COMMISSION DECISION

of 19 December 2012

on State aid SA.20829 (C 26/2010, ex NN 43/2010 (ex CP 71/2006)) Scheme concerning the municipal real estate tax exemption granted to real estate used by non-commercial entities for specific purposes implemented by Italy

(notified under document C(2012) 9461)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2013/284/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(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:

1. PROCEDURE

(1) In 2006 the Commission received a number of complaints essentially concerning two schemes, one involving an exemption from the municipal tax on real estate and the other a corporate tax reduction. More specifically, the two schemes involved:

(a) exemption from the municipal tax on real estate ('*imposta comunale sugli immobili*', hereinafter 'ICI') for real estate used by non-commercial entities and intended exclusively for social assistance, welfare, health, cultural, educational, recreational, accommodation, sports and religious activities (Article 7(1)(i) of Legislative Decree No 504 of 30 December 1992);

(b) a 50 % corporate tax reduction for the entities listed in Article 6 of Presidential Decree No 601 of 29 September 1973 - primarily social welfare organisations, non-profit education and research bodies, and charitable and teaching institutions (including ecclesiastical institutions). This provision also includes social housing entities and cultural foundations and associations.

(2) Following the complaints received about the above ICI exemption, the Commission sent the Italian authorities an initial request for information on 5 May 2006. In the light of the information sent by Italy on 6 June 2006, and following the entry into force of some amendments to the ICI legislation, the Commission informed the complainants by letter of 8 August 2006 that, on the basis of a preliminary analysis, there were no grounds for pursuing the investigation.

(3) However, by letter dated 24 October 2006, the complainants again pointed out that the ICI exemption for non-commercial entities was contrary to Article 107(1) of the Treaty. By letter of 14 November 2006, the Commission informed them that, on the basis of the information available, there were no grounds for further investigating the ICI exemption.

(4) In January and September 2007, the Commission received further letters from the complainants about the ICI exemption. In their letter of 12 September 2007, they drew the Commission's attention to Article 149 of the Income Tax Code ('*Testo Unico delle Imposte sui Redditi*', hereinafter 'TUIR') approved by Presidential Decree No 917 of 22 December 1986. In their view, that Article granted favourable tax treatment only to ecclesiastical institutions and amateur sports clubs.

(5) On 5 November 2007, the Commission invited the Italian authorities and the complainants to provide further information about all the alleged preferential provisions cited by the complainants. The Italian authorities provided the requested information by letters dated 3 December 2007 and 30 April 2008. The complainants submitted additional information by letter of 21 May 2008.

(6) On 20 October 2008, the complainants sent a letter of formal notice (Article 265 of the Treaty), asking the Commission to open the formal investigation procedure and to adopt a formal decision on their complaints.

[1] OJ C 348, 21.12.2010, p. 17.

(7) On 24 November 2008, the Commission sent another request for information to the Italian authorities, to which they replied by letter of 8 December 2008.

(8) By letter dated 19 December 2008, the Commission informed the complainants that, on the basis of a preliminary analysis, it considered that the measures did not appear to constitute state aid and that accordingly there was no need to pursue the investigation.

(9) On 26 January 2009, the Italian Finance Ministry issued '*Circolare 2/DF*' (hereinafter 'the Circular') to clarify further the scope of the ICI exemption for non-commercial entities. On 2 March 2009, the complainants wrote to the Commission expressing their dissatisfaction with the legislation in force and criticising the Circular.

(10) By e-mail of 11 January 2010, the complainants again asked the Commission to initiate the formal investigation procedure, even in the light of the contents of the Circular. On 15 February 2010, the Commission, having taken note of the Circular, sent a letter to the complainants confirming the reasoning set out in their letter of 19 December 2008.

(11) On 26 April 2010, two complainants each brought an action for annulment before the General Court against the Commission's letter of 15 February 2010 ([2]). At the applicants' request, the Court ordered the removal of the case from the register on 18 November 2010 ([3]).

(12) By decision of 12 October 2010 (hereinafter 'the decision initiating the procedure') the Commission initiated the formal investigation procedure laid down in Article 108(2) of the Treaty in respect of the municipal real estate tax exemption granted to real estate used by non-commercial entities for specific purposes and in respect of Article 149(4) TUIR ([4]). On 21 December 2010, the decision initiating the procedure was published in the *Official Journal of the European Union* ([5]), inviting interested parties to submit their comments.

(13) By letter of 10 November 2010, the Italian authorities asked the Commission for copies of the letters sent to the complainants between 2006 and 2010. These were sent to Italy on 2 December 2010.

(14) Between 21 January and 4 April 2011, the Commission received comments on the decision initiating the procedure from 80 interested parties, which are listed in Annex 1 to this Decision.

(15) By letter of 2 March 2011, the Commission received comments from Italy on the decision initiating the procedure. The Commission then forwarded the third parties' comments to the Italian authorities, which submitted their reactions on 10 June 2011.

(16) On 19 July 2011, a technical meeting was held between the Italian authorities and the Commission.

(17) By letter dated 15 February 2012, Italy informed the Commission of its intention to adopt new legislation concerning the municipal real estate tax and announced that ICI had been replaced by the *Imposta Municipale Propria* (hereinafter 'IMU') as of 1 January 2012.

(18) Following Italy's adoption of Law No 27 of 24 March 2012, which included new provisions on the IMU exemption for non-commercial entities performing specific activities but left a number of aspects to be defined in future implementing legislation, the Commission sent the Italian authorities a request for information on 16 May 2012.

([2]) See Cases T-192/10, *Ferracci* v *Commission* (OJ C 179, 3.7.2010, p. 45) and T-193/10, *Scuola Elementare Maria Montessori* v *Commission* (OJ C 179, 3.7.2010, p. 46).

([3]) OJ C 30, 29.1.2011, p. 57.

([4]) In the decision initiating the procedure, the Commission concluded that the 50 % corporate tax reduction under Article 6 of Presidential Decree No 601/73 could entail existing aid (paragraph 18), indicating that it would deal with this measure under a separate procedure concerning existing aid, which was subsequently initiated in February 2011. The entities listed in Article 6 of Decree No 601/73 are as follows: (a) social assistance organisations and establishments, mutual aid societies, hospital organisations, social welfare and charitable organisations; (b) educational establishments and non-profit-making establishments for study and experimentation in the public interest; scientific bodies, academies, historical, literary, scientific foundations and associations pursuing exclusively cultural aims; (c) organisations whose aims are assimilated by law to charitable and educational aims; and (c bis) social housing institutions and their associations.

([5]) See footnote 1.

(19) On 27 June 2012, the Commission received additional information from the complainants, including comments on the new IMU legislation. On 6 July 2012, these observations were forwarded to Italy for comment.

(20) By letter dated 5 September 2012, Italy provided the Commission with the information requested and also its comments on the third parties' observations forwarded to it on 6 July 2012.

(21) Subsequently, by letter of 21 November 2012, the Italian authorities sent the Commission a copy of the IMU implementing regulation adopted on 19 November 2012.

2. DESCRIPTION OF THE MEASURES

2.1. Municipal real estate tax exemption for non-commercial entities

(22) In 1992 the Italian authorities introduced a municipal tax on real estate (ICI). As laid down in Legislative Decree No 504 of 30 December 1992, all physical and legal persons that were in possession of real estate (for reasons of ownership, right of usufruct, use, occupancy or leasehold) were liable for the tax. The tax was payable by both residents and non-residents, irrespective of the use made of the real estate, and it was calculated on the basis of the cadastral value.

(23) According to Article 7(1)(i) of Legislative Decree No 504/92, real estate used by non-commercial entities exclusively for social assistance, welfare, health, educational and accommodation services and cultural, recreational, sports and religious activities was exempted from ICI.

(24) According to Article 7(2a) of Decree Law No 203 of 30 September 2005 ([6]), the exemption provided for by Article 7(1)(i) of Legislative Decree No 504/92 was applicable to the activities listed there, even if they were of a commercial nature. According to Article 39 of Decree Law No 223 of 4 July 2006 ([7]), this exemption applied only if the activities in question were not exclusively of a commercial nature.

([6]) Converted into Law No 248 of 2 December 2005.
([7]) Converted into Law No 248 of 4 August 2006.

(25) The Italian authorities explained that the municipal real estate tax exemption provided for by Article 7(1)(i) applied only if two cumulative conditions were met:

i. the real estate must be used by non-commercial entities ([8]). The law defines non-commercial entities as public and private entities that are not companies and whose activities are not exclusively or primarily commercial;

ii. the real estate must be used exclusively for performing the activities listed in Article 7(1)(i).

(26) In Circular 2/DF of 26 January 2009, the Italian authorities clarified which entities could be considered non-commercial and the characteristics required of the activities performed by these entities for entitlement to the exemption.

(27) The Circular stated that non-commercial entities could be both public and private. Specifically, the following were considered to be public non-commercial entities: the State, regions, provinces, municipalities, chambers of commerce, health agencies, public bodies set up exclusively for welfare, assistance and health purposes, non-economic public entities, welfare and assistance bodies, universities and research institutes, and special public service bodies (the former 'IPAB'). Examples of private non-commercial bodies given in the Circular include the following: associations, foundations, committees, NGOs, amateur sports clubs, voluntary service organizations, bodies classified for tax purposes as non-profit organisations ('ONLUS') and ecclesiastical bodies belonging to the Catholic Church and other religious denominations.

(28) The Circular also specified that the activities performed in the real estate exempt from ICI should not be available on the market ([9]) - i.e. they should be carried on to satisfy social needs that were not always met by public structures or private commercial operators.

([8]) Specifically, Article 7(1)(i) of Legislative Decree No 504/92 refers to the entities defined in Article 87(1)(c) [now Article 73] of Presidential Decree No 917/86. The definition of non-commercial entities is contained in this latter provision.
([9]) See Circular, point 5.

(29) The Circular contained a number of criteria for each of the activities listed in Article 7(1)(i), which helped to establish when each of them should be considered not exclusively of a commercial nature ([10]).

(30) The ICI was replaced by the IMU as of 1 January 2012. The rules on the municipal real estate tax for non-commercial entities were also amended in the course of 2012, as explained in Section 5.

2.2. **Article 149 of the Income Tax Code**

(31) Article 149 comes under Title II, Chapter III of the Income Tax Code (TUIR). Title II lays down the rules on corporate tax and Chapter III lays down the tax provisions applicable to non-commercial entities, such as the rules for calculating the taxable base and the rules on the rates of taxation ([11]). Article 149 identifies the conditions that can trigger the loss of an entity's 'non-commercial status'.

(32) In particular, Article 149(1) TUIR states that a non-commercial body will lose that status if it carries on chiefly commercial activities during an entire tax period.

(33) Article 149(2) TUIR defines an entity's 'commercial status' in terms of more income being derived from commercial activities than from institutional revenue and in terms of higher value of fixed assets related to commercial activities than to other activities ([12]). The legal form adopted by the entities in question has no influence on the loss of their 'non-commercial status'.

(34) Article 149(4) TUIR states that the above provisions (i.e. Article 149(1) and (2) TUIR) do not apply to ecclesiastical bodies that have been granted civil law status or to amateur sports clubs.

3. **GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE**

(35) The Commission initiated the formal investigation procedure into the municipal real estate tax exemption (ICI exemption) for real estate used by non-commercial entities for specific purposes because it seemed to qualify as state aid within the meaning of Article 107(1) of the Treaty. The Commission likewise initiated the formal investigation procedure into Article 149(4) TUIR, according to which the provisions on loss of non-commercial status do not apply to ecclesiastical bodies and amateur sports clubs.

(36) To assess whether the measures at issue were selective, in line with established case law ([13]), the Commission first identified the reference tax system for each measure and then considered whether the measure departed from that system and, if so, whether it was justified by the nature and general structure of the tax system.

([10]) For instance, as already indicated in the decision initiating the procedure, in the areas of health and social activities the Circular requires an agreement with the public authorities. As regards education, the Circular seems to require compliance with the mandatory basic principles in order for the service to be considered on a par with the public system, and it also requires operating surpluses to be reinvested in the educational activity itself. As regards cinemas, the Circular requires operators to restrict themselves to particular market segments (films of cultural interest, films that have been issued a quality certificate, films for children) if they wish to obtain the tax exemption. The same applies to accommodation services in general, which must charge prices lower than the market price and not operate as normal hotels.

([11]) See Articles 143 *et seq.* of the TUIR. In general terms, the total income of non-commercial entities consist of real estate and capital income and other sources of income (Article 143 TUIR). Provided that specific conditions are met, non-commercial entities can opt for simplified systems for determining income (Article 145 TUIR).

([12]) The factors that can be used for assessment purposes pursuant to Article 149(2) TUIR are the following: more net fixed assets relating to business activities than other activities; more revenue from commercial activities than from the 'normal value' of supplies or services relating to institutional activities; more income from commercial activities than revenue from institutional activities (such as contributions, grants, donations and members' subscriptions).

([13]) See, *inter alia*, Case C-88/03 *Portugal* v *Commission* [2006] ECR I-7115, paragraph 56, and Case C-487/06 P *British Aggregates* [2008] ECR I-10505, paragraphs 81-83.

