



EUROPEAN COMMISSION

Brussels, 14.8.2015
C(2015) 5549 final

PUBLIC VERSION

This document is made available for information purposes only.

COMMISSION DECISION

of 14.8.2015

ON THE MEASURES

SA.33083 (2012/C) (ex 2012/NN)

[implemented by Italy

for reduced taxes and contributions linked to natural disasters (all sectors except agriculture)]

and

SA.35083 (2012/C) (ex 2012/NN)

[implemented by Italy

for reduced taxes and contributions linked to the 2009 earthquake in Abruzzo (all sectors except agriculture)]

(Only the Italian version is authentic)

(Text with EEA relevance)]

**COMMISSION DECISION
of 14.8.2015**

ON THE MEASURES

SA.33083 (2012/C) (ex 2012/NN)

[implemented by Italy

**for reduced taxes and contributions linked to natural disasters (all sectors except
agriculture)]**

and

SA.35083 (2012/C) (ex 2012/NN)

[implemented by Italy

**for reduced taxes and contributions linked to the 2009 earthquake in Abruzzo
(all sectors except agriculture)]**

(Only the Italian version is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union ("TFEU"), and in particular the first subparagraph of Article 108(2) thereof,

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

Having called on interested parties to submit their comments pursuant to the provisions cited above¹ and having regard to their comments,

Whereas:

I. PROCEDURE

State aid 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 request² from an Italian judge of the Court of Cuneo in Piedmont, in the framework of the

¹ Commission decision C(2012)7128 final (OJ C 381, 11.12.2012, p. 32)

² 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"

*Commission notice on the enforcement of State aid law by national courts*³. In the request, the Italian judge drew the Commission's attention to the existence of a series of laws dating from 2002-2003 and 2007 supposedly introducing State aid measures (in the 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 (even if not in this order) whether these measures: (i) had been notified by Italy pursuant to Article 108(3) of the TFEU, (ii) had been assessed by the Commission, (iii) had been the subject of a formal investigation, (iv) had been the subject of an adopted decision, or (v) in the absence of an adopted decision, when a decision would be adopted. 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 investigation.

- (2) On 27 May 2011, the case was registered at the Commission with reference number SA.33083 (2011/CP).
- (3) 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.
- (4) 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 invited the Italian authorities to submit comments, 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 injunction requiring the suspension of any unlawful aid under the aforementioned measures. Italy replied with a letter dated 25 July 2012.
- (5) Meanwhile, the Commission received on 6 July 2012 an information request regarding this proceeding⁵ from the Court of Vercelli in Piedmont. The Commission services replied on 20 July 2012.
- (6) 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

³ OJ C 85, 9.4.2009, p. 1.

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

⁵ 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).

Commission's State aid registry as non-notified aid under number SA.33083 (2012/NN).

- (7) On the basis of information gathered during the preliminary assessment phase, the Commission decided to split the file as regards the agricultural sector. The present decision does not concern, therefore, activities linked to the production, transformation and commercialisation of agricultural products as listed in Annex I to the Treaty with the exception of fisheries and aquaculture products.

State aid SA.35083 (2012/NN) - Reduced taxes and contributions linked to the 2009 earthquake in Abruzzo

- (8) By electronic notification of 2 July 2012, registered by the Commission the same day under reference number 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 Abruzzo, for which the Commission already asked information in its letter of 19 June 2012 under No SA.33083 (2012/NN).
- (9) 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 disasters". More precisely, the Italian authorities referred to a significant decline in the GDP of the region Abruzzo between 2008 and 2009⁶.
- (10) By letter dated 17 August 2012, the Commission informed the Italian authorities that it considered the measure to be a presumed non-notified aid and that it would be assessed together with case No SA.33083 (2012/NN).
- (11) 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).
- (12) On the basis of information provided in the notification, the Commission decided to split the file as regards the agricultural sector. The present decision does not cover, therefore, activities linked to the production, transformation and commercialisation of agricultural products as listed in Annex I of the Treaty with the exception of fisheries and aquaculture products.

⁶ 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 %).

Common procedure for State aid cases SA.33083 (2012/C) (ex 2012/NN) and SA.35083 (2012/C) (ex 2012/NN) following the opening of the procedure laid down in Article 108(2) of the TFEU

- (13) By letter dated 17 October 2012⁷ the Commission informed Italy that it had decided to initiate the procedure laid down in Article 108(2) of the TFEU in respect of the aid measures. The cases were registered respectively under numbers SA.33083 (2012/C) (ex 2012/NN) and SA.35083 (2012/C) (ex 2012/NN).
- (14) The Commission decision to initiate the procedure (hereinafter "the opening decision") was published in the *Official Journal of the European Union*⁸ and interested parties were invited to submit their comments on the aid measures.
- (15) By letter of 13 November 2012 the Italian authorities requested an extension of the deadline to provide comments. By letters of 15 November 2012, the Commission agreed to the request for a deadline extension.
- (16) Italy submitted its comments on 11 January 2013. The Commission received four comments from interested parties: on 9 January 2013 comments from Studio Legale Prof. Avv. Mario P. Chiti ("Studio Legale Chiti"), on 10 January 2013 comments from Studio Legale Avvocato Roberto Preve – Katia Gavioli ("Studio Legale Preve-Gavioli") and on 11 January 2013 comments from Confindustria. On 31 January 2013, after the deadline of one month following the publication of the opening decision in the Official Journal, the Commission received comments from CGIL L'Aquila ("CGIL").
- (17) All comments received from interested third parties within the deadline of one month following the publication of the opening decision in the Official Journal were forwarded by the Commission to the Italian authorities on 17 January 2013, which were given the opportunity to react. Italy replied on 11 March 2013 that it had no comments to make on the third parties' observations.
- (18) On 23 March 2013 the Commission asked for clarifications on the information received from Italy. Italy replied to this request on 24 and 30 April 2013. On 12 June 2014 the Commission asked for further information and sent a reminder on 17 October 2014. Italy replied to the request and the reminder with various submissions of information on 20 and 24 June, 11 July, 4 August and 29 October 2014.

II. DESCRIPTION OF THE MEASURES

Measures and legal bases

- (19) 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*

⁷ Cf. footnote 3.

⁸ Cf. footnote 3.

infortuni sul lavoro) (together: “contributions”) for undertakings based or otherwise located in areas affected by various natural disasters in Italy since the year 1990.

Measures linked to the 1990 earthquake in Eastern Sicily

- (20) 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 granting to all undertakings⁹ located in the municipalities affected by the earthquake¹⁰ a suspension and deferral of the payment of taxes, as well as of compulsory social security and occupational insurance contributions, or otherwise allowing their payment in instalments.
- (21) In 2001 a law¹¹ provided that those who had still not paid their taxes or contributions could rectify their position (i.e., fulfil their respective payment obligations) by paying the full amounts still due, increased by 15%, by 28 December 2001.
- (22) However, in 2002 Italy introduced legislation¹² allowing those who had still not paid their taxes for the years 1990-1991-1992 to rectify their position automatically by paying only 10 % of the amount still due before 16 March 2003¹³. In other words, Italy introduced by means of Law n. 289 of 27 December 2002 the possibility of a 90 % rebate on amounts due to the State for taxes.
- (23) New laws in 2003 and 2004¹⁴ extended this possibility until 16 April 2004.
- (24) In 2005, a new law¹⁵ referring to the 2002 law¹⁶ introduced 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 rectify their position automatically by paying only 10 % of the amounts still due. The budget foreseen for this measure was EUR 52 million¹⁷.
- (25) A law of 2007¹⁸ extended the deadline for payments to 31 December 2007, but required a payment of 30 % of the amount still due for taxes. A further law of

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.

¹¹ Article 138 of Financial Law 2001, as modified by Decreto-Legge n. 355 of 28.09.2001.

¹² Article 9, comma 17 of Legge n. 289 del 27.12.2002 (Financial Law for year 2003).

