COMMISSION

COMMISSION DECISION

of 2 July 2008

on a State aid scheme (C 1/04 (ex NN 158/03 and CP 15/2003)): Misuse of aid measure N 272/98, Regional Act No 9 of 1998

(notified under document number C(2008) 2997)

(Only the Italian version is authentic)

(Text with EEA relevance)

(2008/854/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:

1. PROCEDURE

(1) On 21 February 2003 the Commission received a complaint, which it registered under the number CP 15/03, alleging misuse of a regional scheme of assistance to the hotel industry in the Region of Sardinia that the Commission had approved in 1998, in case N 272/98.

(2) By letter dated 26 February 2003 (ref. D/51355) the Commission asked the Italian authorities for clarification. By letter dated 28 March 2003 the Commission agreed to a request from the Italian authorities asking it to extend the deadline for providing the information; the information was subsequently submitted by letter dated 22 April 2003 (ref. A/33012).

(3) On 3 February 2004, the Commission decided under Article 88(2) of the EC Treaty to open a formal investigation into the possible misuse of aid measure No N 272/98. The decision to initiate the procedure was published in the *Official Journal of the European Union* [2]. The Commission there called on interested parties to submit their comments.

(4) By letter dated 10 March 2004 (ref. D/5172), the Commission agreed to a request from the Italian authorities asking it to extend the deadline for submitting comments; the Italian authorities submitted their comments by letter dated 19 April 2004, registered at the Commission on 26 April 2004 (ref. A/32956).

(5) By letter dated 30 April 2004, registered at the Commission on the same day, the Commission received comments from one interested party, a recipient of aid under the scheme. The Commission did not receive any further comment from the complainant.

(6) By letter ref. D/53359 dated 13 May 2004, the Commission forwarded these observations to the Italian authorities to allow them to reply.

(7) The Italian authorities did not react to the comments submitted.

(8) On 7 December 2004, a meeting with the Italian authorities took place in Brussels.

(9) By letter of 28 June 2005, registered at the Commission on 30 June 2005 (ref. A/35257), the Italian authorities submitted further information.

(10) On 22 November 2006 the Commission decided to correct and extend the scope of the investigation; the decision was published in the *Official Journal of the European Union* [3]. The Commission there called on interested parties to submit their comments.

[1] OJ C 79, 30.3.2004, p. 4, and OJ C 32, 14.2.2007, p. 2.

[2] OJ C 79, 30.3.2004, p. 4.

[3] OJ C 32, 14.2.2007, p. 2.

(11) Neither the Italian authorities nor any other interested party reacted to the correction and extension of the scope of the investigation.

2. DESCRIPTION OF THE MEASURE

(12) Aid scheme No N 272/98 provides for grants towards initial investment in the hotel industry in Sardinia. The scheme is a regional one, which was approved in 1998, when the Commission considered it compatible with the common market under the exemption in Article 87(3)(a) of the EC Treaty ([1]).

(13) The aid contemplated in the scheme is of two kinds:

(a) there is provision for aid towards initial investment in the form of grants and subsidised loans;

(b) Article 9 of Regional Act No 9 of 11 March 1998 provides for operating aid, in the form of interest relief, falling under the *de minimis* rule.

This Decision is not concerned with the second part of the scheme, which is mentioned here only in order to explain the context.

(14) When they notified the scheme the Italian authorities supplied the text of Regional Act No 9 of 1998, but did not at that time send any implementing legislation.

(15) In its decision to approve the scheme, the Commission described the measures as follows:

(a) the purpose of the scheme was to grant aid for initial investment in the tourism sector;

(b) the aid was in the form of grants with an aid intensity up to 40 % of the eligible costs, plus a subsidised loan covering up to 35 % of the eligible costs (the interest relief could reduce the reference rate of interest by up to 60 %);

(c) the decision expressly noted a commitment given by the Italian authorities that they would adjust the aid intensity once the Italian regional aid map for the period 2000-2006 had been approved;

(d) the duration of the scheme was unlimited; the budget was to be EUR 2,6 million for the first year of implementation;

(e) applications for aid had to be submitted before work started on the project;

(f) aid in the form of interest relief could in certain circumstances be granted for investment carried out before the implementation of the earlier Regional Act No 40 of 1993. According to a commitment given by the Italian authorities, aid of this kind would be *de minimis* only.

