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Subject: State aid No SA.33083 (2012/C) (ex 2012/NN) – Italy - Reduced taxes and contributions linked to natural disasters *and* State aid No SA.35083 (2012/C) (ex 2012/NN) – Italy – Reduced taxes and contributions linked to the 2009 earthquake in Abruzzi (all sectors except agriculture)

Sir,

The Commission wishes to inform Italy that, having examined the information supplied by your authorities on the aid measures referred to above, it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (hereinafter "TFEU").

S.E. Giulio TERZI DI SANT'AGATA
Ministro degli Affari esteri
P.le della Farnesina 1
00194 Roma
ITALIA

1. PROCEDURE

1.1. State aid No SA.33083 (2012/NN) - Reduced taxes and contributions linked to natural disasters in Sicily, Northern Italy and other regions

- (1) On 21 February 2011, the Commission received an information request¹ from an Italian judge of the Administrative Court of Cuneo in Piedmont, in the framework of the *Commission notice on the enforcement of state aid law by national courts*². In her request, the Italian judge raised the attention of the Commission on the existence of a series of laws dating of 2002-2003 and 2007 introducing State aid measures (in form of a 90 % reduction of taxes and compulsory social security and occupational insurance contributions) linked to the earthquake that hit Eastern Sicily (the provinces of Siracusa, Catania and Ragusa) on 13-16 December 1990 as well as to the floods of November 1994 in Northern Italy, and asked whether these measures had been: (i) notified by Italy pursuant to Article 108(3) of the TFEU, (ii) assessed by the Commission, or (iii) a decision had been adopted, or (iv) a formal investigation opened, and in absence of an adopted decision, (v) when a decision would be adopted.
- (2) On 21 March 2011, the Commission services replied to the Italian judge that apparently these measures had not been notified by the Italian authorities and that the Commission had not yet opened a proceeding or a formal investigation³.
- (3) On 27 May 2011, the case was registered at the Commission as an *ex officio* investigation with reference No SA.33083 (2011/CP).
- (4) On 25 July 2011 the Commission sent an information request to the Italian authorities. After a reminder on 8 September 2011, the Italian authorities replied on 6 October 2011. By letter of 14 October 2011, the Commission requested additional information, to which the Italian authorities replied with letter dated 7 December 2011.
- (5) By letter of 19 June 2012, the Commission requested additional information regarding the measures linked to the natural disasters in Eastern Sicily and Northern Italy (as well as other similar measures linked to natural disasters that occurred in Italy since 1990)⁴, and

¹ Ordinanza del Tribunale di Cuneo, pronunciata il 18 febbraio 2011, avente ad oggetto una richiesta di informazioni ai sensi della "Comunicazione della Commissione relativa all'applicazione della normativa in materia di aiuti di Stato da parte dei giudici nazionali"

² OJ C 85, 9.4.2009, p. 1.

³ On 18 April 2011 the Italian judge asked again for possible results of her request, as it had relevance for the decision on numerous cases pending before the Court of Cuneo. The Commission services replied on 30 May 2011. After a further request on state of play on 7 February 2012, the Commission services replied on 24 February 2012 that the Commission started an *ex officio* investigation.

⁴ The letter mentioned measures linked to earthquakes affecting the regions Umbria and Marche in 1997, Molise and Puglia in 2002 and Abruzzi in 2009, or any other similar measures put in place by Italy.

invited the Italian authorities to submit comments⁵, in particular as regarding the unlawfulness of these aid measures, their aid character and their possible justification under State aid rules. The Commission services also informed the Italian authorities that the Commission was considering issuing an injunction⁶ requiring the suspension of any unlawful aid under the aforementioned measures. Italy replied with a letter dated 25 July 2012.

- (6) Meanwhile, the Commission received on 6 July 2012 an information request regarding this proceeding⁷ from the Court of Vercelli in Piedmont. The Commission services replied on 20 July 2012.
- (7) As the aid schemes had not been notified pursuant to Article 108(3) of the TFEU and have been put into effect before the Commission has taken a decision authorising such aid, the measures were registered in the Commission's State aid registry as non-notified aid under number SA.33083 (2012/NN).
- (8) On the basis of information gathered during the preliminary assessment phase, the Commission decided to split the file as regarding the agricultural sector. The present decision does not concern, therefore, activities linked to the production, transformation and commercialization of agricultural products as listed in Annex I of the TFEU with the exception of fisheries and aquaculture products.

1.2. State aid No SA.35083 (2012/NN) - Reduced taxes and contributions linked to the 2009 earthquake in Abruzzi

- (9) By electronic notification of 2 July 2012, registered by the Commission the same day under reference No SA.35083 (2012/N), the Italian authorities notified the measure concerning aid in form of reduced taxes and contributions linked to the 2009 earthquake in Abruzzi, for which the Commission already asked information in its letter of 19 June 2012 under No SA.33083 (2012/NN).
- (10) In the notification, the Italian authorities considered that the compatibility of the measure should be assessed with reference to Article 107(2)(b) of the TFEU ("*aid to make good the damage caused by natural disasters*"), or to Article 107(3)(c) of the TFEU ("*aid to facilitate the development of certain (...) economic areas*"), in order to "compensate the macroeconomic impact in terms of decrease in GDP as a consequence of the natural

⁵ In line with Article 11(1) 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 (OJ L 83, 27.3.1999, p. 1).

⁶ In accordance with Article 11(1) of Council Regulation (EC) No 659/1999.