(37) As regards the ICI exemption, the Commission concluded that the reference system for assessing the measure in question was ICI itself. By granting an exemption to non-commercial entities using their real estate for specific activities, some of them deemed to be economic, the measure departed from the reference system (according to which every legal person in possession of real estate must pay the corresponding municipal tax, irrespective of what it was used for). Granting an exemption only to non-commercial entities that performed specific activities with a certain social value was not considered to be justified by the nature and general structure of the Italian system for municipal real estate tax.

(38) As regards Article 149(4) TUIR, the Commission identified income tax as the reference system. The Commission concluded that the measure was, at first sight, selective, since it seemed to offer the possibility – but only to ecclesiastical bodies and amateur sports clubs - to maintain their non-commercial status, even though they were no longer considered to be non-commercial entities. Such a measure could not be justified on the basis of the underlying principles of the Italian tax system.

(39) The Italian authorities had not provided information showing that the measures in question met the conditions of the *Altmark* case law ([14]). Since all the other criteria under Article 107(1) of the Treaty seemed to be met, the measures appeared to involve state aid.

(40) As regards compatibility, Article 107(2) of the Treaty did not appear to apply to the measures. Moreover, none of the exceptions under Article 107(3) seemed to apply, except for Article 107(3)(d) on the promotion of culture and heritage conservation. Indeed, as regards the ICI exemption, the Commission considered that this exception could have been applied to specific activities performed by non-commercial entities performing exclusively educational, cultural and recreational activities. Finally, the Commission did not rule out the possibility that certain activities might be classified as services of general economic interest in accordance with Article 106(2) of the Treaty. The Italian authorities had not, however, provided any information allowing it to assess the compatibility of the measures in question with the internal market.

(41) Consequently, the Commission had doubts as to the compatibility of the measures with the internal market and, in accordance with Article 4(4) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([15]), it decided to initiate the formal investigation procedure, inviting Italy and other interested parties to submit their comments.

(42) In the opinion of the Commission, both the ICI exemption and Article 149(4) TUIR could be classified as new aid. ICI, which was levied on an annual basis, had actually been introduced in 1992 and the tax exemption in question had not been notified or otherwise approved by the Commission. The exemption applied to a wide range of activities that were not closed to competition when ICI was introduced. Therefore, any departure from the normal rules of this tax regime had to be considered new aid since the requirements of Article 107(1) of the Treaty seemed to be met. Likewise, Article 149 TUIR ([16]) had been introduced in 1998 and it had not been notified or otherwise approved by the Commission. For this reason, the exception provided for by this measure should be classified as new aid since the requirements of Article 107(1) of the Treaty seemed to be met.

4. COMMENTS FROM THE ITALIAN AUTHORITIES AND THE INTERESTED THIRD PARTIES

(43) Pursuant to Article 20(2) of Regulation (EC) No 659/1999 and in response to the invitation published in the *Official Journal of the European Union* ([17]), the Commission received comments from the Italian authorities and from 80 interested third parties.

(44) To summarise, the Italian authorities consider that the entities that benefited from the ICI exemption were not 'undertakings' for the purposes of Union law. In any case, the activities carried on by such entities had an important public and social function. Thus, it was in keeping with the nature and logic of the taxation system to provide for differentiated tax treatment for purely economic activities, on the one hand, and social assistance, charity,

([14]) Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747.

([15]) OJ L 83, 27.3.1999, p. 1.
([16]) Former Article 111a TUIR.
([17]) See footnote 1.

solidarity and religious activities, on the other hand. The Italian authorities also contested the classification of the ICI measure as new aid. According to them, the measure should be assessed in the light of the continuity it provided with the earlier property taxes (which already applied before the entry into force of the EEC Treaty). Furthermore, on the basis of the letters of rejection sent to the complainants, the measure should be deemed to have been approved by the Commission. In any event, the Commission had created a legitimate expectation on the part of the recipients of the measure because of a reply to a parliamentary written question and also because it had informed the complainants of its preliminary position, of which the Italian authorities had also been apprised informally.

(45) As regards Article 149(4) TUIR, the Italian authorities claim that, despite what its wording suggests, ecclesiastical bodies and amateur sports clubs can lose their non-commercial status. In that case, those entities would no longer enjoy any tax relief.

(46) Of the 80 interested third parties, 78 of them (hereinafter 'the 78 interested parties') share the views of the Italian authorities, whereas two third parties (hereinafter 'the two interested parties' or 'the complainants') from among the original complainants, consider that both ICI and Article 149(4) TUIR constitute unlawful state aid measures, incompatible with the internal market. The arguments of the 78 interested parties will accordingly be presented together with the Italian authorities' position, while the arguments of the complainants will be addressed separately.

4.1. **Comments from the Italian authorities and the 78 interested parties**

4.1.1. *ICI: the specific activities carried on by non-commercial entities cannot be considered economic activities*

(47) The Italian authorities and the 78 interested parties claim that the specific activities carried on by non-commercial entities benefiting from the ICI exemption cannot be considered economic activities. They argue that these activities – mainly targeting very specific categories of recipients - do not constitute an offer of goods or services on the market and are thus not in competition with the activities carried on by commercial undertakings. Therefore, these non-commercial entities, which operate in sectors of public interest, cannot be considered undertakings, which is a prerequisite for the application of Article 107(1) TFEU.

(48) According to the Italian authorities and some of the 78 interested parties, in most cases these activities have specific characteristics. For example, they are performed in the public interest or for solidarity purposes, either free of charge or for reduced fees. In view of the specific features and the particular purposes of the non-commercial entities in question, it is not possible to classify them as undertakings.

4.1.2. *ICI: the measure is justified by the logic of the Italian taxation system*

(49) The Italian authorities and the 78 interested parties consider that the ICI exemption does not constitute a departure from the general tax system but merely represents the application of the guiding principles of that system.

(50) They maintain that it is consistent with the logic of the Italian taxation system to have differentiated tax treatment for economic and profit-making activities, on the one hand, and for assistance, charitable, religious and similar activities carried out by entities with specific aims, on the other hand ([18]). The latter activities are based on the solidarity principle, which is fundamental to both national and Union law. By making this differentiation, the legislator simply wished to take account of the different legal and factual situation of entities that carry on the above public interest activities with a high social value.

(51) Moreover, it is up to the Member State to define which activities are of public interest. The only limitation on the Member State is that the differentiated tax treatment must be coherent, i.e. it must be in line with the logic of the tax system as a whole and an adequate system of controls must also be set up. Both conditions are met in the case of the ICI exemption in question.

([18]) Furthermore, the entities in question mainly operate in limited geographical areas (at local level) and the activities are targeted at specific categories of users/recipients.

(52) The rationale of the ICI exemption is based on Articles 2 and 3 of the Italian Constitution, requiring fulfilment of the duties of political, economic and social solidarity towards citizens, and Article 38, which establishes the right to social welfare for people without the necessary means of subsistence. It should also be noted that non-commercial entities assist the State in performing specific tasks of social concern. The State has always recognized the specific role of these entities, as it is aware that it would be impossible for it alone to provide welfare, health, cultural, educational and sports services.

(53) The Italian authorities reiterated that, as indicated in the Circular, the two cumulative conditions described in paragraph 25 (subjective and objective requirement) had to be met for entitlement to the ICI exemption.

(54) As regards the subjective requirement (i.e. being a non-commercial entity), and more specifically religious bodies, the Italian authorities stressed that the category of non-commercial entities includes ecclesiastical institutions with civil-law status, belonging either to the Catholic Church or to other religious denominations ([19]).

(55) As regards the objective requirement (i.e. performing one of the activities listed by the legislation), the Italian authorities pointed out that the Italian Court of Cassation has repeatedly held that, for the purposes of granting the ICI exemption, it is essential to consider the activity actually carried on in the real estate. This means checking that this activity, even if it is included in the list of exempted activities, is not actually pursued on a commercial basis ([20]). In addition, as already established by the Council of State ([21]), if only part of an entire property (even if it is the largest part) is used for one of the purposes allowed by the law, the restrictive nature of the exemption is such that the tax relief cannot be granted to the whole property.

4.1.3. *The classification of the measure as existing aid*

(56) According to the Italian authorities, ICI represents the logical legislative progression from the earlier property taxes - with which it provides formal and material continuity. Exempting real estate used for specific activities with a high social value has always been a key element of all real estate legislation since 1931, well before the entry into force of the EEC Treaty.

(57) The Italian authorities and the 78 interested parties also consider the ICI exemption to have been approved by the Commission on the basis of the letters of rejection sent to the complainants, of which Italy was informed.

(58) For these reasons, the ICI exemption – if considered to be aid – should be considered existing aid.

4.1.4. *Compatibility*

(59) The Italian authorities decided not to submit any comments on the possible compatibility of the measures pursuant to Article 107(2) and (3) of the Treaty or on their possible classification as services of general economic interest under Article 106(2) and the *Altmark* case law.

(60) Some of the 78 interested parties maintain that the ICI exemption is compatible with Articles 106(2) and 107(3)(c) of the Treaty as the measure is necessary for performing socially useful activities based on the solidarity principle. Moreover, the exemption does not significantly distort competition and does not have an appreciable effect on trade between Member States.

4.1.5. *Legitimate expectation*

(61) The Italian authorities argue that the Commission's replies to the complainants concerning the ICI exemption, of which Italy was informally apprised, had created a legitimate expectation on the part of non-commercial entities as to the compatibility of the ICI exemption with Union law.

(62) They also maintain that the Commission's reply to a parliamentary written question of 2009 on the tax treatment of non-commercial entities had given rise to a legitimate expectation ([22]).

([19]) Under Italian law, for all religions accepted by the State, including the Catholic Church, religious aims are deemed equivalent to charitable and educational aims for tax purposes.

([20]) See judgments Nos 20776 of 26 October 2005, 23703 of 15 November 2007, 5485 of 29 February 2008 and 19731 of 17 September 2010. See also judgment No 8495 of 9 April 2010.

([21]) See Opinion No 266 of 18 June 1996.

([22]) Written Question E-177/2009 (OJ C 189, 13.7.2010).

(63) This would imply that, if the Commission considered the measure to be unlawful and incompatible aid, without accepting it as existing aid, it should not order recovery of the aid, pursuant to Article 14(1) of Regulation (EC) No 659/1999.

(64) According to some third parties, recovery should not in any case be ordered in respect of Article 149(4) TUIR since it would be very difficult and burdensome for the national authorities to quantify the hypothetical advantage gained.

4.1.6. *Article 149 TUIR*

(65) In their observations, the Italian authorities provided a detailed description of the specific taxation rules applicable to non-commercial entities, including ecclesiastical bodies and amateur sports clubs. The Italian authorities stress that Article 149(2) TUIR provides a non-exhaustive list of parameters that can be taken into account ([23]) in order to classify an entity as a commercial organisation. Even if one or more of these conditions are met, the non-commercial entity does not automatically lose its non-commercial status (since these parameters cannot be considered legal presumptions). The fact that these requirements are met would merely indicate that the activities carried on by the entity are potentially of a primarily commercial nature.

(66) As indicated in the Revenue Agency's Circular No 124/E of 12 May 1998, ecclesiastical bodies with civil-law status can be considered non-commercial entities only if the sole or principal scope of their activities is of a non-commercial nature.

(67) Therefore, according to Italy, Article 149(4) TUIR merely excludes the application of the specific time and business parameters set out in Article 149(1) and (2) ([24]). Article 149(4) TUIR does not exclude the possibility of ecclesiastical institutions losing their non-commercial status. In any event, according to some of the 78 interested parties, this measure does not imply any transfer of public resources and does not grant any advantage.

(68) The Italian authorities explained that the measure is aimed at preserving the exclusive responsibility borne by CONI (the Italian National Olympic Committee) for amateur sports clubs and by the Interior Ministry for granting and revoking civil-law status to ecclesiastical institutions ([25]). If, however, during a tax inspection of these institutions, the tax authorities establish that they perform predominantly commercial activities, they will immediately inform the Interior Ministry or the CONI. The tax authorities, for their part, will order the recovery of the difference in taxation from the body concerned.

(69) The Italian authorities confirmed that checks were carried out on both ecclesiastical institutions and amateur sports clubs. As regards ecclesiastical institutions, the Interior Ministry also carried out the checks for which it is responsible but did not find any form of abuse.

4.2. **Comments from the two interested parties**

(70) In their comments, the two interested parties ([26]) refer to all the documents and observations that they had already submitted to the Commission during the administrative proceedings prior to the decision to initiate the procedure. According to them, these documents prove that ecclesiastical institutions indeed carry on economic activities.

(71) As regards the ICI exemption, the two parties point out that the contested measure was introduced by Italy in 2005. After the entry into force of Decree Law No 203/2005, the ICI exemption applied to non-commercial entities carrying on the activities listed by the legislation, even if they were of a commercial nature ([27]). Following amendments to the ICI law in 2006, the ICI exemption became applicable to the same activities, provided that they were not exclusively commercial ([28]). The 2006 amendments did not, however, eliminate the state aid nature of the measure in question.

([23]) See footnote 12.
([24]) See paragraphs (31) *et seq.*
([25]) This also guarantees compliance with the international agreements signed between Italy and the Holy See as regards ecclesiastical institutions.
([26]) Out of the original complainants, only Pietro Ferracci and *Scuola Elementare Maria Montessori s.r.l.* submitted comments on the decision initiating the procedure.
([27]) Decree Law No 203/2005, converted into Law No 248 of 2 December 2005.
([28]) Decree Law No 223/2006, converted into Law No 248 of 4 August 2006.