(16) After the Commission approved the scheme the Regional Government adopted an order (*decreto*) and a number of resolutions (*deliberazioni*) to implement the scheme. Order No 285 was adopted in April 1999 ([2]), and was followed by several administrative measures, most notably Resolutions Nos 33/4 and 33/6 of 27 July 2000. Resolution No 33/6 co-exists with Resolution No 33/4, and states that in certain exceptional cases aid may be granted even though work started before the application was submitted.

(17) Following the adoption of the Italian regional aid map for the period 2000-2006 ([3]), the aid intensities provided for in the scheme were adjusted. By letter dated 2 November 2000 (ref. A/39177), the Italian authorities informed the Commission of the implementing measures that had been adopted as part of the appropriate measures exercise; they confirmed:

(a) that the aid intensities had been adjusted in conformity with the ceilings applicable under the Italian regional aid map for 2000-2006 (see in particular Resolution No 34/73 of 8 August 2000); and

(b) that the principle of the necessity of the aid had been respected (see in particular Article 6 of Resolution No 33/4 of 27 July 2000, which expressly states that costs are eligible if sustained after the application for financing) ([4]).

(18) On the basis of the information submitted by the Italian authorities, the Commission, in a letter dated 17 May 2001, took note that Italy had accepted the proposal for appropriate measures, and confirmed that the scheme had now been brought into line with the guidelines on national regional aid of 1998 (the 1998 Guidelines) ([5]).

([1]) Commission letter dated 12.11.1998, ref. SG(98) D/9547.

([2]) Decreto dell'assessore del turismo, artigianato e commercio del 29.4.1999, No 285 'Esecutività della Deliberazione della Giunta Regionale No 58/60 del 22.12.1998 come modificata dalla Deliberazione No 16/20 del 16.3.1999 che approva la direttiva di Attuazione prevista dall'Art. 2 della L.R. 11 marzo 1998 No 9 disciplinante: incentivi per la riqualificazione delle strutture alberghiere e norme modificative della L.R. 14.9.1993 No 40'. Published in BURAS, No 14, 8.5.1999.

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

([4]) Annex to Resolution No 33/4 of 27 July 2000, Guidelines for the application of Regional Act No 9 of 11 March 1998, Article 6, Eligible expenditure: 'The expenditure indicated above shall be eligible provided it is incurred after the application for the benefits sought'.

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

(19) The scheme operated in practice on the basis of published calls for applications asking interested parties to submit applications for aid in line with the resolutions just described.

(20) The Italian authorities state that the first call asking interested parties to submit a formal application for financing under the scheme (known as the 2000 call) was published in 2001.

(21) According to the information available, the first call for applications was followed by the adoption of the following resolutions:

— on 31 January 2002 the Regional Government adopted Resolution No 3/24, proposing an initial list of recipients of aid in certain sectors. The selection criteria applied were those listed in Resolution No 33/4, further detailed in a circular dated 21 November 2000,

— on 16 April 2002 the Regional Government adopted Resolution No 12/17, amending the abovementioned list of recipients and proposing a further list,

— on 18 July 2002 the Regional Government adopted Resolution No 23/40 approving the list of projects eligible under the first call for applications,

— on 7 February 2003 the Regional Government adopted Resolution No 5/38, rectifying errors concerning some aid recipients referred to in Resolution No 23/40.

(22) In the information they submitted on 22 April 2003 (ref. A/33012, registered at the Commission on 28 April 2003), on p. 13, the Italian authorities stated that 'in the interests of the Region' they had decided 'to include in the ranking certain so-called "critical" projects (i.e. projects on which work had begun before the date of the application for aid but after the entry into force of the Act on 5 April 1998)'. As a result, they said, aid had been given in 2002 to at least 28 investment projects that had been started before the date of the application for aid, the total amount of aid involved being around EUR 24 million.

3. GROUNDS FOR INITIATING THE PROCEDURE

(23) When it initiated the formal investigation procedure the Commission drew attention to the fact that point 4.2 of the 1998 Guidelines stated that an application for aid must be submitted before work is started on the project.

(24) The Commission also pointed out that that obligation was repeated in the decision of 1998 in which the Commission had decided to raise no objection to the regional scheme of assistance to the hotel industry in the Region of Sardinia (aid measure No N 272/1998).

