissions.

(b) **Article 16**

(41) First of all, the Commission argued that the Italian authorities did not clarify in their submissions why they believe that the aid for the establishment of the Euro-Mediterranean Financial Services and Insurance Centre can qualify for the exemption laid down in Article 87(3)(a) of the EC Treaty.

(42) The Italian authorities stated in their submissions that the measure in question constitutes operating aid. The Commission took the view that the distortion of competition resulting from aid in the financial sector can be very marked and that financial activities do not help significantly to remedy the handicaps faced by regions eligible for the exemption under Article 87(3)(a), as stated in the Commission notice on the application of State aid rules to measures relating to direct business taxation ([11]) and in various decisions taken since. The Commission recalled that the aforementioned notice clearly states that, in order to be considered compatible with the common market, State aid intended to promote the economic development of particular areas must be 'in proportion to, and targeted at, the aims sought'. From this perspective, offshore activities and activities that have little or no impact on the local economy are unlikely to be allowed as compatible State aid. The Commission doubted therefore that there is proportionality between the level of aid and the handicap it seeks to offset.

(43) Lastly, the Commission doubted that the measure provided for in Article 16 could be considered to be a project of common European interest within the meaning of Article 87(3)(b) of the EC Treaty.

(44) In fact, the main justification put forward by the Italian authorities in support of the aid was that the measure is considered to be a project of common European interest within the meaning of Article 87(3)(b) of the EC Treaty because Article 16 is similar to a provision in Law No 19/1991 on the development of economic activities and international cooperation in the region of Friuli-Venezia Giulia, the province of Belluno and neighbouring areas, which set up the Trieste Financial Services and Insurance Centre, which was found incompatible by the Commission in 2003 after being authorised by it in 1995 under the exemption of Article 87(3)(b) ([12]) of the EC Treaty. In this regard, the Commission remarked that, in its first decision, the aid for the establishment of the Trieste Financial Services and Insurance Centre was considered compatible with the common market under the exemption in Article 92(3)(c) (now Article 87(3)(c)) and not under the exemption in Article 87(3)(b) ([13]).

(45) The Italian authorities claimed that the reasons for overturning the previous decision of compatibility by the Commission are based on the fact that Sicily is a region eligible for state aid under Article 87(3)(a) of the EC Treaty and that, in the present case, the European capital market is not integrated with the African capital market so that favouring this integration in accordance with the Barcelona Declaration remains a major European objective.

(46) The Commission remarked that each analysis has to be carried out on a case-by-case basis, taking into account the different characteristics of seemingly similar schemes that might though be very significant, as in the economic context. In this connection, it stressed, for example, that the total aid (over the five-year duration of the scheme) provided for the establishment of the Trieste Financial Services and Insurance Centre was capped and that the total amount of loans and investments by companies at the Centre was limited.

(47) Moreover, the Commission considers that the same reasoning as that applied in 2003 in the case of Trieste still holds in this case, for the following reasons:

(a) One of the main arguments for overturning the Trieste decision was that this kind of measure constitutes operating aid which the Commission authorises only exceptionally in sectors of activity which require special treatment. This is not the case in the financial sector and the Commission has taken the view that, nowadays, aid to participants in the financial markets can engender very significant distortions in this sector.

([10]) See Case C-156/98 Germany v Commission (2000) ECR I-6857, paragraphs 76 to 87.

([11]) OJ C 384, 10.12.1998, p. 3 (see point 33).

([12]) To be more precise, the Centre was established by Article 3 of Law No 19/1991 of 19 January 1991. The relevant Commission decisions are Decision 95/452/EC of 12 April 1995 (OJ L 264, 7.11.1995, p. 30) and Decision 2003/230/EC of 11 December 2002 on the existing aid scheme that Italy was authorised to implement for the Trieste Financial Services and Insurance Centre (OJ L 91, 8.4.2003, p. 47).

([13]) See footnote 12.

(b) Another argument for overturning the Trieste decision was that, in its assessment made in the light of the State aid rules, the Commission may also take into account the adverse effects on competition that have been highlighted by the work on the Code of Conduct for Business Taxation ([14]). This work showed that tax incentives on internationally mobile activities, such as finance, insurance and intra-group services, may have adverse effects on other Member States, in particular because they create opportunities for tax avoidance. The Trieste regime, which was assessed as a harmful regime under criteria laid down in the Code, may have such potential. The Commission points out that the Italian authorities, in their comments at the time on appropriate measures for the Trieste scheme, referred to the meeting on 19 March 2002 of the Code of Conduct Group, at which Italy stated that the Centre would be closed within a period compatible with the programme of work on the Code of Conduct.

(48) Lastly, after stressing that two of the countries that had signed the Barcelona Declaration, Cyprus and Malta, were already members of the European Union at the time of notification of the present measure, the Commission considers that the situation in the countries that will benefit from investments by the companies established at the Centre differs in many respects from the situation of the eastern European countries in 1995. In particular, the special problems of transition have either never been encountered by many of the signatories to the Barcelona Declaration or have been encountered in the past (for example, Turkey and Israel are clearly free market economies) and the transitional period has ended (for example, in Algeria).

(49) Therefore, the Commission doubts that Article 16 qualifies for the exemption provided for by Article 87(3)(b) of the EC Treaty.

(50) 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.