(72) The Circular itself gave a selective advantage to entities that should really be considered undertakings. In many cases, the possibility of the activities described in the Circular being granted the ICI exemption depended solely on the entity not making any profits. However, based on the principles laid down in EU case law, the fact that an entity is non-profit-making is irrelevant for the purposes of applying state aid rules. Therefore the Circular did not solve the state aid issues relating to the ICI exemption, since this exemption continued to apply to non-commercial entities performing an economic activity but not to entities that performed the same activity but were profit-making.

(73) According to the complainants, it was in any case practically impossible to acquire specific data on the real estate belonging to the entities in question, mainly because these entities were not required to declare the real estate that was ICI exempted.

(74) As regards Article 149(4) TUIR, the complainants consider that it is not possible for ecclesiastical institutions to lose their non-commercial status.

(75) As far as the ICI exemption and Article 149(4) TUIR are concerned, the complainants agree with the Commission's preliminary conclusions on the presence of state resources and the existence of an advantage, and also as regards selectivity, distortion of competition and effects on trade.

(76) As for the compatibility of the measures at issue, the complainants agree with the Commission's preliminary conclusion that Articles 107(2) and 107(3)(a), (b) and (c) of the Treaty are not applicable. However, they disagree on the possibility of applying the exception under Article 107(3)(d) to certain entities that perform exclusively educational, cultural and recreational activities. The complainants also consider that the conditions of the *Altmark* case law are not met in the case at hand.

4.3. **Observations of the Italian authorities on the comments from third parties**

(77) The Italian authorities sent their observations on the third parties' comments by letter of 10 June 2011.

(78) First, even supposing that certain activities carried on by non-commercial entities benefiting from the exemption can actually be classified as economic activities, the Commission must still prove that the advantage granted is selective and that it is not justified by the logic of the Italian tax system.

(79) Second, as regards the generic observations made about the Circular, the Italian authorities consider that the Commission is called on to examine a measure that involves a tax exemption. This means that it must assess the interpretative criteria of the legislation indicated by the national authorities and also the existence of an adequate system of controls.

(80) In particular, regarding the alleged difficulties - referred to by the complainants - of gathering data on real estate belonging to non-commercial entities, the Italian authorities point out that the requirement to submit the ICI declaration was abolished in 2006. The Italian authorities also point out that both the cadastral system and the databases on real estate are currently being reorganised.

(81) As also acknowledged by the complainants, the Italian authorities note that Article 149(4) TUIR is neither a stand-alone provision nor one with material scope but instead a procedural provision that is relevant solely from the point of view of controls.

5. **THE NEW LEGISLATION ON MUNICIPAL REAL ESTATE TAX**

5.1. **Description of the new municipal real estate tax: IMU**

(82) As part of the so-called reform of fiscal federalism, it was decided under Legislative Decree No 23 of 14 March 2011 that IMU would replace ICI as of 1 January 2014. By Decree Law No 201 of 6 December 2011, converted into Law No 214 of 22 December 2011, Italy decided to bring forward the introduction of IMU to 2012.

(83) All persons in possession of real estate are liable for IMU. The taxable base is calculated on the basis of the real estate's value, which is determined by taking the cadastral income of the real estate and applying the criteria in Article 5 of the ICI Decree (Legislative Decree No 504/92), together with the criteria laid down by Decree Law No 201/2011. Multipliers, which vary according to the real estate's cadastral category, are applied to the value established in accordance with the above criteria. The standard IMU rate is 0,76 %.

(84) The cadastral system is therefore of fundamental importance for real estate taxes. The minimum unit relevant for cadastral purposes can be a building or part of a building or a set of buildings or an area, provided that they are autonomous in terms of function and income. The Italian cadastral system, which is due to be revised, identifies six categories of real estate. Group A includes real estate for housing or similar purposes; Group B includes real estate used for collective use, such as colleges, hospitals, public offices, schools; Group C includes real estate used for ordinary commercial purposes, such as shops, stores and buildings and premises used for sports; Group D includes real estate for special purposes, such as hotels, theatres, hospitals and buildings and premises used for sports; Group E includes real estate for special purposes, such as for land, sea and air transport services, toll bridges, lighthouses, buildings for public worship activities. Group F includes real estate registered in fictitious categories.

(85) With specific reference to the new IMU, Article 91a of Decree Law No 1 of 24 January 2012, converted into Law No 27 of 24 March 2012, introduced a number of changes to the taxation of real estate belonging to non-commercial entities that perform specific activities. In particular, the new law abolished the 2006 amendment that had broadened the scope of the ICI exemption to include real estate hosting specific activities that were '*not exclusively commercial in nature*' ([29]) (paragraph 4) and further specified that the IMU exemption was limited to the activities indicated by the law ([30]), performed by non-commercial entities on a non-commercial basis (paragraph 1). Decree Law No 1/2012 also introduced specific rules to allow a pro-rata payment of the IMU in cases where the same property is used for both commercial and non-commercial activities. In particular, Article 91a(2) states that, if a property is used for both commercial and non-commercial activities, as of 1 January 2013 the exemption will apply only to the portion of the property where non-commercial activities are carried on, if it is possible to identify the portion of the property devoted exclusively to these activities. In cases where it is not be possible to identify these autonomous parts of the property, as of 1 January 2013 the exemption will apply pro-rata to the non-commercial use of the property, as stated in a special declaration (Article 91a(3)). Decree Law No 1/2012 left a number of aspects to be dealt with in a future implementing regulation, to be adopted by the Minister for Economic Affairs and Finance. These aspects included: the terms and conditions for submitting the declaration; the relevant information for identifying the proportional use; and – following the changes introduced by Decree Law No 174/2012 ([31]) - general and specific conditions for an activity to be classified as being performed on a non-commercial basis.

(86) Having taken on board the favourable opinion and comments expressed by the Council of State ([32]), by Decree No 200 of 19 November 2012 the Minister for Economic Affairs and Finance adopted the IMU implementing regulation (hereinafter 'the Regulation') ([33]). It

([29]) Article 7(2a) of Decree Law No 203/2005; Article 91a(4) of Decree Law No 1/2012.

([30]) See Article 13(13) of Decree Law No 201/2011 and also Article 9(8) of Legislative Decree No 23/2011, which refers to Article 7(1)(i) of the ICI law. See paragraph (23) for the description of Article 7(1)(i) of the ICI law.

([31]) See Article 9(6) of Decree Law No 174 of 10 October 2012, converted, with amendments, into Law No 213 of 7 December 2012 (Official Gazette No 286 of 7 December 2012).

([32]) See Opinion No 4802/2012, issued on 13 November 2012 (case No 10380/2012).

([33]) Decree No 200 of 19 November 2012, published in Official Gazette No 274 of 23 November 2012.

establishes when the specific activities concerned by the IMU exemption, as defined in the Regulation itself, will be considered to be carried on on a 'non-commercial basis'. First, as a general requirement, the activities must be non-profit-making; furthermore, in line with EU law, because of their nature they must not be in competition with other market operators that are profit-making and they must abide by the principles of solidarity and subsidiarity ([34]). In addition to this, two concurrent sets of criteria must be met as regards non-commercial entities (subjective requirements) and as regards the specific activities performed by these entities (objective requirements). Concerning the subjective requirements, the Regulation lays down the general conditions that must be met by non-commercial entities for entitlement to the IMU exemption ([35]). In particular, the Regulation states that the non-commercial entity's articles of association or statutes must include a general prohibition on distributing any type of profits, operating surplus, funds and reserves. In addition to this, any profits must be reinvested exclusively in activities that contribute to the institutional aim of social solidarity. If the non-commercial entity is wound up, its assets must be attributed to another non-commercial entity that performs a similar activity. As regards the objective requirements ([36]), specific characteristics are defined for the different types of activity defined in Article 1 ([37]). For welfare and health activities, two alternative requirements must be met: a) the recipient is accredited by the State and has concluded a contract or an agreement with the public authorities; the activities are part of or complementary to the public system and services are provided to users free of charge or for an amount that is only a contribution to the cost of the universal service provision; b) if the entity is not accredited and has not concluded a contract or an agreement, the services are provided free of charge or for a symbolic fee which, in any event, must not exceed half the average price for similar activities in the same geographical area on a competitive basis, also taking into account the absence of any connection with the actual cost of the service. For educational activities, three cumulative requirements must be met: a) the activity must be on a par with public education and the school must apply a non-discriminatory enrolment policy; b) the school must also accept disabled pupils, apply collective working agreements, have structures that meet the applicable standards and publish its accounts; c) the activity must be provided either free of charge or for a symbolic fee covering only a fraction of the actual cost of the service, also taking into account the absence of any connection with the actual cost of such service. For accommodation services and cultural, recreational and sports activities, the recipient must provide the services free of charge or for a symbolic fee which, in any event, must not exceed half the average price for similar activities in the same geographical area, also taking into account the absence of any connection with the actual cost of the service.

([34]) See Article1(1)(p) of the Regulation of the Minister for Economic Affairs and Finance of 19 November 2012.

([35]) Article 3 of the Regulation of the Minister for Economic Affairs and Finance of 19 November 2012.

([36]) Article 4 of the Regulation of the Minister for Economic Affairs and Finance of 19 November 2012.

([37]) Further requirements are found in the definitions in Article 1 of the Regulation. In particular, for accommodation services, Article 1(1)(j) of the Regulation states that only certain categories of people will be given access and that opening periods must not be continuous. More specifically, as regards 'social accommodation', the Regulation indicates that the services must target people with temporary or permanent special needs or people who are disadvantaged due to physical, psychological, economic, social or family conditions. In any event, the exemption is excluded for activities that are carried out in hotels or similar establishments, as defined by Article 9 of Legislative Decree No 79 of 23 May 2011. As regards sports activities, Article 1(1)(m) provides that the entities concerned shall be non-profit sports associations affiliated to national sports federations or sports promotion entities under Article 90 of Law No 289/2002.

5.2. **Comments from the two interested parties on the IMU law**

(87) According to the two parties, Article 91a(2) and (3) of Decree Law No 1/2012 depart from the ordinary rules on the taxation of real estate.

(88) First, the two complainants comment on Article 91a(2), according to which, if the real estate has a mixed use, the IMU exemption applies only to the part of the property where non-commercial activities are carried on, when it is possible to identify the part that is used exclusively for these activities. For the other part of the real estate, which is autonomous in terms of function and income, Article 2(41), (42) and (44) of Decree Law No 262 of 24 November 2006 apply. These provisions govern the procedure applicable to real estate in cadastral Group E, whose cadastral income needs to be reclassified and re-valued. According to this law, in fact, real estate classified under Group E (real estate for special purposes) ([38]) cannot include buildings or parts of buildings with a commercial or industrial use or used for different purposes, if they are autonomous in terms of function and income.

([38]) See paragraph (84).

(89) The two interested parties submit that the reference to Decree Law No 262/2006, contained in Article 91a(2), should be read as a general reference to the procedure of cadastral reclassification. According to the two parties, if the procedure established by Decree Law No 262/2006 were applicable only to real estate belonging to cadastral Group E, the requirement to 'divide up' property with a mixed use would be applicable to only a very limited number of buildings, i.e. buildings in categories E7 and E9.

(90) The two parties also argue that the declaration under Article 91a(3) could pose avoidance issues and the new law would leave too much discretionary power to the public authorities. In addition, the new rules will apply only as of 1 January 2013 and therefore, in any case, the Commission should order the recovery of the aid unlawfully granted under the ICI exemption from 2006 to 2012.

5.3. **Observations from the Italian authorities on the comments from the two interested parties**

(91) The Italian authorities explained that the reference to Article 2(41), (42) and (44) of Decree Law No 262/2006 contained in Article 91a(2) should be read as a general reference to the type of procedure to be followed for dividing up a mixed use property. This procedure applies irrespective of the cadastral category.

(92) Italy also explained that, in general, the Italian tax system is based on the obligation for taxpayers to submit a tax declaration and that it is a very common legislative practice to leave the regulation of specific aspects to the implementing legislation. Moreover, as the law adopted in March 2012 introduces a new system for the declaration of real estate used by non-commercial entities, it was necessary to postpone the entry into force of the new system for those entities.

(93) As regards recovery, the Italian authorities said that it is not possible to identify retroactively which real estate belonging to non-commercial entities was used for not exclusively commercial activities (and which therefore benefited from the ICI exemption). The cadastral data do not in fact provide any information on the type of activity performed in a property ([39]). Nor is it possible to identify from the other tax databases which real estate was used by non-commercial entities for institutional activities performed on a non-exclusively commercial basis.

([39]) See also Circular No 4/2006 of 16 May 2006 of the *Agenzia del Territorio*.

6. **ASSESSMENT**

(94) In order to ascertain whether a measure constitutes aid, the Commission must assess whether the measure at issue fulfils all the conditions laid down in Article 107(1) of the Treaty. This provision states that: 'save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.' In line with this provision, the Commission will examine whether the measure: (i) is financed by the State or through state resources; (ii) provides a selective advantage; (iii) affects trade between Member States and distorts or threatens to distort competition.

(95) First the Commission needs to assess whether at least some of the non-commercial entities involved are in fact undertakings for the purposes of Union competition law.

