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WORKING LANGUAGE

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**Subject: State aid N 632/2008 – Italy
Incentives to foster energy savings and the use of renewable energies
(Piedmont Region)**

Sir,

The Commission wishes to inform Italy that, having examined the information supplied by your authorities on the matter referred to above, it has decided to raise no objections to the proposed aid measure.

1. PROCEDURE

(1) By electronic notification of 15 December 2008, the Italian authorities notified the above mentioned measure. By letters dated 13 March 2009 and 28 May 2009 Italy submitted additional information.

2. DETAILED DESCRIPTION OF THE AID

Legal basis:

- *Deliberazione Giunta Regionale No 12-8312 of 3.3.08;*

S.E On. Franco FRATTINI
Ministro degli Affari esteri
P.le della Farnesina 1
I - 00194 Roma

- *Regional Operational Programme of the Piedmont Region, EFRD 2007-2013, Axis II, Activities II.1.1 "Production of renewable energies" and II.1.3 "Energy efficiency"*

Budget: €100 million (overall amount).

Duration: until 31 December 2014.

- (2) The Piedmont Region intends to provide State aid towards investments carried out by undertakings in order to achieve energy savings and produce energy from renewable sources. The scheme does not involve the provision of operating aid. The measures notified here are part of a package of measures to be financed via the Regional Operation Programme (Structural Funds). The other aid schemes, which also concern energy savings and renewable energies, are block-exempted (under numbers XS 183/2008, XR 96/2008) or granted under "de minimis". Applicants must choose one of the types of aid foreseen in the package.

2.1. The Measures

2.1.1. Aid for energy savings (including cogeneration)

- (3) The Region intends to finance investments in energy savings such as, for instance, the introduction of intrinsically energy-efficient processes, the installation of high-efficiency, low-emission cogeneration units, the use of more energy-efficient machinery, the improvement of existing building envelopes or the creation of new, energy-efficient building envelopes, the adoption of systems to reduce the need for heating and cooling of buildings, also through trigeneration¹ plants, the exploitation of low-enthalpy geothermal resources, and generally, all interventions which lead to a significant improvement in the energy efficiency of undertakings' production units. Interventions having a primary energy savings-to-overall investment ratio higher than 1.5 kWh/€ are considered to lead to a significant improvement in energy efficiency.

2.1.2. Aid for renewable energy sources

- (4) Investment aid will be granted for the production of energy from renewable energy sources (to the exclusion of tidal and wave energy). Eligible investments include generation plants using the following technologies: high efficiency biomass (> 500 KW), biogas, solar thermal, photo-voltaic, windpower (including mini-plants), plants for the production of hydrogen from renewable energy and energy storage through hydrogen technology, the installation of fuel-cell systems for stationary generation, hydropower plants.
- (5) As regards biomass-based plants, the Region intends to limit the grant of aid to power plants which use to a significant extent (50 to 70%) local biomass, defined as biomass produced within a radius of 50 km from the power generation site.
- (6) The text of the call for applications (*bando*) includes investments in plants for the production of biofuels. However, the Italian authorities have explained that this measure is,

¹ Trigeneration is the combined production of power generation, heating and cooling from a single energy source.

de facto, inapplicable, since the notified scheme concerns the generation of electricity, not the production of the primary energy as such (the biofuel). Besides, the notification only concerns investment aid whereas typically aid for biofuels takes the form of operating aid. In any event, the Italian authorities have committed to notify individually any aid for biofuels.

2.1.3. Aid for district heating

- (7) Aid will also be granted for the construction of district heating system, including the relevant infrastructure (the distribution pipes and equipment). Eligible investments will always consist of a high-efficiency co-generation unit and its distribution infrastructure. Only energy-efficient pipes will be used. Investments will not concern the replacement of existing pipes or the creation of a stand-alone infrastructure (without a generation unit). The pipes and equipment inside the buildings which will receive the heat will not be eligible for aid. The measure is targeted at investments in industrial areas, to the exclusion of urban district heating. There will be no aid in favour of undertakings which connect to the district heating system, and the cost of heat for the recipient will not be subsidized. The intensity of aid will differ according to the type of primary energy used (conventional or renewable), as indicated in the table in point (10).