⁷ Verbale di udienza del Tribunale di Vercelli, del 19 giugno 2012, avente ad oggetto una richiesta di informazioni circa il procedimento pendente n. SA.33083 (2011/CP).

disasters". More precisely, the Italian authorities referred to a significant decline in the GDP of the region Abruzzi between 2008 and 2009⁸.

- (11) By letter dated 17 August 2012, the Commission informed the Italian authorities that the measure is considered to be a presumed non-notified aid and that it will be assessed together with case No SA.33083 (2012/NN).
- (12) As the legal basis was put into effect before the Commission has taken a decision authorising such aid, the measure was registered in the Commission's State aid registry as non-notified aid under reference No SA.35083 (2012/NN).
- (13) On the basis of information provided in the notification, the Commission decided to split the file as regarding the agriculture sector. The present decision does not cover, therefore, activities linked to the production, transformation and commercialization of agricultural products as listed in Annex I of the TFEU with the exception of fisheries and aquaculture products.

2. DESCRIPTION OF THE MEASURES

2.1. Objective

- (14) The general objective of the above mentioned schemes, as presented in the various legal bases, seems to be to support the recovery of areas affected by natural disasters.

2.2. Measures and legal basis

- (15) The below listed measures and schemes are designed to reduce taxes, as well as obligatory social security contributions (due to INPS – *Istituto nazionale per la previdenza sociale*) and compulsory occupational insurance contributions (due to INAIL - *Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro*) for undertakings seated or located in areas affected by various natural disasters in Italy since the year 1990.

2.2.1. Measures linked to the earthquake in Sicily of 1990

- (16) Following the earthquake that hit Eastern Sicily (the provinces of Siracusa, Catania and Ragusa) on 13-16 December 1990, the Italian authorities adopted in the years from 1990 until 2002 a series of decisions and laws allowing to all undertakings⁹ located in the municipalities affected by the earthquake¹⁰ the suspension and deferral of the payment of

⁸ ISTAT (Istituto Nazionale di Statistica) measured this decrease from EUR 26 314.5 million in 2008 to EUR 25 343.2 million in 2009 (i.e. minus 3.7 %).

⁹ Including undertakings in the industrial, commercial, handicraft and agriculture sector having an activity in the area affected by the earthquake.

¹⁰ Municipalities identified by *Decreto del Presidente del Consiglio dei Ministri* of 15 gennaio 1991.

taxes, as well as of compulsory social security and occupational insurance contributions, or otherwise allowing their payment in instalments.

- (17) In 2002 Italy introduced by law¹¹ the possibility - for those who had still not paid their taxes for the years 1990-1991-1992 – to automatically close their position by 16 March 2003 by paying only 10 % of the amount still due¹². In other words, Italy introduced the possibility of a 90 % rebate on amounts due to the State for taxes.
- (18) New laws in 2003 and 2004¹³ extended this possibility until 16 April 2004.
- (19) In 2005, a law¹⁴ referring to the 2002 law¹⁵ clarified the possibility - for undertakings that had still not paid social security contributions (to INPS) and occupational insurance contributions (to INAIL) for the years 1990-1991-1992 – to automatically close their position by paying only 10 % of the amounts still due. The budget foreseen for this measure was EUR 52 million¹⁶.
- (20) A law of 2007¹⁷ extended to 31 December 2007 the deadline for payments, but requiring a payment of 30 % of the amount still due for taxes. A further law of 2007¹⁸ extended to 30 June 2008 the deadline for payments, and re-established that only 10 % of the amount still due ought to be paid.

2.2.2. *Measures linked to the floods in Northern Italy of 1994*

- (21) Similarly, following the floods of November 1994 in Northern Italy (affecting 257 municipalities of the regions Piedmont, Lombardy, Emilia-Romagna, Liguria, Toscana and Veneto), the Italian authorities adopted a series of laws allowing undertakings¹⁹ which had suffered a relevant damage²⁰ caused by the floods the suspension and deferral of payments for taxes and contributions.

¹¹ With Article 9, comma 17 of Legge n. 289 del 27.12.2002 (Financial Law for year 2003).

¹² In one solution or in instalments for sums above EUR 5 000.

¹³ Article 23-decies, comma 5, del *Decreto legge* n. 355 del 24 dicembre 2003, convertito in Legge n. 47 del 27 febbraio 2004 e dal *Decreto Ministeriale* 8 aprile 2004.

¹⁴ Legge finanziaria n. 266 del 23 dicembre 2005, art. 1(363).

¹⁵ Article 9, comma 17 of Legge n. 289 del 27.12.2002 (Financial Law for year 2003).

¹⁶ Legge n. 81 dell'11 marzo 2006, di conversione del *Decreto legge* n. 2 del 10 gennaio 2006.

¹⁷ Legge n. 17 del 26 febbraio 2007, di conversione del *Decreto legge* n. 300 del 28 dicembre 2006, art. 3-quater, comma 2.

¹⁸ Legge n. 248, art. 36-bis, del 31 dicembre 2007.

¹⁹ Excluding undertakings in the banking and insurance sector.

²⁰ Damage was considered to be relevant (under Art.16-bis of Legge n. 22 del 21 gennaio 1995 di conversione del *Decreto legge* n. 646 del 24 novembre 1994) if it was estimated to be more than one sixth of the income declared for year 1993 and, at least, above LIT 2 million (approx. EUR 1,032.39).

