

COMMISSION DECISION**of 25 November 1999****on aid to firms in Venice and Chioggia by way of relief from social security contributions under
Laws Nos 30/1997 and 206/1995***(notified under document number C(1999)4268)***(Only the Italian text is authentic)****(Text with EEA relevance)**

(2000/394/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 Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty⁽¹⁾ and in particular Article 14 thereof,

Having called on interested parties to submit their comments⁽²⁾ pursuant to the provisions cited above and having regard to their comments,

Whereas:

I

PROCEDURE

- (1) By letter dated 10 June 1997, the Italian authorities communicated the text of Article 27 of Decree-Law No 669 of 31 December 1996, converted into Law No 30 of 28 February 1997 containing provisions on the reduction of and exemption from social security contributions. This was done pursuant to Article 5 of Commission Decision 95/455/EC on the arrangements for reducing the social security contributions paid by firms in the Mezzogiorno⁽³⁾. That Article requires the Italian Government to notify the Commission of the measures adopted for implementing the plan for the progressive dismantling, laid down by the same Decision, of the scheme for the reduction of social security contributions benefiting firms in Sicily, Calabria, Sardinia, Basilicata, Apulia, Molise and Abruzzi.
- (2) Examination of the provisions shows that, apart from implementing the said dismantling plan, they extend the scope of the relief from social security contributions to the cities of Venice and Chioggia. The Commission asked for further information by letter dated 1 July

1997. Since no reply was received, a reminder was sent by letter dated 28 August 1997.

- (3) Since the Italian authorities failed to provide further information, the Commission notified Italy by letter dated 17 December 1997 of its decision to initiate the procedure laid down in Article 88(2) (formerly Article 93(2) of the EC Treaty regarding the aid provided for by Article 27 of Law No 30/1997 and Article 5a of Decree-Law No 96 of 29 March 1995, converted into Law No 206/1995 to which the said Article refers. These provisions extend to Venice and Chioggia the scope of the reduction of and exemption from social security contributions for the Mezzogiorno.
- (4) In the course of the proceedings an interested party, the Comitato Venezia vuole vivere (Venice wants to live committee – hereinafter ‘the Committee’) submitted comments by letter dated 17 March 1998, in the form of a memorandum and a study carried out by COSES (Consorzio per la ricerca e la formazione – Association for research and training) on the particular difficulties faced by firms operating in the lagoon of Venice and not experienced by companies based on the mainland.
- (5) The comments were forwarded to Italy.
- (6) By letter dated 23 January 1999 the Italian authorities notified their comments regarding:
- (a) National Institute of Social Insurance (INPS) tables listing the types of reduction in social security contributions granted, the number and size of the recipient firms, the number of employees involved and amounts broken down by sector and year,
- (b) their position regarding the nature of the measures and the compatibility of the aid which is the subject of the proceedings,
- (c) their position regarding the recovery of any aid considered incompatible.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1.

⁽²⁾ OJ C 51, 18.2.1998, p. 9.

⁽³⁾ OJ L 265, 8.11.1995, p. 23.

- (7) The Venice authorities also submitted their comments by letter, explaining that municipal companies also received aid under the scheme and stating that the companies in question provided public services of general interest. For this reason they requested that the relief from social security contributions granted to the municipal companies in Venice and Chioggia be exempted under Article 86(2) (formerly Article 90(2)). The Commission forwarded these comments to Italy.
- (8) By letter of 10 June 1999 the Italian authorities informed the Commission that they fully supported the Venice authorities' view that the Article 86(2) exemption should apply to the reductions in social security contributions for the municipal companies in Venice and Chioggia.
- (9) By decision of 23 June 1999, as the Commission considered that Italy had failed to provide all the necessary information to enable it to assess whether the measures concerning the municipal companies of Venice and Chioggia could be exempted under Article 86(2) of the Treaty, it gave Italy notice to provide it with all such documentation, information and data as are necessary to enable it to examine the compatibility of the reductions with the common market.
- (10) The Italian authorities replied by letter of 27 July 1999.
- (11) A meeting was held with the Italian authorities in Brussels on 12 October 1999.
- (12) No other Member State or third party submitted comments.

II

DESCRIPTION OF THE AID

- (13) The aid provided for under Article 5a of Law No 206/1995 and Article 27 of Law No 30/1997 concerns:
- (a) reductions in social security contributions under Article 1 of the Decree of the Minister of Labour of 5 August 1994 (which was the subject of Decision 95/455/EC) for companies situated in Venice and Chioggia;
- (b) exemption from social security contributions under Article 2 of the Decree of 5 August 1994 for net job creation in companies in Venice and Chioggia.

The data supplied by INPS can be summarised in the table below:

1995 to 1997 — annual average

	General reduction (Article 1 of Ministerial Decree of 5 August 1994)	Exemption for net job creation (Article 2 of Ministerial Decree of 5 August 1994)
Amount of aid	ITL 73 billion (EUR 37,7 million)	ITL 567 million (EUR 292 831)
Number of firms assisted	1 645	165

- (14) The Italian authorities stated that they had suspended the scheme with effect from 1 December 1997. authorities, average annual aid per employee amounts to EUR 300.
- (15) INPS indicated that exemptions from social security contributions for net job creation were granted for one year for the net jobs created within the company in relation to a reference period (the 30 November prior to the exemption period). The company is not allowed to have laid off staff and the employees taken on must have been unemployed. According to the Italian
- (16) When the Commission initiated the procedure under Article 88(2) of the Treaty, it observed that the reduction of social security contributions for existing jobs constituted *prima facie* operating aid. This type of aid can be authorised, under certain conditions, only in regions eligible for exemption under Article 87(3)(a) of the Treaty. The cities of Chioggia and Venice are not eligible for this exemption, since they do not belong to a NUTS level II region with a per capita GDP lower

than 75 % of the Community average⁽⁴⁾. As regards the exemption from social security contributions for new jobs created, the Commission observed that, since it was a question of total exemption and since the Italian Government had not provided any further information for its assessment, it was not in a position to conclude that the amount of aid was proportional to the objective pursued. Moreover, while the city of Chioggia is eligible for regional aid under Article 87(3)(c), the city of Venice is only partly eligible for that derogation. It also expressed doubts regarding the compatibility of the measures with the common market in that, in the areas of Venice not eligible for regional aid, the aid does not appear to be consistent with the guidelines on aid to employment, as it does not appear to be limited to small and medium-sized enterprises (SME) nor intended to encourage firms to take on certain groups of workers experiencing particular difficulties entering or re-entering the labour market.