2.2. Beneficiaries

- (8) All undertakings may benefit from the scheme. However, the aid is targeted primarily at SMEs and consortia thereof. Large undertakings may receive aid only for large photovoltaic projects (>1 MW/p) or cogeneration plants (> 5 MWe) and for improvements in their production processes leading to emission savings of at least 1000 CO²-equivalent tonnes a year.

2.3. Eligible costs

- (9) As a general principle, only the extra investment costs directly related to environmental protection will be considered eligible for aid. To avoid repetition, the detailed description of the method used by Italy to identify the extra environmental will be provided in the "assessment" part of the decision.

2.4. Aid intensities

- (10) Aid intensities per measure

	Small undertakings	Medium-sized undertakings	Large undertakings
Renewable energies	80%	70%	60%
Energy saving	80%	70%	60%
Cogeneration	80%	70%	60%

District heating (renewable energies and cogeneration ²)	80%	70%	60%
District heating (conventional energy)	70%	60%	50%

2.5. Financing mechanism

- (11) The investment aid will take the form of an interest rate subsidy, which can be complemented by a direct grant, provided the aid intensity ceilings set by the Community Guidelines on State aid for Environmental Protection³ (EAG) for each form of aid are not exceeded. The direct grant is capped at EUR 150 000 for small undertakings, €200 000 for medium-sized undertakings and EUR 300 000 for large undertakings. The maximum amount of investment aid granted cannot exceed EUR 7.5 million.
- (12) The interest rate subsidy is granted via a Revolving Fund, managed by the Regional holding *Finpiemonte*, which is a fully State-owned entity. The intervention of the Revolving Fund will be based on the overall size of the project (hereinafter referred to as: *the overall investment costs*). However, for each project, the extra environmental costs (hereinafter: *the extra costs*) will also be determined. The aid granted on the basis of the overall investment costs cannot exceed the ceilings set out in the EAG, based on the extra costs.
- (13) For the purpose of determining the overall investment costs on which the Revolving Fund will intervene, the following investments will be taken into account:
- a. the acquisition of tangible assets such as investments in buildings, plant and equipment intended to reduce or eliminate pollution and nuisances and investments to adapt production methods with a view to protecting the environment.
 - b. technical expenditure closely related to the environmental project (design, work supervision, testing and certification of plants), up to 5% of the overall investment costs.
- (14) Assets purchased via financial leasing operations will not be eligible for aid. The purchase of means of transport or investments aiming to increase the energy efficiency of means of transport will not be eligible for aid, either.
- (15) The Fund, managed by *Finpiemonte*, (the Regional financial holding), will be endowed with financial resources from the regional budget. These resources will be entirely earmarked to this scheme, and, in particular, they will not be used to finance the operating costs of *Finpiemonte*. Separate accounting records will be kept for the management of the funds, in order to rule out any cross-subsidization of *Finpiemonte*. Any interest accruing on these resources will be entirely reallocated to the Fund, so that the resources earmarked for

² These ceilings apply if the aid is intended solely for the generation part of a district heating installation.

³ OJ C 82 of 1.4.2008, p. 1.

the scheme cannot be put to any other use, or finance any other activity by *Finpiemonte*, but will be fully transferred to the beneficiaries.