- (22) As already for the earthquake in Sicily (see recital (17) above), Italy introduced in 2003²¹ also for the undertakings that were affected by the floods in November 1994 the possibility to close their position by July 2004 by paying only 10 % of the amount for taxes and contributions due for the years 1995-1996-1997.
- (23) Further laws of 2007²² extended the terms of the payment of amounts still due for taxes and contributions to 31 March 2008.

2.2.3. *Similar measures linked to other natural disasters in Italy which occurred since 1997*

- (24) According to information available to the Commission, Italy introduced in recent years the same type of rebate measure also in other areas affected by natural disasters. More precisely:
- (a) In 2006 Italy introduced a 50 % rebate²³ on taxes²⁴, and contributions, in favour of undertakings located or operating in those municipalities of the province of Catania (region Sicily) affected by the earthquake and the eruptions of volcano Etna of 2002²⁵.
 - (b) In 2008, Italy introduced a 60 % rebate on taxes and contributions in favour of undertakings located or operating in the municipalities of the regions Umbria and Marche affected by the earthquake of 1997²⁶, as well as
 - (c) a 60 % rebate on taxes and contributions in favour of undertakings located or operating in the municipalities of the regions Molise and Puglia affected by the earthquake of 2002²⁷.

²¹ With Article 4, comma 90, of Legge n. 350 del 24.12.2003 (Financial Law for year 2004).

²² Legge n. 17 del 26 febbraio 2007, di conversione del *Decreto legge* n. 300 del 28 dicembre 2006, art. 3-
quater, comma 1. *Decreto legge* n. 248 del 31 dicembre 2007, art. 36-bis.

²³ Art. 1, comma 1011, of Legge n. 296 del 27 dicembre 2006 (Financial Law 2007), referring to the *Ordinanza del Presidente del Consiglio dei Ministri* n. 3442 del 10 giugno 2005, covering the *Ordinanza del Presidente del Consiglio dei Ministri* n. 3254 del 29 novembre 2002.

²⁴ Art. 1, comma 1011, of Legge n. 296 del 27 dicembre 2006 refers to "... ciascun tributo e contributo (...) diminuito al 50% ..."

²⁵ When first suspended with Art. 5 of *Ordinanza del Presidente del Consiglio dei Ministri* n. 3254 del 29 novembre 2002, they were referred to as "... versamenti di contributi di previdenza e di assistenza sociale e dei premi per l'assicurazione obbligatoria contro gli infortuni e le malattie professionali" in favour of "soggetti residenti, avente sede legale o operativa nel territorio" – then confirmed with *Ordinanza del Presidente del Consiglio dei Ministri* n. 3242 del 10 giugno 2005 applicable to "... datori di lavoro privati avente sede legale od operativa nei comuni ..."

²⁶ Articolo 2 comma 1 del *Decreto-legge* del 8 aprile 2008, n. 61, convertito dalla legge del 6 giugno 2008, n. 103 (per il quale era prevista la copertura finanziaria all'articolo 2, comma 109, della legge 24 dicembre 2007, n. 244). Articolo 3 comma 2 del *Decreto-legge* del 23 ottobre 2008, n. 162, convertito in Legge n. 201 del 22 dicembre 2008.

- (d) Similarly, the same 60 % rebate on taxes and contributions was introduced in 2011²⁸ in favour of undertakings located or operating in the municipalities of the region Abruzzi affected by the earthquake of 6 April 2009 (see in more detail the description below at point 2.2.4).
- (25) It cannot be excluded that Italy has introduced more of these measures in recent years for other areas affected by natural disasters.
- 2.2.4. *Notified aid measure No SA.35083 (2012/NN) linked to the 2009 earthquake in Abruzzi*
- (26) The measure notified by Italy and registered by the Commission with reference No SA.35083 (2012/NN) (see point 1.2 above) concerns aid in form of reduced taxes and contributions linked to the earthquake in Abruzzi of 2009.
- (27) Following the earthquake which hit the region Abruzzi (the regional capital L'Aquila as well as several other municipalities) on 6 April 2009, the Italian authorities adopted in 2009 a series of decisions and laws²⁹ allowing to all undertakings³⁰ located in the municipalities³¹ affected by the earthquake the suspension and deferral until 30 November 2009 of the payment of taxes and contributions. This deadline was extended with further decisions to 30 June 2010³², to 15 December 2010³³, to 31 October 2011³⁴ and finally to 16 December 2011³⁵.
- (28) On 12 November 2011, Italy introduced a law³⁶ stipulating that as from January 2012 the payment of the taxes and contributions suspended and deferred since the earthquake (see previous recital) would take place in 120 monthly instalments, and that the amount due for each tax or contribution, subject of the suspension, would be reduced to 40 %. As from the text of the various legal bases, it appears that this 60 % rebate refers to taxes and contributions due from 6 April 2009 until 31 December 2011.

²⁷ Articolo 6 commi 4-bis e 4-ter del *Decreto-legge* del 29 novembre 2008, n. 185, convertito in Legge n. 2 del 28 gennaio 2009.

²⁸ Legge n. 183 del 12 novembre 2011, art. 33 comma 28.

²⁹ *Ordinanze del Presidente del Consiglio dei Ministri*: n. 3753 e n. 3754 del 9/4/2009; n. 3780 del 6/6/2009. *Decreto legge* n. 39 del 28 aprile 2009, convertito dalla Legge n. 77 del 24 giugno 2009.