(25) Despite the fact that the Commission Decision had indicated that recipients must have filed an application for the aid before work started on the project, and despite the fact that in the course of the appropriate measures exercise that followed the entry into force of the 1998 Guidelines the Italian authorities had expressly confirmed that that obligation had been complied with [1], the Italian authorities nevertheless adopted several implementing measures, never submitted to the Commission (in particular the Resolution of 22 December 1998 and Resolution No 33/6 of 27 July 2000), which did allow aid to be granted to projects started before the date of submission of the application, though by way of exception and only in the first year of operation of the scheme on the basis of the first call for applications. The Commission therefore took the view that the Italian authorities had not complied with the obligations imposed by the Commission decision authorising the scheme or with the requirements of the guidelines on national regional aid.

(26) As a consequence, the Commission considered that the incentive effect of the aid might be undermined if there was no application for aid before work on the project actually started. This might constitute a case of misuse of aid measure No N 272/98 that would be caught by Article 16 of Regulation (EC) No 659/99 (the 'Procedural Regulation') [2], and the Commission doubted whether aid granted to investments started before the date of the application for the aid would be compatible with the common market.

4. GROUNDS FOR CORRECTING AND EXTENDING THE SCOPE OF THE PROCEDURE

(27) In its first decision to open the investigation procedure, the Commission concentrated its analysis on the fact that measures implementing the scheme had never been brought to its attention. The decision did not mention Resolution No 33/6.

(28) But the aid referred to in recital 22 arose out of Resolution No 33/6, rather than Resolution No 33/4, which was erroneously cited in the initiating decision of 3 February 2004.

[1] By letter dated 25.4.2001, ref. 5368 (registered at the Commission as A/33473). See recital 17.

[2] Council Regulation No 659/99 laying down detailed rules for the application of Article 93 of the EC Treaty [now Article 88], OJ L 83, 27.3.1999, p. 1.

(29) The decision originally opening the formal investigation procedure also spoke of misuse of an approved aid scheme within the terms of Article 16. Article 16 is generally understood to refer to situations where the recipient of approved aid applies the aid contrary to the conditions of the individual granting decision or aid contract, and not to situations where a Member State amends an existing aid scheme so as to introduce new unlawful aid (Articles 1(c) and (f) of the Procedural Regulation).

(30) For these reasons, and in order to avoid any possible misunderstanding, the Commission considered it necessary to correct and extend the scope of the investigation, and to invite further comments from Italy and interested parties.

5. COMMENTS FROM INTERESTED PARTIES

(31) In response to the publication in the *Official Journal* of the 2004 decision to open the formal investigation procedure, the Commission received observations from the following interested party:

— Grand Hotel Abi d'Oru SpA.

The interested party argued that there was indeed an incentive effect, and that the principle of the necessity of aid had been complied with.

(32) The interested party contended that the incentive effect and the principle of necessity had been fully respected, for the following reasons:

— first of all, before work started the interested party had applied for aid under another regional aid scheme, No N 715/99 (Act No 488 of 1992) [1]. That application had been accepted twice, but no aid was granted, owing to budgetary constraints,

— having failed to receive aid under that scheme, and in view of the fact that the measures implementing Regional Act No 9 of 1998 were published at the same time (May 1999), the interested party had decided to apply for aid under the scheme under investigation here. It had relied on the acceptance of its application, despite the fact that the projects had already started, on the basis of the provisions of the first implementing measure, Order No 285/99, which allowed aid to be granted for projects already started provided they were started after Regional Act No 9 of 1998 entered into force on 5 April 1998,

— the application for aid submitted on the basis of the aid scheme now under investigation concerned only a part of a wider investment project (the eligible costs of the original investment project amounted to EUR 10 500 000; the eligible costs considered in the application made under the scheme being investigated amounted to EUR 9 039 028),

— it was irrelevant that the application for aid on the basis of the aid scheme under investigation had been submitted after work had begun, as that application was merely a re-submission of the same application that had been submitted previously under a different regional aid scheme and related to the same investment project.

(33) The interested party also submitted that the aid was necessary, arguing that it would not have undertaken such an investment project in the absence of public financing. In order to launch the investment, pending the granting of the aid, it had had recourse to short-term bank funding.

(34) The Commission did not receive any further comments following the publication of the decision correcting and extending the scope of the procedure [2].