6.1. **The classification of non-commercial entities as undertakings**

(96) In the decision initiating the procedure, the Commission noted that the non-commercial entities concerned by the measures in question performed, at least partially, economic activities and were therefore classified as undertakings on the basis of those activities.

(97) The Italian authorities and the 78 interested parties maintain that the specific activities carried on by non-commercial entities cannot be considered economic activities. In particular, they consider that, in the context of the ICI measure, activities such as assistance for young mothers in difficulty or management of a building in the mountains where children from a parish go on their summer holidays do not constitute an economic activity. These activities – targeting well-defined categories of recipients - do not constitute a supply of goods or services on the market by non-commercial entities and are not in competition with the activities performed by commercial undertakings. Therefore, these non-commercial entities, operating in the public interest, should not be considered undertakings, which is the prerequisite for the application of Article 107(1) of the Treaty. Moreover, according to the Italian authorities and some of the 78 interested parties, in many cases there is no actual market for such activities. Almost all of these activities also have specific characteristics, which can be summarised as follows:

a) they are provided free of charge or at reduced fees/prices;

b) they are provided for purposes of solidarity and social benefit, which fall outside the scope of commercial undertakings;

c) they have a reduced tax-paying capacity compared with commercial undertakings, which operate on market principles;

d) they generate deficits or low income; any profit must be reinvested in line with the entity's objectives.

(98) In view of these characteristics and the specific aims of the non-commercial entities in question, it is not possible to consider these entities to be undertakings.

(99) The Commission notes that, according to settled case law, the concept of undertaking covers every entity engaged in an economic activity, regardless of its legal status and the way it is financed ([40]). Therefore, the classification of a particular entity depends entirely on the nature of its activities. This general principle has three important consequences, which are described below.

(100) First, the status of an entity under a specific national law is immaterial. This means that its legal and organisational form is irrelevant. Therefore, even an entity which is classified as an association or a sports club under national law may nevertheless be regarded as an undertaking for the purposes of Article 107(1). The only relevant criterion is whether or not the entity concerned carries on an economic activity.

(101) Second, the application of the state aid rules does not depend on whether the entity is set up to generate profits, since non-profit entities can also offer goods and services on the market ([41]).

(102) Third, the classification of an entity as an undertaking is always relative to a specific activity. An entity that carries on both economic and non-economic activities is regarded as an undertaking only with regard to the former type of activity.

(103) An economic activity is any activity consisting of offering goods and services on a market. In this respect, the Commission considers that the characteristics and aspects referred to in paragraph 97 indicated by Italy and the 78 interested parties, which even by their own admission are not present in all cases, cannot *per se* exclude the economic nature of the activities involved.

(104) As already explained, according to Article 7(2a) of Decree Law No 203/2005, as amended by Decree Law No 223/2006 (now repealed), the activities listed in Article 7(1)(i) of the ICI law could be of a commercial nature, provided that they were not exclusively commercial in nature. The Circular of 29 January 2009 had drawn up a number of criteria for each of the activities listed in Article 7(1)(i), in order to establish when each of them must be considered non-exclusively commercial in nature. If the conditions indicated in the Circular were fulfilled, the non-commercial entities were exempted from ICI, even when the activities they carried on also included economic aspects. Indeed, as already stated in the decision initiating the procedure, in the health sector the main requirement was that the non-commercial entities had concluded an agreement or a contract with the public authorities. It is clear that this condition cannot *per se* exclude the economic nature of the activities concerned. Similarly, as regards education, the school had to comply with teaching standards, be accessible to disabled pupils, apply collective working agreements and a non-discriminatory enrolment policy and reinvest profits in the educational activity. Again, these requirements do not exclude the economic nature of the educational activities carried on in this way. As regards cinemas, they were required to show films of cultural interest or with a quality certificate or films for children. As regards accommodation services, the requirement was that these should not be open to the public at large but to predefined categories and that the service was not provided all year round. The service supplier also had to apply prices significantly lower than market prices and the structure could not operate as a normal hotel. Once again, these conditions do not rule out the economic nature of the activities concerned.

([40]) See *inter alia* Case C-41/90 *Höfner* [1991] ECR I-1979, paragraph 21; Case C-222/04, *Cassa di Risparmio di Firenze* [2006] ECR I-289, paragraphs 107 *et seq*.

([41]) Joined Cases 209/78 to 215/78 and 218/78 *Van Landewyck* [1980] ECR 3125, paragraph 21; Case C-244/94 *FFSA and others* [1995] ECR I-4013; Case C-49/07 *MOTOE* [2008] ECR I-4863, paragraphs 27 and 28.

(105) The Commission also observes that, even if in most cases the activities are carried on in the public interest, this element alone does not *per se* rule out the economic nature of such activities. In any case, even if an activity has a social aim, this alone is not enough to preclude it from being classified as an economic activity. Furthermore, non-commercial entities may indeed have a reduced tax-paying capacity, but this does not imply the absence of any economic activity. This factor is of no relevance to a real estate tax that is based on the possession of real estate and takes no account of other elements of tax-paying capacity.

(106) In the light of the above, given that the 2005 Law itself also allowed the ICI exemption for activities of a commercial nature and that the criteria laid down in the Circular and the information provided by Italy are not sufficient to rule out the economic nature of the activities performed, the Commission considers that the non-commercial entities at issue must be classified as undertakings, as far as those activities are concerned. The same holds true for the non-commercial entities under Article 149(4) TUIR, which are effectively allowed to carry on economic activities. This latter conclusion is not contested by the Italian authorities.

(107) In any event, in line with the case law of the Court of Justice ([42]), the Commission considers that, in order to classify a scheme as state aid, it is not necessary to demonstrate that all individual aid granted under that scheme qualifies as state aid under Article 107(1) of the Treaty. In order to conclude that a scheme contains aid elements within the meaning of Article 107(1), it is sufficient for situations to arise during its implementation that constitute aid. Hence, *mutatis mutandis*, in the context of this Decision it is not necessary to consider the nature of all the individual activities listed in Article 7(1)(i) of Legislative Decree No 504/92. As already indicated in paragraph 104, the Commission has in fact established that some of the individual applications of the contested aid scheme involved undertakings.

(108) In the light of the above, the Commission concludes that there is no reason to depart from the position taken in the decision initiating the procedure: the scheme in question also includes economic activities. The specific features of at least some of the activities are such that the Commission can classify them as economic activities. Since the recipients of the measures in question may perform economic activities, it is therefore possible to classify them as undertakings as far as those activities are concerned.

([42]) See Cases C-471/09 P to C-473/09 P *Diputación Foral de Álava and others/Commission*, not yet published in the ECR, paragraph 98; see also Joined Cases C-71/09 P, C-73/09 P and C-76/09 P *Comitato 'Venezia vuole vivere'* v *Commission*, not yet published in the ECR, paragraph 130 and the case law quoted there.

6.2. **The ICI exemption**

(109) In this section, the Commission will examine whether the ICI exemption granted to non-commercial entities, pursuant to Article 7(1)(i) of Legislative Decree No 504/92, in the version in force prior to the amendments introduced by Decree Law No 1/2012, was financed by the State or through state resources; granted a selective advantage, and was furthermore justified by the logic of the Italian taxation system; affected trade between Member States and distorted or threatened to distort competition.

6.2.1. *State resources*

(110) The measure involved the use of state resources and involved foregoing tax revenue for the amount corresponding to the reduced tax liability.

(111) A loss of tax revenue is effectively equivalent to consumption of state resources in the form of fiscal expenditure. By allowing entities, which could be classified as undertakings, to reduce their tax burden through exemptions, the Italian authorities were foregoing revenue to which they would have been entitled in the absence of the tax exemption.

(112) For these reasons, the Commission finds that the measure at issue caused a loss of state resources since it provided for a tax exemption.

6.2.2. *Advantage*

(113) According to the case law, the concept of aid embraces not only positive benefits, but also measures which in various forms mitigate the charges which are normally included in the budget of an undertaking ([43]).

(114) Therefore, since the ICI tax exemption reduced the charges normally included in the operating costs of any undertaking owning real estate in Italy, it gave the entities concerned an economic advantage in comparison with other undertakings that were not entitled to these tax advantages.

([43]) Case C-143/99 *Adria-Wien Pipeline* [2001] ECR I-8365, paragraph 38.

6.2.3. *Selectivity*

(115) To constitute state aid, a measure must be selective ([44]), in the sense that it must favour certain undertakings or the production of certain goods. According to established case law ([45]), in order to classify a domestic tax measure as 'selective', first, it is generally necessary to identify and examine the common or 'normal' tax system applicable in the Member State concerned. Second, it is in relation to this common or 'normal' tax system that it is necessary to establish whether any tax advantage granted by the measure at issue is selective. This must be done by demonstrating that the measure departs from that common system as it differentiates between economic operators that, in the light of the objective pursued by that system, are in a comparable factual and legal situation. Third, if this departure exists, it is necessary to examine whether it results from the nature or general scheme of the taxation system of which it forms part and could hence be justified by the nature or general scheme of the system. In this context, it is for the Member State to show that the differentiated tax treatment derives directly from the basic and guiding principles of its tax system ([46]).

a) Reference system

(116) ICI was an autonomous tax, due annually to the municipalities. In its decision initiating the procedure, the Commission concluded that the reference system for assessing the ICI exemption was the municipal real estate tax itself. Neither Italy nor any of the other interested parties contested this conclusion.

(117) The Commission therefore concludes that there is no reason to review the position taken in the decision initiating the procedure, namely that the reference system is the ICI itself.

b) Departure from the reference system

(118) Under the ICI legislation, all legal persons in possession of real estate, irrespective of the use made of it, were liable for ICI ([47]). Article 7 indicated which categories of real estate were exempted from this tax.

(119) The Commission notes that Article 7(1)(i) of Decree Law No 504/92 departed from the reference system, on the basis of which every person in possession of real estate had to pay the ICI tax, irrespective of the use made of it. As demonstrated above, the non-commercial entities in question could perform activities of a commercial nature, like any other undertaking that performed similar economic activities. In view of the objective pursued by the ICI tax system - i.e. taxation of the possession of real estate by the municipalities - non-commercial entities were therefore in a comparable legal and factual situation to the undertakings liable for ICI.

(120) For instance, according to the conditions laid down in the Circular, cinemas that were managed by non-commercial entities on a non-exclusively commercial basis were entitled to the ICI exemption. These services, offered on the market on a structured basis and against remuneration, none the less constitute economic activities. It is undisputed that, in cases where the activities listed in Article 7(1)(i) were performed by non-commercial entities, these entities benefited from the ICI exemption for the property in which these activities were performed, provided that the minimum requirements of the Circular were met. Commercial entities did not enjoy the same tax exemption, even if they performed the same activities and met the conditions of the Circular regarding the nature of the films.

(121) The Commission accordingly concludes that the ICI exemption under Article (1)(i), in the version in force before the amendments introduced by Decree Law No 1/2012, departed from the reference system and constituted a selective measure within the meaning of the case law.

c) Justification by the nature and general scheme of the tax system

(122) Since the Commission considers that the tax exemption at issue is selective, it will have to determine, in accordance with the case law of the Court of Justice, whether this exemption is justified by the nature and general scheme of the system of which it forms part. A measure that departs from the application of the general tax system may be justified by the nature and general scheme of the tax system if the Member State concerned can show that the measure results directly from the basic or guiding principles of its tax system.

([44]) See Case C-66/02 *Italy* v *Commission* [2005] ECR I-10901, paragraph 94.

([45]) See, *inter alia*, Case C-88/03 *Portugal* v *Commission* [2006] ECR I-7115, paragraph 56; Joined Cases C-78/08 to C-80/08 *Paint Graphos*, not yet published, paragraph 49.

([46]) See Case C-143/99 *Adria-Wien Pipeline GmbH and Wietersdorfer & Peggauer Zementwerke* [2001] ECR I-8365, paragraph 42.

([47]) Articles 1 and 3 of Legislative Decree No 504/92.

(123) The Italian authorities, supported by the 78 interested parties, consider that the ICI exemption represents the application of the guiding principles of the Italian tax system. According to them, differentiated treatment of activities which have a high social value and are provided in the public interest is in keeping with the logic of the taxation system. These activities are inspired by the solidarity principle, which is a fundamental principle of both domestic and Union law. In addition, the non-commercial entities concerned share specific social functions with the State. The rationale of the ICI exemption is based on Articles 2 and 3 of the Italian Constitution, requiring fulfilment of the duties of political, economic and social solidarity towards citizens, and Article 38, which establishes the right to social welfare for people without the necessary means of subsistence.

(124) In this regard, the Commission finds that the Italian authorities have not demonstrated that the measure at issue results directly from the basic or guiding principles of the Italian taxation system. The Articles of the Italian Constitution invoked by Italy do not actually refer to any guiding principle of the Italian tax system but merely to general principles of social solidarity.

(125) Second, the Commission notes that the objective pursued by state measures is not sufficient to exclude those measures from classification as 'aid' for the purposes of Article 107 of the Treaty ([48]). As the Court has also held on numerous occasions, Article 107(1) TFEU does not distinguish between the causes or objectives of state aid but defines them in relation to their effects ([49]). In the light of the above, the Commission further notes that having a social objective and pursuing activities in the public interest is not sufficient to exclude the measure at issue from being classified as state aid.