³⁰ Both undertakings having legal seat as well as those having operative location in the municipalities affected by the earthquake (in Italian: "... *soggetti residenti, aventi sede legale od operativa alla data degli eventi sismici* ..." – altrove "... *aventi domicilio fiscale o sede operativa*...").

³¹ Identified by *Decreto del Presidente del Consiglio dei Ministri* n. 3 of 16 aprile 2009.

³² *Ordinanza del Presidente del Consiglio dei Ministri* n. 3837 del 30/12/2009.

³³ *Decreto legge* n. 78 of del 31 maggio 2010 (Art. 39), convertito con Legge n. 122 del 30 luglio 2010.

³⁴ *Decreto legge* n. 225 of del 29 dicembre 2010 (Art. 3).

³⁵ *Decreto del Presidente del Consiglio dei Ministri* of 16 August 2011.

³⁶ With Article 33 comma 28 of Law n. 183 of 12.11.2011 (*Legge di stabilità 2012*).

2.3. Geographical scope of the measures

- (29) The different measures are applicable to various areas affected by natural disasters in Italy. These areas are identified by Italian decrees as areas affected either by: earthquakes, floods or volcanic eruptions.
- (30) The areas referred to in these measures are:
- (a) the municipalities³⁷ affected by the earthquake that hit Eastern Sicily (the provinces of Siracusa, Catania and Ragusa) on 13-16 December 1990;
 - (b) municipalities³⁸ of the regions Piedmont, Lombardy, Emilia-Romagna, Liguria, Toscana and Veneto affected by the floods of November 1994³⁹;
 - (c) municipalities⁴⁰ of the province of Catania (region Sicily) affected by the earthquake and the eruptions of volcano Etna of 2002;
 - (d) municipalities⁴¹ of the provinces of Ancona and Perugia (regions Marche and Umbria) affected by the earthquake of 1997;
 - (e) municipalities⁴² of the provinces of Campobasso and Foggia (regions Molise and Puglia) affected by the earthquake of 2002;
 - (f) municipalities⁴³ of the region Abruzzi affected by the earthquake of 6 April 2009.

2.4. Beneficiaries

- (31) The schemes appear to be open to undertakings operating in all sectors, including agriculture, forestry, fisheries and aquaculture⁴⁴, with the exception of the measure linked

³⁷ Identified by *Decreto del Presidente del Consiglio dei Ministri* del 15 gennaio 1991.

³⁸ Identified by two *Decreti del Presidente del Consiglio dei Ministri* del 26 e 29 novembre 1994.

³⁹ Certain documents refer to Valle d'Aosta as a beneficiary area, but the Commission has found no evidence so far of municipalities of region Valle d'Aosta in the different legal basis.

⁴⁰ Identified with *Decreto del Presidente del Consiglio dei Ministri* del 29 ottobre 2002

⁴¹ Identified with three *Ordinanze* n. 2668 del 28 settembre 1997, n. 2694 del 13 ottobre 1997 and n. 2719 del 28 novembre 1997.

⁴² Identified with *Decreti del Presidente del Consiglio dei Ministri* del 31 ottobre 2002 e dell'8 novembre 2002.

⁴³ Identified with two *Decreti del Presidente del Consiglio dei Ministri* n. 3 del 16 aprile 2009 and n. 11 del 17 luglio 2009.

⁴⁴ However, as mentioned at recital (13) above, the present decision does not cover activities linked to the production, transformation and commercialization of agricultural products as listed in Annex I of the TFEU with the exception of fisheries and aquaculture products.

to the 1994 floods in Northern Italy, which excludes undertakings in the banking and insurance sector

- (32) As for the earthquakes (and volcanic eruptions) that hit Sicily, Umbria, Marche, Molise, Puglia and Abruzzi, the beneficiaries appear to be all undertakings having the legal seat or an operative location in the municipalities affected by the natural disaster (areas identified with specific laws, see recital (30) above).
- (33) In the case of the floods in Northern Italy, the beneficiaries appear to be undertakings seated or operating in the municipalities affected by the natural disaster (see recital (30)(b) above), but limited to those undertakings proving to have suffered a relevant damage⁴⁵.

2.5. Duration of the measures

- (34) The duration of the schemes introducing the rebates can be identified as starting on the date when the legal basis entered into force, but the legal basis is not always clear regarding the end of application of the schemes, nor regarding the period of time for which the reduction would be applicable. Moreover, in most cases the final deadline to benefit of the measure was postponed several times.
- (35) The entry into force of the rebate measures appears to have been:
- (a) the 1 January 2003⁴⁶ for the earthquake that hit Eastern Sicily (the provinces of Siracusa, Catania and Ragusa) on 13-16 December 1990;
 - (b) the 1 January 2004⁴⁷ for the floods of November 1994 in Northern Italy;
 - (c) the 1 January 2007⁴⁸ for the earthquake and eruptions of volcano Etna of 2002;
 - (d) the 1 January 2008⁴⁹ for the earthquake in regions Umbria and Marche of 1997;
 - (e) the 29 November 2008⁵⁰ for the earthquake in regions Molise and Puglia of 2002;
 - (f) the 1 January 2012⁵¹ for the earthquake in the region Abruzzi of 2009.

⁴⁵ For the definition of relevant damage, please see footnote (20).

⁴⁶ Date of entry into force of Law n. 289 of 27.12.2002 (Financial Law for year 2003).

⁴⁷ Date of entry into force of Law n. 350 of 24.12.2003 (Financial Law for year 2004).