- (16) The beneficiaries of the aid scheme will seek financing for their project on the market. They will take out loans with the financial institution of their choice, among those registered (*convenzionate*) with *Finpiemonte*. This registration is a mere administrative step to standardize handling procedures, and any banking institution can register with *Finpiemonte*. Wide publicity will be given, at the regional level, to the existence of the Revolving Fund.
- (17) The interest rate subsidy will be calculated in terms of Gross Grant Equivalent (GGE). The GGE will be calculated on the basis of the difference between the interest rate resulting from the application of the method set out in the Communication from the Commission on the revision of the method for setting the reference and discount rates⁴ and the actual interest rate paid by the beneficiary.
- (18) The Revolving Fund will operate as follows: For each subsidized operation, the Fund will put at the disposal of the bank, at zero interest rate, a financial amount representing up to 75% of the overall investment costs of the operation (not the extra costs) up to a maximum of EUR 2.5 million. The remaining 25% will be provided by the selected bank at the ordinary rate. The maximum ordinary rate has been contractually agreed between *Finpiemonte* and the banks. If the rate is variable, it cannot exceed the 3 months Euribor plus a maximum spread of 2 points. If the rate is fixed, it cannot exceed the Eurirs of equal duration as the loan, as published on the Sole24ore of the first working day of the month during which the financing is granted, plus a maximum spread of 2 points according to the undertaking's credit rating. The maximum intervention rate of 75% may be reduced if that rate would lead to a GGE in excess of the aid intensity ceilings set out in the Environmental Guidelines.
- (19) The rate paid by the beneficiary on the total loan is calculated as the weighted average between the ordinary rate applied by the bank and the zero rate which applies to the amount provided by the Fund.
- (20) The bank will pay back to *Finpiemonte* the funds put at its disposal, based on the same schedule of repayment stipulated with the beneficiary of the aid.

2.6. Cumulation

- (21) The measures foreseen in the call for applications (which are covered by block exemption regulations) are alternative options, and therefore cannot be cumulated with each other. However, aid granted under the notified measure is cumulable with aid granted from certain other sources for the same eligible expenses, provided the maximum aid intensities of the Environmental Guidelines are not exceeded. *Finpiemonte* has access to the national State aid database and can therefore perform the checks required to ensure that the maximum aid intensities are not exceeded, and reduce the amount of aid, if necessary.

3. ASSESSMENT

⁴ OJ C 14 of 19.1.2008, p. 6.

3.1. Presence of aid within the meaning of Article 87(1) of the Treaty.

- (22) Article 87(1) of the Treaty provides that “*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 common market*”.
- (23) The scheme proposed by the Piedmont Region confers an economic advantage on undertaking investing in energy savings or renewable energies in that it enables them to obtain loans with financial institutions at reduced interest rates as well as direct grants.
- (24) The scheme will be financed through resources from the European Regional Development Fund (ERDF) and resources from the budget of the Piedmont Region. It is clear that the latter constitute State resources. However, the former also qualify as State resources for the reasons explained below.
- (25) The Court declared that Article 87 (1) of the EC Treaty “*covers all the financial means by which a public sector may actually support undertakings, irrespective of whether or not those means are permanent assets of the public sector. Consequently, even though the sums involved in the measure [...] are not permanently held by the Treasury, the fact that they constantly remain under public control, and are therefore available to the competent national authorities, is sufficient for them to be categorised as State aid.*”⁵
- (26) In the case at issue, the ERDF resources will be made available to the competent national authorities and constantly remain under their control⁶, with no possibility of direct transfer between the Community budget and the beneficiaries. Therefore, the ERDF monies also qualify as State resources.
- (27) The award of aid under the notified scheme is imputable to the State, since the regional authorities have a large margin of discretion in the allocation of resources from the ERDF, and in particular are responsible for project selection and funding.
- (28) The resources are injected into the Revolving Fund, which lends free of interest to the selected bank. The system entails a loss of public resources in terms of foregone interest on the amounts lent to the banks by the Fund. Therefore, the loans involve a transfer of State resources. The direct grants equally involve a transfer of State resources.
- (29) Since the contribution will be granted only to certain undertakings, the measure is selective in scope.
- (30) The market for electricity in the EU is fully open to competition. Therefore, the measure has an impact on intra-community trade and is liable to distort competition.
- (31) In the light of the above considerations, the measure constitutes State aid caught by Article 87(1) of the EC Treaty in favour of the undertakings in question and can only be authorized if it can benefit from one the derogations laid down in the Treaty.

⁵ Case C-83/98 *France v Ladbroke Racing and Commission* [2000] ECR I-3271, paragraph 50.

⁶ The financial framework of the Structural Funds as established by Regulation (EC) 1083/2006 is based on the allocation to each Member State of a global envelope, which is managed by the Member State.

