

COMMISSION DECISION**of 11 December 2002****on the existing aid scheme that Italy was authorised to implement for the Trieste Financial Services and Insurance Centre***(notified under document number C(2002) 4829)***(Only the Italian version is authentic)****(Text with EEA relevance)**

(2003/230/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 the provisions cited above ⁽¹⁾ and having regard to their comments,

Whereas:

21 March 2000 (D/51237) and 27 July 2000 (D/54024) in order to determine whether the arrangements for implementing the tax scheme were in conformity with the conditional Commission decision that authorised it ⁽⁴⁾. The Italian authorities did not reply to the requests for information.

- (4) By letter of 27 July 2000 (D/54024), the Commission informed the Italian authorities of its doubts concerning the compatibility of the scheme with the common market and invited them to submit comments within one month of the date of the letter, as provided for in Article 17(2) of Council Regulation (EC) No 659/1999 ⁽⁵⁾. The Italian authorities did not submit any comments by the deadline set. By letter of 22 September 2000, they confirmed that the Centre was not operational and that the Government was deciding on the appropriate steps to take.

I. PROCEDURE

(1) In 1998 the Commission adopted a notice on the application of the State aid rules to measures relating to direct business taxation ⁽²⁾ (hereinafter 'the notice').

(2) In accordance with paragraph 37 of the notice, the Commission undertook a review of existing tax aid systems in the Member States. As part of the review procedure, it requested information by letter of 12 February 1999 (D/50716) on the tax scheme applicable to the Trieste Financial Services and Insurance Centre. The scheme had already been approved, subject to certain conditions, in 1995 ⁽³⁾.

(3) By letter of 2 July 1999 (A/35043), the Italian authorities informed the Commission that the aid scheme had never entered into force owing to the failure to adopt all the necessary implementing legislation. The Commission asked for further information by letters of 1 December 1999 (D/64991),

(5) By letter of 11 July 2001, the Commission proposed appropriate measures to the Italian authorities aimed at:

- abolishing the scheme applicable to the Trieste Centre by 1 January 2002,
- publishing a statement by 31 October 2001 on the adoption of the necessary measures to abolish the scheme.

(6) As neither of the two requests had been complied with by 1 January 2002 and as no official reply had been received, the Commission took note of the rejection by the Italian authorities of the appropriate measures proposed. By letter of 27 February 2002, it informed Italy that it had decided to initiate proceedings under

⁽¹⁾ OJ C 115, 16.5.2002, p. 9.

⁽²⁾ Commission notice on the application of the State aid rules to measures relating to direct business taxation (OJ C 384, 10.12.1998, p. 3).

⁽³⁾ Decision 95/452/EC, 12.4.1995 (OJ L 264, 7.11.1995).

⁽⁴⁾ See footnote 3.

⁽⁵⁾ OJ L 83, 27.3.1999, p. 1.

Article 88(2) of the EC Treaty in respect of the Trieste Financial Services and Insurance Centre. Italy replied to that letter on 13 May 2002.

- (7) The Commission's decision to initiate proceedings was published in the *Official Journal of the European Communities* (6). The Commission invited other interested parties to submit comments on the measures in question. No comments were received.

II. DETAILED DESCRIPTION OF THE AID

- (8) The Trieste Financial Services and Insurance Centre was set under Article 3 of Law No 19 of 9 January 1991.
- (9) The scheme provides for the setting-up of a financial services and insurance centre in the area of Trieste (the Centre) and introduces tax relief for the financial, insurance and credit companies (resident or not) operating at the Centre with an appropriate operational structure (branch, subsidiary or agency). The tax relief comprises:
- exemption from the tax on incomes of legal persons (IRPEG), limited to profits made at the Centre and arising from transactions in the countries of central and eastern Europe and of the former Soviet Union or from trading in financial securities connected with such transactions,
 - a fixed-rate reduction in indirect business taxes (registration tax, mortgage tax and cadastral duty).
- (10) The tax concessions are valid for five years from the opening of the Centre and are subject to two limits: total aid may not exceed ITL 65 billion (about EUR 34 million), and total loans and investments in eastern Europe may not exceed EUR 3,5 billion. The companies operating in the Centre are not subject to withholding taxes on their transactions (*obblighi di sostituto d'imposta*).

III. COMMENTS FROM ITALY

- (11) By letter of 13 May 2002, the Italian authorities stated that they had already provided all the relevant information in their correspondence with the Commission.
- (12) They claimed in particular that the Centre had never become operational and that the necessary implementing rules had not been adopted. Within the

framework of the code of conduct for business taxation (7), the then Finance Minister had already confirmed by letter of 27 February 2001 that Italy did not intend to proceed with the Centre. The Italian authorities also referred to the meeting of 19 March 2002 of the Code of Conduct Group, at which the Italian representative stated that the scheme for the Centre would be dismantled within a period of time compatible with the programme of work on the code of conduct.