III

COMMENTS FROM THE INTERESTED PARTIES

A. The question whether the relief from social security contributions constitutes the aid

The Italian authorities's comments

- (17) The Italian authorities pointed out that the reductions were intended to offset the additional costs incurred by firms operating on the lagoon islands and were granted to everyone employed by firms located on the Venetian islands. The additional costs incurred by the firms are:
- (a) increased costs of location as a result of higher purchase prices or rents charged for premises and higher maintenance costs;
 - (b) the logistical disadvantage of frequent intermediate reloading in connection with the transport of stocks and goods;
 - (c) the increased cost of goods and services because the firms operate in a city which is also a popular tourist resort;

- (d) additional costs incurred owing to legal constraints and restrictions designed to safeguard the historical and scenic heritage of the area and special safety regulations;
- (e) additional disadvantages deriving from environmental factors (seasonal flooding, fog and tides);
- (f) disadvantages caused by the declining and ageing population, which limits the number of firms operating locally.

(18) The reductions of and exemptions from social security contributions should not be considered aid, since they in no way strengthened the position of the recipient companies. They were rather a method of offsetting the more significant disadvantages faced by companies operating in the lagoon area.

(19) The Italian authorities referred to the details of the COSES study to demonstrate that the additional costs incurred by Venetian companies were far greater than the benefits they derived from the reduction of and exemption from social security contributions⁽⁵⁾.

(20) Therefore the companies located in the lagoon area were not viewed as enjoying any advantage over other companies with regard to costs normally incurred. In fact, State involvement was seen as having the effect of partly redressing the competitive balance between companies. Instead of distorting competition, the aid at least partly restored it by enabling the recipient companies to compete with others on a more equal footing.

(21) Failure to provide this assistance would amount to leaving the city to waste away, as could be seen from the tendency to move to the mainland.

The Committee's comments

(22) The Committee's observations reiterated the comments already set out but also pointed out that there was no real or potential distortion of competition, as the reductions of and exemptions from social security contributions were a method of compensating for costs incurred by companies operating in the lagoon area.

⁽⁴⁾ See point 1 of the Commission communication on the method for the application of Article 92(3)(a) and (c) to regional aid (OJ C 212, 12.8.1988, p. 2), now replaced by the guidelines on national regional aid (OJ C 74, 10.3.1988, p. 9).

⁽⁵⁾ According to the COSES study, the impact of the relief from social security contributions is equivalent to 2,9 % of turnover, while the impact of the additional costs is the equivalent of 9,5 %.

The cost breakdown was extremely similar to that of the Italian authorities⁽⁶⁾. The measures in question were intended to level the playing field with regard to competition between companies, which was in keeping with the aims of the Treaty. For this reason they were not detrimental to competition and therefore did not fall into the category of aid within the meaning of Article 87(1) of the Treaty.

- (23) The Committee also pointed out a close and inseparable link between the relief in question and the intrinsic added cost of being based in Venice. The measures were intended to promote employment; they were linked to the development of the region. As the measures were simply a form of compensation⁽⁷⁾, the authors of the study concluded that the reductions should not be considered aid within the meaning of Article 87 of the Treaty.

Venice local authorities' comments

- (24) The Venice local authorities pointed out that if the relief from social security contributions were to be regarded as aid, it had to have an impact on intra-Community trade and distort competition.
- (25) The authorities explained that the city of Venice had asked to be included on the list of regions eligible for Structural Fund assistance under Objective 2 in the coming programming period. If the aid were declared incompatible and the funds ordered to be recovered, this would effectively cancel out any benefits deriving from Structural Fund assistance and therefore from the cohesion policy. The fact that the city did not enjoy

⁽⁶⁾ The Committee lists the following additional costs:

- (a) logistical and structural costs, including the higher maintenance costs and the expense of adapting the buildings, costs resulting from the need to use warehouses which need to be higher to combat the effects of humidity and tides, higher prices for purchasing or renting property and additional costs as a consequence of architectural limitations and scenic and safety restrictions;
- (b) operational disadvantages, including the need for transshipments when transporting stocks and goods, the higher cost of goods and services, which is in part a consequence of relatively static tourist demand notwithstanding price increases;
- (c) higher personnel costs owing to the emoluments paid to employees who agree to work in Venice;
- (d) commercial disadvantages caused by out-migration and the gradual ageing of the population of Venice, which make it more difficult to have contact with customers and sell products;
- (e) weather-related disadvantages (seasonal flooding, fog and tides).

⁽⁷⁾ The Italian authorities referred to the 'neutral' nature of the measures and cited the case of aid granted to the textile, clothing and leather/footwear industry by France in the form of reductions in social security contributions in connection with reorganising working hours (OJ C 357, 26.11.1996, p. 5).

Objective 2 status at the time was irrelevant, since the practical situation was no different from that which would obtain from 1 January 2000, the date of the start of the new Structural Funds programming period.

- (26) Examination of the Treaty provisions covering cohesion and competition, they argued, revealed that, constitutionally speaking, cohesion was a higher principle than competition and that those provisions prevailed. It therefore followed that competition legislation, particularly on State aid, was intended to bring about fair competition, not free competition. This could be achieved only by restoring the conditions of freedom to compete.