- (32) By contrast, the presence of an element of aid in favour of selected banks can be ruled out, since a) banks will fully pass-through the benefit of the aid to investors in the form of reduced interest rates; b) beneficiaries will be free to select the bank of their choice and c) all banks will be able to take part in the scheme without undue formalities and information about the existence of the scheme will be widely available.

3.2. Legality of the aid

- (33) The Italian authorities have duly notified the measure and made its implementation conditional on approval by the Commission by way of a suspensive clause in the legal basis. The Italian authorities have therefore fulfilled their obligation to notify planned aid under Article 88(3) of the Treaty.

3.3. Compatibility of the aid

- (34) The Commission has assessed whether the measure at hand can benefit from the derogation laid down in Article 87(3)(c) of the EC Treaty, which enables the Commission to authorize State aid aimed "*to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*".
- (35) The increased use of renewable energy sources and energy savings are among the Community's priorities in the fight against climate change. The compatibility criteria for investment aid in this area are spelled out in the Community Guidelines on State aid for Environmental Protection (hereinafter: the EAG).
- (36) The analysis developed below demonstrates that the notified measure complies with the conditions of the EAG.

3.3.1. Specific criteria applicable to the individual aid categories

3.3.1.1. Renewable energy sources

- (37) First of all, the Commission notes that the definition of renewable energies used in the notified scheme is in line with that laid down in point 70 (5) of the Guidelines.
- (38) According to point 101 of the Guidelines, aid may only be allowed if there is no mandatory Community standard concerning the share of energy from renewable sources for individual undertakings. At the time of adoption of this decision, no such individual standards exist at EU level.
- (39) Eligible investment costs for this category of aid are in line with the criteria of the EAG, as explained in paragraphs (54) to (57) *infra*. The aid intensity will not exceed 60% of the extra costs for large enterprises, 70% for medium-sized enterprises and 80% for small enterprises, in line with point 103 of the EAG.
- (40) As regards biomass-based plants, the Region intends to limit the grant of aid to power plants which use a certain proportion (50 to 70%) of local biomass. The Italian authorities have explained that this restriction has an environmental rationale. On the one hand, the use of locally produced biomass is more environmentally friendly since the raw material is not transported over long distances. Besides, the valorisation of local biomass for energy use contributes to a more rational exploitation of resources. In particular, the use of livestock

effluents for energy production significantly contributes to the improvement of air quality and the reduction of pollution, which are particularly severe problems in the *Pianura Padana* area. Furthermore, the Italian authorities have explained that plants using biomass from neighbouring countries, for example France, would also be eligible for aid, provided the source of the biomass is located within the prescribed radius of 50 km from the plant. In the light of these explanations, the Commission is satisfied that this restriction does not constitute a quantitative restriction on imports within the meaning of Article 28 of the EC Treaty.

- (41) It should be noted, however, that the Commission according to Article 17(9) of Directive 2009/28/EC on the promotion of the use of energy from renewable sources shall submit a report, accompanied where appropriate by legislative proposals, for a sustainability scheme for energy uses of biomass, other than biofuels and bioliquids. The present decision is without prejudice to the conclusions that the Commission will derive from this work regarding the appropriateness of distance-related biomass sourcing requirements as the one applied in the notified measure.

3.3.1.2. Cogeneration

- (42) Investments in co-generation will be considered eligible only if the co-generation unit satisfies the definition of high-efficiency co-generation set out in point 70(11) of the EAG⁷ and if a) the new cogeneration unit will make primary energy savings compared to separate production, as defined by Directive 2004/8/EC and Commission Decision 2007/74/EC, or b) the improvement of an existing cogeneration unit or conversion of an existing power generation unit into a cogeneration unit will result in primary energy savings compared to the original situation. These are the criteria prescribed in point 112 of the EAG.
- (43) Eligible investment costs for this category of aid are in line with the criteria of the EAG as explained in paragraphs (54) to (57) *infra*. The aid intensity will not exceed 60% for large undertakings, 70% for medium-sized undertakings and 80% for small undertakings, as laid down in point 115 of the EAG.