¹³ In one solution or in instalments for sums above EUR 5,000.

¹⁴ 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.

¹⁵ Legge finanziaria n. 266 del 23 dicembre 2005, art. 1(363).

¹⁶ Article 9, comma 17 of Legge n. 289 del 27 dicembre 2002 (Financial Law for year 2003).

¹⁷ Legge n. 81 dell'11 marzo 2006, di conversione del Decreto legge n. 2 del 10 gennaio 2006.

¹⁸ Legge n. 17 del 26 febbraio 2007, di conversione del Decreto legge n. 300 del 28 dicembre 2006, art. 3-quater, comma 2.

2007¹⁹ extended the deadline for payments to 30 June 2008, and re-established the previous position that required only 10 % of the amount still due to be paid.

Measures linked to the 1994 floods in Northern Italy

- (26) Similarly, following the floods of November 1994 in Northern Italy (affecting 257 municipalities of the Piedmont, Lombardy, Emilia-Romagna, Liguria, Toscana and Veneto regions), the Italian authorities adopted a series of laws granting undertakings²⁰ that had suffered a relevant damage²¹ caused by the floods a suspension and deferral of payments for taxes and contributions.
- (27) As for the earthquake in Eastern Sicily, in 2003²² Italy offered undertakings affected by the 1994 floods the chance to rectify their position by paying only 10 % of the amount for taxes and contributions due for the period 1995-1996-1997 before July 2004.
- (28) Further laws of 2007²³ extended the deadline for payment of amounts still due for taxes and contributions to 31 March 2008.

Similar measures linked to other natural disasters in Italy which occurred between 1997 and 2002

- (29) According to information available to the Commission, in recent years Italy also introduced the same type of rebate measure also in other areas affected by natural disasters.
- (30) In 2006 Italy introduced a 50 % rebate²⁴ on taxes and contributions²⁵ 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 Mount Etna of 2002²⁶.

¹⁹ Legge n. 248, art. 36-bis, del 31 dicembre 2007.

²⁰ Excluding undertakings in the banking and insurance sector.

²¹ 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 With Article 4, comma 90, of Legge n. 350 del 24 dicembre 2003 (Financial Law 2004).

²³ 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.

²⁴ 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.

²⁵ Art. 1, comma 1011, of Legge n. 296 del 27 dicembre 2006 refers to "... ciascun tributo e contributo (...) diminuito al 50% ..."

²⁶ 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

- (31) In 2008, Italy introduced a 60 % rebate on taxes and contributions in favour of undertakings located or operating in the municipalities of the Umbria and Marche regions that were affected by the 1997 earthquake²⁷.
- (32) In 2008, Italy also introduced a 60 % rebate on taxes and contributions in favour of undertakings located or operating in the municipalities of the Molise and Puglia regions that were affected by the 2002 earthquake²⁸.
- (33) Similarly, the same 60 % rebate on taxes and contributions was introduced in 2011²⁹ in favour of undertakings located or operating in the municipalities of the Abruzzo region that were affected by the earthquake of 6 April 2009 (see in more detail the description below at the next point).

Notified aid measure No SA.35083 (2012/NN) linked to the 2009 earthquake in Abruzzo

- (34) The measure notified by Italy and registered by the Commission with reference No SA.35083 (2012/NN) (see recital (8)) concerns aid in form of reduced taxes and contributions linked to the earthquake in Abruzzo of 2009.
- (35) Following the earthquake which hit the region Abruzzo (the regional capital L'Aquila as well as several other municipalities) on 6 April 2009, the Italian authorities adopted a series of decisions and laws³⁰ granting all undertakings³¹ located in the municipalities³² affected by the earthquake a suspension and deferral until 30 November 2009 of the payment of taxes and contributions. This deadline was extended with further decisions to 30 June 2010³³, to 15 December 2010³⁴, to 31 October 2011³⁵ and finally to 16 December 2011³⁶.

Ministri n. 3242 del 10 giugno 2005 applicabile to "... datori di lavoro privati avente sede legale od operativa nei comuni ..."

²⁷ 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.

²⁸ 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.

²⁹ Legge n. 183 del 12 novembre 2011, art. 33 comma 28.

³⁰ 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.

³¹ Both undertakings having their legal seat as well as those having an 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...").

³² Identified by Decreto del Presidente del Consiglio dei Ministri n. 3 of 16 aprile 2009.

³³ Ordinanza del Presidente del Consiglio dei Ministri n. 3837 del 30/12/2009.

³⁴ Decreto legge n. 78 of del 31 maggio 2010 (Art. 39), convertito con Legge n. 122 del 30 luglio 2010.

³⁵ Decreto legge n. 225 of del 29 dicembre 2010 (Art. 3).

³⁶ Decreto del Presidente del Consiglio dei Ministri of 16 August 2011.

- (36) On 12 November 2011, Italy introduced a law³⁷ stipulating that as from January 2012 the payment of the taxes and contributions suspended and deferred since the earthquake would take place in 120 monthly instalments, and that the amount due for suspended taxes or contributions would be reduced to 40 % of their original amount payable.

Objective of the measures

- (37) The general objective of the above listed schemes (introducing a reduction up to 90 % of taxes and compulsory social security and occupational insurance contributions) is to support undertakings having their seat or an operative location ("*sede legale o operativa*") in the areas affected by natural disasters.

Geographical scope of the measures

- (38) 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.

- (39) The areas referred to in these measures are:

- the municipalities³⁸ affected by the earthquake that hit Eastern Sicily (the provinces of Siracusa, Catania and Ragusa) on 13-16 December 1990;
- the municipalities³⁹ of the Piedmont, Lombardy, Emilia-Romagna, Liguria, Toscana and Veneto regions affected by the floods of November 1994;
- the municipalities⁴⁰ of the province of Catania (Sicily region) affected by the 2002 earthquake and eruptions of Mount Etna;
- the municipalities⁴¹ of the provinces of Ancona and Perugia (respectively in the Marche and Umbria regions) affected by the 1997 earthquake;
- the municipalities⁴² of the provinces of Campobasso and Foggia (respectively in the Molise and Puglia regions) affected by the 2002 earthquake;
- the municipalities⁴³ of the Abruzzo region affected by the earthquake of 6 April 2009.

³⁷ With Article 33 comma 28 of Law n. 183 of 12.11.2011 (Legge di stabilità 2012).

³⁸ Identified by Decreto del Presidente del Consiglio dei Ministri del 15 gennaio 1991.

³⁹ Identified by two Decreti del Presidente del Consiglio dei Ministri del 26 e 29 novembre 1994.

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.

Beneficiaries

- (40) The schemes are open to undertakings operating in all sectors, including agriculture, forestry, fisheries and aquaculture⁴⁴, with the exception of the measure linked to the 1994 floods in Northern Italy, which excludes undertakings in the banking and insurance sector.
- (41) As for the earthquakes (and volcanic eruptions) that hit Sicily, Umbria, Marche, Molise, Puglia and Abruzzo, the beneficiaries are all undertakings having their legal seat or an operative location in the municipalities affected by the natural disaster (in the areas identified by the specific laws).
- (42) In the case of the floods in Northern Italy, the beneficiaries are undertakings based or operating in the municipalities affected by the natural disaster, but limited to those undertakings that are able to prove that they have suffered relevant damage⁴⁵.