([14]) The EU's Finance Ministers established the Code of Conduct Group (Business Taxation) at a Council meeting on 9 March 1998, under the chairmanship of UK Paymaster General Dawn Primarolo, to assess the tax measures that may fall within the scope of the Code of Conduct. In a report of November 1999 the Group identified 66 harmful tax measures, one of which was the measure establishing the Trieste Financial Services and Insurance Centre.

IV. COMMENTS FROM ITALY

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

V. ASSESSMENT OF THE MEASURE

V.1. Legality

(52) By notifying the aid scheme with a standstill clause or, in the case of Articles 14 and 15, by implementing it under the *de minimis* Regulation until authorised by 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

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

Presence of state resources:

(54) 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.

Economic advantage:

(55) 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 companies benefit immediately in the years when the reduction is applied.

Presence of selectivity in that the measure favours 'certain undertakings or the production of certain goods':

— *Articles 14 and 15*

(56) The Commission notes that Articles 14 and 15 have to be examined together because they confer similar advantages on different categories of beneficiary. The two articles combined exclude from the group of possible beneficiaries various categories of undertaking:

(a) new companies with a turnover of more than EUR 10 million which operate in all sectors other than those mentioned in Article 14(1) (i.e. tourism, hotels, cultural goods, agri-food, ITC and craft activities);

(b) new companies with a turnover of less than EUR 10 million which operate in all sectors other than those mentioned in Article 14(2) (i.e. industry); these are basically companies in the agricultural and service sectors);

(c) existing companies operating in the chemical and petrochemical sectors (Article 15).

(57) Consequently, the measure favours certain productive sectors, in particular the sectors of tourism, hotels, cultural goods, agri-food and ITC, in which all companies are eligible for the five-year exemptions from IRAP. Secondly, it favours existing and new industrial companies with a turnover of less than EUR 10 million, excluding companies operating in the chemical and petrochemical sectors.

(58) Even if the Italian authorities were to prove that there were no new companies with a turnover of more than EUR 10 million in industry, excluding the chemical and petrochemical sectors, the measure, according to established case law ([15]), would amount to a selective measure favouring the abovementioned productive sector because the five-year IRAP exemption is not available to companies active in sectors other than industry.

(59) Lastly, the measure seems to confer a selective advantage on Sicilian companies in that only the taxable undertakings having cumulatively their registered office, their administrative headquarters and their place of business in Sicily can benefit from the scheme. This does not seem to be the case with all undertakings carrying on a productive or commercial activity in Sicily and which are subject to IRAP on that activity.

— *Article 16: Euro-Mediterranean Financial Services and Insurance Centre*

(60) The Commission observes that Article 16 confers selective advantages insofar as only certain companies can benefit from them. Indeed, the advantages are provided only to insurance and finance companies authorised to operate at the Centre. The measure therefore excludes all companies collecting funds on the international markets in order to invest them in the countries referred to in footnote 7 and whose activities with those countries are not carried on at the Centre.

([15]) See, for example, Case C-143/99 Adria-Wien Pipeline GmbH and Wietersdorfer & Peggauer Zementwerke GmbH v Finanzlandesdirektion für Kärnten [2001] ECR I-08365 concerning a rebate granted only to undertakings manufacturing goods.

(61) Moreover, the measure is selective insofar as it excludes insurance and finance companies investing in Italy and in other countries which do not appear on the exhaustive list given in footnote 7.

(62) Accordingly, the Commission concludes that the proposed measure is selective.

Distortion of competition and trade between Member States

(63) In accordance with settled case law ([16]), for a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.

(64) The Commission observes that the measures contained in Articles 14 and 15 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.

(65) In the present case, the beneficiaries are companies of all sizes that operate mainly in industry, excluding the chemical and petrochemical sectors. These companies compete with other companies on markets open to competition so that, in accordance with settled case law, the IRAP exemption potentially distorts competition and affects trade.

(66) Similarly, the Commission considers that the measure contained in Article 16 distorts competition and affects trade between Member States. Indeed, given the very nature of their business, finance companies, insurance companies, real estate brokerages and trust companies compete with other companies at European level.

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

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

V.3. **Compatibility**

(68) Insofar 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 and 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).

(69) 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.

(70) In its decision to initiate the formal investigation procedure, the Commission explained the reasons, summarised in paragraphs 29 to 50, why it doubted that the measure could qualify for the exemption in Article 87(3)(a). Furthermore, it ruled out the possibility that the measure provided for in Article 16 of Regional Law No 21/2003 could qualify for the exemption in Article 87(3)(b), which provides for the authorisation of aid to promote the execution of a project of common European interest or to remedy a serious disturbance in the economy of Italy.

(71) In the absence of any comments from Italy or interested third parties, the Commission can simply note that these doubts are confirmed.

VI. **CONCLUSION**

(72) The Commission concludes that the measure notified by Italy and described in paragraphs 10 to 28 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 therefore there is no need to recover it,

HAS ADOPTED THIS DECISION:

Article 1

The aid scheme which Italy is planning to implement under Articles 14, 15 and 16 of Law No 21/2003 of the Region of Sicily constitutes State aid.

The aid referred 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 notification of this Decision, of the measures taken to comply with it.

Article 3

This Decision is addressed to Italy.

Done at Brussels, 7 February 2007.

For the Commission

Neelie KROES

Member of the Commission