3.3.1.3. District heating

- (44) Aid for district heating can be considered compatible if it complies with the requirements of section 3.1.8 of the EAG.
- (45) However, the definition of district heating installations, as specified in footnote 44 of the EAG, excludes infrastructure, the financing of which must be assessed under Article 87(3)(c) of the EC Treaty.
- (46) In the case at hand, the aid may cover also infrastructure. However, an investment in infrastructure will always be linked to a co-generation plant and the counterfactual analysis carried out by the Italian authorities will ensure that the aid is granted exclusively to projects which would not be viable without State aid covering also the infrastructure.

⁷ Cogeneration meeting the criteria of Annex III to Directive 2004/8/EC and satisfying the harmonised efficiency reference values established by Commission Decision 2007/74/EC of 21 December 2006 establishing harmonised efficiency reference values for the separate production of electricity and heat in application of Directive 2004/8/EC of the European Parliament and of the Council.

Therefore, the investment in infrastructure can be considered an integral part of the co-generation project.

- (47) In these circumstances, the Commission considers that the assessment of both the generation component (covered by the EAG) and the infrastructure component (based on Article 87(3)(c) of the EC Treaty) can follow the criteria of the EAG, and in particular section 3.1.8 of the EAG (applied directly for the generation part and by analogy for the infrastructure).
- (48) Therefore, the Commission has verified that the proposed investments comply with the requirements of point 120 (a) EAG, according to which aid can be considered compatible provided that the beneficiary district heating installation satisfies the definition of energy-efficient district heating and that the combined operation of the generation of heat (and electricity in the case of cogeneration) and the distribution of heat will result in primary energy savings.
- (49) Since the investments Italy intends to finance will always include a high-efficiency cogeneration unit, the installations will comply with the definition of energy-efficient district heating laid down in point 70(13) EAG⁸.
- (50) As regards the environmental benefits achieved in the form of energy savings, the Italian authorities have confirmed that each project will be assessed on the basis of the energy savings it involves, taking into account benefits through co-generation (minus distribution losses) compared to the average environmental performance of the existing park of boilers. The counterfactual analysis carried out in the project selection phase will ensure that only projects which entail overall energy savings can benefit from aid. Besides, the authorities intend to define the notion of energy efficient pipes (reflecting the state of the art) in order to ensure that heat dispersion is kept to a minimum and the environmental benefits remain substantial.
- (51) For projects where heat is generated from conventional fuels, the maximum aid intensities (50% for large undertakings, 60% for medium-sized undertakings, and 70% for small undertakings) are in line with those prescribed in point 122 of the EAG. For projects involving aid solely for the generation part of a district heating installation which uses co-generation or renewable energies, the maximum aid intensities foreseen (60% for large undertakings, 70% for medium-sized undertakings and 80% for small undertakings) are in line with those of point 121 (read in conjunction with point 103) of the EAG.
- (52) Therefore, the requirements of section 3.1.8 of the EAG are complied with.

⁸ Energy-efficient district heating means district heating which, with regard to generation, either complies with the criteria for high-efficiency cogeneration or, in the case of heat-only boilers, meets the reference values for separate heat production laid down in Decision 2007/74/EC.