Duration of the measures

- (43) The Commission considers that the start of the duration of the schemes introducing the rebates can be identified as the date when the legal bases entered into force. The Commission acknowledges that the implementation of the measures may have started at a different moment in time, as provided in the implementing acts (e.g. the decrees implementing the various legal bases, see comments from Italy to the opening decision at recitals (87) to (94)).
- (44) The Commission considers that the rebate measures entered into force on:
- 1 January 2003⁴⁶ for taxes, and 1 January 2006⁴⁷ for contributions, for the earthquake that hit Eastern Sicily (provinces of Siracusa, Catania and Ragusa) on 13-16 December 1990;
 - 1 January 2004⁴⁸ for the 1994 floods in Northern Italy;
 - 1 January 2007⁴⁹ for the 2002 earthquake and eruptions of Mount Etna;
 - 1 January 2008⁵⁰ for the 1997 earthquake in the Umbria and Marche regions;

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 7, the present decision does not cover activities linked to the production, transformation and commercialization of agricultural products as listed in Annex I of the Treaty with the exception of fisheries and aquaculture products.

⁴⁵ For the definition of relevant damage, please see recital 26.

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

⁴⁷ Date of entry in force of Law n. 266 of 29.12. 2005 (Financial Law for year 2006), art. 1, comma 363.

⁴⁸ Date of entry into force of Law n. 350 of 24.12.2003 (Financial Law for year 2004).

⁴⁹ Date of entry into force of Law n. 296 of 27.12.2006 (Financial Law for year 2007).

- 29 November 2008⁵¹ for the 2002 earthquake in the Molise and Puglia regions;
 - 1 January 2012⁵² for the 2009 earthquake in the Abruzzo region.
- (45) As for the period for which these rebates were applicable, the legal bases refer to the respective periods of suspension of the payment for taxes and contributions. The Commission takes note that the various schemes applied to different periods for the different types of taxes and contributions. On the basis of information provided by Italy to the Commission during the formal investigation phase (see comments from Italy to the opening decision at recitals (87) to (94)):
- (a) as for the earthquake that hit Eastern Sicily (the provinces of Siracusa, Catania and Ragusa) on 13-16 December 1990, the relevant suspension period are the years 1990-1991-1992. The Italian Tax Agency refers to the period 13 December 1990 until 31 July 1993, whereas for social security and occupational insurance contributions, both INPS and INAIL mention as relevant suspension period the period 13 December 1990 until 31 December 1992;
 - (b) as for the floods of November 1994 in Northern Italy, the legal basis mentions as relevant suspension period the years 1995-1996-1997, whereas the Italian Tax Agency mentions the period 4 November 1994 until 31 October 1995 (INPS sets the end of the period at 30 November 1995, INAIL mentions the whole period 1 January 1995 until 31 December 1997);
 - (c) as for the 1997 earthquake in the Umbria and Marche regions, the relevant suspension period would be 26 September 1996 until 30 June 1999 (31 March 1998 for certain beneficiaries);
 - (d) as for the 2002 earthquake in the Molise and Puglia regions, the Italian Tax Agency declares that the relevant suspension period would be 31 October 2002 until 30 June 2008, while INPS and INAIL mention the period from 31 October 2002 until 31 December 2007;
 - (e) as for the 2002 earthquake and eruptions of Mount Etna, the relevant suspension period would be 29 October 2002 until 31 March 2004;
 - (f) as for the 2009 earthquake in the Abruzzo region, the relevant suspension period depends on the nature of the beneficiary: for all undertakings with an annual turnover above EUR 200,000, the period of application would be from 6 April 2009 until 30 June 2010; for undertakings with an annual turnover below EUR 200,000 and for

⁵⁰ Date of entry into force of Law n. 244 of 24.12.2007 (Financial Law for year 2008).

⁵¹ Date of entry into force of Law n. 185 of 29.11.2008 (Legge per misure anti-crisi 2009).

⁵² 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).

individuals with income from business activity or self-employed individuals the period would be 6 April 2009 until 15 December 2010.

- (46) As for the duration of the rebate measures, the Commission notes that each legal basis mentioned a different final deadline after which the reduction ceased to be available. The Commission's understanding is that the period of application had been extended as a result of the judgments of the Italian Supreme Court of Cassation, as explained below at recitals (49) to (53) (see also the comments from Italy to the opening decision at recitals (91) and (93)).

Eligible costs

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

Form of the aid and aid intensity

- (48) The aid is awarded in form of a 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, to 60 % for Marche, Umbria, Molise, Puglia and Abruzzo, and to 50% for Catania. The remaining amount due could be paid in one solution, or in instalments (e.g. up to 120 monthly instalments for the measure for Abruzzo). Depending on the individual measure, these instalments sometimes include interest payments.

Rulings of the Italian Supreme Court of Cassation

- (49) The information request of the Court of Cuneo (see recital (1) above) also 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 also to all those eligible to claim the same rights (even if in the meanwhile they had already paid the amount due).
- (50) In practice, the Italian Supreme Court of Cassation considers that all undertakings that could benefit from the measures for Sicily or Northern Italy were entitled to the same rebate of 90 % (on taxes and contributions). Otherwise, there would be an "*unjustified disparity in treatment*".
- (51) The Supreme Court of Cassation's interpretation of the rulings was also confirmed by the Italian authorities in their submissions of 7 December 2011 and 25 July 2012. In their last submission, the Italian authorities mention a further 2012 ruling of the Supreme Court of Cassation⁵⁴, which declared an

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.

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

appeal of the Tax Agency (*Agenzia delle Entrate*) inadmissible, since there was already "*a consolidated jurisprudential orientation*".

- (52) The Commission has received information that these rulings have relevance for the decision on numerous cases pending in front of various courts in Italy (procedures launched by potential beneficiaries under the different measures).
- (53) 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 (at least for beneficiaries of the measures for Eastern Sicily or Northern Italy, to which the rulings refer to). Thus, the measures would have no limit of time in application as long as an undertaking could prove to be entitled to the benefit.

III. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

- (54) The Commission initiated the formal investigation procedure laid down in Article 108(2) of the TFEU into the measures in question (as described in part II of this decision) because they appeared to qualify as State aid within the meaning of Article 107(1) of the TFEU. At the same time, the Commission decided to issue a suspension injunction in accordance with Article 11(1) of Council Regulation (EC) No 659/1999⁵⁵ for any payment under all aid measures referred to in cases SA.33083 (2012/NN) and SA.35083 (2012/NN).
- (55) In the decision to initiate the procedure laid down in Article 108(2) of the TFEU ("the opening decision")⁵⁶, the measures in question were examined in the light of the derogation under Article 107(2)(b) of the TFEU stipulating that aid to make good the damage caused by natural disasters or exceptional occurrences shall be compatible with the internal market.
- (56) The Commission also considered whether the measures in question would qualify for any of the other derogations provided for in Article 107(2) and 107(3) of the TFEU.

Unlawfulness of the aid measures

- (57) In the opening decision, the Commission reminded that the Italian authorities had not fulfilled their obligation to notify the schemes in accordance with Article 108(3) of the TFEU, as already recognised by the Italian authorities during the preliminary investigation phase.

Analysis of the measures under Article 107(2) and 107(3) of the TFEU

- (58) The Commission 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.

⁵⁵ 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)

⁵⁶ Cf. footnote 3

- (59) When assessing aid schemes falling under Article 107(2)(b) of the TFEU the Commission must verify (i) the occurrence of the natural disaster invoked to justify the granting of aid and (ii) that the following conditions are met:
- the damage for which the compensation is granted is a proven direct consequence of the natural disaster;
 - aid does not result in overcompensation of damage and it only makes good the damage caused by the natural disaster.
- (60) The various Italian legal bases identify areas affected 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 TFEU⁵⁷, undertakings that suffered damage due to these natural disasters could in principle qualify as beneficiaries of aid for the amount of damage suffered as a consequence of the same events.
- (61) However, the schemes in question do not lay down any definition of damage (whether material or economic) and do not establish any link between the aid and any damage suffered as a result of the aforementioned natural disasters⁵⁸. Furthermore, the schemes do not appear to limit the compensation to the actual damage suffered by the beneficiaries, and the eligible costs are not determined on the basis of the damage suffered by the undertakings as a consequence of the natural disaster.