6. COMMENTS FROM ITALY

(35) In response to the assessments made by the Commission in the letter initiating the investigation, the Italian authorities put forward three main arguments, regarding the existence of legitimate expectations, the incentive effect of the aid, and the determination of the *de minimis* threshold.

Legitimate expectations and incentive effect

(36) In their observations the Italian authorities claimed legitimate expectations, and also invoked the principle of legal certainty. First, they explained that Regional Act No 9 of 1998 was in some sense considered by recipients to be a continuation of a previous scheme, Regional Act No 40 of 1993, which was still in force at the relevant time, and which operated on a continuous basis (scheme No N 611/93 as amended by N 250/01). This earlier system had helped to give recipients a legitimate expectation that they would be able to obtain subsidies when they submitted their application, irrespective of whether or not work had begun.

[1] Letter to the Member State dated 2.8.2000, ref. SG(2000) D/105754.

[2] OJ C 32, 14.2.2007, p. 2.

(37) The Italian authorities pointed out, furthermore, that the measures implementing the scheme were taken after the scheme had been approved by the Commission. The first such measure, Order No 285 of 1999, was adopted on 29 April 1999. Article 17 of that Order (transitional provisions) stated that expenditure incurred after the Act entered into force on 5 April 1998 was eligible. The Order was published in the official gazette of the Region of Sardinia on 8 May 1999 ([1]).

(38) The Italian authorities added that Order No 285 of 1999 had been annulled by Resolution No 33/3 on 27 July 2000 on the ground that it was defective. At the same time, the Regional Government adopted new implementing measures, which were notified to the Commission on 20 September 2000.

(39) The Italian authorities emphasised that when adopting these resolutions on 27 July 2000, the Region of Sardinia had had to bear in mind that the publication of Order No 285/99 in the official gazette generated legitimate expectations among the recipients. This was why for the first call for applications it was decided that applications in respect of investment projects already started would be accepted under Article 9 of Regional Act No 9 of 1998. Resolution No 33/6, 'Transitional provision for the first call for applications', accordingly stated that by way of exception, in the case of applications submitted in response to the first call, costs would be eligible for aid if they were incurred after 5 April 1998, the date on which Regional Act No 9 of 1998 entered into force.

(40) The Italian authorities pointed out that in its letter of 17 May 2001 (ref. D/52027), as part of the appropriate measures exercise, the Commission had concluded that the scheme was compatible with the common market, after asking the Italian authorities to implement Article 9 of Act No 9 of 1998 in accordance with the *de minimis* rules in Regulation (EC) No 69/2001.

(41) They also explained that after the Resolution of 27 July 2000 had entered into force the practical implementation of the scheme required that applications for aid submitted before the publication of the first call for applications be submitted afresh using the new forms.

(42) The Italian authorities repeated that there was indeed an incentive effect, since the grants were needed to clear bank loans covering the period between the point when the costs were incurred and the payment of the aid.

(43) Finally, the Italian authorities stated that recipients were required to choose the regional aid scheme of reference, because they were not allowed to submit applications under different aid schemes for the same project. They stressed that the Sardinian regional aid scheme established by Regional Act No 9 of 1998 (N 272/98) and the countrywide regional aid scheme established by the national Act No 488 of 1992 (N 715/99) were exclusive of each other.

Determination of the de minimis *threshold*

(44) The Italian authorities contended that the principle of incentive effect was complied with even where the work had begun before the application was submitted under Article 9 of Regional Act No 9 of 1998. They argued that the part of the aid granted before the applications were submitted was covered by the *de minimis* rules. The part of the aid below the threshold of EUR 100 000 that was granted before the application had to be considered separately, taking account only of the costs incurred before that date and not of the entire cost of the project. These considerations applied to 12 projects out of 28.

(45) No further comments were received following the notice correcting and extending the scope of the procedure.

7. **ASSESSMENT OF THE MEASURE**

State aid within the meaning of Article 87(1) of the EC Treaty

(46) The assessment of scheme No N 272/98 concluded that the measure constituted State aid within the meaning of Article 87(1) of the EC Treaty because it met all the criteria set out there.

(47) The measure provides an economic advantage to a specific category of recipients, reducing their normal costs. The advantage is granted through state resources, and it threatens to distort competition, because it strengthens the financial position of some undertakings by comparison with their competitors. Since hoteliers in different Member States compete to attract tourists, support given to the tourism sector is likely to affect intra-Community trade ([2]).

