

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 27 February 2002

concerning measures adopted by Italy for the recovery and completion of serviced small business areas developed for Sirap SpA and the allocation of plots and industrial buildings

(notified under document number C(2002) 611)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2002/633/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on interested parties to submit their comments pursuant to the provision cited above ⁽¹⁾,

Whereas:

Commission received the information on 23 February and 16 April 1998. The Commission sent further questions on 4 June 1998, to which the Italian authorities replied on 16 October 1998.

- (4) During its examination of the aid, the Commission also learnt of the existence of a scheme for the allocation of plots and industrial buildings to small and medium-sized enterprises (SMEs) by municipal authorities. These provisions were communicated to the Commission in an annex to the letter of 16 April 1998 referred to in recital 3.

I. PROCEDURE

- (1) By letter of 6 October 1997 the Italian authorities notified the Commission, under Article 88(3) of the EC Treaty, of a draft Law of the Sicilian Region on rules for the recovery and completion of serviced small business areas developed by Sirap SpA.
- (2) By letter of 21 October 1997 the Commission requested further information.
- (3) On 10 December 1997 the Italian authorities informed the Commission that the notified draft law had been approved as Law No 46 of the Sicilian Region of 24 December 1997 ⁽²⁾ (hereinafter Law No 46/1997) and transmitted the text of the law. The request for further information was answered on 15 January 1998; the

- (5) On 9 December 1998 the Commission decided to initiate the procedure provided for in Article 88(2) of the Treaty in respect of the aid in question. Italy was informed by letter of 30 December 1998. The publication of that letter in the *Official Journal of the European Communities* ⁽³⁾ did not give rise to any reactions by other interested parties. Comments from Italy were received by the Commission on 10 March 1999. On 24 November 1999 a meeting was held in Brussels with representatives from Italy and the Sicilian Region. The Commission received a further letter from the Italian authorities dated 7 June 2001 in which the latter undertook to apply the measures in question within the limits established by the Commission notice on *de minimis* aid ⁽⁴⁾.

⁽¹⁾ OJ C 162, 10.6.2000, p. 4.

⁽²⁾ Sicilian Regional Official Gazette, 30.12.1997.

⁽³⁾ OJ C 162, 10.6.2000, p. 4.

⁽⁴⁾ OJ C 68, 6.3.1996, p. 9.

II. DESCRIPTION OF THE AID

II.1. Sirap's background: the Decision of 3 March 1999

- (6) Sirap SpA (hereinafter Sirap), which was wound up on 1 February 1993, was a publicly owned company whose object was to promote economic development in the Sicilian Region (which is eligible for regional aid under Article 87(3)(a)). Following the winding-up, the firms that had carried out work for Sirap were not paid the amounts owed to them and most of them had to be wound up. To remedy this situation, the Italian authorities granted an initial amount of aid in the form of guarantees and interest subsidies to the firms in question in order to prevent a series of bankruptcies.
- (7) The Commission concluded its examination of the aid in question by adopting Decision 1999/678/EC of 3 March 1999⁽⁵⁾, which found that the funding granted by the Italian authorities to the firms affected by the winding-up of Sirap constituted aid under Article 87(1) of the EC Treaty. This finding was based chiefly on the fact that the aid enabled the recipients to avoid some of the consequences of the bankruptcy of the promoter. The firms were thus placed artificially in a more favourable position than other similar firms operating in Italy. The Commission therefore concluded that the measures did not qualify for exemption under Article 87(2) and (3) of the Treaty. Italy was therefore requested to put an end to the aid scheme as regards the part not covered by the *de minimis* rule and to take the necessary steps to recover all the aid granted unlawfully. However, no unlawful aid was recovered as Italy announced that it would not proceed with any recovery until a final decision had been adopted.

II.2. Sirap and the measures in question

- (8) Sirap had the task of awarding contracts for and superintending infrastructure development works to encourage businesses to locate there. In the case in point, the works comprised primary and secondary site development for the serviced small business areas and the construction of industrial buildings. The measure adopted by the Italian authorities provided for the payment of claims held by members of the professions in respect of design, works supervision and accountancy services, by the firms that carried out the works and the owners of the land where the work was carried out. The payment of these debts was to have been made by Sirap using funds paid in several instalments by the Sicilian Region, since Sirap operated under a contract concluded with the Region. Following the bankruptcy of Sirap in February 1993, much of the work had to be left unfinished as the firms

were not paid, which is why the Region is financing the completion of the works and hand them over to the municipalities⁽⁶⁾. Payment of the claims is to be made within the limits of the funds originally earmarked for financing the works. Where the total claims exceed the available funds, the reimbursement is to be reduced proportionately.