Doubts and grounds for opening

- (62) In light of the above and based on the available information, as the measures in question had been implemented without being notified to the Commission, the Commission considered that they constitute unlawful aid in the meaning of Article 1 of Regulation (EC) No 659/1999.
- (63) Furthermore, as a consequence of its preliminary assessment in the opening decision, the Commission expressed its serious doubts that these measures introduced by Italy since 2002 were compatible with the internal market. It could not be concluded from the assessment that the aid measures were in line with the principles of the TFEU, and in particular with Article 107(2)(b) of the TFEU which refers to aid to make good damage suffered as a consequence of a natural disaster⁵⁹. More precisely, the Commission expressed doubts that the information provided by the Italian authorities could demonstrate that the

⁵⁷ See Commission Regulation (EU) No 651/2014 of 17 June 2014 *declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty*, OJ L 187, 26.6.2014, p. 1

⁵⁸ With the partial exception of the measures linked to the 1994 floods in Northern Italy, which set a minimum damage as a condition to benefit from any aid.

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).

measures in question were, by virtue of their nature and operational arrangements, designed to make good the damage caused by natural disasters.

(64) In particular, the Commission was unable to conclude from the operational arrangements set out in the measures in question that:

- the aid recipient is an undertaking that has effectively suffered damage (with the partial exception of the measure for Northern Italy, for which the condition was for the undertaking to have suffered a minimal amount of damage, see recital (26)),
- the damage was caused exclusively by the natural disasters referred to in one of the aforementioned legal bases,
- the aid for the undertaking was confined to making good solely the damage caused by these natural disasters, excluding any overcompensation for the said damage for the individual recipient.

(65) Moreover, the Commission expressed doubts that any of the other derogations set out in Article 107(2) and 107(3) of the TFEU would be applicable⁶⁰.

(66) The Italian authorities and interested third parties were 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 documentation.

IV. COMMENTS FROM INTERESTED PARTIES

Comments submitted by Studio Legale Avvocato Mario Chiti

(67) Studio Legale Chiti is a law firm based in Florence which represents 58 private firms and public administrations and organisations affected in various ways by the 1994 floods in Piedmont. The aim of its submission is to demonstrate that the case of Piedmont is different from other cases of compensations granted after natural disasters.

(68) After having recalled the factual elements and legislative development of the case, the law firm focuses on the issue related to the rulings by the Supreme Court of Cassation. It claims that following the judgments issued in 2007, 2010 and 2012 all undertakings affected by the floods in Piedmont could rectify their position *ex post* by paying 10% of the due amounts or, in case the full amount had already been paid, by requesting a refund of 90 %, as provided by Law n. 350/2003, Article 3 par. 90. The law firm specifies that, so far, of the 233 court cases on compensation for damage caused by the floods, 96 had been finalised while most of the remaining ones are suspended following the suspension injunction issued by the Commission on 17 October 2012.

⁶⁰ See opening decision, points 3.3.2 and 3.3.3.

- (69) Studio Legale Chiti states that in order to obtain the benefit from the judge the undertakings had to demonstrate *in concreto* the amount of the effective damage and the causal link between the event and the damage. This proof is based on technical assessments ordered by the judge, on certified surveys or on official documents by INPS and INAIL. Therefore, the concerned undertakings obtained the compensation only for the effective damage they were able to demonstrate or for loss certified *ex officio* by the judge.
- (70) The law firm submits that the compensation scheme for damage caused by the 1994 floods in Piedmont is related to a natural disaster and, hence, should be examined under Article 107(2)(b) TFEU. For these measures to be compatible with the internal market, the causal link between the event and the damage and the absence of any overcompensation of the damage must be demonstrated. As for the clients it represents, the law firm claims that compensation has not been granted indiscriminately to every undertaking in Piedmont but only to the ones meeting the following conditions:
- (a) They apply in the areas affected by the event as identified in specific acts of the Government. As a result, the measures are selective but according to the law firm they do not fall under Article 107(1) of the TFEU. In fact, the geographical selectivity does not derive from a political or economic assessment (e.g. referring to unemployment rates or to less developed areas) but from unpredictable natural events that are not under human control. Thus, the identification of the beneficiaries is based on criteria not linked to the exercise of a discretionary choice. Furthermore, the selectivity of the benefits under consideration is excluded because there is no distortion of competition, since the aim of the legislation is to restore a situation of disadvantage for the undertakings affected by the natural disaster. This is a consequence of the principle of equal treatment.
 - (b) There must be proof of having suffered "relevant damage" in order to obtain the compensation. This condition also distinguishes the case of Piedmont from other cases. In fact, the only loss that may be compensated is material damage above the threshold of LIT 2 million fixed by the law and certified by technical assessments.
 - (c) There must be a causal link between the event and the damage. According to Italian law, the demonstration of a causal link is an essential prerequisite for obtaining compensation for damage; hence the undertakings concerned had to establish a causative link before a judge in any event. This implies that there has not been any overcompensation, since the damage had to be demonstrated by way of technical or *ex officio* assessment or official documents from the authorities involved. Moreover, it is a general principle of Italian law that compensation for extra-contractual loss cannot constitute a source of profit (Article 2043 of the Italian Civil Code).
- (71) Therefore, Studio Legale Chiti invites the Commission to reconsider, as regards the Piedmont case, its statement according to which the measures under investigation would not appear to be aimed at making good the damage

caused by natural disasters. This would follow, according to the law firm, from the circumstance that the Piedmont case presents peculiar elements in comparison with the other cases treated jointly in the opening decision. It is argued, moreover, that the benefits granted to undertakings concerned are compatible with the internal market under Article 107(2)(b) of the TFEU because:

- The compensation relates exclusively to the damage directly derived from the natural disaster;
- The damage has been quantified with reference to its relevance for the undertaking concerned;
- There has not been any overcompensation, since the compensation has been established in a way consistent with the demonstrated damage;
- There has not been any cumulation with other benefits.

(72) Studio Legale Chiti argues that, should the aid be considered incompatible and should an order for its recovery consequently be issued, Article 15 of Regulation (EC) No 659/1999 would apply. Under this provision, the Commission should not proceed with the recovery of the aid after ten years from the day on which the aid was awarded to the beneficiary. In this respect, the law firm claims that the benefits have been granted immediately after the floods in November 1994 on the basis of Decree-Law n. 646/1994. The favourable treatment of the companies concerned under this Decree-Law has merely been further enhanced by the successive laws adopted in the period between 2003 and 2007. In other words, even though the opening decision refers to 1 January 2004 as the starting date for the period of application of the benefits, the moment when the aid was actually granted in the case of Piedmont was November 1994.

(73) Furthermore, Article 14(1) of Regulation (EC) No 659/1999, according to which the Commission is not to recover the aid if this would be contrary to a general principle of Union law, applies. Two principles are at stake here. First, the principle of legal certainty entails the respect of final judgements by national Courts and prevents any possibility of recovery of the sums received by the undertaking. While recognizing that the principle of *res judicata* does not have an absolute value under Union law, Studio Legale Chiti considers that in the case at hand the special conditions that led the European Court of Justice to rule on this principle in the past⁶¹ would not apply. Second, the Studio Legale Chiti invokes the principle of legitimate expectations, as from late 1994 until 2011 not a single national or Union authority raised questions about the lawfulness of the benefits. Thus during that entire period the undertakings concerned had received benefits which were not considered to constitute State aid by the competent authorities. The law firm concludes that this is a typical situation in which the principle of legitimate expectations applies.