IV. ASSESSMENT OF THE AID

- (13) The scheme in question was approved by the Commission in 1995 (8). It contains the four elements described in Article 87(1) of the EC Treaty.
- (14) First, it confers an advantage in the form of the exemption from the tax on incomes of legal persons and from certain indirect taxes as described above in recital 9.
- (15) Second, the measure is financed through State resources, in that the abovementioned tax incentives are financed through public resources obtained from central government or local authorities and, in any event, constitute a loss of resources for those authorities.
- (16) The measure is selective inasmuch as it is limited to activities involving the supply of financial services in central and eastern European countries and those of the former Soviet Union.
- (17) Lastly, the measure might affect trade and competition as it concerns firms operating in the financial and insurance sectors. The two sectors are currently the subject of intense intra-Community trade. The fact that all the activities of the firms operating at the Centre take place outside the Community is not in itself sufficient to rule out possible distortions of intra-Community trade (9).
- (18) In its 1995 decision the Commission specifically classified the scheme in question as operating aid, stating that it was compatible with the common market under the exemption in Article 92(3)(c) (now Article 87(3)(c)) of the Treaty. As already stated in its decision formally initiating the investigation (10), the Commission had, in assessing the compatibility of the tax scheme in 1995, taken particular account of the following:
- the value to the Community of encouraging the development of the financial markets in central and

(6) See footnote 1.

(7) OJ C 2, 6.1.1998, p. 1.

(8) See footnote 3.

(9) Case 142/87 [1990] ECR-I-959, paragraph 35.

(10) See footnote 1.

eastern European countries by mobilising private capital was such as to justify the granting of operating aid, despite the distortions of competition it caused,

- the distortions of competition would be limited and would not affect trading conditions to an extent contrary to the common interest.
- (19) In view of its notice on tax relief as well as the new situation in the countries of central and eastern Europe, the Commission has reconsidered its assessment of the scheme's compatibility as the scheme authorised in 1995 has not yet become operational.
- (20) On the basis of its notice, the Commission takes the view, first, that the aid scheme in question constitutes operating aid, which is, in principle, incompatible with the single market and is therefore prohibited. Operating aid in the form of measures not linked to the introduction of specific projects but which reduce a firm's current expenses is, in principle, prohibited as it distorts competition without otherwise contributing to the achievement of Community objectives. For this reason, as stated in paragraph 32 of the notice, the Commission currently authorises operating aid only in exceptional cases and subject to certain conditions, e.g. in regions qualifying for exemption under Article 87(3)(a) of the EC Treaty and in specific sectors such as shipbuilding, environmental protection, transport and maritime transport. The scheme applicable to the Centre does not involve a region qualifying for exemption under Article 87(3)(a) or a sector or field regarded as eligible for exceptional treatment.
- (21) Second, the Commission considers that the application of the scheme would now, unlike five years ago, lead to significant distortions of competition on the market for financial services.
- (22) In 1995 the Commission considered that the aid measure proposed by Italy would be needed to facilitate the development of capital markets in central and eastern European countries, something which was unquestionably in the interests of the European Community.
- (23) However, from 1994/1995, with the entry into force of most of the Europe Agreements with the countries of eastern Europe, the development of those markets was gradually stepped up.
- (24) The Europe Agreements contain specific clauses on the liberalisation of markets and trade and on the right of

establishment, notably the reciprocal right of insurance and financial firms in the EU and the signatory countries to take up and pursue all economic activities through the setting-up and management of subsidiaries, branches and agencies⁽¹¹⁾. Consequently, the measures provided for by the scheme for the Centre would now have more serious distortive effects on competition as there are no longer the barriers to the development of capital markets in the countries in question.

- (25) In addition, since 1995 new financial instruments have been adopted to facilitate the accession of the applicant countries. The introduction of special initiatives and programmes under Agenda 2000 and the conclusions of the Berlin European Council⁽¹²⁾ have provided additional instruments for encouraging investors and underpinning the economic transition of the central and eastern European countries⁽¹³⁾. There is, accordingly, no need for a general scheme that is applicable to the financial services of all the countries of central and eastern Europe and of the former Soviet Union without distinguishing between their specific social and economic situations.
- (26) The Commission notes that neither Italy nor any other interested parties have submitted any comments on this matter.

V. CONCLUSION

- (27) The Commission finds that the State aid for the Trieste Financial Services and Insurance Centre is incompatible with the common market. As no aid has yet been granted under the scheme, it concludes that the scheme should be abolished within a short period of time,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Italy was authorised to grant to the Trieste Financial Services and Insurance Centre, set up under Article 3 of Law No 19 of 9 January 1991, is incompatible with the common market.

⁽¹¹⁾ See, for instance, Article 45 of the Europe Agreement between the European Communities and their Member States and the Czech Republic (OJ L 360, 31.12.1994), which entered into force on 1 February 1995.

⁽¹²⁾ European Council meeting on 24 and 25 March 1999.

⁽¹³⁾ Council Regulation (EC) No 1266/1999 of 21 June 1999 on coordinating aid to the applicant countries in the framework of the pre-accession strategy (OJ L 161, 26.6.1999) and Council Regulation (EC) No 1267/1999 of 21 June 1999 establishing an instrument for structural policies for pre-accession (OJ L 161, 26.6.1999).

Article 2

As from the date of notification of this Decision, Italy shall not adopt any measure designed to bring into operation the Trieste Financial Services and Insurance Centre and shall repeal Article 3 of Law No 19 within six months of the date of this Decision.

Article 3

Italy shall inform the Commission within six months of the date of notification of this Decision of the measures it has taken to comply with it.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 11 December 2002.

For the Commission

Mario MONTI

Member of the Commission