B. Compatibility of the aid

The Italian authorities' comments

- (27) If the measures were to be considered aid, the Italian authorities requested an exemption under Article 87 (formerly Article 92(3)(a) and (c) of the Treaty, as the measures were intended as part of a regional policy and had little impact on competition or intra-Community trade. The underlying reason for the exemption would be economic cohesion to enable all companies to pursue Community objectives that market forces would not allow them to achieve within a reasonable period of time. Moreover, the Italian authorities cited the case-law of the Court of the Justice of the European Communities in support of their request that the Commission demonstrate the impact of the measures on competition⁽⁸⁾.
- (28) The Italian authorities claimed that the measures prevented out-migration from the city of Venice, the decline of its industrial activities and the transformation of Venice into a living museum devoid of any vitality or potential for development.
- (29) They observed that the various Community guidelines were not suitable to justify the relief in question and argued that the Commission should not apply the principles too rigidly as this would not be in the spirit of the exemptions provided for under the Treaty.
- (30) They recalled that in the Community guidelines on State aid for undertakings in deprived urban areas⁽⁹⁾ the Commission acknowledges that the rules governing regional aid do not reflect the needs of geographically

⁽⁸⁾ Case 296/82 Netherlands and Leuwarder v. Commission [1985] ECR 809.

⁽⁹⁾ OJ C 146, 14.5.1997, p. 6.

limited areas. Therefore the Commission should recognise the regional objectives behind these measures which, in the view of the Italian Government, consisted of preventing out-migration from the city and urban decline caused by companies being forced to relocate on account of the additional costs they had to meet in order to stay in the area.

- (31) These considerations were behind the changes to the method for the application of Article 87(3)(c) to regional aid for northern Europe⁽¹⁰⁾.
- (32) They claimed that the exemption under Article 87(3)(a) and (c) of the Treaty could be applied to these measures for the following reasons:
- (a) the reductions and exemptions contributed to the long-term development of the islands of the Venice region;
 - (b) it was a matter of Community interest that the islands of the Venice region benefit from the measures; there was a clear link between safeguarding the economy of Venice and the preservation of the city as a place of universal interest as described by Unesco;
 - (c) the measures had no impact on intra-Community trade, as they were a method of offsetting additional burdens faced by Venetian companies and because the Venetian economy served a local market.
- (33) The peculiarity or, rather, uniqueness of Venice's situation should enable the Commission to adopt a flexible attitude when assessing the measures. The island status of the area should provide an additional reason for adopting this approach in the light of Declaration No 30 on the island regions annexed to the Final Act of the Treaty of Amsterdam.
- (34) The arguments employed by the Italian authorities were reiterated by the Committee to urge the Commission to adopt more flexible criteria when assessing the relief from social security contributions.
- (35) The Committee repeated the particular needs which form the basis for the guidelines on deprived urban areas, pointing out that the Commission had also adopted a flexible approach in connection with the north of the province of Madrid, which was exempted under Article 87(3)(c) although it was part of a NUTS III region and therefore ineligible.
- (36) Furthermore, problems similar to those experienced by Venice had led the Commission to change the rules governing the application of the exemptions under Article 87(3)(c) to the peripheral and sparsely populated regions of northern Europe; island regions should be treated favourably in line with Declaration No 30.
- (37) They argued that the aid in question was proportional, since it was the only way to stem the tide of companies relocating to the mainland.
- (38) The aid granted did not affect trade to an extent that was detrimental to the Community interest. Most of the recipient companies were SMEs and had already received aid under the *de minimis* threshold. Moreover, they were primarily operating locally. Given the problems of operating from the islands, the companies were not very competitive in relation to the outside world but could be affected by competition from outside. Venetian manufacturing destined for export was based on traditional products, such as glass.
- (39) For all of the reasons set out above, the measures should be considered compatible on the basis of the exemption under Article 87(3)(c). The Committee also requested the application of the exemption under Article 87(3)(a), pointing out that to preserve Venice, which had been declared a protected monument by Unesco, steps needed to be taken to revitalise the economy of the city and its firms. Left without an economic and social base, the city would become a museum. The Committee also asked the Commission to present a proposal to the Council to authorise the measures on the basis of the exemption under Article 87(3)(e), given the exceptional nature and urgency of the situation.

The Committee's comments

- (34) The Committee believes that, should the measures be considered aid within the meaning of Article 87 of the Treaty, the Commission should exempt them under the provisions of Article 87(3)(a) and (c), as they were regional aid measures, had only a minor impact on intra-Community trade and helped to safeguard Venice's historical and artistic heritage.
- (35) The Committee pointed out that part of the region where the relief applied was entitled to a derogation under Article 87(3)(c).

⁽¹⁰⁾ OJ C 364, 20.12.1994, p. 8.

Venice local authorities' comments

- (42) For the most part, the local authorities used the same arguments as those set out above to request the application of the exemption under Article 87(3)(a) and (c) of the Treaty. They asked the Government to include Venice among the regions exempted under Article 87(3)(c) of the Treaty, arguing that, without these measures to restore a level playing field for the recipient companies, the additional costs and difficulties involved in operating from the lagoon area would force the firms into decline and lead to their disappearance. Without this assistance untrammelled market forces would not achieve one of the objectives of the exemptions, namely regional development.

C. The municipal companies

- (43) The Venice local authorities confirmed that certain municipal companies had benefited from the relief. They pointed out that these companies were entrusted with the operation of public services of general interest and for this reason could be exempted under Article 86(2), in accordance with rulings of the Court of First Instance of the European Communities⁽¹⁾.
- (44) The Italian authorities agreed wholeheartedly with the comments forwarded by the Venice authorities in support of their request that the relief from social security contributions for the municipal companies in Venice and Chioggia be exempted under Article 86(2).

D. The *de minimis* rule

- (45) The Italian Government and the Venice authorities pointed out that most of the measures in question provided SMEs with assistance far below the threshold set out in the *de minimis* rule⁽¹²⁾.

E. The possibility of a recovery order

- (46) The Italian authorities cited a number of Commission Decisions and Court rulings to illustrate the discretionary nature of recovery. They also cited Decision 95/455/EC, where at point 15 the Commission endorsed the general principle that in special situations with a limited impact

on competition there need be no recourse to recovery if the aid is stopped.

- (47) The Italian authorities listed three Decisions where, for specific reasons, the Commission did not order aid to be recovered. In their view, the specific reasons for not requiring recovery of the aid were that:
- (a) the companies were located in an island region;
 - (b) their activities were local;
 - (c) no third party had expressed an interest in the proceedings;
 - (d) the scheme was stopped on 30 September 1997.