⁶¹ Case C-119/05 *Lucchini*, ECLI:EU:C:2007:434

Comments submitted by Studio Legale Preve-Gavioli

- (74) Studio Legale Preve–Gavioli is a law firm based in Turin (Piedmont). After summarising the chronological development of the Italian legislation under consideration and the circumstances leading to the Commission procedure, it concludes its submission by stating that the benefits conferred upon the undertakings affected by the floods in 1994 in Piedmont are not selective as they do not favour in any way specific enterprises by relieving costs that those undertakings should normally bear. By contrast, the measures are only aimed at compensating undertakings for damage suffered as a result of a natural disaster. Moreover, the benefits introduced by the law would not result in a strengthening of the competitive position of the beneficiaries over their competitors, since the compensation they received merely enabled them to return to the market on an equal footing with undertakings that did not suffer any damage or income loss. In other words, the benefits do not distort competition in any way but, on the contrary, correct a situation of financial disadvantage and restore the commercial competitiveness of the undertakings affected by the floods.
- (75) Studio Legale Preve–Gavioli considers that the benefits granted to the undertakings hit by the floods in Piedmont in 1994 cannot be qualified as State aid because the conditions set in Article 107(1) TFEU are not met. However, even if these measures were to be regarded as State aid, they should be considered as aid to compensate the damage caused by a natural disaster on the basis of Article 107(2)(b) TFEU. They would therefore be compatible with the internal market by virtue of the Treaty and not subject to the prior notification obligation nor to the Commission's *ex ante* assessment.

Comments submitted by Confindustria

- (76) Confindustria is the largest Italian employers' federation, founded in 1910. It comprises approximately 150,000 voluntary member companies, accounting for nearly 5,500,000 operators. According to Article 108(2) TFEU, it has submitted comments as an interested party in both cases SA.33083 and SA.35083.
- (77) Confindustria expresses its concern that Italy's failure to comply with its Union obligations to notify State aid to the Commission should not result in the penalisation of beneficiary undertakings that have, in good faith, availed themselves of measures aimed at making good the damage caused by natural disasters.
- (78) Confindustria submits that the Commission should consider some general facts relating to the overall context. In particular, it mentions that these measures relate to events that date back twenty years (longer in some cases); and therefore that the current State aid decisional practice does not provide for a proper protection of the third parties concerned. It is argued that, even where there are doubts about the compatibility of certain measures adopted by the national legislator, it is difficult to obtain information from the competent authorities; and in the current economic context most enterprises (especially SMEs) continue to have serious liquidity problems. To order the recovery of

aid granted decades ago at the present moment in time would jeopardise the survival of many of these enterprises. Moreover, Confindustria submits that it would not understand the reasons underlying the doubts on the compatibility of these measures.

- (79) Confindustria suggests finding an alternative solution in order to avoid an unjustified and dangerous penalisation of the undertakings concerned.
- (80) First, it considers that for every measure and case concerned, a careful assessment should be made of the existence of exceptional circumstances that could justify the granting of aid or preclude the necessity of recovery. These conditions relate to (i) the ten-year prescription period, (ii) the principle of the protection of legitimate expectations and (iii) the applicability of derogations other than those set out in Article 107(3)(c) TFEU.
- (81) Second, Confindustria invites the Commission to specify clearly in its decision in which cases the amounts paid to enterprises as compensation for damage directly caused by natural disasters can be regarded to be compatible with the Treaty. In fact, the measures benefitted undertakings directly affected by events consistently considered to qualify as natural disasters by the Commission (earthquakes, floods, volcanic eruptions). Moreover, the text of the legislation underlying the aid measures in question makes clear that these measures were adopted by the Italian authorities with the aim of making good the damage caused by these natural events. Furthermore, Confindustria underlines that the beneficiaries are undertakings that suffered real damage as a result of natural disasters. Even though the benefit was granted only in specific cases to firms having suffered "relevant damage", the existence of relevant damage should also be acknowledged in other cases. In fact, the location of a firm in an area affected by a natural disaster necessarily leads to economic loss, independently of any material damage. Confindustria also claims that there might be cases in which the beneficiaries have documents demonstrating the amount of damage effectively suffered, and for which that loss is significantly higher than the compensation received. As a result, Confindustria believes that for all the measures under investigation Article 107(2) of the TFEU is applicable.
- (82) As for the existence of the conditions relied upon by the Commission, Confindustria admits that for some measures a formal definition of damage is arguably missing; likewise for the establishment of a causal link between damage and event and its proportionality. However, Confindustria suggests that this link exists *de facto* - that in case of natural disasters all undertakings suffer damage (at least, economic loss) and that a simplified method to estimate the damage and the corresponding aid could be proposed. This method should take into account, for example, the different revenue capacity and the number of people employed by each undertaking. Thus, Confindustria considers that the problem is related to cases of overcompensation rather than to the measures' compatibility with State aid rules. Confindustria maintains that it is important to avoid a situation in which action against a few cases of overcompensation would lead to the penalisation of a large majority of firms which have received benefits in good faith and in compliance with the law. Confindustria therefore suggests that undertakings should be allowed to keep

the benefits that at the time of their adoption should have been notified to the Commission, if the Italian authorities had complied with the Treaty and the notification obligation.

- (83) In sum, Confindustria invites the Commission:
- (a) To confirm expressly that any decision of the Commission is of no consequence for specific cases of compatible aid on the basis of Article 107(2)(b) TFEU, the *de minimis* regulation or other provisions.
 - (b) To foster formal or informal cooperation between, on the one hand, the Commission and the national authorities and, on the other hand, the beneficiary undertakings to work out a method and a mechanism to prevent cases of overcompensation. This would avoid the recovery of aid granted to the extent allowed by the *de minimis* regulation and the recovery of the aid amounts that correspond to material and economic loss effectively suffered by beneficiaries.
 - (c) To consider the opportunity to introduce a simplified method of quantification of the loss in the case of natural disasters.

Comments submitted by Confederazione Generale Italiana del Lavoro (CGIL)

- (84) The Italian General Confederation of Labour (CGIL) is the largest national trade union centre in Italy with a membership of about 6 million. In response to the opening decision, CGIL L'Aquila (Abruzzo) submitted a contribution after the deadline of one month following the publication of the decision. The Commission is not normally obliged to consider comments from third parties submitted after the foreseen deadline but may do so exceptionally, as in this case.
- (85) CGIL considers that the suspension of the favourable measures introduced by Italy, the request for recovery of the amounts granted and the necessity to certify the damage suffered risks pushing the undertakings concerned out of the market. This would be all the more problematic as other cases of compensation for damage caused by natural disasters have been treated differently. As a result, the area of L'Aquila, despite being the most affected by an earthquake, still suffers from a situation of distorted competition as compared with the conditions prevailing upon competitors not affected by such a disaster. In sum, the suspension of the benefits and the absence of any mechanisms of gradual repayment and of verification procedures (for which CGIL blames the State) risk further weakening the local manufacturing sector, together with all the associated negative consequences in terms of unemployment and social insecurity.

V. COMMENTS FROM ITALY

- (86) In response to the opening decision, on 11 January 2013 the Italian authorities have submitted comments. The Commission services received submissions from the following national authorities and agencies:

- (a) Ministero dell'Economia e delle Finanze
- (b) Agenzia delle Entrate (Italian Tax Agency);
- (c) INPS (National Institute on Social Security);
- (d) INAIL (Italian Workers' Compensation Authority);
- (e) Dipartimento della Protezione Civile (Department of Civil Protection): it claims, however, not to have any of the information requested in the decision.