3.3.2. Common criteria

3.3.2.1. Eligible costs

- (53) The intervention of the Revolving Fund is based on the overall investment costs borne by the beneficiaries. However, for each project the Italian authorities will also calculate the environmental extra costs, and ensure that the intensity of aid, expressed as a proportion of the extra costs, do not exceed the ceilings of the EAG.
- (54) As regards the extra costs, the Commission considers that the methodology detailed in the documents submitted by the Italian authorities and the examples provided for each category of aid are in line with the criteria of the EAG on the basis of the following considerations.
- (55) Point 80 of the Guidelines sets out the general principles for the calculation of eligible costs and provides that "*eligible costs must be limited to the extra investment costs necessary to achieve a higher level of environmental protection than required by the Community standards and will be calculated in two steps. First, the cost of the investment directly related to environmental protection will be established by reference to the counterfactual situation, where appropriate. Second, operating benefits will be deducted and operating costs will be added*". These principles are further specified in points 81 to 84 with respect to the various categories of aid.
- (56) The Commission notes that, if the environmental component of the investment is not easily identifiable, the proposed investment will be compared with the counterfactual situation in the absence of State aid, i.e. with the cost of a technically comparable investment that provides a lower degree of environmental protection (corresponding to mandatory Community standards, if they exist) and that would credibly be realised without aid ('reference investment'). This is in line with points 80 and 81 of the EAG. The reference investments provided as examples by the Italian authorities are in line with the criteria set out by the EAG, as i) they are investments with the same production capacity and all other technical characteristics of the investment under assessment and ii) they constitute, from a business point of view, a credible alternative. Only the costs related to the acquisition of tangible assets (buildings, plant and equipment, as defined in point 70(22) of the EAG) will be taken into account. This is in line with point 83 of the EAG.
- (57) As regards investments in renewable energies, including cogeneration and district heating, eligible costs will be calculated net of any operating benefits (including revenues from sales of heat or green certificates) and operating costs arising during the first five years of the life of the investments, in line with point 106 of the EAG read in conjunction with points 81, 82 and 83 EAG. In particular, for district heating the counterfactual scenario proposed by the Italian authorities is the installation of a conventional power plant producing only electricity. The eligible costs will be calculated by deducting, from the overall cost of the district heating installation (plant and infrastructure), the cost of the reference investment (plant only). Operating costs and benefits will be deducted from this amount. As in this case the investment in infrastructure can be considered an integral part of the co-generation project, the Commission considers this method to be acceptable.
- (58) As regards energy savings, the Italian authorities have confirmed that eligible costs will be limited to the extra investment costs required to achieve energy savings beyond the level required by Community standards. If no Community standards exist, the eligible costs will consist of the investment costs necessary to achieve a higher level of environmental

protection that that which the undertaking would achieve in the absence of any environmental aid. This is the method prescribed in point 84 of the Guidelines. Eligible costs will be calculated net of any operating benefits and costs arising during the first three years of the life of the investment in the case of SMEs, the first four years in the case of large undertakings that are not part of the EU CO₂ Emission Trading System and the first 5 years in the case of large undertakings that are part of the Emission Trading System. This is the method prescribed by point 98 of the Guidelines, read in conjunction with points 81 and 83.

- (59) The Commission notes that certain items of expenditure which form part of the overall investment costs (notably technical expenses, as described in point (13)) are not mentioned specifically in the EAG. However, the Italian authorities have indicated that such technical expenses will either not be taken into account for the purpose of calculating the extra environmental costs of a project or, if they are, they will be taken into account also for the reference investment, so that the balance corresponds to the extra technical expenses related to environmental protection. The Commission notes that, in its decision-making practice, it has already considered such expenses eligible for aid⁹ and can therefore accept their inclusion under the conditions outlined above.
- (60) These principles have been applied in all the concrete examples provided by the Italian authorities. Therefore, the Commission is satisfied that the identification of the extra environmental costs will be carried out in compliance with the criteria set out in the EAG.

3.3.2.2. Gross grant equivalent of the interest rate subsidy

- (61) The Commission notes that, for the purpose of calculating the gross grant equivalent of the interest rate subsidy, Italy has committed to use the reference rates resulting from the Communication from the Commission on the revision of the method for setting the reference and discount rates. The Italian authorities have provided examples of calculation and the Commission is satisfied that the method used is in line with accepted practice.
- (62) The Italian authorities have set limits on the nominal ordinary interest rate to be used by banks in respect of the subsidized operations, which cannot exceed the 3-month Euribor (or Eurirs for fixed rates), plus 2 points of spread. The Commission considers that such limits are justified in that they ensure that undertakings in difficulties will not benefit from the scheme, since they will not be able to obtain financing on the market at these rates, which apply to creditworthy undertakings.

3.3.2.3. The Revolving Fund mechanism and compliance with EAG aid ceilings

- (63) Since the intervention of the Revolving Fund is based on the overall investment costs, for each project it is necessary to identify separately the extra environmental costs and make sure that the aid granted (interest rate subsidy plus direct grant) does not exceed the ceilings of the EAG, which are expressed as a proportion of the extra costs. The Italian authorities have confirmed that this will be the case. If the application of a 75% intervention rate by the

⁹ See, for example, Commission Decision of 18 December 2006 C(2006)7041 on State aid N 576/2006 (environmental scheme for large industrial undertakings in Friuli-Venezia Giulia) and Commission Decision of 29 January 2004 C(2004)264 on State N 613/2002 (Investment aid for photo-voltaic energy and environmental protection, Umbria).