([1]) Bollettino Ufficiale della Regione Sardegna (Suppl. Straordinario No 3 al Bollettino Ufficiale No 14 dell'8 maggio 1999).

([2]) For example, the Commission has ascertained from web searches that Grand Hotel Abi d'Oru is a five-star hotel with 177 rooms catering to a mixed Italian and international clientele.

Legality of the measure

(48) The aid scheme notified to the Commission and approved by it under Article 4(3) of the Procedural Regulation constitutes State aid within the meaning of Article 87(1) of the EC Treaty.

(49) In the context of the appropriate measures exercise, Resolution No 34/73 adjusted the aid intensity to the new regional aid map ceilings, thus ensuring compatibility with the 1998 Guidelines, while Resolution No 33/4 ensured compliance with the principle of incentive effect; the Commission concluded, therefore, that these resolutions did not add any new element to the aid scheme previously approved, scheme No N 272/98.

(50) The Commission takes the view that the transitional provisions introduced by Order No 285 of 1999 might have changed the scheme the Commission had originally approved. The Commission never took any position on that implementing measure, but accepts that it never entered into force, as it was annulled by Resolution No 33/3.

(51) Scheme No N 272/98 was changed again on 27 July 2000, with the adoption of Resolutions Nos 33/4 and 33/6. As explained above (recitals 16-21), Resolution No 33/6 made amendments to the notified measure which were not compatible with the terms of the Commission's Decision to approve the aid.

(52) As explained in recital 38, the Italian authorities contend that they did notify the Commission of these implementing measures as part of the appropriate measures exercise.

(53) The Commission takes the view that the Italian authorities did not notify the resolutions referred to above, and that as part of the appropriate measures exercise they informed the Commission that Resolution No 33/4 ensured compliance with the principle of incentive effect. In the course of that exercise they never informed the Commission of Resolution No 33/6, and thus breached Article 88(3) of the EC Treaty and their duty of cooperation under Article 10 of the Treaty [1].

(54) The aid scheme thereafter applied by the abovementioned implementing provisions is consequently in contravention of the Commission's original authorising decision.

(55) The aid projects on which work started before any application for aid was made must be therefore be considered unlawful.

Compatibility

(56) The doubts as to compatibility that the Commission expressed in its letters of 3 February 2004 and 22 November 2006, which opened the formal investigation procedure, have not been challenged either by the Italian authorities or by the interested party. The Commission therefore confirms its assessment, which can be summarised as follows.

(57) As has been explained, at least 28 investment projects were started at a time when they could not qualify for aid under the scheme.

(58) The 1998 Guidelines require that an application for aid be submitted before work starts on the project.

(59) This requirement was repeated in the Commission Decision of 1998 raising no objection to the regional scheme to assist the hotel industry in Sardinia (N 272/1998); that decision expressly states that the recipients must have applied for aid before work on the project begins.

(60) Moreover, in the context of the appropriate measures exercise that followed the entry into force of the 1998 Guidelines, the Italian authorities supplied Resolution No 33/4 of 27 July 2000, Article 6 of which expressly states that costs are eligible if incurred after the submission of the application for aid.

(61) The principle of the necessity of aid is a general principle recognised by the Court in its judgment in the *Philip Morris* case [2], and is clearly an essential consideration when it has to be determined whether investments carried out by undertakings are eligible for aid under the 1998 Guidelines. The abovementioned Commission Decision and the Guidelines themselves both state that the application for aid must be submitted before work starts on the projects.

[1] 'Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks. They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty'.

[2] Case 730/79 *Philip Morris Holland BV* v *Commission* [1980] ECR 2671, paragraph 17: 'it would result in Member States' being permitted to make payments which would improve the financial situation of the recipient undertaking although they were not necessary for the attainment of the objectives specified in Article 92(3)'.

(62) The Italian authorities argue that the system operating in Italy has created a legitimate expectation that a grant will be available merely on the basis of the submission of the application, no matter whether the projects have already started or not.

(63) The Commission cannot accept this argument, as the decision approving the regional aid scheme under investigation explicitly requires that an application for aid be submitted before work on the project begins.