IV

ASSESSMENT

- (48) The measures in question are part of an aid scheme, as provided for by a law concerning all companies in the regions involved. Consequently, and in line with the case-law of the Court of Justice⁽¹³⁾, they cannot be considered ad hoc cases, as claimed by the Committee.

The aid element involved in the scheme

- (49) The Commission takes the view that the measures involved in the scheme constitute state aid within the meaning of Article 87(1) of the Treaty. First of all, they result in a loss of contributions for INPS, which amounts to a use of public funds. Secondly, the assistance was granted to selected companies based in the lagoon area, which do not have to bear costs that they would normally incur. Therefore they enjoy an advantage over competing companies forced to bear the full cost of making social security contributions. Moreover, competition and trade between Member States is affected, in that all companies benefit from reductions in social security contributions, including those operating in areas where there is trade between Member States. In particular, according to the information notified by the Italian authorities, some of the recipient companies operate in sectors of intense trading activity, such as the manufacturing and service sectors.

⁽¹⁾ Case T-106/95 *Fédération française des sociétés d'assurances v. Commission* [1997] ECR II-229.

⁽¹²⁾ Commission notice on the *de minimis* rule for State aid, OJ C 68, 6.3.1996, p. 9.

⁽¹³⁾ Joined Cases C-324/90 and C-342/90 *Germany and Pleuger Worthington v. Commission* [1994] ECR I-1173.

- (50) Although most of the recipient companies are SMEs, and therefore less likely to be active outside the domestic market, the measures distort competition and have an impact on intra-Community trade, not only because part of their production is exported to other Member States, but also because companies located in other Member States have less chance of being able to export their products⁽¹⁴⁾.
- (51) With regard to the arguments put forward by the Italian authorities and interested third parties to the effect that the measures compensated companies operating in the lagoon area for the additional costs they had to bear, the Commission finds as follows.
- (52) The fact that a measure is of a compensatory nature does not mean that it is not an aid measure within the meaning of Article 87(1) of the Treaty. Article 87(2)(b) defines as compatible 'aid to make good the damage caused by natural disasters ...'. It follows that the notion of aid is not dependent on whether a measure is designed as a form of compensation. In certain cases, however, the compensation aspect may be taken into consideration when assessing compatibility.
- (53) Moreover, it should be borne in mind that the Treaty is not intended to ensure perfect theoretical equality between companies, since companies operate in a real-life context and not in a perfect market where they are all subject to the same conditions.
- (54) Furthermore, the additional costs borne by Venetian companies are calculated in relation to savings that would have been made if the companies had relocated to the mainland, not to average costs borne by companies in the Community. Therefore, the comparison is not made with a typical situation, but with a situation which would favour the companies in question.
- (55) The Commission's assessment in a Decision cited by the Italian authorities that certain aid granted to the textile sector was neutral was based on an examination of average costs in the sector and included the form of aid involved in the measures assessed.
- (56) The Commission points out that, more generally speaking, Article 87 does not distinguish between measures on the basis of cause or aim; it defines them according to their impact on competition⁽¹⁵⁾.
- (57) The argument presented by the Italian authorities that the measures are neutral because the companies do not export their products cannot be accepted. Trade between Member States is harmed when the opportunities for companies located in other Member States to export their products to any market are reduced⁽¹⁶⁾.
- (58) The Venice authorities asked the Commission to prove that the measures had an impact on intra-Community trade. The Commission notes that the scheme is designed to favour companies involved in trade between Member States⁽¹⁷⁾. As this is a scheme and not an ad hoc case, this constitutes sufficient grounds for finding that there is an impact on trade. Moreover, the Commission is not required to demonstrate the actual impact on intra-Community trade in the case of an unnotified scheme, in so far as any other decision would favour Member States which grant aid in violation of the notification requirements to the detriment of States which notify planned aid⁽¹⁸⁾.
- (59) The claims that, according to the Treaty, cohesion legislation prevails over rules on State aid are in the Commission's view unfounded. The reference in the first indent of Article 2 of the Treaty on European Union (formerly Article B) to cohesion as one of the objectives of the Union must be taken in conjunction with the reference in the fifth indent to the objective of maintaining in full the *acquis communautaire* and building on it. Article 2 also sets the objective of promoting a harmonious and balanced development of economic activities which includes rules on competition and economic and social cohesion. In the list of activities provided for under Article 3 of the Treaty to achieve the purposes set out in Article 2, competition policy is dealt with under Article 3(1)(g) and the strengthening of

⁽¹⁵⁾ Case 173/74 Italy v. Commission [1974] ECR 709.

⁽¹⁶⁾ Case 102/87 France v. Commission [1988] ECR 4067.

⁽¹⁷⁾ Case 248/84 Germany v. Commission [1987] ECR 4013.

⁽¹⁸⁾ Case T-214/95 Het Vlaamse Gewest v. Commission [1998] ECR II-0717.

⁽¹⁴⁾ Case C-102/87 SEB v. Commission [1988] ECR I-4067.

economic and social cohesion under Article 3(1)(j). The Treaty provisions therefore do not bear out the claim that cohesion policy is a higher priority than competition policy.

Lastly, if secondary legislation is taken into consideration, Article 7 of Council Regulation (EEC) No 2052/88 on the tasks of the Structural Funds clearly states that cohesion measures must be in keeping with competition rules⁽¹⁹⁾, which once again refutes any claim of superiority for cohesion policy.

Compatibility of the aid measures provided for by the scheme

(60) Having established that the measures under scrutiny constitute State aid within the meaning of Article 87(1) of the Treaty, the Commission has to examine whether they may be declared compatible with the common market in pursuance of Article 87(2) or (3) of the Treaty.