Rebates and application period for each area and measure

- (87) In recital 71 of the opening decision, the Commission requested the Italian authorities to provide it with information concerning *"the rebates for each area and measure, and the period for which the rebates are applicable"*.
- (88) INPS submits preliminarily that the difficulties encountered by the Commission (see section 2.5 of the opening decision) in identifying the exact suspension periods of payments for taxes and contributions derive from different legal time-frames set by each institution. In this respect, a distinction must be made between the duration of the suspension for the payments of compulsory social security contributions and workers' insurance premiums (due to INPS and INAIL) and the duration of the suspension for tax payments (due to the Italian Tax Agency). A further distinction is required between the suspension period of payments for taxes and contributions, and the application period of the rebate measures.
- (89) As for the starting date of the schemes, INAIL claims that this date does not always coincide with the entry into force of the corresponding legislative act, as affirmed by the Commission in recital 34 of the opening decision. In fact, the starting date of the rebate measure can be set at a later stage (and, in the case of Piedmont, only after a court ruling giving to undertakings the right to rebates with retroactive effect). Conversely, the Italian Tax Agency agrees with the Commission when considering that beneficiaries identified by law have the right to fiscal advantages as from the entry into force of the legal basis that introduced the advantage.
- (90) INPS and INAIL provide precise time-frames for each rebate scheme reducing compulsory social security contributions and workers' insurance premiums:
 - (a) For the earthquake that hit **Eastern Sicily** (the provinces of Siracusa, Catania and Ragusa) on 13-16 December 1990, documents prepared by both INPS and INAIL identify the suspension period as the time-frame 13 December 1990 - 31 December 1992. The period of availability to benefit from the rebate was 1 January 2006 – 30 September 2006 for payments below EUR 5,000 (to be paid in one instalment) or 1 October 2006 onwards for amounts above EUR 5,000 (to be paid in eight biannual instalments, with interest).

- (b) As for the 1994 floods in **Northern Italy**, INPS identifies the time-frame 4 November 1994 until 30 November 1995 as the suspension period. In contrast, INAIL sets the suspension period between 1 January 1995 and 31 December 1997, with reference to the years 1995-1996-1997. In both cases, the period of availability to benefit from the rebates is specified as being from 1 January 2004 onwards. However, INPS specifies in this respect that the rebate on social security contributions only applies from the moment of the execution of final Court judgements and not automatically as in the case of INAIL.
- (c) For the 1997 earthquake in the **Umbria and Marche** regions, the document prepared by INPS and INAIL specifies that the suspension period ran from 26 September 1997 until 31 March 1998 (for individuals residing in "disaster areas" identified by the law) and from 26 September 1997 until 30 June 1999 (for those residing in "damaged areas" also identified by a specific evacuation act). INPS and INAIL mention that the rebates applied from 1 January 2009 until 30 June 2009. The Italian Tax Agency considers that the starting date for the application of the measure was 23 October 2008, the date of entry into force of Decree Law n. 162/2008.
- (d) For the 2002 earthquake in the **Molise and Puglia** regions, INPS and INAIL submitted that the suspension period was from 31 October 2002 until 31 December 2007. For both institutions, beneficiaries could apply the rebates from 1 January 2009 until 30 June 2009, due to the extension of the application of the measures introduced for the 1997 earthquake in the Umbria and Marche regions by legislative decree n. 162/2008. The Italian Tax Agency specifies that the starting date to apply for reduced tax payments was 29 January 2009, the date of entry into force of decree Law 185/2008.
- (e) In the case of the earthquake and eruptions of Mount **Etna** in 2002, both INPS and INAIL specify that the suspension period ran from 29 October 2002 until 31 March 2004, while the period to apply the rebate extended from 1 January 2007 until 30 June 2008.
- (f) For the 2009 earthquake in **Abruzzo**, the relevant period depends on the nature of the beneficiary: for all undertakings with an annual turnover above EUR 200,000, the documents prepared by INPS, INAIL and the Italian Tax Agency identify the suspension period as running from 6 April 2009 until 30 June 2010; and for undertakings with an annual turnover below EUR 200,000 and for individuals who have an income from business activity or who are self-employed, the suspension period is identified as running from 6 April 2009 until 15 December 2010 (not 31 December 2010 as stated in recital 36(f) of the opening decision). The rebate was applicable from January 2012, but both INPS and INAIL declare in their submissions that the reduction exclusively applied to aid that complies with the *de minimis* regime whilst awaiting the Commission decision on aid going beyond the *de minimis* level.

- (91) In recital 71 of the opening decision, the Commission also 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 (...) these measures could potentially make the aid available (without a limit in time) to all undertakings identified as beneficiaries under the legal basis for each measure.*" In this respect the Italian authorities present two different views.
- (92) INPS and INAIL assert that the Commission's interpretation does not appear to be correct. In their opinion, although the Supreme Court of Cassation's judgements could potentially extend the aid without a limit in time to all beneficiaries identified by virtue of the specific legal basis, its jurisprudence aims solely at clarifying that the favourable measures can be granted in two ways. These are either the payment of 10% of the amounts due by the undertakings which have not paid yet or the refund of 90% of the sums already paid. The two institutions affirm that this interpretation derives from the legislative interventions introducing the rebates. These measures have in fact, the legal nature of "*jus superveniens*" favourable to the tax payers and they therefore legitimise the refund of the amounts previously paid in excess. However, INPS and INAIL point out that in the first case (payment of 10%) several judgements denied the right of the tax payer to the favourable measure, because the corresponding requests were introduced after the deadline of 31 July 2007 set by the law. In the second case (refund of 90%) the right to the refund is limited by the existence of a prescription period, which is normally ten years from the moment when the right can be exercised (Art. 2946 of the Civil Code), i.e. from the entry into force of the law introducing the measure. Moreover, contrary to what was affirmed in recital 45 of the opening decision, the principles formulated by the Supreme Court of Cassation would refer only to specific cases (Sicily and Piedmont) and cannot be generally applied to all other disasters as suggested by the Commission.
- (93) As far as the Italian Tax Agency is concerned, it is submitted that the Commission's interpretation is correct. The Italian authorities point out that as a general rule the tax refund requests from those who have already paid must be introduced within 48 months from the date of the payment (referring to Article 38 of DPR 602/1973). Nonetheless, recent rulings of the Supreme Court of Cassation recognise the right for the beneficiaries to be refunded of sums previously paid in excess, this right being subject to the ordinary term of prescription as explained above.
- (94) As for the applicable percentage of rebate for each measure and for each tax and contribution, Italy confirms the percentages mentioned at point 2.2 of the opening decision.

Cumulation of different natural disaster aid schemes

- (95) In recital 71 of the opening decision, the Commission requested the Italian authorities to indicate "*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.*"

- (96) Of the three institutions that submitted comments, only INPS replied to this question. It asserts that the value of the rebate measures had been strictly limited to the amounts effectively due to the institution for the corresponding suspension periods. That is, the favourable measures had been limited to the reduction in percentage of the social security contributions due. As a result, INPS excludes the possibility that the reduced amounts could overcompensate the eligible costs. Concerning the disaster aid schemes for the 2002 earthquake in Molise (aid scheme N 174a/2004) and for the 2009 earthquake in Abruzzo (aid scheme N 459a/2009), INPS points out that these did not grant any compensation in respect of labour costs (wages and social contributions). The two schemes provided compensation exclusively for direct and indirect or economic damage deriving from a temporary suspension of economic activity caused by the disaster or by the need to transfer the activity following the occurrence of the natural event. Conversely, the aid schemes regarding the social security contributions under discussion exclusively concern the undertakings that continued their activity after the disaster and were therefore obliged to pay social security contributions. Moreover, the aid schemes for both Molise and Abruzzo authorised by the Commission envisaged mechanisms for the monitoring of cumulation in order to exclude any possibility of overcompensation.

Estimate of damage for each beneficiary

- (97) In recital 71 of the opening decision, the Commission also asked "*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.*"
- (98) As for the previous point, only INPS submitted a reply. INPS affirms that the beneficiaries of the suspension for social security contribution payments are all the undertakings operating in a specific geographic area identified by civil protection decisions. However, the legislative interventions introducing the rebate measures did not provide for any mechanism for verifying the existence of a causal link between the damage suffered and the natural event.

Estimate of beneficiaries of each measure and aid amounts

- (99) According to recital 72 of the opening decision, "*the Italian authorities are requested to provide the estimated number of beneficiaries of each measure and the aid amounts involved*".
- (100) INPS, INAIL and the Italian Tax Agency in 2013 provided figures about the estimated numbers of beneficiaries of the aid but only INPS and INAIL indicated also the amounts granted.