⁴⁸ Date of entry into force of Law n. 296 of 27.12.2006 (Financial Law for year 2007).

⁴⁹ Date of entry into force of Law n. 244 of 24.12.2007 (Financial Law for year 2008).

⁵⁰ Date of entry into force of Law n. 185 of 29.11.2008 (*Legge per misure anti-crisi* 2009).

⁵¹ Date of entry into force of Law n. 183 of 12.11.2011 (*Legge di stabilità* 2012), as identified in Art. 33, comma 28 and notified by the Italian authorities under case No SA.35083 (2012/NN).

- (36) As for the period for which the rebates were applicable, the legal bases refer to the period of suspension of the payment for taxes and contributions (see also point 2.2 above). However, as for the suspension periods information provided by Italy to the Commission until this date is not completely consistent:
- (a) as for the earthquake that hit Eastern Sicily (the provinces of Siracusa, Catania and Ragusa) on 13-16 December 1990, the relevant period appears to be the years 1990-1991-1992 (see recital (17) above); nevertheless, a further document prepared by the Italian Tax Agency mentions the period 13 December 1990 until 31 July 1993, while for social security and occupational insurance contributions documents prepared by both INPS and INAIL⁵² mention the suspension period 13 December 1990 - 31 December 1992. All these documents were provided by the Italian authorities on 25 July 2012;
 - (b) as for the floods of November 1994 in Northern Italy, the legal basis mentions the years 1995-1996-1997 (see recital (22) above), while the document prepared by the Italian Tax Agency mentions the period 4 November 1994 until 31 October 1995 (30 November 1995 in the document prepared by INAIL);
 - (c) as for the earthquake and eruptions of volcano Etna of 2002, the period concerned appears to be 5 November 2002 until 31 March 2004 (see recital (24)(a) above);
 - (d) as for the earthquake in regions Umbria and Marche of 1997, from the document prepared by the Italian Tax Agency the period concerned appears to be 26 September 1996 until 30 June 1999;
 - (e) as for the earthquake in regions Molise and Puglia of 2002, from the document prepared by the Italian Tax Agency the period concerned appears to be 31 October 2002 until 30 June 2008 (but the documents prepared by INPS and INAIL mention the period from 31 October 2002 until 31 December 2007);
 - (f) as for the earthquake in the region Abruzzi of 2009, the period concerned depends on the nature of the beneficiary: for all undertakings with an annual turnover above EUR 200 000, the document prepared by the Italian Tax Agency considers a period of application from 6 April 2009 until 30 June 2010; for undertakings with an annual turnover below EUR 200 000 and for individuals with income from business activity or self-employed the period would be 6 April 2009 until 31 December 2010.
- (37) As for the period of duration of the rebate measures, the Commission notes that each legal basis mentioned a different deadline to benefit of the reduction. On the other hand, the period of application appears to be extended as a result of the judgments of the Italian Supreme Court of Cassation, as explained below at point 2.9.

⁵² Documents provided by Italy to the Commission on 25 July 2012.

2.6. Budget

- (38) Apart from the budget mentioned in recital (19) above (EUR 52 million for social and insurance contributions for the earthquake in Sicily) and the budget for the notified measure SA.35083 (2012/NN) (EUR 641 million), so far, Italy has not informed the Commission on the total amount of aid allocated to the various measures or on the distribution per measure.

2.7. Eligible costs

- (39) The eligible costs under the measures are taxes, obligatory social security contributions (to INPS) and compulsory occupational insurance premiums (to INAIL) to be paid by undertakings for a defined period of time (as determined in the legal basis of each measure, see points 2.2 and 2.5 above) following the natural disaster.

2.8. Form of the aid and aid intensity

- (40) The aid is awarded in form of rebate on taxes and compulsory contributions (for social security and occupational insurance). The rebate amounts to 90 % for the measures for Sicily and Northern Italy (see recital (15) and point 2.2.2 above), to 60 % for Marche, Umbria, Molise, Puglia and Abruzzi, and to 50% for Catania (see point 2.2.3 above). The remaining amount due could be paid in one solution, or in instalments (e.g. up to 120 monthly instalments for the measure for Abruzzi). Depending on the measure, these instalments include interest payments or not.

2.9. Rulings of the Italian Supreme Court of Cassation

- (41) The information request of the Court of Cuneo (see recital (1) above) brought to the attention of the Commission the 2007 and 2010 rulings⁵³ of the Italian Supreme Court of Cassation, according to which the reduction to 10 % of the amounts due for taxes and contributions ought to be applied to all those who could have claimed for the same rights (even if in the meanwhile they had already paid the amount due).
- (42) In practice, the Italian Supreme Court of Cassation considers that all undertakings that could benefit of the measures for Sicily or Northern Italy had right to the same rebate of 90 % (on taxes and contributions). Otherwise, there would be an "unjustified disparity in treatment".
- (43) This interpretation of the rulings of the Supreme Court of Cassation was confirmed also by the Italian authorities in their writings of 7 December 2011 and 25 July 2012. In their last submission, the Italian authorities mention a further 2012 ruling of the Supreme Court

⁵³ Sentenza della Suprema Corte di Cassazione, Sezione Quinta Civile, del 1 ottobre 2007, n. 20641. Sentenza della Suprema Corte di Cassazione, Sezione Lavoro, del 7 maggio 2010, n. 11133. Sentenza della Suprema Corte di Cassazione, Sezione Lavoro, del 10 maggio 2010, n. 11247.

of Cassation⁵⁴, which rejected the admissibility of an appeal of the Tax Agency (*Agenzia delle Entrate*), since there would already "exist a *consolidated* jurisprudential orientation".