(61) As regards the aid granted under Article 2 of the Decree of 5 August 1994 in the form of an exemption from social security contributions to promote job creation, the Community guidelines on aid to employment ('the employment guidelines'⁽²⁰⁾), specify that the Commission will be favourably disposed, *inter alia*, towards aid for net job creation if it is reserved for SMEs or regions eligible for regional aid. The guidelines also specify that the Commission will ensure that the aid is proportionate to the aim to be achieved. On the basis of the information supplied by INPS, the Commission can conclude that the measure in question is intended for net job creation within the meaning of the employment guidelines and as approved by Decision 95/455/EC. The amount of around EUR 300 per job created is proportionate to the aim pursued since it is small in relation to the total cost of employing a worker. However, while the city of Chioggia is eligible for regional aid under Article 87(3)(c)⁽²¹⁾, the city of Venice was only partly eligible for that derogation during the period concerned. In the areas of Venice not eligible for regional aid, the aid is compatible with the common market in accordance with the employment guidelines only if it is not limited to SMEs. Accordingly, in line with the first indent of point 21 of the

employment guidelines, the aid is compatible with the common market where it is granted to SMEs. The aid granted to firms which are not SMEs is compatible where they operate in an area eligible for exemption under Article 87(3)(c) of the Treaty.

(62) Outside these two categories, namely SMEs and large firms operating in an area eligible for exemption under Article 87(3)(c) of the Treaty, aid may be exempted where it is granted to firms which have taken on certain groups of workers experiencing particular difficulties entering or re-entering the labour market.

(63) Having due regard to point 23 of the employment guidelines, the above analysis also applies to firms in sensitive sectors since the scheme in question is not limited to one or more sensitive sectors but applies without distinction to all sectors of the economy.

(64) Unlike the measures discussed in point 61, the reductions in social security contributions provided for in Article 1 of the Decree of 5 August 1994 constitute aid to maintain jobs granted in favour of all the employees of firms operating in the lagoon area.

(65) Point 22 of the employment guidelines stated that aid to maintain jobs, which is similar to operating aid, may be authorised only under the following conditions:

- (a) where it is intended to make good damage caused by natural disasters or exceptional occurrences (Article 87(2)(b) of the Treaty);
- (b) where it is granted to firms located in regions eligible for exemption under Article 87(3)(a) of the Treaty;
- (c) where it forms part of a restructuring plan for an ailing firm in accordance with the conditions laid down in the Community guidelines on State aid for rescuing and restructuring firms in difficulty⁽²²⁾.

Since these conditions are not met in the case in point, the reductions in social security contributions provided for in Article 1 of the Decree of 5 August 1994 cannot be regarded as compatible with the common market under the employment guidelines.

⁽¹⁹⁾ OJ L 185, 15.7.1988, p. 9, repealed as of 1 January 2000 by Council Regulation (EC) No 1260/99 (OJ L 161, 26.6.1999, p. 1).

⁽²⁰⁾ OJ C 334, 12.12.1995, p. 4.

⁽²¹⁾ See the Commission decision notified to the Italian Government by letter dated 30 June 1997, concerning, *inter alia*, the list of areas eligible for regional aid.

⁽²²⁾ OJ C 368, 23.12.1994, p. 12.

(66) All the parties which submitted comments urge the Commission, in view of the special situation of Venice, to refrain from applying the rule referred to in point 65 and to adopt a special derogation for that city. According to the Italian authorities, such a derogation should be based on the regional exemptions provided for in Article 87(3)(a) or (c) of the Treaty, while the interested third parties call for the application, in addition to the latter, of the 'cultural' exemption provided for by Article 87(3)(d) or of a specific derogation that the Commission could propose for adoption by the Council under Article 87(3)(e).

The regional exemptions

(67) As regards the regional exemption provided for by Article 87(3)(a) of the Treaty, no explanation has been given as to why it should be applied. The arguments put forward by the Italian authorities and interested parties in support of applying a regional exemption to the aid measures under examination are based on the need to avert population decline in Venice and the erosion of its industrial base and prevent it becoming a 'museum city' with no vitality and development potential.

(68) The Commission would point out first of all that only part of the territory of the city of Venice is included in the list of Italian regions eligible for the regional exemptions. It would also stress that, when the regional aid map was drawn up by Italy on the basis of proposals from the Italian authorities, the city of Venice was not proposed in its entirety as a region in which the derogation provided for in Article 87(3)(c) of the Treaty was to apply.

(69) The criteria for determining the eligibility of an area for the regional exemptions, the type of aid that can be granted therein and the intensity of such aid were laid down by the Commission in its communication on the method for the application of Article 87(3)(a) and (c) of the Treaty to regional aid⁽²³⁾. Only aid granted in accordance with that method may be regarded as regional aid. In applying Article 87(3)(c), the Commission bases its decisions on a method of assessing the socio-economic situation of a region in both the national and the Community context. This enables it, in the Community interest, to establish whether there is a significant regional imbalance and, if so, to allow the Member State concerned, irrespective of its level of economic development, to implement a national regional aid policy.

(70) Regional aid is furthermore intended to support productive investment or job creation linked to such investment. Since they are independent of any kind of investment, the measures in question designed to

stimulate job creation cannot be regarded as regional measures.

(71) In reply to the arguments adduced in support of the claim that the Commission has occasionally used the regional exemption provided for by Article 87(3)(c) of the Treaty in order to apply rules departing from those set out in the communication mentioned in point 69, as in the case of an area in the north of the Province of Madrid, the Commission stresses the following.

(72) It is not correct to describe State aid to firms in deprived urban areas as regional aid⁽²⁴⁾. The rules laid down by the relevant guidelines refer to Article 87(3)(c) and concern assessment of the compatibility of aid granted by Member States to urban areas 'for which the socio-economic indicators are significantly worse than the average for the cities to which they belong'. Those rules cannot be regarded as exceptions to the rules laid down in the communication mentioned in point 69. Neither can they be applied in the case in point since the conditions governing the eligibility of areas, enterprises and activities are not satisfied⁽²⁵⁾.

(73) The method for the application of Article 87(3)(c) of the Treaty to regional aid was amended⁽²⁶⁾ when Finland and Sweden joined the Community. The Commission made those changes because the existing Community rules did not adequately reflect the special features of some areas of the Nordic countries (remote northern location of some areas, harsh weather conditions and very long distances), as stated in point 4 of the notice. The Commission's aim was to find a test of eligibility that satisfied two conditions: it had to continue to be of general application, i.e. potentially applicable to any country, and it should not disrupt the organisation of the Community and particularly the system of regional aid currently in force.