Further information and clarifications provided by Italy

- (101) Following the Commission's clarification requests (see recital (18)), as regards the type of taxes covered by the measures, the Italian Tax Agency clarified that they would cover all types of taxes indiscriminately. The Italian Tax Agency also explained the difficulties of providing an exact estimate of the

number of beneficiaries and of the total amount of the rebates under the different measures. This was due to the non-availability of electronic data, mainly because the application for the rebates had to be presented in paper form, and not through the electronic tax declaration system. Only for the measure in respect of the 2009 earthquake in Abruzzo the analysis could take place on the basis of annual tax statements. Even in this case, however, data would not be extracted directly but would require a case by case analysis. A further complication is the fact that the data for the reduced social contributions include both the amounts payable by the employer and those payable by the employee. A rebate on the amount due by the employee would not qualify as State aid in the sense of Article 107(1) of the TFEU as it represents a benefit to individuals and not to the undertakings.

- (102) Only in 2014, after having established a methodology for each agency involved in the analysis (Tax Agency, INPS, INAIL), Italy was finally in a position to produce an approximate overall estimate of the beneficiaries of the measures. It provided a number of tables with beneficiaries and aid amounts. More precisely, Italy established (in its letter of 4 August 2014) that it identified 80,577 beneficiaries. Of these, (i) 33,831 benefited from a rebate amounting to less than EUR 1,000, (ii) 66,704 benefited from a rebate amounting to less than EUR 10,000 and (iii) 75,469 benefited from a rebate amounting to less than EUR 100,000. Only 539 undertakings benefited from rebates amounting to more than EUR 200,000.
- (103) As for the measures covered by case SA.33083 (for natural disasters between 1990 and 2002), the number of beneficiaries was approximately 59,500, of which 23,303 are not active anymore. As for the measure covered by case SA.35083 (for the 2009 earthquake in Abruzzo), the number of beneficiaries was approximately 21,000, of which 4,000 are not active anymore.

Comments provided by Italy regarding the documentation of compensations for damage due to the natural disaster

- (104) In the same letter of 4 August 2014 Italy explains in detail the difficulties in obtaining documents proving: (i) whether the beneficiaries of the measures under investigation had or had not suffered damage as a consequence of a natural disaster; (ii) whether or not the beneficiaries received compensation for any such loss; and (iii) the amount of any such compensation received.
- (105) The Italian authorities consider that the opening decision did not explicitly require proof of the damage suffered by the beneficiaries of the measures under investigation. The Italian authorities did not, therefore, gather documents proving the actual damage suffered by individual beneficiaries. The Italian authorities would therefore need to launch *ex novo* a dedicated procedure addressed to both public authorities (to verify whether compensation payments for damage were already granted and/or paid out) and to the aid beneficiaries of the measures under investigation (to verify whether they suffered damage and had been compensated for this damage by insurance companies).
- (106) More specifically, in its letter Italy explains that:

- (a) Following the Commission's specific request that Italy provide evidence of the damage suffered by the individual beneficiaries of the aid under investigation, the Italian authorities have launched an investigation for documents to establish the loss due to natural disasters and any compensation granted by public or private bodies.
- (b) However, this investigation would be carried out only for beneficiaries still in business (excluding, therefore, those which have ceased their activity and are therefore no longer able to distort competition in the market).
- (c) A statement establishing the damage caused by natural disaster was not one of the conditions for the granting of the alleged unlawful aid under investigation. Consequently, this documentation is not held by any of the administrations that granted the aid (i.e. Agenzia delle Entrate, INPS, INAIL). New specific investigations would have to be launched in each of the areas concerned for each of the measures under investigation.
- (d) These investigations concern documents relating to both the proof of damage and the compensation possibly granted on that basis. Since the statement of damage caused by a natural disaster was not one of the conditions for the granting of the alleged unlawful aid under investigation, any evidence of damage required by public or private bodies in order to obtain compensation should refer to the event to which it relates and, therefore, also to the moment in time when the event occurred.
- (e) The proof of damage should be established only when the damage is recent and still verifiable, since otherwise it is not possible to establish the direct damage and causal link with the natural disaster. Consequently, the search for the documentation of any certificate or statement of damage, and their possible compensation, are inseparably linked to the date when the natural disaster occurred.
- (f) The possibility to collect documents providing proof of the damage suffered and compensation paid and received is limited by the legal requirements to keep and maintain records in Italy. Articles 2220 and 2946 of the Italian Civil Code impose obligations on companies and authorities to keep records for up to 10 years (and in some specific cases even less than 10 years). It follows that an administrative action to obtain this documentation more than 10 years after the event would not be the appropriate legal instruments to ensure that beneficiaries and public administrations provide the required documentation.
- (g) The analysis of the national legal framework on record keeping suggests that it would be objectively impossible to collect evidence of damage suffered by individual undertakings for all those disasters for which more than 10 years have passed, i.e. all the natural disasters covered by the measures under investigation other than the 2009 earthquake in Abruzzo, for which the 10 years period has not elapsed.

- (107) As regards the measure for the 2009 earthquake in Abruzzo, covered by case SA.35083 (2012/C), the Italian authorities explain that a precise and detailed enquiry is necessary to determine without error both the identity of the aid beneficiaries and the amount of unlawful aid they would have received. The data collected by Italy until 2014 also include a large number of individuals who may have benefitted from the scheme for taxes on revenues which are not related (in part or at all) to their business activity. In fact, of the approx. 21,000 beneficiaries identified by Italy, 17 500 are individuals, for whom the data on taxes refer to both revenues for professional and business activity, and other forms of income. For all these beneficiaries, a more detailed assessment would be necessary in order to quantify the extent to which the rebates from which they benefitted should be regarded as State aid in the sense of Article 107(1) TFEU, given the fact that rebates not benefiting undertakings do not qualify as State aid.
- (108) Finally, Italy provided detailed information and documentation as to the systemic impact of the 2009 earthquake on the economic fabric of the Abruzzo region. This rather general documentation includes macroeconomic data and lists of damaged local infrastructures.

VI. ASSESSMENT OF THE MEASURES

State aid character of the measures

- (109) In the decision initiating the procedure, the Commission considered that the measures in question (i.e. the rebate schemes introducing a reduction of up to 90 % of taxes and compulsory social security and occupational insurance contributions due by undertakings based in the areas affected by natural disasters: Article 9, comma 17 of Law n. 289 of 27.12.2002, as amended; Article 4, comma 90, of Law n. 350 of 24.12.2003, as amended; Article 1, comma 363 of Law n. 266 of 23.12.2005, as amended; Article 1, comma 1011, of Law n. 296 of 27.12.2006, as amended; Article 2, comma 109, of Law n. 244 of 24.12.2007, as amended; Article 6, commi 4-bis and 4-ter of Decree-Law n. 185 of 29.11.2008, as amended; Article 33, comma 28 of Law n. 183 of 12.11.2011, as amended; and all the relevant implementing acts under the abovementioned laws, as presented in recitals (20) to (36) of this Decision) appeared to constitute State aid. Below the Commission will examine whether the measures under investigation do indeed constitute State aid within the meaning of Article 107(1) of the TFEU.
- (110) In order to assess whether the rebate measures constitute aid within the meaning of Article 107(1) of the TFEU, it is necessary to determine whether they favour certain undertakings, whether the advantage is conferred by the State through State resources, and whether the measures in question is capable of affecting competition and trade between Member States.
- (111) As the rebates are granted only to undertakings having establishments in the geographical areas (see recital (39)) affected by certain types of natural disasters (earthquakes, volcanic eruptions and floods), the measures are selective. By reducing taxes, compulsory social security and occupational

insurance contributions, the Italian State relieves these undertakings of operating costs that they would have to bear in the normal course of business. Therefore, the undertakings benefit from an economic advantage which may distort or at least threatens to distort competition. As the measures cover undertakings possibly involved in trade between Member States, they are capable of affecting such trade.