- (44) The Commission is informed that these rulings have relevance for the decision on numerous cases pending in front of many Administrative Courts in Italy (procedures launched by potential beneficiaries under the different measures).
- (45) The Commission's understanding is that, as a result of these rulings of the Supreme Court of Cassation, these measures would be retroactively applicable to benefit all undertakings, including those that regularly paid taxes and contributions. Thus, that the measures would have no limit of time in application as long as an undertaking can prove to be entitled to the benefit.

2.10. Further comments of the Italian authorities

- (46) In their letter dated 5 October 2011 the Italian authorities provided a note with the description of the legal basis of the measures for Sicily and Northern Italy, recognizing that the measures had not been notified to the Commission, but without taking a position as to the unlawfulness or the possible incompatibility of the aid.

3. ASSESSMENT OF THE MEASURE

3.1. State aid character of the measures

- (47) In order to assess whether the measures provided for in the aforementioned rebate schemes constitute aid within the meaning of Article 107(1) of the TFEU, it is necessary to determine whether they confer an advantage on the recipient, whether the advantage is conferred by the State, whether the measures in question affect competition and whether they are liable to affect intra-Community trade.
- (48) As the rebates are granted only to undertakings having establishments in the geographical areas (see point 2.3 above) affected by natural disasters (earthquakes, volcanic eruptions and floods), the measures are considered to be selective. By reducing taxes, compulsory social security and occupational insurance contributions, the Italian State relieves these undertakings from operating costs which they would normally have to bear themselves. Therefore, the undertakings benefit from an economic advantage which may distort or threaten to distort competition. As the measures cover undertakings possibly involved in trade between Member States, there is a risk that the aid could affect or have affected such trade.
- (49) The support provided by public authorities through State resources takes the form of revenue forgone by the public authorities: the reduction in income tax reduces the tax

⁵⁴ Sentenza della Suprema Corte di Cassazione del 12 giugno 2012, n. 9577.

revenue accruing to the State. Similarly, the reduction of compulsory social security and occupational insurance contributions to be paid to State agencies (INPS and INAIL) requires an increased transfer of State resources to these agencies in order to compensate for their forgone revenue.

- (50) Therefore, all these measures adopted by Italy since 2002 and referred to under State aid cases SA.33083 (2012/NN) and SA.35083 (2012/NN), reducing by 90 %, respectively 50 % and 60 %, the charges for taxes as well as compulsory social security and insurance contributions, constitute State aid within the meaning of Article 107(1) of the TFEU.

3.2. Unlawfulness of the aid measures

- (51) In view of the fact that the measures have already entered into force, the Commission regrets that the Italian authorities have not fulfilled their obligation to notify the schemes in accordance with Article 108(3) of the TFEU.

3.3. Compatibility of the aid with the internal market

- (52) Having established that the aforementioned rebate schemes involve State aid within the meaning of Article 107(1) of the TFEU, it is necessary to consider whether the aid can be found to be compatible with the internal market pursuant Article 107(2) and 107(3) of the TFEU.

- (53) Italy invoked the possible compatibility with Article 107(2)(b) and 107(3)(c) of the TFEU only for the rebate measure linked to the 2009 earthquake in Abruzzi within the notification procedure for case No SA.35083 (2012/NN). Italy did not take a position regarding the compatibility of the other measures.

- (54) Since all rebate measures refer to areas affected by natural disasters, the Commission will consider, first of all, whether the measures could qualify for the derogation in Article 107(2)(b) of the TFEU as aid to make good the damage caused by natural disasters or exceptional occurrences.

3.3.1. Aid to make good damage caused by natural disasters

- (55) The Commission has examined the aid schemes in the light of Article 107(2)(b) of the TFEU. Article 107(2)(b) stipulates that aid to make good the damage caused by natural disasters shall be compatible with the internal market. According to Article 108 of the TFEU, any intentions from Member States to grant such aid should be notified to the Commission.

- (56) The Commission verifies the occurrence of the natural disaster invoked to justify the granting of aid and that the following conditions are met:

- (a) the damage for which the compensation is granted is a proven direct consequence of the natural disaster;

- (b) aid does not result in overcompensation of damage and it only makes good the damage caused by the natural disaster.
- (57) The Italian legal bases identify areas affected either by three types of natural disasters: earthquakes, floods or volcanic eruptions. Since the Commission has consistently taken the view that earthquakes, floods and volcanic eruptions constitute natural disasters within the meaning of Article 107(2)(b) of the TFEU, undertakings that suffered damages from these natural disasters could qualify as beneficiaries of aid for the amount of damage suffered as a consequence of the same events.
- (58) However, the schemes in question do not lay down any definition of damage (whether material or immaterial) and do not establish any link between the aid and the damage suffered as a result of the aforementioned natural disasters⁵⁵. Furthermore, the schemes do not appear to limit the compensation to the damage suffered by the undertakings, and the eligible costs are not determined on the basis of the damage suffered by the undertakings as a consequence of the natural disaster.
- (59) In the light of the above observations, the Commission considers at this stage that the information provided by the Italian authorities does not suggest that the measure under examination is, by virtue of its nature and operational arrangements, designed to make good the damage caused by natural disasters.
- (60) Concerning the schemes applying to fisheries and aquaculture, their compatibility with the EU legislation should be assessed in the light of the guidelines for the examination of state aid to fisheries and aquaculture in force at the date of the entry into force of each scheme. Actually, from 2001, the Commission indicates in these guidelines its manner of interpretation of the Treaty with regard to State aids to fisheries and aquaculture.
- (61) Pursuing the assessment of all schemes in object in the light of the abovementioned guidelines, the observations of this section apply also to fisheries and aquaculture.