(126) Third, the Commission notes also that, as already stated, a measure which creates an exception to the application of a general tax system may be justified if it results directly from the basic or guiding principles of the (reference) tax system, in this instance the ICI. In this context, as stated in paragraph 26 of the Commission notice on the application of the state aid rules to measures relating to direct business taxation ([50]), a distinction must be made between, on the one hand, the external objectives assigned to a particular tax scheme (in particular, social or social objectives) and, on the other hand, the objectives which are inherent in the tax system itself. Consequently, tax exemptions which are the result of objectives unrelated to the reference tax system cannot circumvent the requirements under Article 107(1) of the Treaty ([51]). The primary purpose of the tax system in question is to collect revenue to finance state expenditure ([52]) by taxing possession of real estate. Thus, the Commission considers that the social objectives pursued by the entities falling within the scope of the ICI exemption are external to the logic of the ICI tax system and therefore cannot be relied upon to justify *prima facie* the selectivity of the measure.

(127) Fourth, in line with the case law ([53]), when determining if a measure can be justified by the nature or general scheme of the national system of which it forms part, it is necessary to establish not only if the measure forms an inherent part of the essential principles of the tax system applicable in the Member State concerned, but also if it complies with the principles of consistency and proportionality. However, given that the measure at issue does not result directly from the basic principles of the reference tax system, the Commission considers it superfluous to analyse the system of controls put in place by Italy to ensure compliance with the conditions for the ICI exemption for non-commercial entities, as described by the Italian authorities. In any event, the differentiated tax treatment of non-commercial entities, introduced by the measure at issue, is neither necessary nor proportionate in terms of the logic of the tax system.

(128) In the light of paragraphs 122 to 127, the Commission concludes that the selective nature of the tax measure in question is not justified by the logic of the tax system. Therefore, the contested measure must be considered to grant a selective advantage to non-commercial entities performing specific activities.

([48]) Joined Cases C-78/08 to C-80/08 *Paint Graphos*, paragraph 67; see also Case C-487/06 *British Aggregates* v *Commission* [2008] ECR I-10505, paragraph 84 and case law cited there.

([49]) Case C-487/06 *British Aggregates* v *Commission* [2008] ECR I-10505, paragraph 85.

([50]) OJ C 384, 10.12.1998, p. 3.

([51]) Joined Cases C-78/08 to C-80/08 *Paint Graphos*, paragraph 70.

([52]) See paragraph 26 of the Commission notice on the application of the state aid rules to measures relating to direct business taxation.

([53]) Joined Cases C-78/08 to C-80/08 *Paint Graphos*, paragraphs 73 *et seq*.

6.2.4. *Effects on trade between Member States and distortion of competition*

(129) Article 107(1) of the Treaty prohibits aid which affects trade between Member States and distorts or threatens to distort competition. According to the case law of the Court of Justice ([54]), to classify a national measure as state aid, the Commission is required, not to establish that the aid in question has a real effect on trade between Member States and that competition is actually being distorted, but only to examine whether the aid is liable to affect such trade and distort competition. It should also be noted, as explained in paragraph 107 above, that in order to decide on classifying a scheme as state aid, it is not necessary to demonstrate that all individual aid granted under that scheme qualifies as state aid under Article 107(1) of the Treaty. For this purpose, in order to conclude that a scheme contains aid elements within the meaning of Article 107(1), it is sufficient for situations to arise during its implementation that constitute aid.

(130) With regard more specifically to the condition that trade between Member States must be affected, it follows from the case law that the grant of aid by a Member State, in the form of tax relief, to some of its taxable persons must be regarded as likely to have an effect on trade and, consequently, as meeting that condition, where those taxable persons perform an economic activity in the field of such trade or it is conceivable that they are in competition with operators established in other Member States ([55]). Furthermore, when aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid. Moreover, it is not necessary for the recipient undertaking itself to be involved in intra-Union trade. Where a Member State grants aid to an undertaking, its activity on the domestic market may be maintained or increased as a result, so that the opportunities for undertakings established in other Member States to penetrate the market in that Member State are thereby reduced.

(131) With regard to the condition of the distortion of competition, it should be borne in mind that, in principle, aid intended to release an undertaking from costs which it would normally have to bear in its day-to-day management or normal activities distorts the conditions of competition ([56]).

(132) The Italian authorities did not submit any comment in this respect. Some of the 78 third interested parties consider that the ICI exemption is unable to cause any significant effect on trade or distortion of competition, given the specific features of the recipients of the scheme and the way they carry on the activities giving rise to the exemption.

(133) The Commission cannot agree with the views presented by those interested parties, according to which the exemption at issue, granted to non-commercial entities operating at local level, did not cause any significant effect on trade and distortion of competition. According to well established case law, in fact, an adverse effect on trade requires nothing more than a determination that the favoured undertaking is active in a market which is open to competition (import or export of goods or transnational provision of services) ([57]). It is irrelevant whether the affected markets are local, regional, national or Union-wide. Indeed, it is not the definition of the substantively and geographically relevant markets which is decisive, but rather the potential adverse effect on intra-Union trade. The relatively small amount of aid or the relatively small size of the undertaking which receives it does not as such exclude the possibility that intra-Union trade might be affected ([58]). In fact, neither the insignificant amount of the aid nor the small size of the favoured undertakings rules out the presence of the aid ([59]).

([54]) Case C-372/97 *Italy* v *Commission* [2004] ECR I-3679, paragraph 44; Case C-148/04 *Unicredito Italiano* [2005] ECR I-11137, paragraph 54; Case C-222/04 *Cassa di Risparmio di Firenze* [2006] ECR I-289, paragraph 140; Joined Cases C-78/08 to C-80/08 *Paint Graphos*, not yet published, paragraph 78; Case T-303/10 *Wam Industriale Spa* v *Commission*, not yet published, paragraphs 25 *et seq*.

([55]) See Case C-88/03 *Portugal* v *Commission*, paragraph 91, and Case C-172/03 *Heiser* [2005] ECR I-1627, paragraph 35; Case C-494/06 P, *Commission* v *Wam* [2009] ECR I-3639, paragraph 51.

([56]) See Case C-156/98 *Germany* v *Commission* [2000] ECR I-6857, paragraph 30, and *Heiser*, paragraph 55.

([57]) See Case T-298/97 *Alzetta* ECR [2000] II-2319, paragraphs 93 *et seq*.

([58]) See Case C-142/87 *Belgium* v *Commission* [1990] ECR I-959, '*Tubemeuse*', paragraph 43; Joined Cases C-278/92 to C-280/92 *Spain* v *Commission* [1994] ECR I-4103, paragraph 42, and Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747, paragraph 81.

([59]) Case T-171/02 *Sardegna* v *Commission* [2005] ECR II-2123, paragraph 86 *et seq*; Case C-113/00 *Spain* v *Commission* [2002] ECR I-7601, paragraph 30; Case T-288/97, *Friuli Venezia Giulia* v *Commission* [2001] ECR II-1169, paragraphs 44 and 46.

(134) In the case at hand, the Commission notes that at least some of the sectors benefiting from the ICI exemption, such as accommodation and health services, were and are indeed exposed to competition and trade within the Union. With reference to the measure at issue, the Commission considers that the conditions set out in the case law are met because the measure provides an advantage in terms of financing the activities of the entities concerned, releasing those entities from costs which they would have normally borne. The measure is therefore liable to distort competition.

(135) Therefore, the Commission concludes that the measure at issue is liable to affect trade between Member States and distort competition within the meaning of Article 107(1) of the Treaty.

6.2.5. *Conclusion on the classification of the contested measure*

(136) In the light of the above, the Commission concludes that the measure at issue fulfils all the conditions laid down in Article 107(1) of the Treaty and should thus be regarded as state aid.

6.2.6. *Classification of the measure as new aid*

(137) In the decision initiating the procedure, the Commission considered that the ICI exemption under Article 7(1)(i) of Legislative Decree No 504/92 constituted new aid. The ICI tax, an annual tax paid to the municipalities, was introduced in 1992. It was not notified to the Commission or approved by the Commission. The exemption applied to a wide range of activities which were open to competition at the time of its introduction.

(138) Italy submits that the approach taken by the Commission in the decision initiating the procedure is incorrect and that, if the ICI exemption were considered to be aid, it should be classified as existing aid. Italy maintains that ICI represents the logical legislative progression from the earlier property taxes, with which it provides formal and material continuity. Exempting real estate used for specific activities with a high social value has been a fundamental component of all taxes on real estate introduced since 1931, well before the entry into force of the EEC Treaty.

(139) The Italian authorities also argue that the Commission's replies to the complainants concerning the ICI exemption, of which Italy was informally notified, had created a legitimate expectation on the part of non-commercial entities as to the compatibility of the ICI exemption with Union law.

(140) Italy presented a detailed description of the real estate taxes that were in force before ICI. In 1931, Italy introduced the specific and general improvement taxes in the Single Act on Local Finance. Subsequently, in 1963, a tax on the appreciation of building areas was introduced by Law No 246 of 5 March 1963. Finally, the tax on the appreciation of immovable property (the so-called INVIM) was introduced by Presidential Decree No 643 of 26 October 1972. The appreciation in the value of immovable property was taken into account when calculating the specific and general improvement taxes. Similarly, the 1963 tax also targeted the capital gain of building areas. This capital gain was also taxed at the time of transfer of the properties by *inter vivos* deeds and, in general, at the end of every ten years of possession of the real estate. INVIM, introduced in 1972, replaced both the 1931 and the 1963 taxes. Under the INVIM law, the taxable persons were the transferor for consideration or the transferee without charge and, in each case, the tax was due every ten years. INVIM was abolished with the introduction of ICI. According to Italy, this analysis demonstrates the close continuity between the various real estate tax instruments used since 1931. Italy also notes that the rules on real estate tax exemptions have always taken into account the type of activity carried on by the entities that were entitled to the exemption. The fact that the categories of exempted recipients have increased over the years is simply due to the fact that the range of entities pursuing social interest activities has broadened.

(141) The Commission does not consider the Italian authorities' arguments to be correct. First, the Commission points out that ICI is completely different from the earlier property taxes that it replaces. In any case, there are a number of substantial differences between ICI and the previous real estate taxes, in terms of taxable persons, taxable base and events which gave rise to the obligation to pay these taxes. For instance, until the introduction of ICI, real estate taxes were calculated on the capital gain of the real estate whereas ICI was calculated on the basis of the real estate's cadastral value. In addition, whereas INVIM was due by the transferor for consideration or by the transferee without charge, ICI was due by every natural and legal person that possessed real estate.

Finally, whereas INVIM was generally paid every ten years, ICI had to be paid each year. In the light of the above, the Commission considers that the amendments introduced over time and, in particular, with the ICI Law, affect the actual substance of the original scheme and cannot be separated from it, so that the original scheme is transformed into a new aid scheme ([60]). The Commission has no reason to review the position set out in the decision initiating the procedure and confirms that the ICI exemption constituted new aid.

(142) As regards the alleged authorisation of the ICI measure, the Commission notes that the aid in question was never authorized by the Commission or the Council. If this had been the case, the aid would be considered existing aid, according to Article 1(b)(ii) of Regulation (EC) No 659/1999. However, the letters containing the Commission's preliminary assessment, which were sent to the complainants in the context of the administrative proceedings prior to the decision initiating the procedure, cannot be equated to Commission decisions. Indeed, a measure can be considered existing aid under Article 1(b)(ii) only if the aid has already been approved by an express decision of the Commission or the Council. In any event, the letter sent to the complainants on 15 February 2010 was challenged by two complainants before the General Court and did not become final; these Court actions were withdrawn only after the decision initiating the procedure. The Commission accordingly concludes that, in the absence of any Commission or Council decision, Article 1(b)(ii) of Regulation (EC) No 659/1999 does not apply. Therefore, the aid at issue cannot be considered existing aid - on the contrary, it constitutes new aid.

6.2.7. *Compatibility*

(143) In the decision initiating the procedure, the Commission considered that the aid scheme in question did not qualify for any of the exemptions laid down in Article 107(2) and (3) of the Treaty and that the Italian authorities had not demonstrated that the aid could be declared compatible under Article 106(2) of the Treaty.

([60]) Joined Cases T-195/01 and T-207/01 *Government of Gibraltar* v *Commission* [2002] ECR II-2309, paragraph 111.

(144) In the course of the procedure, the Italian authorities did not present any argument to indicate that the exceptions provided for in Article 107(2) and (3) and in Article 106(2) can apply to the scheme at issue. Some of the 78 interested parties considered that the scheme was compatible under Article 106(2) and Article 107(3)(c). In their view, the exemption was necessary for activities carried out in the public interest based on the solidarity principle. The two complainants consider that none of the exceptions laid down in the Treaty is applicable.

(145) The Commission considers that the exceptions provided for in Article 107(2), which concern aid of a social character 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.

(146) The same holds for the exception provided for in Article 107(3)(a), which authorises aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious unemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation. Nor can the measure in question be considered to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of Italy, as provided for by Article 107(3)(b).