Fund would result in an aid intensity (on the extra costs) above the maximum, the intervention rate will be accordingly reduced. The direct grant will only be granted if the EAG ceilings allow it. The Commission is therefore satisfied that the aid intensities of the EAG will be complied with.

3.3.2.4. Incentive effect

- (64) Point 142 of the EAG sets out the general principle that State aid must have an incentive effect. If the aided project has not started before an application for aid is submitted, the requirement of incentive effect is presumed to be automatically met for SMEs, except in cases where the aid must be assessed in accordance with the detailed assessment in chapter 5 (point 144 EAG). For large companies, the Member State is required to provide an additional demonstration of the incentive effect (point 146 EAG).
- (65) The Italian authorities have confirmed that no aid will be awarded under the present scheme to projects initiated before the application of aid is submitted to the competent authorities. The maximum amount of aid which can be granted under the scheme¹⁰ is well below the threshold for detailed assessment (EUR 7.5 million). As regards large companies, the Italian authorities have provided assurances that all applications for aid will be subject to an evaluation of the project based on a credible counterfactual analysis. Investments which would be profitable without State aid will not be eligible for support. The Region will ask large companies to provide documentation demonstrating the incentive effect of the aid. An explanation of how the incentive effect has been respected will also be provided in the context of the annual report.
- (66) Therefore, it is considered that the proposed aid scheme will always have an incentive effect.

3.3.2.5. Cumulation

- (67) Aid authorized under the EAG may not be combined with other State aid within the meaning of Article 87(1) of the EC Treaty or with other forms of Community financing if such overlapping results in an aid intensity higher than that laid down in the EAG (point 190 EAG). As explained in point (21) above, the present aid scheme (notified and approved under the EAG) cannot be cumulated with the other support measures of the Regional Operational Programme "package" (which are compatible and exempt from notification on the basis of block exemptions). However, the scheme is cumulable with other forms of support (for example from certain national schemes) for the same eligible expenses. The Italian authorities have provided assurances that the maximum aid intensities set out in the EAG will not be exceeded, and have submitted examples showing the method they will follow to carry out the necessary checks on cumulation.

¹⁰ It is not possible to calculate precisely a maximum aid amount, since the gross grant equivalent of the aid depends, inter alia, on the duration of the loan and the applicable interest rate, both of which are variable. However, since the Revolving Fund intervenes for a maximum of EUR 2.5 million and the direct grant cannot exceed EUR 300 000, the aid cannot be higher than EUR 2.8 million and is indeed likely to be considerably lower.

3.3.2.6. "Deggendorf" case-law

- (68) The Italian authorities have committed not to grant aid under this scheme to undertakings which have not repaid a previous illegal and incompatible aid, the recovery of which was ordered by a Commission decision (*Deggendorf* case-law¹¹). Undertakings will be required to provide a declaration to this effect, in application of Article 1, paragraph 1223 of Law No 296/2006.
- (69) Since all the relevant criteria of the EAG are complied with, the measure can be considered in line with the applicable State aid rules. Since, for aid towards district heating infrastructure, the criteria of the EAG, applied by analogy, are also met, this measure can be considered compatible with the common market on the basis of Article 87(3)(c) of the EC Treaty.

4. CONCLUSION

- (70) On the basis of the foregoing considerations, the Commission finds that the measure notified by the Piedmont Region is compatible with the common market pursuant to Article 87(3)(c) of the EC Treaty.
- (71) If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

http://ec.europa.eu/community_law/state_aids

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Registry
B-1049 Brussels
Fax No: 00-32-2-296-12-42

Yours faithfully,

For the Commission

Neelie KROES
Member of the Commission

¹¹ Judgment of the ECJ in Case C 188/92 *Textilwerke Deggendorf GmbH*, [1994] ECR I-00833.