II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 11 March 2008

concerning State aid C 28/07 (ex NN 33/07) where Italy Intends the prolongation of eligible investment expenditure until 2008

(notified under document number C(2008) 831)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2008/400/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to those provisions [1] and having regard to their comments,

Whereas:

I. PROCEDURE

(1) On 26 February 2007 Italy adopted the Law No 17/2007 [2], including Article 4-bis which prolongs the application of a regional aid scheme providing automatic tax credits for new investments in the assisted areas of Italy, which had been approved in 2001 and 2002 by the Commission [3] and which expired on 31 December 2006.

(2) By letter dated 7 March 2007 (D/50987) the Commission requested the Italian authorities to submit information on Article 4-bis of the Law No 17/2007. The Italian authorities replied by letter, registered at the Commission on 19 March 2007 (A/32387).

(3) By letter of 10 July 2007 [4], the Commission informed Italy of its decision to initiate the formal investigation procedure laid down in Article 88(2) of the EC Treaty in respect of the measure created by Article 4-bis of the Law No 17/2007.

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

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

(6) By letter dated 24 July 2007, registered at the Commission on 25 July 2007, the Commission was informed of the intention of the Italian authorities to repeal the measure. By e-mail of 9 October 2007, the Italian authorities confirmed their intention and submitted a draft legal provision repealing the measure.

(1) OJ C 187, 10.8.2007, p. 13.
(2) Gazzetta Ufficiale n. 47 of 26.2.2007.
(3) State aid N 646/A/00 Crediti di imposta per gli investimenti nelle aree svantaggiate (OJ C 149, 19.5.2001, p. 11) and State aid N 324/02 Credito d'imposta per gli investimenti nelle regioni ammissibili alla deroga di cui all'articolo 87(3)(a) del trattato e delle zone dell'Abruzzo e del Molise ammissibili alla deroga di cui all'articolo 87(3)(c) (OJ C 239, 4.10.2002, p. 2).
(4) Letter of the Commission C (2007) 3260 def.
(5) OJ C 187, 10.8.2007, p. 13.

(7) On 23 November 2007 the Commission asked the Italian authorities to submit the adopted final legal provision, which repealed the measure in question.

(8) The Italian authorities submitted the adopted final legal provision to repeal Article 4-bis of Law No 17/2007 by letter registered at the Commission on 15 January 2008.

II. **DESCRIPTION OF THE MEASURE**

(9) The measure aimed at prolonging the period during which the investment expenditure under an approved regional aid scheme, which expired on 31 December 2006, could have been incurred.

(10) Under the regional aid scheme (N 646/A/2000), which aimed at promoting regional development in the Italian regions eligible for regional aid under the regional aid map 2000-2006 [1] and which expired on 31 December 2006, a beneficiary obtained the legal right to a tax credit by carrying out a positive net investment that was established on the basis of an accountancy/balance sheet approach for eligible expenses to be incurred before 2007. The original scheme was amended in 2002 with the introduction of a budgetary-cap mechanism requiring the beneficiary to apply for a reservation of funds to the fiscal authorities. The amendment did not change the expiry date for the scheme, nor its limitation to expenditure incurred before 2007.

(11) By adopting Article 4-bis of the law No 17 of 26 February 2007, the Italian authorities extended the period during which expenditure could have been incurred until 2008.

III. **GROUNDS FOR INITIATING THE PROCEDURE**

(12) The Commission refers to sections 4.1 and 4.2 of its Decision to open the formal investigation procedure.

IV. **COMMENTS FROM ITALY**

(13) On 24 July 2007 the Italian authorities informed the Commission of their intention to repeal the measure.

(14) On 9 October 2007 the Italian authorities reassured the Commission that the measure would be repealed by Article 3, comma 18 of the 2008 Finance Bill (d.d.l. Finanziaria 2008), approved by the Council of Ministers on 28 September 2007.

(15) Following the Commission's request to submit the adopted definite legal provision repealing the measure, the Italian authorities submitted to the Commission the text of Article 1, comma 65 of the Budget Law 2008 [2] (Legge finanziaria) on 15 January 2008 which includes the relevant legal provisions which repeal Article 4-bis of the law No 17 of 26 February 2007.

V. **ASSESSMENT**

(16) Article 1, comma 65 of the Budget Law 2008 stipulates that the amendment to the original legal scheme adopted by Article 4-bis of Law No 17/2007, i.e. the possibility to prolong the eligible investment expenditure until 2008, is repealed. Further, Article 2, comma 65 of the Budget Law 2008 also foresees the reallocation of the budgetary appropriations of the measure [3].

(17) Since the tax credit accrued with reference to the eligible costs incurred in 2007 can only be claimed definitively at the moment of the 2007 fiscal declaration, in 2008, at the time this tax declaration has to be submitted to the fiscal agency, no legal basis or budget for the tax credit exist.

(18) The measure has therefore become nil and void, and no tax credits can be granted for expenditure incurred after 2006 on the basis of the legal provision adopted by Article 4-bis of L. 17/2007.

VI. **CONCLUSION**

In view of the foregoing, the Commission considers that the formal investigation procedure initiated under Article 88(2) of the Treaty as regards the prolongation of the eligible investment expenditures until 2008 is without object,

[1] Letter of the Commission of 13.3.2000 (OJ C 175, 24.6.2000, p. 11) and letter of the Commission of 20.9.2000 (OJ C 105, 20.4.2002).

[2] Art. 1, comma 65 *Legge n. 244 del 24 Dicembre 2007* — Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 2008), *G.U. n. 300 del 28 Dicembre 2007 (suppl.ord.) Testo ripubblicato nella G.U. n. 10 del 12 Gennaio 2008 (suppl.ord.).*

[3] Art. 1, comma 65: '*Il quinto periodo del comma 1 dell'articolo 8 della legge 23 dicembre 2000, n. 388, convertito, con modificazioni, dalla legge 26 Febbraio 2007, è soppresso. In relazione a quanto previsto dal primo periodo del presente comma e in considerazione dell'effettivo utilizzo dei crediti d'imposta previsti dagli articoli 7 e 8 della legge 23 dicembre 2000, n. 388, le risorse finanziarie a tal fine preordinate, esistenti presso la contabilità speciale 1778 — Fondi di bilancio, sono ridotte di 1 500 milioni di euro. Le predette risorse sono versate al bilancio dello Stato nella misura di 450 milioni di euro per l'anno 2008 e di 525 milioni di euro per ciascuno degli anni 2009 e 2010*'.

HAS ADOPTED THIS DECISION:

Article 1

Due to the repeal of the measure by Italy, the present procedure has become without object and is hereby closed.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 11 March 2008.

For the Commission

Neelie KROES

Member of the Commission