(64) Resolution No 33/6 was not sent to the Commission until after the complaint had been lodged. It was transmitted to the Commission only with memo No 5245 dated 22 April 2003, in the course of the procedure following the complaint (CP 15/2003). The argument of legitimate expectations invoked by the Italian authorities cannot be accepted, because the Commission did not give any specific assurances to the Italian authorities or to any other interested party, and they could not therefore harbour any legitimate expectation that this condition would not apply. 'It is settled case-law that the right to protection of legitimate expectations may be claimed by any individual who finds himself in a position in which it is shown that the Community administration gave rise to justified hopes on his part … However, no one may plead infringement of the principle of the protection of legitimate expectations in the absence of specific assurances given to him by the administration' ([1]).

(65) Nor can the Commission accept the arguments proposed by the Italian authorities according to which there was an incentive effect where the recipient applied for aid before the work started on the basis of a different regional aid scheme.

(66) The Commission takes the view that the incentive effect cannot be transferred from one scheme to another, and that the fact that an undertaking has chosen to apply under one scheme or another cannot be accepted as showing that the principle of the incentive effect has been complied with. The Italian authorities have themselves emphasised (see recital 43) that the recipient may not submit more than one application under different aid schemes in respect of the same project, and that the Sardinian regional aid scheme established by Regional Act No 9 of 1998 (N 272/98) and the countrywide regional aid scheme established by the national Act No 488 of 1992 (N 715/99) are exclusive of each other.

(67) Nor can the Commission accept the arguments advanced by the Italian authorities according to which there is indeed an incentive effect because the grants are necessary to clear bank loans covering the period between the time when the costs were incurred and the payment of the aid. The fact that an economic operator is prepared to start work, and to borrow money to finance the costs, does not in any way show that aid is needed for the project to go ahead, or that the aid provides an incentive to undertake a project which would not take place otherwise. Quite the reverse, the fact that an economic operator is prepared to start work, and to incur the financial risks inherent in the project, even without submitting an application for aid under the relevant scheme, suggests that the aid is not needed in order to provide an incentive.

(68) Lastly, the Commission cannot accept the Italian authorities' arguments with regard to the *de minimis* rule, because the *de minimis* rule cannot be invoked to circumvent the obligation contained in the Guidelines that in order to comply with the principle of incentive effect the application must be submitted before work is started on the project. The sum to be considered must relate to the project in its entirety, and not just the section granted before the application for aid. The Commission cannot accept the suggestion that it ought to consider the initial work eligible under the *de minimis* rule, thus taking it outside the scope of the Guidelines. Furthermore, not only have the Italian authorities failed to consider the projects in their entirety when calculating the *de minimis* threshold, but the same recipient may have received *de minimis* aid from other sources, and the Commission understands that the Italian authorities did not take this aspect into account.

(69) In conclusion, the Commission takes the view that the Italian authorities have failed to demonstrate that the aid was granted in accordance with the terms of the Commission's approval decision. Even if this aid were to be considered operating aid, it could not be considered compatible. Under the 1998 Guidelines operating aid may be granted on an exceptional basis in regions eligible under the exemption in Article 87(3)(a) of the Treaty. Sardinia was eligible for aid under Article 87(3)(a) during the period 1998-2006. With the exception of *de minimis* aid, however, no operating aid was approved under the scheme in question. Furthermore, the Italian authorities have not produced any evidence in the context of this investigation that might demonstrate that the aid was justified by its contribution to regional development, or its nature, nor have they shown that it is proportionate to the handicaps it seeks to alleviate.

([1]) Joined Cases T-132/96 and T-143/96 *Freistaat Sachsen and Others* v *Commission* [1999] ECR II-3663, paragraph 300.

(70) The Italian authorities have not put forward any arguments to suggest the aid concerned might be compatible with other Treaty provisions, state aid rules, frameworks or guidelines.

(71) Nor has the Commission been able to identify any other basis for the approval of the aid. As explained above, the measure does not qualify for 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. The exemptions in Article 87(2), which concern aid that has a social character and is 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). The measure does not have as its objective the promotion of culture and heritage conservation provided for in Article 87(3)(d).

(72) Accordingly, the Commission considers incompatible with the common market the aid presumably granted to projects on which work had started before the submission of an application for aid under the regional scheme of assistance to the hotel industry in the Region of Sardinia, approved by the Commission in 1998 (N 272/98), as implemented by Resolution No 33/6 in connection with the first call for applications.