(74) The Commission does not intend to amend the method for the application of Article 87(3)(c) of the Treaty in order to adapt it to the case under examination. The situation in Venice has not changed, and the proposed aid is such as to disrupt the system of aid in force since

⁽²⁴⁾ See footnote 9.

⁽²⁵⁾ The conditions for the application of the guidelines in question stipulate, *inter alia*, that the deprived urban area must have a population of between 10 000 and 30 000 and belong to a city or urban agglomeration with at least 100 000 inhabitants. Although the Municipality of Venice had a population of 293 727 in 1997, the historic centre of the city had 68 600 inhabitants and the islands 45 382. These population figures do not allow the guidelines in question to be applied to the area under examination. As far as eligible firms are concerned, the guidelines refer only to small enterprises in accordance with the Community definition. An Annex to guidelines also lists the eligible sectors.

⁽²⁶⁾ See footnote 10.

⁽²³⁾ See footnote 4.

it is operating aid granted to a region that does not suffer from acute problems of economic and social cohesion. The socio-economic indicators for the areas concerned during the period in question were a per capita GDP equal to 122,3 % and an unemployment rate equal to 70,8 % of the Community average. These figures are not indicative of an abnormally low standard of living or serious underemployment.

(75) The Commission already examined in Decision 95/455/EC the reductions in social security contributions provided for by Article 1 of the Decree of 5 August 1994. In that Decision it found that they constituted operating aid and deemed them compatible with the common market where they were degressive and temporary and granted in a region eligible for the derogation provided for in Article 87(3)(a) of the Treaty. The Venice lagoon does not qualify for that derogation.

(76) As regards the fact that the same aid was already deemed compatible in two regions of the Mezzogiorno eligible for exemption under Article 87(3)(c)⁽²⁷⁾ the Commission explained in Decision 95/455/EC that that assessment had been made in relation to temporary support measures for firms located in regions that had ceased to be eligible for exemption under Article 87(3)(a) of the Treaty. Those support measures consisted, *inter alia*, of certain forms of operating aid. That approach clearly cannot be taken in the case of Venice and Chioggia, which have never been eligible for that exemption and currently only partly qualify for exemption under Article 87(3)(c).

(77) As regards the exceptional case in which exemptions were allowed in an area in the north of the Province of Madrid, it should be pointed out that, in Decision 93/353/EEC⁽²⁸⁾, the Commission found that the area in question was not eligible for regional aid. The Spanish national regional aid scheme could therefore be applied in that area only in respect of SMEs, and more specifically SMEs located in areas eligible for Structural Fund assistance, up to 31 December 1993. The intensity of the investment aid was partly reduced and limited to 10 % for medium-sized enterprises, 20 % for small enterprises and 40 % for micro-enterprises. In this case the Commission based its decision on a generally

applicable rule set out in the last paragraph of point 4.1 of the Community guidelines on State aid for small and medium-sized enterprises⁽²⁹⁾.

(78) As far as the regional development objective of the aid is concerned, the Commission notes that, given their characteristics, the measures are not related to the structural difficulties they seek to overcome. There is no connection between the reductions in social security contributions granted per person employed and transport costs, the costs of purchasing, renting and maintain buildings, and administrative burdens imposed by legal, architectural and scenic constraints and other public restrictions⁽³⁰⁾.

The cultural exemption

(79) On the subject of the cultural objective of the aid granted in the form of relief from social security contributions in the lagoon area, the Commission points out that the Italian Government has never sought to rely on the exemption provided for by Article 87(3)(d) of the Treaty, having always argued that the measures under examination constitute regional aid and qualify for the regional exemption.

(80) There are two aspects to Article 87(3)(d) of the Treaty, which may be applied in respect of aid to promote culture or heritage conservation.

(81) With regard to heritage conservation, the Italian Government and the Committee include in the list of additional costs which they claim are borne by Venetian firms the extra costs of complying with architectural and scenic constraints. Such costs are not, however, incurred by all firms; it follows that while the relief is granted to all firms, only some of them bear costs linked to heritage conservation. Furthermore, even if the relief were restricted to firms occupying buildings subject to architectural and scenic constraints and therefore actually incurring such additional costs, the advantage deriving from the aid would not be proportional to the costs incurred. The aid could prove insufficient for achieving the objective of heritage conservation where granted to a firm employing few people in relation to the artistic heritage to be preserved or, conversely, excessive where granted to a firm with many employees but limited heritage conservation costs.

⁽²⁷⁾ Although they qualified for Structural Fund assistance under Objective 1, the two regions concerned (Abruzzi and Molise) were no longer eligible for exemption under Article 87(3)(a) since their per capita GDP expressed as a percentage of the Community average (89,85 % for Abruzzi and 78,97 % for Molise) greatly exceeded the threshold for eligibility for exemption under Article 87(3)(a), set at 75 %.

⁽²⁸⁾ OJ L 145, 17.6.1993, p. 25.

⁽²⁹⁾ OJ C 213, 19.8.1992, p. 2.

⁽³⁰⁾ These burdens are furthermore not linked per se to the island status as such of the lagoon and therefore do not constitute structural handicaps of the islands which any guidelines drawn up on the basis of the new Declaration No 30 introduced by the Amsterdam Treaty could take into account.

The derogation cannot therefore be allowed since the method of implementation of the aid does not make it possible to ensure that it is proportional to the objective of heritage conservation.

- (82) As far as the promotion of culture is concerned, the Commission considers that the approach must be based on the generally accepted definition of the term and that the concept cannot be interpreted broadly. The argument put forward by the Committee, namely that promoting the economic activities that constitute the lifeblood of Venice contributes to conservation of the city, which Unesco has designated as belonging to the world cultural heritage, is too superficial and vague in relation to the cultural objectives covered by this derogation.