II.3. The notified measure (ex N 693/97)

- (9) By letter of 6 October 1997 the Italian authorities notified the Commission, under Article 88(3) of the Treaty, of the measures for the recovery and completion of serviced small business areas developed by Sirap SpA, already in liquidation. The measures are provided for in Law No 46/1997⁽⁷⁾ and concern three types of action:
- (a) works on serviced small business areas (essentially primary and secondary site development) entrusted to Sirap but not completed following the declaration of the latter's bankruptcy are to be handed over to the administrations of the relevant municipalities. The Sicilian Region is authorised to settle claims by firms that carried out work on behalf of Sirap within the limits of the amounts available under the finance originally granted at the time the works in question were carried out. Payment is subject to the condition that creditors have not asked for their claim to be included in the list of Sirap's liabilities as part of the bankruptcy proceedings. Articles 2 and 3 of Law No 46/1997 provide that, once completed, the works financed by the Sicilian Region are to be handed over to the municipalities;
- (b) Article 4 of Law No 46/1997 authorises the Region to grant ITL 21 billion (EUR 10 845 594) to the municipalities in 1997 for completion of the works on serviced small business areas;
- (c) the Region grants a contribution representing up to 80 % of the necessary expenditure to craft cooperatives and their partners or to cooperative firms that carry out or complete the work themselves. The contribution is reduced to 50 % of the necessary expenditure in the case of any businesses that also own the land. Under the Law, craft cooperatives or cooperative firms are craft associations which have the object of managing the completed business areas on condition that the areas, once completed, can be used immediately. Article 7 of Law No 46/1997 provides for a budget of ITL 5 billion (EUR 2 582 284) to complete the work in 1997.

⁽⁶⁾ It should be noted that the municipalities were regarded as the owners of the works although the latter were transferred to them only once completed.

⁽⁷⁾ See footnote 2.

⁽⁵⁾ OJ L 269, 19.10.1999, p. 29.

II.4. The non-notified measures (ex NN 130/98)

- (10) The fourth type of measure, contained in the provisions on the allocation of plots and industrial buildings ⁽⁸⁾ and applicable throughout Sicily, concerns the letting of plots and buildings to SMEs by municipalities against payment of rent fixed by the administrations on the basis of the estimated cost of maintaining the infrastructure and the buildings over a five-year period.

III. REASONS WHY THE COMMISSION INITIATED PROCEEDINGS UNDER ARTICLE 88(2) OF THE EC TREATY

- (11) In view of the similarity of this case with that forming the subject of Decision 1999/678/EC, the Commission concludes that the financing of the creditors of Sirap (the first measure) was intended to avoid the rules on bankruptcy and hence to give an advantage to the recipient firms.
- (12) The Commission takes the view that payment of the work ordered by Sirap is one of the latter's contractual obligations. However, despite the fact that Sirap should have ensured that its contract with the Sicilian Region allowed the latter to succeed it in contracts with the firms carrying out the work, this was not done. Consequently, there is no contractual relationship between Sirap's creditors and the Sicilian Region which in this case requires the Region to pay the creditors. The Commission believes that there were other ways the Region could have recovered the works already carried out. It could have paid Sirap in liquidation the sums corresponding to the work carried out, in exchange for ownership of the works, or acquired the works carried out during the liquidation if the official receiver had decided to sell them by means of an open and non-discriminatory invitation to bid. Instead of choosing one of the two options, it seems that the Sicilian Region preferred to pay the creditors directly, thus obliging it to pay them on a statutory basis using the funds initially earmarked for carrying out the whole of the work.
- (13) The measure in question therefore constitutes operating aid as it is not intended to be used for investment or job creation.
- (14) Furthermore, none of the information communicated indicates that the conditions applicable to operating aid provided for in the guidelines for regional aid have been satisfied ⁽⁹⁾.