(73) This finding of incompatibility applies to the entirety of aid granted towards projects whose eligible costs were incurred before the submission of an application for aid, on the basis of the implementing measures in force at the time the application was submitted, which exceeds the amount of *de minimis* aid for which the recipient may have been eligible at the relevant time, calculated in accordance with Article 2 of Regulation (EC) No 69/2001.

8. **CONCLUSIONS**

(74) The Commission finds that Italy has unlawfully implemented the aid in question in breach of Article 88(3) of the Treaty.

(75) From its assessment the Commission concludes that the aid granted towards the projects referred to above under the scheme designated 'Regional Act No 9 of 1998 — Misuse of aid N 272/98', on the basis of the first call for applications and of Resolution No 33/6, does not satisfy the tests of the 1998 Guidelines. It finds that the aid was granted unlawfully and was incompatible with the common market under Article 87(3)(a) and (c) of the EC Treaty.

(76) It is the Commission's long established practice, in accordance with Article 87 of the EC Treaty, to require recovery from the recipient of incompatible aid which has been granted unlawfully in breach of Article 88 of the EC Treaty. This practice has been confirmed by Article 14 of the Procedural Regulation.

(77) Italy must therefore take all necessary measures to recover the aid from the recipients. To that end, Italy must require the recipients to repay the aid within four months from the date of notification of this Decision.

(78) Article 14(2) of the Procedural Regulation states that 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 recipient until the date of its recovery.

(79) The interest is to be calculated in conformity with 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 [1]. The Commission asks Italy to require potential recipients of aid under the scheme to repay the aid including interest within four months of this Decision as specified below.

(80) The Commission asks Italy to provide the information requested using the questionnaire attached in Annex to this Decision, compiling a list of the recipients concerned and indicating clearly the measures planned and the measures already taken to obtain immediate and effective recovery of the illegal State aid. Within two months of the Decision the Commission asks Italy to submit all documents giving evidence that recovery proceedings have been initiated against the recipients of the illegal aid, circulars, recovery orders, etc.,

[1] OJ L 140, 30.4.2004, p. 1.

HAS ADOPTED THIS DECISION:

Article 1

The State aid granted in accordance with Regional Act No 9 of 1998, unlawfully put into effect by Italy in Resolution (*deliberazione*) No 33/6 and in the first call for applications, is incompatible with the common market unless the recipient of the aid submitted an application for aid under the scheme before starting work on an initial investment project.

Article 2

1. The Italian Republic shall recover the incompatible aid granted under the scheme referred to in Article 1 from the recipients.

2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the recipients until their actual recovery.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004 and Regulation (EC) No 271/2008 amending Regulation (EC) No 794/2004.

4. The Italian Republic shall cancel all outstanding payments of aid under the scheme referred to in Article 1 with effect from the date of adoption of this Decision.

Article 3

1. Recovery of the aid granted under the scheme referred to in Article 1 shall be immediate and effective.

2. The Italian Republic shall ensure that this Decision is implemented within four months following the date of notification of this Decision.

Article 4

1. Within two months following notification of this Decision, the Italian Republic shall submit the following information:

(a) a list of recipients of aid under the scheme referred to in Article 1 showing the total amount of aid received by each of them under the scheme. The information required shall be provided using the questionnaire attached in Annex to this Decision;

(b) the total amount to be recovered from each recipient (principal and interest);

(c) a detailed description of the measures already taken or planned to comply with this Decision;

(d) documents demonstrating that the recipients have been ordered to repay the aid.

2. The Italian Republic shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid granted under the scheme referred to in Article 1 has been completed. It shall immediately submit, upon request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and interest already recovered from the recipients.

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels on 2 July 2008.

For the Commission

Neelie KROES

Member of the Commission

ANNEX

Information regarding the implementation of the Commission Decision in case C 1/2004

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

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

— the principal,

— the interest.

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

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

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

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

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

3. **Information regarding individual recipients**

Please provide details of each recipient from whom unlawful aid granted under the scheme is to be recovered in the table below.

Identity of the recipient	Total amount of aid received under the scheme (°)	Total amount of aid to be recovered (°) (principal)	Total amount already reimbursed (°)	
			Principal	Interest

(°) In million units of national currency.