3.3.2. *Aid to promote or facilitate the development of certain economic areas*

- (62) As regards the applicability of the derogations in Article 107(3)(a) and (c) of the TFEU to aid measures covering certain geographic areas of the Member State, the Commission would have to assess it on the basis of the *Guidelines on national regional aid for 2007-2013* ("RAG")⁵⁶.
- (63) A reduction in the payment of taxes and contributions constitutes operating aid reducing the firm's current expenses. Paragraph 76 of the RAG reminds that "regional aid aimed at reducing a firm's current expenses (operating aid) is normally prohibited", but that it could

⁵⁵ With the exception of the measures linked to the 1994 floods in Northern Italy, which set a minimum damage to benefit of the aid (see recital (21) and footnote 20 above).

⁵⁶ OJ C 54, 4.3.2006, p. 13

exceptionally "be granted in regions eligible under the derogation in Article 107(3)(a)" under certain conditions. The Commission notes that only some of the areas benefitting of the assessed aid measures are Article 107(3)(a) regions identified in the regional aid map for Italy for the period 2007-2013⁵⁷.

- (64) For the rebate measure linked to the 2009 earthquake in Abruzzi (case No SA.35083 (2012/NN)), Italy invoked the possible compatibility with Article 107(3)(c) of the TFEU, arguing that the aid should "compensate the macroeconomic impact in terms of a 3.7 % decrease in GDP as a consequence of the natural disasters". More precisely, the Italian authorities referred to a decline in the GDP of the region Abruzzi between 2008 and 2009. However, the arguments brought forward by Italy to justify the compatibility of the aid pursuant to Article 107(3)(c) do not appear to be in line with the principles set under heading 5 (on "Operating aid") of the RAG.

3.3.3. Possible compatibility with other derogations in Article 107 of the TFEU

- (65) The beneficiaries, the eligible costs and the aid intensities of the assessed aid measures do not appear to correspond to any of those foreseen by the different provisions of the *General Block Exemption Regulation* ("GBER")⁵⁸ according to which certain categories of aid would be compatible with the internal market in application of Articles 107 and 108 of the TFEU.
- (66) As regards the applicability of the other derogations provided for in the TFEU, the Commission takes the view that the aid does not qualify for the derogation in Article 107(2)(a) as it is not aid having a social character or it is not aid covered by Article 107(2)(c). For obvious reasons, the derogations in Article 107(3)(b) and (d) are not applicable either.

4. DOUBTS AND GROUNDS FOR OPENING

- (67) In light of the above and based on the available information, as the measures mentioned at Sections 1 and 2 have been implemented without being notified to the Commission, they constitute unlawful aid in the meaning of Article 1 of Council Regulation (EC) No 659/1999 of 22 March 1999.
- (68) Furthermore, as a consequence of the preliminary assessment (see point 3.3 above), the Commission has serious doubts that these measures introduced by Italy since 2002 are compatible with the TFEU, since it cannot be concluded from the above assessment that the aid measures are in line with the principles of the TFEU, and in particular with Article

⁵⁷ As approved by the Commission with decision C(2007)5618 of 28.11.2007 for State aid case N 324/2007 (OJ C 90, 11.04.2008, p. 4) and amended with decision C(2010)4497 of 6.7.2010 for State aid case N 117/2010 (OJ C 215, 10.08.2010, p. 5).

⁵⁸ Commission Regulation (EC) No 800/2008 of 6 August 2008 (OJ L 214, 9.8.2008, p. 3).

107(2)(b) of the TFEU which sets the principles of aid to make good damage suffered as a consequence of a natural disaster⁵⁹.

(69) In particular, the Commission is unable to conclude from the operational arrangements set out in the measures at stake that:

- (a) the aid recipient is an undertaking that has effectively suffered damage (with the exception of the measure for Northern Italy, for which the condition was for the undertaking to have suffered a minimum damage, see point 2.2.2 above),
- (b) the damage was caused exclusively by the natural disasters referred to in one of the aforementioned legal bases (see point 2.2 above),
- (c) the aid for the undertaking is confined to making good solely the damage caused by these natural disasters, excluding any overcompensation for the said damage for the individual recipient.

(70) Lastly, the Commission doubts whether appropriate arrangements exist for monitoring the cumulation of aid under these schemes with aid under other schemes that exclude any overcompensation for the damage suffered by individual recipients as a result of the natural disasters in question. In particular, the Commission refers to possible cumulation with aid granted under schemes aimed at making good the damage suffered as a consequence of that specific natural disaster. The Commission is at least aware of the existence of the disaster aid schemes for the 2002 earthquake in Molise (aid scheme N 174a/2004)⁶⁰ and for the 2009 earthquake in Abruzzi (aid scheme N 459a/2009)⁶¹.