- (15) Whilst the financing granted to the municipalities, craft cooperatives and cooperative firms (second and third measures) does not appear to constitute State aid, its close connection with the arrangements for the acquisition of the works by the Sicilian Region places it in the more general context of those arrangements.
- (16) As regards the rents paid by SMEs to municipalities, which are determined by the latter (fourth measure), the Commission had objected to the level of the rents and had considered that aid might be involved as the rent may have been lower than the market price. In that event, the aid granted could be regarded as investment aid for SMEs or as operating aid subject to the conditions provided for in the regional aid guidelines. The Commission had also stated that 'it is possible that some or all of the aid granted in this manner to craft firms and SMEs may be covered by the *de minimis* rule, under which aid amounting to not more than ECU 100 000 may be granted over a three-year period' ⁽¹⁰⁾. However, the Italian authorities have not provided any reasons since the initiation of proceedings to indicate that the advantages in question fell within the limits of the *de minimis* rule.

IV. ASSESSMENT OF THE AID

IV.1. First measure

- (17) As regards the arrangements for the acquisition of the works by the Sicilian Region, Italy provided explanations by letter of 10 March 1999. The works to be completed clearly belonged to the municipal administrations from the beginning, pursuant to Article 37(2) of Sicilian Regional Law No 35 of 23 May 1991. It was therefore not a question of acquisition but of restitution to the rightful owner. For that reason the other two options proposed by the Commission were not applicable as the municipalities had been the owners of the works right from the beginning. The sole purpose of the contributions towards the completion of the work was to speed up the restitution of the works to the municipalities. The measures were designed to conserve the work already carried out. In any event, if the Region had not acted, the creditors would have instituted proceedings against the municipalities which would in turn have instituted proceedings against the Region. The outcome would have been identical, but the solution taken was more rapid. Accordingly, the first measure is not covered by Article 87(1) of the Treaty and does not constitute State aid.

⁽⁸⁾ Decree of 8 February 1991, Italian Official Gazette, 20.4.1991.

⁽⁹⁾ OJ C 74, 10.3.1998, p. 4, point 4.15.

⁽¹⁰⁾ See footnote 4.

IV.2. Second measure

- (18) The second measure is the financing granted to the municipalities in order to complete the work. It does not constitute State aid as no advantage is transferred to a firm but to another public authority. Furthermore, even if it did constitute aid, the commitment given by Italy on 7 June 2001 to comply with the limits of the *de minimis* rule means that aid can be ruled out.

IV.3. Third measure

- (19) The third measure enables the Region to grant financing to groups of firms in order to complete the work. The financing amounts to 80 % of costs or 50 % if the firms own the land on which the works are carried out. As the works belong to the municipalities, it is for them to bear the total costs incurred. The Region is not granting any advantage as it not paying for all the costs to the groups of firms. As a result, the third measure is not caught by Article 87(1) of the Treaty and does not constitute State aid. Even if it were to be regarded as aid, the commitment given by the Italian authorities on 7 June 2001 to comply with the limits of the *de minimis* rule means that aid can be ruled out.

IV.4. Fourth measure

- (20) As regards assessing the advantage resulting from the letting of the industrial buildings and plots, the regional authorities have emphasised the difficulty of quantifying any advantage derived by the tenant firms in view of the lack of any directly comparable situation on the market.

However, the Region has undertaken, by letter of 7 June 2000, to comply with the limits of the *de minimis* rule.

V. CONCLUSIONS

- (21) The beneficiaries of the measure are small and medium-sized firms ⁽¹⁾, which is a favourable factor in the Commission's assessment. There is also the undertaking given by the Italian authorities to comply with the limits of the *de minimis* rule in respect of all the measures referred to in the initiation of proceedings. The Commission therefore concludes that no aid is involved.
- (22) This Decision is consistent with Decision 1999/678/EC which concludes that the part not covered by the *de minimis* rule constitutes aid,

HAS ADOPTED THIS DECISION:

Article 1

The measures taken by the Italian authorities for the recovery and completion of serviced small business areas developed by Sirap SpA and for the allocation of plots and industrial buildings to municipalities do not constitute aid within the meaning of Article 87(1) of the Treaty.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 27 February 2002.

For the Commission

Mario MONTI

Member of the Commission

⁽¹⁾ Pursuant to Article 7 of Regional Law No 46/97 which refers to Law No 96/81, as subsequently amended (Measures for small and medium-sized industrial, commercial and craft enterprises, cooperatives and fisheries). SMEs are therefore covered by Article 7 of Regional Law No 46/97.