(147) According to Article 107(3)(c), aid to facilitate the development of certain economic activities may be considered compatible where it does not adversely affect trading conditions to an extent contrary to the common interest. However, the Commission did not receive any factual information enabling it to assess whether the tax exemption granted by the measure under examination was related to specific investments or projects eligible

to receive aid under the EU rules and guidelines, or otherwise directly compatible with Article 107(3)(c). Therefore, the Commission cannot agree with the position of the third parties that claim the compatibility of the measure under Article 107(3)(c) on the basis of the need to allow non-commercial entities to carry out activities based on the solidarity principle and with a high social function. In particular, in view of the nature of the advantage, which is simply linked to the level of tax liability for the possession of real estate, it is not possible to establish that it is necessary and proportionate to attain an objective of common interest in all individual cases. Consequently, the Commission considers that the measure concerned cannot be considered compatible under any of the guidelines based on Article 107(3)(c).

(148) Article 107(3)(d) provides that aid to promote culture and heritage conservation, where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest, may be considered compatible with the internal market. In the decision initiating the procedure, the Commission considered that, in the case of some entities such as non-commercial entities that performed exclusively educational, cultural and recreational activities, it was not possible to rule out *a priori* that their object was the promotion of culture and heritage conservation and that they could accordingly come under Article 107(3)(d). However, neither Italy nor any of the interested parties provided the Commission with any information that could have demonstrated the compatibility of the measure at issue for specific entities, pursuant to Article 107(3)(d) ([61]). In this context, too, the very nature of the advantage makes it impossible to consider that the aid is necessary and proportionate in all individual cases.

(149) Finally, in the decision initiating the procedure, the Commission did not rule out that some of the activities benefiting from the measure in question could be classified under Italian law as services of general economic interest, in line with Article 106(2) of the Treaty and the *Altmark* case law. Some of the interested parties considered that the Commission should assess the measure under Article 106(2) but did not provide any relevant information for the analysis. The two parties consider that the measure does not fulfil the criteria of the *Altmark* case law. However, given that neither Italy nor the interested parties provided any information enabling the Commission to assess the measure under Article 106(2), the Commission concludes that it is not possible to establish if any of the activities at issue could be classified as services of general economic interest under that Article. Once again, it is not possible to establish whether, in each individual case, the aid is necessary and proportionate to cover the costs incurred in the discharge of public service obligations or in the performance of services of general economic interest.

(150) In the light of the above, the Commission concludes that the aid scheme in question is incompatible with the internal market.

6.3. **Article 149(4) TUIR**

(151) In the decision initiating the procedure, the Commission considered that the measure in question appeared to constitute state aid. In the following section, the Commission will examine whether Article 149(4) TUIR constitutes state aid within the meaning of Article 107(1) of the Treaty.

(152) The Italian authorities explained that Article 149(2) TUIR contains a non-exclusive list of parameters that can be taken into account ([62]) to assess the commercial nature of an entity. Should one or more of these conditions be met, it does not mean the automatic loss of the entity's non-commercial status (since these parameters cannot be considered legal presumptions) but instead gives an indication of the potentially commercial nature of the activity performed by the entity. As regards ecclesiastical institutions with civil-law status, Italy pointed out that Revenue Agency Circular No 124/E of 12 May 1998 explained that ecclesiastical institutions can benefit from the tax treatment granted to non-commercial entities only if performing commercial activities is not their prime object. In any case, ecclesiastical institutions with

([61]) In their observations on the comments from third parties, the Italian authorities claimed that Article 107(3)(d) of the Treaty could be applicable – in theory – only to certain activities listed in Article 7(1)(i). However, no further arguments were put forward to support this.

([62]) See footnote 12.

civil-law status must give priority to institutional activities of a chiefly idealistic persuasion. Therefore, Article 149(4) TUIR simply excludes the application of the specific time and business parameters under Article 149(1) and (2) to ecclesiastical institutions and amateur sports clubs, but it does not preclude these entities from losing their non-commercial status.

(153) The Italian authorities emphasised that the measure is aimed at preserving the exclusive competence enjoyed by CONI (the Italian National Olympic Committee) for amateur sports clubs and by the Interior Ministry for ecclesiastical institutions.

(154) In particular, as regards ecclesiastical institutions, Law No 222 of 20 May 1985 implementing the international agreements between Italy and the Holy See governs, *inter alia*, the powers attributed to the Interior Ministry. Italy stressed that the Interior Ministry has exclusive competence both for the recognition of the civil-law status of ecclesiastical institutions and the revocation of this status ([63]). Article 149(4) TUIR therefore confirms this exclusive competence by preventing the implicit revocation of the civil-law status of ecclesiastical institutions by the tax authorities. If the Interior Ministry revoked the civil-law status of an ecclesiastical institution, it would lose the status of a non-commercial entity and would no longer be able to benefit from the tax treatment applicable to non-commercial entities. According to Presidential Decree No 361/2000, the Interior Ministry, through the '*Prefetti*', also checks that ecclesiastical institutions continue to meet the requirements for maintaining their civil-law status.

(155) As regards amateur sports clubs, Italy confirmed that CONI is the only entity that can check that the clubs effectively carry on sports activities. The Italian authorities also clarified that amateur sports clubs can lose their non-commercial status if the CONI concludes that they do not carry on amateur sports activities. Amateur sports clubs must transmit their tax data using the special EAS form ([64]). However, if amateur sports clubs do not carry on any commercial activities, they do not need to submit this form. In the light of the above, the Italian authorities have put in place the appropriate instruments to check the activities carried out by amateur sports clubs – including from a tax point of view.

(156) Italy also explained that if the tax authorities find out that ecclesiastical institutions and amateur sports clubs perform primarily commercial activities, they immediately inform the Interior Ministry or the CONI. The Interior Ministry and CONI carry out their own checks, according to the statutory powers assigned to them. In parallel, the tax authorities ensure that the tax declaration of the non-commercial entity concerned is corrected and order the recovery of the difference in taxation.

(157) The Italian authorities confirmed that tax controls were indeed carried out on non-commercial entities ([65]). In this respect, the Revenue Agency recently issued specific operational instructions to the regional offices concerning non-commercial entities ([66]). As regards ecclesiastical institutions, the Interior Ministry also carried out a number of *ex officio* checks on these entities but has never found any cases of abuse.

(158) In the light of the above, the Commission considers that the legal instruments exist to ensure that abuse of the non-commercial status of ecclesiastical institutions and amateur sports clubs is effectively prevented or suppressed. The Italian authorities have also demonstrated that the competent authorities do exercise their powers of control and that both ecclesiastical institutions and amateur sports clubs can lose their non-commercial status if they carry out primarily economic activities. Therefore, ecclesiastical institutions and amateur sports clubs can lose their entitlement to the tax treatment granted to non-commercial entities in general. Consequently, there is no system of 'perpetual non-commercial status', as alleged by the complainants. The mere fact that specific procedures apply to the checks on the ecclesiastical institutions with civil-law status and amateur sports clubs in question does not involve an advantage.

([63]) In particular, as regards revocation, see Article 19 of Law No 222 of 20 May 1985.

([64]) See Article 30 of Law No 185 of 29 November 2008. See also Circular No 12/E of 9 April 2009 of the Tax Revenue Agency and the Decision of the Director of the Revenue Agency of 2 September 2009.

([65]) In 2010 and 2011, Italy carried out 2 030 checks on non-commercial entities and issued 5 086 tax assessment notices.

([66]) See Circular No 20/E of the Tax Revenue Agency of 16 April 2010.

(159) The Commission therefore concludes that Article 149(4) TUIR does not confer any selective advantage on ecclesiastical institutions or amateur sports clubs. Hence the measure does not constitute state aid within the meaning of Article 107(1) of the Treaty.

6.4. **The IMU exemption**

(160) Following the introduction of IMU - the new municipal real estate tax replacing ICI – at the request of the Italian authorities and in the light of the complainants' comments on this new law, the Commission agreed to establish whether the new IMU exemption regarding non-commercial entities performing specific activities complies with the state aid rules. The Commission will accordingly assess whether the IMU exemption in question constitutes state aid within the meaning of Article 107(1).

(161) The Commission notes that, from the date of entry into force of Decree Law No 1/2012, converted into Law No 27/2012, the exemption under Article 7(1)(i) of Legislative Decree No 504/92 applies to the real estate owned by non-commercial entities only if the activities listed there are carried on on a non-commercial basis. The provisions concerning the 'mixed use' of buildings, both in the case where parts of the buildings are autonomous in terms of function and revenue and where it is necessary to have a declaration by the entities concerned, will apply as of 1 January 2013.

(162) The Commission considers that the new rules spell out that the exemption can be guaranteed only if commercial activities are not carried on. Therefore, the hybrid situations which the ICI legislation had created, where commercial activities were carried on in some buildings that were entitled to a tax exemption, will no longer be possible.

(163) In general terms, the interpretation of the notion of economic activity depends, *inter alia*, on the specific circumstances, the way the activity is organised by the State, and the context in which it is organised. In order to establish the non-economic nature of an activity pursuant to Union case law, it is necessary to examine the nature, the aim and the rules that govern this activity. The fact that some activities can be classified as 'social' is not in itself sufficient to exclude their economic nature. However, the Court of Justice has also recognised that certain activities with a purely social function may be considered non-economic, especially in sectors closely related to the basic tasks and responsibilities of the State.

(164) None the less, as regards IMU, the Commission considers it essential first to establish whether the criteria laid down in Italian legislation to exclude the commercial nature of the activities entitled to the IMU exemption are in line with the notion of non-economic activity under Union law.

(165) In this respect, as illustrated above in paragraphs 82 *et seq*., the Italian authorities recently approved the implementing legislation provided for by Article 91a(3) of Decree Law No 1/2012. The Regulation of the Ministry of Economic Affairs and Finance of 19 November 2012 sets out the general and specific requirements needed to establish when the activities listed in Article 7(1)(i) of Legislative Decree No 504/92 are performed on a non-commercial basis.

(166) First, Article 1(1)(p) of the Ministerial Regulation of 19 November 2012 defines the concept of 'non-commercial basis'. The institutional activities are considered to be carried on on a non-commercial basis when: (a) they are not-profit making; (b) in keeping with the principles of Union law, by their nature they are not in competition with other market operators that are profit-making; and (c) they put into practice the principle of solidarity and subsidiarity. In this respect, the requirement under (b) is an important safeguard since, by referring expressly to Union law, it guarantees in general that the activity is not in competition with other profit-making market operators, which is an essential characteristic of non-economic activities ([67]).

(167) Second, Article 3 of the Regulation defines the general subjective requirements which must be included in the articles of association or statutes of non-commercial entities so that their activities are carried on on a non-commercial basis The criteria are as follows: (a) ban on distributing, even indirectly, any profits, operating

([67]) Case C-222/04 *Cassa di Risparmio di Firenze* [2006] ECR I-289, paragraphs 121-123.

surplus, funds, reserves or capital during the life of the entity, unless it is imposed by law or is in favour of entities that belong to the same structure and that perform the same activity; (b) any profit and surplus must be reinvested exclusively in developing activities that contribute to the institutional aim of social solidarity; and (c) if the non-commercial entity is wound up, its assets must be attributed to another non-commercial entity that performs a similar activity, unless otherwise provided by law.

(168) Third, Article 4 of the Regulation identifies additional objective requirements that must be met, together with the conditions indicated in Articles 1 and 3, in order for the activities listed in Article 7(1)(i) of the ICI law to be deemed to be carried on on a non-commercial basis.

(169) In particular, as regards welfare and health care activities, the Regulation states that these are carried on on a non-commercial basis if at least one of the following conditions is met: (a) the activities are accredited by the State and are performed under either a contract or an agreement with the State, the Regions or local authorities and they are part of or complementary to the public national health system and provide services to users free of charge or for an amount that is only a contribution to the cost of the universal service provision; (b) if the activities are not accredited and performed under a contract or an agreement, they must be provided free of charge or for a symbolic fee which, in any event, must not exceed half the average price for similar activities in the same geographical area on a competitive basis, also taking into account the absence of any connection with the actual cost of the service.

(170) With reference to the first condition, the Commission notes that, as explained by the Italian authorities, in order to benefit from the exemption the entities concerned must be an integral part of the national health service, which provides universal cover and is based on the principle of solidarity. In this system, public hospitals are directly funded from social security contributions and other state resources. These hospitals provide their services free of charge on the basis of universal cover or for a low fee which covers only a small fraction of the actual cost of the service. Non-commercial entities falling under the same category and fulfilling the same conditions are also considered an integral part of the national health system ([68]). In the light of the specific features of this case and in line with the principles laid down by Union case law ([69]), since the Italian national system provides a system of universal cover, the Commission concludes that the entities concerned, which perform the activities described above and fulfil all the statutory requirements, do not qualify as undertakings.

(171) As regards the second condition, the Regulation states that the activities must be performed either free of charge or for a symbolic fee. Services provided free of charge do not generally constitute an economic activity. In particular, this is the case if the services are not offered in competition with other market operators, as laid down in Article 1 of the Regulation. The same holds true for services that are provided for a symbolic fee. In this respect, it is important to note that the Regulation stipulates that, for the fee to be considered symbolic, it must bear no relationship to the cost of the service. The Regulation also states that the limit set of half the average price charged for similar activities performed on a competitive basis in the same geographical area can be used only to exclude entitlement to the exemption (as indicated by the words 'in any event'). It does not, however, imply that service providers which charge a price below that limit are entitled to the exemption. Therefore, given that the assistance and health care activities also meet the general and subjective requirements indicated in Articles 1 and 3 of the Regulation, the Commission concludes that such activities, performed in line with the principles of the current legislation, do not constitute economic activities.