The exemption provided for by Article 87(3)(e) of the Treaty

- (83) In its conclusions the Committee, in the hope that the aid will be deemed compatible with the common market, calls for application of the exemption provided for by Article 87(3)(e), which reads 'such other categories of aid as may be specified by a decision of the Council acting by a qualified majority on a proposal from the Commission'.
- (84) On the basis of the categories of aid already specified in the exemptions provided for by Article 87(3), the Commission has drawn up the Community guidelines on aid to employment, which constitute an adequate body of rules governing that category of aid. Furthermore, even if the Council were to specify a new category of aid, this would not automatically render aid belonging to such a category compatible with the common market but would still require the Commission to take a decision assessing the compatibility of a specific instance of aid and possibly also to adopt guidelines for the new aid category. Neither could the Commission disregard the relevant and currently applicable rules when assessing aid that has been put into effect unlawfully.

Municipal companies

- (85) In the comments they submitted as an interested party, the Venice local authorities argue that the municipal companies benefiting from the relief are entrusted, by the public authorities, with the operation of a service of general public interest and that the aid is necessary for the performance of the 'particular tasks assigned to them'.
- (86) The Venice local authorities claim that Article 87 of the Treaty consequently does not apply on account of the exemption provided for by Article 86(2). They also argue that some of the firms in question operate in sectors that have not been liberalised and enjoy a monopoly, with the result that the relief granted does not distort competition. These comments were repeated by the Italian authorities in their reply to the Commission's letter of 23 June 1999 giving them notice

to supply all the necessary information and documentation for assessing the aid.

- (87) The Italian authorities state that the firms in question enjoy a monopoly and claim that they qualify for exemption under Article 86(2) of the Treaty. They submitted a list of six municipal companies which they claim are entrusted with the operation of services of general interest. The firms in question provide the following services: scheduled urban and suburban public transport (ACTV); ship's towage in the port of Venice (Panfido SpA); integrated water management (ASPIV); school cleaning, public park maintenance and other welfare services (AMAV); operation of the Venice casino; and conservation of Venice and the lagoon (Consorzio Venezia Nuova).
- (88) For some of these companies the Italian authorities provided accounting data intended to demonstrate that the relief granted served exclusively to offset the additional costs they incurred in carrying out public service tasks.
- (89) The Commission has examined the case of each of these companies individually.
- (90) In the case of the company providing scheduled urban public transport (ACTV), the service, including transport in the lagoon, which given the special situation of Venice can be treated in the same way as scheduled urban public transport, was during the period concerned operated under a monopoly established by law, in a non-liberalised sector. The fact that a sector has not been liberalised is not always a sufficient condition for ruling out any impact on trade. However, in the case in point, since the service is provided locally and there is no scope for potential competition as ACTV has been granted an exclusive right to operate it and the instrument granting that right to ACTV allows the firm to engage only in the activities specified therein, there can be no impact on trade. In view of the foregoing, the relief from social security contributions granted to ACTV cannot be regarded as aid since the conditions for the application of Article 87(1) of the Treaty are not met in the case in point, there being no impact on intra-Community trade. In such circumstances it is not necessary to ascertain whether the exemption provided for by Article 86(2) is applicable.
- (91) As regards the company entrusted with ships' towage in the port of Venice (Panfido SpA), the activity is performed locally and in a non-liberalised sector. Since Panfido has an exclusive right to operate the service and the instrument granting that right allows the firm to

engage only in the activities specified therein, there is no impact on trade. The relief from social security contributions granted to Panfido cannot be regarded as aid since the conditions for the application of Article 87(1) of the Treaty are not met in the case in point, there being no impact on intra-Community trade.

(92) In the case of the company responsible for integrated water management (ASPIV), the conditions for application of the exemption provided for by Article 86(2) of the Treaty are met. The activity concerned here is the operation of a service of general economic interest which has been assigned, by means of a formal decision by a public authority, to a non-profit-making public enterprise. The Italian authorities have demonstrated that the relief from social security contributions granted to ASPIV is intended exclusively to offset the additional costs deriving from performance of the specific public service tasks assigned to the firm. The aid granted to ASPIV is therefore compatible with the common market.

(93) The company providing community services such as the cleaning of schools, maintenance of public parks and other welfare services (AMAV) operates locally and its activities therefore have no impact on intra-Community trade. Accordingly, the relief from social security contributions granted to it does not constitute aid as the conditions for the application of Article 87(1) of the Treaty are not met.

(94) The Commission regards the operation of the Venice casino as a commercial activity subject to competitive forces and therefore falling within the scope of Article 87 of the Treaty. On the question of the exemption provided for by Article 86(2) of the Treaty, the Commission notes that the activities of the casino cannot be regarded as services of general economic interest since the public authorities have not imposed public service obligations of general interest in respect of those activities.

(95) The general analysis set out in points 61 to 65 consequently applies to the firm in question.

(96) In the case of Consorzio Venezia Nuova, which looks after the conservation of Venice and the lagoon, the Commission notes that the company was set up for the express purpose of safeguarding the historic, artistic and archaeological heritage of the city of Venice: its object is to carry out, under concession, measures encouraged by the State in that area. The Commission considers that the aid granted to Consorzio Venezia Nuova is

compatible with the common market by virtue of the exemption provided for in Article 87(3)(d) of the Treaty: in the case in point, the institutional role of the Consorzio is to safeguard and preserve the heritage of Venice, and the aid granted in the form of relief from social security contributions in the lagoon therefore has a cultural objective.

Applicability of the other exemptions

(97) The aid under examination does not qualify for any of the other exemptions provided for by Article 87(2) and (3) of the Treaty. It is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State, and is therefore not eligible for exemption under Article 87(3)(b).

(98) As far as Article 87(2) is concerned, the aid does not meet the conditions laid down in subparagraph (a), which relates to aid of a social character granted to individual consumers, nor of course those laid down in subparagraph (c).

(99) Neither does the aid qualify for exemption under Article 87(2)(b) since the seasonal flooding in Venice cannot be regarded as a natural disaster or an exceptional occurrence.

Recovery of aid which is declared incompatible

(100) The court of Justice has recognised that the Commission is entitled to order a Member State to recover incompatible and unlawful aid⁽³¹⁾.

(101) Regulation (EC) No 659/1999 requires the Commission to recover unlawfully granted aid which is incompatible with the common market.