(71) The Italian authorities and interested third parties are therefore invited to provide in their comments to the opening decision all information necessary to carry out a full assessment and to submit to the Commission the appropriate information and documentation. In particular, the Italian authorities are required to provide for each measure in place a clear overview of the advantages provided to beneficiaries:

- The rebates for each area and measure, and the period for which the rebates are applicable. Moreover, the Member State is requested to confirm the Commission's understanding that, as a consequence of the latest judgments of the Italian Supreme Court of Cassation of 2007, 2010 and 2012 (mentioned at point 2.9 above), these measures could potentially make the aid available (without a limit in

⁵⁹ In the Judgement of the Court of 29 April 2004 in Case C-278/00 *Greece v Commission*, [2004] ECR I-03997, "only economic disadvantages directly caused by natural disasters or by exceptional occurrences qualify for compensation as provided for in that provision" (paragraph 82) and "a provision with so broad a scope cannot be regarded as aid to make good the damage caused by natural disasters or exceptional occurrences" (paragraph 85).

⁶⁰ OJ C 125, 24.5.2005, p. 7.

⁶¹ OJ C 278, 18.11.2009, p. 3.

time) to all undertakings identified as beneficiaries under the legal basis for each measure.

- The applicable percentage (%) for each measure, and for each tax and contribution for which payments were suspended and for which the rebate was referred to in the legal basis: taxes, compulsory social security contributions (to be paid to INPS) and obligatory occupational insurance premiums (to be paid to INAIL).
- The existence (or not) of natural disaster aid schemes already providing the beneficiaries with aid aimed at making good the damage suffered as a consequence of that specific natural disaster. The Commission is aware of the existence of two disaster aid schemes (see recital (70) above). If natural disaster schemes were available, please refer to the decision of the Commission approving these schemes or, if these measures were not notified to the Commission, please explain the reason why. Moreover, the Italian authorities are required to explain to which extent cumulation rules have been complied with.
- If and how damage was estimated for each beneficiary located in the areas affected by the natural disasters, and whether the necessity and proportionality of the support has been considered at some moment in time, and in which manner. To this end, the Italian authorities are required to clearly identify and list all the areas covered by these rebate measures or by equivalent ones.
- The existence of any limits or thresholds applicable to aid amount, eligible costs or beneficiaries.

(72) In addition, the Italian authorities are requested to provide the estimated number of beneficiaries of each measure and the aid amounts involved.

(73) Interested parties are especially requested to provide information as to the correlation and the proportionality (or the absence of correlation or of proportionality) between the amount of damage suffered and the measure(s) in place.

5. SUSPENSION INJUNCTION

(74) By letter dated 19 June 2012 (see recital (5) above), the Italian authorities were requested to provide comments on the lawfulness and compatibility of all aid measures referred to in case No SA.33083 (2012/NN), and were informed that the Commission would consider issuing a suspension injunction decision in accordance with Article 11(1) of Council Regulation (EC) No 659/1999. The Italian authorities replied on 25 July 2012 providing further information, but without submitting comments that could allay the Commission's doubts.

(75) By letter dated 17 August 2012 (see recital (11) above), the Commission informed the Italian authorities that the measure referred to in case No SA.35083 (2012/NN) is

considered to be a presumed non-notified aid and that it will be assessed together with case No SA.33083 (2012/NN), and were informed that also for this measure the Commission would consider issuing a suspension injunction decision in accordance with Article 11 (1) of Council Regulation (EC) No 659/1999. The Italian authorities were given twenty working days to submit their comments, but failed to reply by 17 September 2012 with a letter that could allay the Commission's doubts.

- (76) Should the Commission come to the conclusion that the unlawful aid granted by the Italian authorities is not compatible with the internal market, it would decide to issue a recovery order in a final negative decision. This would mean that the Italian authorities would be obliged to recover the incompatible aid. As the aid measures are fully into effect at the day of this decision, also as a result of the rulings of the Italian Supreme Court of Cassation (see point 2.9 above), the Commission therefore considers that it is crucial to now suspend any payment under all aid measures referred to in cases SA.33083 (2012/NN) and SA 35083 (2012/NN).
- (77) The Commission therefore decided that it is necessary to issue a suspension injunction in accordance with Article 11(1) of Council Regulation (EC) No 659/1999.

6. DECISION

- (78) In light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the TFEU, requests Italy to submit its comments and to provide all such information as may help to assess the aforementioned aid measures, within one month of the date of receipt of this letter. The Commission invites the Italian authorities to transmit immediately copy of the present decision to all potential beneficiaries of the aid, or at least to proceed to inform them with appropriate means.
- (79) The Commission wishes to remind Italy that Article 108(3) of the TFEU has suspensory effect for all rebate measures referred to in this decision (i.e. no undertaking should benefit of State aid under these measures as long as the Commission will not have closed the formal investigation), and would draw the attention of the Italian authorities to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.
- (80) The Commission enjoins Italy in accordance with Article 11(1) of Council Regulation (EC) No 659/1999 to suspend any unlawful aid referred to in cases SA.33083 (2012/NN) and SA 35083 (2012/NN) until the Commission has taken a decision on the compatibility of the aid with the internal market (suspension injunction).
- (81) The Commission warns Italy that it will inform interested parties by publishing this letter and a meaningful summary of it in the Official Journal of the European Union. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the Official Journal of the European Union and will inform the EFTA Surveillance Authority by sending a copy

of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.

If this letter contains confidential information which should not be published, 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 publication of the full text of this letter. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Registry
B-1049 Brussels
Fax (32-2) 296 12 42

Yours faithfully,

For the Commission

Joaquín ALMUNIA
Vice-President