(172) Educational activities, for their part, are deemed to be carried on on a non-commercial basis if a number of specific conditions are met. In particular, the activity must be on a par with public education and the school must apply a non-discriminatory enrolment policy; the school must also accept disabled pupils, apply collective working agreements, have structure that meet the applicable standards and publish its accounts. In

([68]) See, in particular, Article 1(18) of Legislative Decree No 502 of 30 December 1992.

([69]) See Case T-319/99 *FENIN* v *Commission* [2003] ECR II-357, paragraph 39, confirmed by Case C-205/03 P *FENIN* v *Commission* [2006] I-6295; Joined Cases C-264/01, C-306/01, C-354/01 and C-355/01 *AOK Bundesverband and Others* [2004] ECR I-2493, paragraphs 45 to 55; see also Case T-137/10, *CBI* v *Commission*, not yet published.

addition, the activity must be provided either free of charge or for a symbolic fee covering only a fraction of the actual cost of the service, also taking into account the absence of any connection therewith. In this respect, the Commission recalls that according to case law ([70]), courses offered by certain establishments forming part of a public education system and financed, entirely or mainly, by public funds do not constitute an economic activity. The non-economic nature of public education is in principle not affected by the fact that pupils or their parents must sometimes pay tuition or enrolment fees which contribute to the operating expenses of the system, provided that the financial contribution covers only a fraction of the actual cost of the service and, therefore, cannot be considered remuneration for the service provided. As also acknowledged by the Commission in its Communication on the application of the European Union state aid rules to compensation granted for the provision of services of general economic interest ([71]), these principles cover kindergartens, private and public primary schools, vocational training, secondary teaching activities in universities and also provision of education in universities. In the light of the above, the Commission considers that the symbolic fee referred to in the Regulation, representing only a fraction of the actual cost of the service, cannot be considered remuneration for the services provided. Therefore, under these specific circumstances, given the general and subjective requirements of Articles 1 and 3 of the Regulation, together with the specific objective requirements laid down in Article 4, the Commission considers that the education service provided by the entities concerned cannot be considered to be an economic activity.

(173) In respect of accommodation services, cultural and recreational activities and sports activities, Article 4 of the Regulation states that they must be provided either free of charge or for a symbolic fee which, in any event, must not exceed half the average price charged for similar activities performed on a competitive basis in the same geographical area, also taking into account the absence of any connection with the actual cost of the service. This requirement is identical to the second condition laid down for assistance and health care activities, examined in paragraph 171 above, hence the same considerations apply. If the services are provided free of charge, in principle they do not constitute an economic activity. The same holds true if they are provided for a symbolic fee. In this respect, it is important to note that the Regulation stipulates that, for the fee to be considered symbolic, it must bear no relationship to the cost of the service. It also states that the limit set of half the average price charged for similar activities performed on a competitive basis in the same geographical area can be used only to exclude entitlement to the exemption (as indicated by the words 'in any event'). It does not, however, imply that service providers which charge a price below that limit are entitled to the exemption.

(174) In the case of accommodation services and sports activities, the Commission also notes the further requirements based on the definitions of these activities in Article 1(1)(j) and (m) of the Regulation. As regards accommodation services, the Regulation limits the exemption to services provided by non-commercial entities that are accessible only to certain categories of people and are not open on a continuous basis. In particular, as regards 'social accommodation', the Regulation indicates that the activities must be targeted at people with temporary or permanent special needs or people who are disadvantaged due to physical, psychological, economic, social and family conditions. The entity can only request payment of a symbolic fee which, in any event, must not exceed half the average price charged for similar activities performed by commercial entities in the same geographical area, also taking into account the absence of any connection with the actual cost of the service. The Regulation also specifies that, in any event, the exemption is not applicable to activities that are carried on in hotels or similar establishments, as defined by Article 9 of Legislative Decree No 79 of 23 May 2011 ([72]). The exemption is therefore excluded for activities carried on, for instance, in hotels, motels and bed and breakfast establishments. Since, in the case at issue, the non-commercial entities offering accommodation must fulfil the general, subjective and objective requirements in Articles 1, 3 and 4 of the Regulation, the Commission considers that, in the light of the specific features of the present case, these activities, which meet the above conditions, do not constitute an economic activity for the purposes of Union law.

([70]) Case 263/86 *Humbel and Edel* [1988] ECR 5365, paragraphs 17 and 18; Case C-109/92 *Wirth* [1993] ECR I-6447, paragraphs 15 and 16; Case C-76/05 *Schwarz* [2007] ECR I-6849, paragraph 39. See also judgment of the EFTA Court of 21 February 2008 in Case E-5/07, *Private Barnehagers Landsforbund* v *EFTA Surveillance Authority*, paragraphs 80-83.

([71]) OJ C 8, 11.1.2012, p. 4.

([72]) Legislative Decree No 79 of 23 May 2011 - *Codice della normativa statale in tema di ordinamento e mercato del turismo, a norma dell'articolo 14 della legge 28 novembre 2005, No 246, nonché attuazione della direttiva 2008/122/CE, relativa ai contratti di multiproprietà, contratti relativi ai prodotti per le vacanze di lungo termine, contratti di rivendita e di scambio*- (Official Gazette No 129 of 6.6.2011 – Ordinary Supplement No 139). Article 9 of this Legislative Decree defines the following as hotels and similar structures: a) hotels; b) motels; c) holiday villages; d) tourist/service apartments; e) boarding houses; f) seasonal residential hotels; g) bed and breakfast establishments run as a business, h) health farms; i) any other tourist accommodation structures with similar features to one or more of the above categories.

(175) Therefore, given the specific circumstances of the present case and given that the non-commercial entities offering accommodation services, cultural, recreational and sports activities must also fulfil the requirements of Articles 1 and 3 of the Regulation, the Commission concludes that these activities, performed as described by the law, are not considered economic activities.

(176) The Commission therefore concludes that, on the basis of the information submitted by the Italian authorities, in the light of the specific and particular features of the present case, the activities analysed in the preceding paragraphs, performed by non-commercial entities in full compliance with the general, subjective and objective criteria laid down in Articles 1, 3 and 4 of the Regulation, are not of an economic nature. Therefore, the non-commercial entities concerned, when performing those activities in full compliance with the conditions laid down by the Italian legislation are not acting as undertakings for the purposes of Union law. Given that Article 107(1) of the Treaty applies only to undertakings, it follows that in the case in question the measure does not fall within the scope of that Article.

(177) Finally, the Commission notes that, from 1 January 2013, in the case of hybrid use of a building, it is possible under the Italian legislation to calculate the pro-rata commercial use of the real estate and to impose IMU on economic activities only. The Commission points out in this context that, if an entity performs both economic and non-economic activities, the partial exemption that it enjoys for the part of the real estate used for non-economic activities does not represent an advantage for that entity when it performs an economic activity as an undertaking. Therefore, the measure does not constitute state aid within the meaning of Article 107(1) in this type of situation either.

6.5. **Recovery**

(178) According to the Treaty and the established case law of the Court of Justice, when the Commission finds that aid is incompatible with the internal market, it is competent to decide that the State concerned must abolish or alter it ([73]). The Court has also consistently held that the obligation of a State to abolish aid regarded by the Commission as being incompatible with the internal market is designed to re-establish the previously existing situation ([74]). In this context, the Court has established that that objective is achieved once the recipient has repaid the amounts granted, thus forfeiting the advantage which it had enjoyed over its competitors on the market, and the situation prior to the payment of the aid is restored ([75]).

(179) Following that case law, Article 14(1) of Regulation (EC) No 659/99 ([76]) stipulates that 'where negative decisions are taken in respect of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the recipient.'

(180) Thus, once the ICI exemption measure is considered unlawful and incompatible aid, it must in principle be recovered in order to re-establish the situation that existed on the market prior to the granting of the aid.

(181) However, Regulation (EC) No 659/99 imposes limits on ordering recovery. For example, Article 14(1) provides that 'the Commission shall not require recovery of the aid if this would be contrary to a general principle of Community law' such as the protection of legitimate expectation. The Court of Justice has also recognised one exception to the obligation for a Member State to implement a recovery decision addressed to it, namely the existence of exceptional circumstances that would make it absolutely impossible for the Member State to execute the decision properly ([77]).

(182) Since these exceptions were raised by the Italian authorities in the context of the formal investigation, the Commission must examine whether they apply to the present case in order to determine if recovery is required.

6.5.1. *Legitimate expectation*

(183) The case law of the Court of Justice and the Commission's own decision-making practice have established that an order to recover aid would infringe a general principle of Union law if, as a result of the Commission's actions, a legitimate expectation exists on the part of the recipient of a measure that the aid has been granted in accordance with Union law.

([73]) Case C-70/72 *Commission* v *Germany* [1973] ECR 813, paragraph 13.

([74]) Joined Cases C-278/92, C-279/92 and C-280/92 *Spain* v *Commission* [1994] ECR I-4103, paragraph 75.

([75]) Case C-75/97 *Belgium* v *Commission* [1999] ECR I-030671, paragraphs 64-65.

([76]) OJ L 83, 27.3.1999, p. 1.

([77]) Notice from the Commission — *Towards an effective implementation of Commission decisions* ordering Member States to recover unlawful and incompatible State aid, OJ C 272, 15.11.2007, p. 4, paragraph 18.

(184) The Court has repeatedly held that the right to rely on the principle of the protection of legitimate expectation extends to any person in a situation where an authority of the Union has caused him or her to have justified expectations. However, a person may not plead legitimate expectation unless he or she has been given precise assurances by the administrative body ([78]).

(185) In the present case, the Italian authorities and the 78 interested parties have essentially invoked the existence of legitimate expectation based on the Commission's reply to a parliamentary written question of 2009 ([79]). In its reply, the Commission declared that it had 'carried out a preliminary assessment and considered that there was no ground to proceed further, since it appears that the ICI tax regime is not liable to put ecclesiastic institutions in an advantageous competitive position'.

(186) The Commission maintains that this reply did not given rise to any legitimate expectation, for the following reasons.

(187) First, the Commission's statement was merely the result of a 'preliminary assessment'; the Commission did not state that it had taken a decision, but only that it considered that there was no ground to proceed further. Second, the Commission indicated tentatively that it appeared that the ICI exemption was not likely to confer any advantage on ecclesiastical institutions. Third, the question and the reply referred only to ecclesiastical institutions, which are a subcategory of the non-commercial entities concerned by the ICI exemption.

(188) In the light of the above, the Commission considers that it did not provide specific, unconditional and consistent assurances of a nature such that the recipients of the measure at issue entertained justified expectations that the scheme was lawful, in the sense that it did not fall within the scope of the state aid rules, and that consequently any advantage derived from it could not be subject to recovery proceedings. In conclusion, the Commission considers that it did not make any precise and unconditional statement to the effect that the ICI exemption at issue should not be considered state aid.

([78]) Case C-182/03 and C-217/03 *Belgium and Forum 187 ASBL* v *Commission* [2006] ECR I-5479, paragraph 147.

([79]) Written Question E-177/2009 (OJ C 189, 13.7.2010).

(189) Italy has also argued that the replies given by the Commission to the complainants on the ICI exemption, about which Italy was informally told, created a legitimate expectation on the part of the non-commercial entities as regards the compatibility of the ICI exemption with Union law. The Commission does not agree with the views expressed by Italy. Preliminary assessment letters sent by the Commission to the complainants, of which the Member State was only unofficially informed, do not constitute the Commission's final position. Whereas Commission decisions are made public and published in the Official Journal, this is not the case in a simple administrative procedure where - on the basis of the facts available - the Commission does not harbour serious doubts about the compatibility of the measures examined. Moreover, the letter sent to the complainants on 15 February 2010 was challenged by two complainants before the General Court and did not become final; these Court actions were withdrawn only subsequent to the decision initiating the procedure.

(190) The Commission therefore concludes that, in the present case, Italy and the 78 interested parties were not given any assurance by any institution of the Union which could justify legitimate expectation and therefore prevent the Commission from ordering recovery.

6.5.2. *Exceptional circumstances: absolute impossibility of recovery*

(191) Under Article 288 of the Treaty, the Member State to which a recovery decision is addressed is obliged to execute the decision. As indicated above, there is one exception to this obligation, namely where the Member States demonstrates the existence of exceptional circumstances that would make it absolutely impossible to execute the decision properly.

(192) Member States usually raise this argument in the context of the discussions with the Commission after the adoption of the decision ([80]). However, in this case, Italy already argued before the adoption of the decision that recovery should not be ordered because it would be absolutely impossible to implement it. Since Italy raised this issue in the context of the formal investigation, and since a general principle of law states that no one can be obliged to do the impossible, the Commission considers that it is necessary to deal with this question in the present Decision.

([80]) Case C-214/07 *Commission* v *Spain* [2008] ECR I-8357, paragraphs 13 and 22.

(193) It should first be recalled that the Court of Justice has constantly given a very strict interpretation to the concept of 'absolute impossibility'. The condition that recovery would be absolutely impossible is not fulfilled where Member States merely inform the Commission of the legal, political or practical difficulties involved in implementing the decision ([81]). The only instance where 'absolute impossibility' could be accepted is where recovery would, from the beginning, be impossible in objective and absolute terms ([82]).

(194) In the case at hand, the Italian authorities have argued that it would be absolutely impossible to define which real estate, belonging to non-commercial entities, was used for activities that were not of an exclusively commercial nature and to retrieve the information needed to determine the amount of tax that should have been paid.