(102) Where the Commission's decision finds that aid has been granted unlawfully and that it is incompatible with the common market, it follows from the case-law of the Court of Justice⁽³²⁾ that recovery is the logical consequence for the purpose of re-establishing the previously existing economic situation.

(103) The observations submitted by the Italian authorities in support of their request that the Commission should refrain from ordering recovery of the aid if it were found to be incompatible with the common market are not sufficient to justify disregarding the obligation imposed by Regulation (EC) No 659/1999, deriving from the fact that the aid in question is incompatible with the common market and was granted unlawfully, for the following reasons:

⁽³¹⁾ Case 70/72 Commission v. Germany [1973] ECR 813.

⁽³²⁾ Case C-142/87 Belgium v. Commission [1990] ECR I-959.

- (a) island status is not *per se* a source of structural weakness for a region;
- (b) the local nature of the activities carried on by firms in Venice has not been demonstrated;
- (c) the fact that no interested party submitted observations does not prove that there is no need to re-establish the previously existing economic situation;
- (d) discontinuation of the scheme from 30 November 1997 ensures that the competition rules are re-established, but the fact remains that before that date certain firms enjoyed advantages that must be eliminated.

V

CONCLUSIONS

- (104) The Commission finds that Italy has put into effect, in breach of Article 88(3) of the Treaty, the relief from social security contributions provided for by Article 27 of Law No 30/1997 and Article 5a of Law No 206/1996, which refers to the Decree of 5 August 1994.
- (105) On the basis of the analysis set out in part IV of this Decision, the Commission finds that the aid granted in the form of a total exemption from social security contributions for net job creation by SMEs is compatible with the common market. Where it is granted to firms that do not have the status SMEs, it is compatible if the firms concerned operate in an area eligible for exemption under Article 87(3)(c) of the Treaty. The aid is also compatible where it benefits any types of firm which hire groups of workers experiencing particular difficulties entering or re-entering the labour market.
- (106) The aid provided for by Article 1 of the Decree of 5 August 1994 and the aid provided for by Article 2 thereof and granted to large firms located outside areas eligible for exemption under Article 87(3)(c) of the Treaty is incompatible with the common market.
- (107) For the reasons set out in points 90, 91 and 93, the measures granted in favour of the municipal companies ACTV, Panfido SpA and AMAV are not deemed to constitute aid within the meaning of Article 87(1) of the Treaty.
- (108) For reasons set out in point 92, the aid granted to the municipal company ASPIV is compatible with the common market since it qualifies for exemption under Article 86(2) of the Treaty.
- (109) For the reasons set out in point 95, the aid granted to Consorzio Venezia Nuova is compatible with the common market since it qualifies for exemption under Article 87(3)(d) of the Treaty.
- (110) Measures which comply with the *de minimis* rule do not fall within the scope of Article 87 of the Treaty. Under that rule, the total amount of aid granted to firms in accordance with the above provisions must not exceed EUR 100 000 over a three-year period. As stated in the relevant Commission notice⁽³³⁾, the *de minimis* rule does not apply to the industries covered by the ECSC Treaty, to shipbuilding, to transport or to aid towards expenditure in connection with agriculture or fisheries.
- (111) Where aid granted unlawfully is found to be incompatible with the common market, the Commission requires the Member State concerned to recover it from the beneficiaries⁽³⁴⁾ in order to re-establish the previously existing situation. This applies to the aid found by this Decision to be incompatible with the common market, of which the amount already received will have to be reimbursed by the recipients.
- (112) Repayment is to be made in accordance with the procedures of national law. The amounts to be repaid are to bear interest from the date on which the aid was made available to the beneficiaries until the date on which it is effectively repaid. The interest must be calculated on the basis of the reference rate used to calculate the grant equivalent of regional aid.

HAS ADOPTED THIS DECISION:

Article 1

Except as provided by Articles 3 and 4 of this Decision, the aid which Italy has put into effect in favour of firms located in Venice and Chioggia, in the form of exemption from social security contributions provided for by Laws No 30/1997 and No 206/1995 which refer to Article 2 of the Ministerial Decree of 5 August 1994, is compatible with the common market where it is granted to the following firms:

- (a) SMEs within the meaning of the Community guidelines on State aid for small and medium-sized enterprises;

⁽³³⁾ See footnote 12.

⁽³⁴⁾ See Commission communication in OJ C 318, 24.11.1983, p. 3.

(b) firms that do not comply with that definition but are located in an area eligible for exemption under Article 97(3)(c) of the Treaty;

(c) any other type of firm which hires groups of workers experiencing particular difficulties entering or re-entering the labour market as referred to in the Community guidelines on aid to employment.

Such aid is incompatible with the common market where it is granted to firms which are not SMEs and are located outside areas eligible for exemption under Article 87(3)(c) of the Treaty.

Article 2

Except as provided by Article 3 and 4 of this Decision, the aid which Italy has put into effect in favour of firms located in Venice and Chioggia, in the form of reductions in social security contributions provided for by Article 1 of the Ministerial Decree of 5 August 1994, is incompatible with the common market.

Article 3

The aid measures which Italy has put into effect in four of the companies ASPIV and Consorzio Venezia Nuova are compatible with the common market since they qualify for exemption under Article 86(2) and Article 87(3)(d) of the Treaty respectively.

Article 4

The measures which Italy has put into effect in favour of the companies ACTV, Panfido SpA and AMAV do not constitute aid within the meaning of Article 97 of the Treaty.

Article 5

Italy shall take whatever steps are necessary to recover from the beneficiaries the incompatible aid referred to in the second paragraph of Article 1 and in Article 2 which has unlawfully been made available to them.

Repayment shall be made in accordance with the procedures of Italian law. The amounts to be repaid shall bear interest from the date on which the aid was made available to the beneficiaries until the date on which it is effectively repaid. The interest shall be calculated on the basis of the reference rate used to calculate the grant equivalent of regional aid.

Article 6

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

Article 7

This Decision is addressed to the Italian Republic.

Done at Brussels, 25 November 1999.

For the Commission

Mario MONTI

Member of the Commission