(195) The Italian authorities explained that, because of the way the cadastre is structured, it is impossible to extrapolate retroactively from the cadastral databases the data concerning real estate belonging to non-commercial entities which was used for activities of a non-exclusively commercial nature of the type indicated in the ICI exemption. It is not possible to trace activities carried on in the real estate from the information contained in the cadastre. In other words, on the basis of the data in the cadastre, it is not possible to work out if, in a given property, an entity carried on either commercial or non-commercial activities. In fact, each single property (including portions of real estate with a separate classification) is registered in the cadastre only on the basis of its objective characteristics, which take into account physical and structural elements linked to its intended use.

(196) As regards tax databases, and in particular records of the tax declarations of non-commercial entities, Italy explained that it was possible to identify from them only the real estate used exclusively on a non-commercial basis. In this case, the buildings that produce revenue must be indicated in the standard tax declaration under Section RB on building revenue, whereas Section RS on mixed costs and receipts does not have to be filled in. On the other hand, if a non-commercial entity owns real estate in which commercial activities are also carried on, then both Sections RB and RS have to be filled in. However, if more than one building is indicated under Section RB, it is not possible to identify the real estate in which the activity that generated the revenue indicated in the tax declaration was carried on. In any case, it should be noted that Section RS of the standard form includes aggregate cost and revenue data concerning goods and services used for both commercial and non-commercial purposes (goods and services used arbitrarily for commercial activities and other activities). However, even when a single building is indicated under Section RB, because of the way the cadastral system is structured it is not possible to obtain a breakdown based on commercial/non-commercial uses of a building and therefore it is not possible to identify what portion of the building was used for the economic activity that generated the revenue stated in the tax declaration.

(197) Consequently, the Commission considers that the Italian authorities have demonstrated that the recipients of the aid cannot be identified and the aid itself cannot be objectively calculated due to the lack of available data. Basically, it is not possible to identify from the tax and cadastral databases the real estate belonging to non-commercial entities, which was used for non-exclusively commercial activities of the type indicated in the ICI exemption provisions. Consequently it is not possible to obtain the necessary information to calculate the amount of tax to be recovered. Therefore, enforcing a possible recovery order would be impossible in objective and absolute terms.

(198) In conclusion, the Commission finds that, given the specific nature of this case, it would be absolutely impossible for Italy to recover any aid illegally granted under the ICI exemption provisions. Recovery of the aid arising from the unlawful and incompatible exemption from this municipal tax on real estate should therefore not be ordered.

7. **CONCLUSION**

(199) The Commission finds that Italy has unlawfully implemented the exemption from the municipal tax on real estate under Article 7(1)(i) of Legislative Decree No 504/92 in breach of Article 108(3) of the Treaty.

(200) Since no grounds of compatibility can be identified for the scheme in question, it is found to be incompatible with the internal market. However, in the light of the exceptional circumstances invoked by Italy, recovery of the aid should not be ordered since Italy has demonstrated that it would be absolutely impossible to enforce.

([81]) Case C-404/00 *Commission* v *Spain* [2003] ECR I-6695, paragraph 47.

([82]) Case C-75/97 *Belgium* v *Commission* ('*Maribel I*') [1999] ECR I-3671, paragraph 86; Case C-214/07 *Commission* v *France* [2008] ECR I-8357, paragraphs 13, 22 and 48.

(201) The Commission considers that Article 149(4) TUIR does not constitute state aid within the meaning of Article 107(1) of the Treaty.

(202) Finally, in view of the specific nature of the IMU exemption measure for non-commercial entities that carry on exclusively specific non-commercial activities, in accordance with the conditions laid down by the Italian legislation, the Commission finds that these activities cannot be considered economic activities for the purposes of the state aid rules and that therefore the measure does not fall within the scope of Article 107(1),

HAS ADOPTED THIS DECISION:

Article 1

The state aid in the form of the ICI exemption, granted to non-commercial entities which carry on in the real estate exclusively the activities listed in Article 7(1)(i) of Legislative Decree No 504/92, unlawfully put into effect by Italy in breach of Article 108(3) of the Treaty, is incompatible with the internal market.

Article 2

Article 149(4) TUIR does not constitute state aid within the meaning of Article 107(1) of the Treaty.

Article 3

The IMU exemption, granted to non-commercial entities which carry on in the real estate exclusively the activities listed in Article 7(1)(i) of Legislative Decree No 504/92, does not constitute state aid within the meaning of Article 107(1) of the Treaty.

Article 4

This Decision is addressed to the Republic of Italy.

Done at Brussels, 19 December 2012.

For the Commission

Joaquín ALMUNIA

Vice-President

ANNEX 1

LIST OF THE INTERESTED THIRD PARTIES THAT SUBMITTED COMMENTS ON THE DECISION INITIATING THE PROCEDURE

Name/Address

1. Santa Maria Annunciata in Chiesa Rossa, Via Neera 24, Milano, Italia
2. Fondazione Pro-Familia, Piazza Fontana 2, Milano, Italia
3. Pietro Farracci, San Cesareo, Italia
4. Scuola Elementare Maria Montessori s.r.l., Roma, Italia
5. Parrocchia S. Luca Evangelista, Via Negarville 14, Torino, Italia
6. Parrocchia S. Nicolò di Bari, Piazza Principe Napoli 3, Tortorici (Messina), Italia
7. Parrocchia S. Nicolò di Bari, Via Libertà 30, Caronia (Messina), Italia
8. Parrocchia S. Nicolò di Bari, Piazza Matrice, S. Stefano di Camastra (Messina), Italia
9. Parrocchia S. Orsola, Contrada S. Orsola, S. Angelo di Brolo (Messina), Italia
10. Parrocchia Sacro Cuore di Gesù, Frazione Galbato, Gioiosa Marea (Messina), Italia
11. Parrocchia Sacro Cuore di Gesù, Corso Matteotti 51, Patti (Messina), Italia
12. Parrocchia Sacro Cuore di Gesù, Via Medici 411, S. Agata Militello (Messina), Italia
13. Istituto Sacro Cuore di Gesù, Via Medici 411, S. Agata Militello (Messina), Italia
14. Parrocchia Santi Nicolò e Giacomo, Discesa Sepolcri, Capizzi (Messina), Italia
15. Istituto Diocesano Sostentamento Clero, Via Cattedrale 7, Patti (Messina), Italia
16. Parrocchia Madonna del Buon Consiglio e S. Barbara, Con. Cresta, Naso (Messina), Italia
17. Parrocchia Maria SS. Annunziata, Frazione Marina, Marina di Caronia (Messina), Italia
18. Parrocchia Maria SS. Assunta, Via Battisti, Militello Rosmarino (Messina), Italia
19. Parrocchia Maria SS. Assunta, Via Monte di Pietà 131, Cesarò (Messina), Italia
20. Parrocchia Maria SS. Assunta, Piazza S. Pantaleone, Alcara Li Fusi (Messina), Italia
21. Parrocchia Maria SS. Assunta, Via Oberdan 6, Castell'Umberto (Messina), Italia
22. Parrocchia Maria SS. Assunta, Piazza Duomo, Tortorici (Messina), Italia
23. Parrocchia Maria SS. Assunta, Via Roma 33, Mirto (Messina), Italia
24. Parrocchia Maria SS. Del Rosario, Contrada Scala, Patti (Messina), Italia
25. Parrocchia Maria SS. Della Scala, Contrada Sceti, Tortorici (Messina), Italia

26. Parrocchia Maria SS. Della Visitazione, Contrada Casale, Gioiosa Marea (Messina), Italia

27. Parrocchia Maria SS. Delle Grazie, Via Campanile 3, Montagnareale (Messina), Italia

28. Parrocchia Maria SS. Delle Grazie, Via Cappellini 2, Castel di Lucio (Messina), Italia

29. Parrocchia Maria SS. Annunziata, Piazza Regina Adelasia 1, Frazzanò (Messina), Italia

30. Parrocchia Maria SS. Annunziata, Contrada Sfaranda, Castell'Umberto (Messina), Italia

31. Parrocchia Maria SS. Di Lourdes, Frazione Gliaca, Piraino (Messina), Italia

32. Parrocchia S. Giuseppe, Contrada Malvicino, Capo d'Orlando (Messina), Italia

33. Parrocchia s. Maria del Carmelo, Piazza Duomo 20, S. Agata Militello (Messina), Italia

34. Parrocchia S. Maria di Gesù, Via Giovanni XXIII 43, Raccuja (Messina), Italia

35. Parrocchia S. Maria Maddalena, Contrada Maddalena, Gioiosa Marea (Messina), Italia

36. Parrocchia S. Maria, Via S. Maria, San Angelo di Brolo (Messina), Italia

37. Parrocchia S. Michele Arcangelo, Via San Michele 5, Patti (Messina), Italia

38. Parrocchia S. Michele Arcangelo, Via Roma, Sinagra (Messina), Italia

39. Parrocchia S. Antonio, Via Forno Basso, Capo d'Orlando (Messina), Italia

40. Parrocchia S. Caterina, Frazione Marina, Marina di Patti (Messina), Italia

41. Parrocchia Cattedrale S. Bartolomeo, Via Cattedrale, Patti (Messina), Italia

42. Parrocchia Maria SS. Addolorata, Contrada Torre, Tortorici (Messina), Italia

43. Parrocchia S. Nicolò di Bari, Via Risorgimento, San Marco d'Alunzio (Messina), Italia

44. Parrocchia Immacolata Concezione, Frazione Landro, Gioiosa Marea (Messina), Italia

45. Parrocchia Maria SS Assunta, Piazza Mazzini 11, Tusa (Messina), Italia

46. Parrocchia Maria SS Assunta, Frazione Torremuzza, Motta d'Affermo (Messina), Italia

47. Parrocchia Maria SS Assunta, Salita Madre Chiesa, Ficarra (Messina), Italia

48. Parrocchia Maria SS. Della Catena, Via Madonna d. Catena 10, Castel di Tusa (Messina), Italia

49. Parrocchia Maria SS. Delle Grazie, Via N. Donna 2, Pettineo (Messina), Italia

50. Parrocchia Ognissanti, Frazione Mongiove, Mongiove di Patti (Messina), Italia

51. Parrocchia S. Anna, Via Umberto 155, Floresta (Messina), Italia

52. Parrocchia S. Caterina, Vico S. Caterina 2, Mistretta (Messina), Italia

53. Parrocchia S. Giorgio Martire, Frazione S. Giorgio, San Giorgio di Gioiosa M. (Messina), Italia

54. Parrocchia S. Giovanni Battista, Frazione Martini, Sinagra (Messina), Italia

55. Parrocchia S. Lucia, Via G. Rossini, S. Agata Militello (Messina), Italia

56. Parrocchia S. Maria delle Grazie, Via Normanni, S. Fratello (Messina), Italia

57. Parrocchia S. Maria, Piazzetta Matrice 8, Piraino (Messina), Italia

58. Parrocchia S. Michele Arcangelo, Piazza Chiesa Madre, Librizzi (Messina), Italia

59. Parrocchia S. Michele Arcangelo, Via Umberto I, Longi (Messina), Italia

60. Parrocchia S. Nicolò di Bari, Piazza S. Nicola, Patti (Messina), Italia

61. Parrocchia S. Nicolò di Bari, Via Ruggero Settimo 10, Gioiosa Marea (Messina), Italia

62. Parrocchia S. Nicolò di Bari, Via S. Nicolò, S. Fratello (Messina), Italia

63. Parrocchia Santa Maria e San Pancrazio, Via Gorgone, S. Piero Patti (Messina), Italia

64. Parrocchia Maria SS Assunta, Piazza Convento, S. Fratello (Messina), Italia

65. Parrocchia Maria SS. Del Rosario, Via Provinciale 7, Caprileone (Messina), Italia

66. Parrocchia Maria SS Assunta, Via Monachelle 10, Caprileone (Messina), Italia

67. Parrocchia Maria SS del Tindari, Via Nazionale, Caprileone (Messina), Italia

68. Parrocchia S. Febronia, Contrada Case Nuove, Patti (Messina), Italia

69. Parrocchia Maria SS. della Stella, Contrada S. Maria Lo Piano, S. Angelo di Brolo (Messina), Italia

70. Parrocchia S. Erasmo, Piazza del Popolo, Reitano (Messina), Italia

71. Parrocchia Maria SS. della Catena, Via Roma, Naso (Messina), Italia

72. Parrocchia S. Benedetto il Moro, Piazza Libertà, Acquedolci (Messina), Italia

73. Parrocchia S. Giuseppe, Frazione Tindari, Tindari (Messina), Italia

74. Parrocchia Santi Filippo e Giacomo, Via D. Oliveri 2, Naso (Messina), Italia

75. Parrocchia SS. Salvatore, Via Cavour 7, Naso (Messina), Italia

76. Santuario Maria SS del Tindari, Via Mons. Pullano, Tindari (Messina), Italia

77. Parrocchia S. Maria Assunta, Via Roma, Galati Mamertino (Messina), Italia

78. Fondazione Opera Immacolata Concezione O.N.L.U.S., Padova, Italia

79. Parrocchia San Giuseppe, Piazza Dante 11, Oliveri (Messina), Italia

80. Parrocchia S. Leonardo, Frazione San Leonardo, Gioiosa Marea (Messina), Italia