- (112) The support provided by public authorities through State resources takes the form of revenue foregone by the public authorities: the reduction in income tax reduces the tax 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.
- (113) Therefore, as already provisionally concluded in the opening decision, all the measures adopted by Italy since 2002 and referred to under State aid cases SA.33083 (2012/C) and SA.35083 (2012/C), reducing by respectively 90 %, 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.
- (114) The aid measures under investigation are, in principle, prohibited by Article 107(1) of the TFEU and may be considered compatible with the internal market only if they qualify for one of the derogations laid down in the Treaty.
- (115) The Commission considers, however, that (individual) aid granted under the measures in question does not constitute State aid in case it fulfils all the conditions laid down by the applicable *de minimis* Regulation⁶².

Unlawfulness of the aid measures

- (116) In view of the fact that the measures granting the aid 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.

Appraisal of the compatibility of the aid with the internal market in the light of the comments by interested parties

- (117) Having concluded that the aforementioned rebate schemes referred to in recital (109) involve State aid within the meaning of Article 107(1) of the TFEU, the Commission has to establish whether the aid can be declared compatible with the internal market pursuant to Article 107, paragraphs (2) or (3) of the TFEU.

⁶² The applicable *de minimis* Regulations are Commission Regulation (EU) No 1407/2013 of 18 December 2013 *on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid*, OJ L 352, 24.12.2013, p. 1-8, and Commission Regulation (EU) No 717/2014 of 27 June 2014 *on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector*, OJ L 190, 28.6.2014, p. 45-54.

- (118) In the opening decision, the Commission considered that, regarding the applicability of the derogations provided for in the Treaty, the aid does not qualify for the derogation of Article 107(2)(a) of the TFEU as it is not aid having a social character; it is not covered by Article 107(2)(c) and, for obvious reasons, the derogations in Article 107(3)(b) and (d) are not applicable either. Italy did not dispute these findings during the formal investigation. As regards the possible use of the derogations laid down in Article 107(3), paragraphs (a) and (c), the Commission refers to the doubts it expressed in its decision initiating the procedure (see point 3.3.2 of the opening decision). In its comments, the Member State did not argue that the aid could qualify for the derogations provided for under Articles 107(3)(a) or (c) of the TFEU, nor did it provide any information that would enable the Commission to assess the compatibility of the schemes in question in the light of these derogations during the formal investigation procedure. Instead Italy (and the third parties who submitted comments) argued that the aid was meant to make good the damage caused by natural disasters, thus implying that it should be assessed on the basis of the derogation provided for in Article 107(2)(b) of the TFEU. This finding is without prejudice to the possibility that individual aid granted under the schemes may be declared compatible following a case by case examination or may be covered by an exemption regulation adopted pursuant to Article 1 of Council Regulation (EC) No 994/98⁶³.
- (119) Since all rebate measures do indeed relate to undertakings having their legal seat or an operative location in areas affected by natural disasters, the Commission will consider 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.

Aid to make good the damage caused by natural disasters

- (120) The Commission has examined the aid schemes in question in the light of Article 107(2)(b) of the TFEU, which stipulates that aid to make good the damage caused by natural disasters shall be compatible with the internal market.
- (121) In this regard, the Commission verifies whether the disasters invoked by Italy effectively qualify as "natural disasters" within the meaning of Article 107(2)(b) of the TFEU and whether the following conditions are met:
- (a) the damage for which the compensation is granted is a proven direct consequence of the natural disaster in question;
 - (b) the aid only makes good the damage caused by the natural disaster and does not result in overcompensation of the damage suffered by the beneficiaries.
- (122) The Italian legal bases identify areas affected by one of three types of natural disasters: earthquakes, floods or volcanic eruptions. Since the Commission has

⁶³ Council Regulation (EC) No 994/98 of 7 May 1998 *on the application of Articles 92 and 93 (now 87 and 88 respectively) of the Treaty establishing the European Community to certain categories of horizontal State aid*, OJ L 142, 14.05.1998, p. 1.

consistently taken the view that earthquakes, floods and volcanic eruptions constitute natural disasters within the meaning of Article 107(2)(b) of the TFEU, each undertaking that actually suffered damage as a result of these natural disasters could qualify for an amount of aid necessary to make good such damage⁶⁴.

- (123) However, the schemes in question do not lay down any definition of damage (whether material or economic), nor do they establish any link between the aid and any damage actually suffered as a result of the aforementioned natural disasters⁶⁵. Furthermore, the schemes do not limit the amount of compensation to the amount necessary to make good the direct damage actually suffered by the respective aid beneficiary. Finally, the eligible costs are not determined on the basis of the damage suffered by the beneficiary undertakings as a direct consequence of the natural disaster. This has also been confirmed during the formal investigation phase by the Italian authorities (see comments by INPS at recital (98)).
- (124) The Commission concludes that the schemes provided benefits not just to companies that suffered actual damage, but to all companies having their legal seat or an operative location in the areas designated as disaster areas by the Italian authorities, irrespective of whether they actually did suffer any damage as a result of the respective disaster.
- (125) In the light of the above, the measures under investigation are not, by virtue of their nature and operational arrangements, designed to ensure that the aid granted is limited to the amount needed to make good the damage caused by natural disasters.
- (126) It must therefore be concluded that the formal investigation procedure has not allayed the Commission's doubts about the compatibility of the measures under investigation with the internal market.
- (127) Therefore, as the aid does not qualify for any of the derogations of Article 107, paragraphs (2) and (3) of the TFEU, the Commission concludes that the aid schemes in question are incompatible with the internal market.
- (128) Concerning the schemes applying to fisheries and aquaculture, their compatibility with Union 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. Starting from 2001, the

⁶⁴ In line with the findings in cases C-303/09, *Commission v Italy*, 14 July 2011, ECLI:EU:C:2011:483; Joined cases C-71/09P, C-73/09P, and C-76/09P, *Comitato "Venezia vuole vivere" and Others v Commission*, 9 June 2011, ECLI:EU:C:2011:368; Joined cases C-346/03 and C-529/03, *Atzeni and Others v Regione autonoma della Sardegna*, 23 February 2006, ECLI:EU:C:2006:130; Case C-73/03, *Spain v Commission*, 11 November 2004, ECLI:EU:C:2004:711; Case C-278/00, *Greece v Commission*, 29 April 2004, ECLI:EU:C:2004:239; Case C-364/90, *Italy v Commission*, 28 April 1993, ECLI:EU:C:1993:157

⁶⁵ With the exception of the measures linked to the 1994 floods in Northern Italy, which set a minimum damage level as a condition to benefit from any aid.

Commission has indicated in these guidelines its way of applying the Treaty with regard to State aids to fisheries and aquaculture.

- (129) Given that the same main requirements for natural disaster aid as set out above apply also under those guidelines, the Commission concludes that the observations of this section apply also to any aid granted under the measures in the areas of fisheries and aquaculture.

Comments by interested parties

- (130) The Italian authorities and four interested parties (Studio Legale Chiti, Studio Legale Preve-Gavioli, Confindustria CGIL L'Aquila) provided comments on the doubts expressed by the Commission in the opening decision.
- (131) As invoked by all the interested parties, under Article 107(2)(b) of the TFEU aid for the damage caused by natural disasters shall be compatible with the internal market. The measures in question were addressed to undertakings located in areas hit by earthquakes, floods and volcanic eruptions. However, as already assessed in the previous point ("Aid to make good damage caused by natural disasters"), the Commission considers that the measures in question are not, by virtue of their nature and operational arrangements, designed to make good the damage caused by the aforementioned natural disasters within the meaning of Article 107(2)(b) of the TFEU.
- (132) Some interested parties (Studio Legale Chiti, Confindustria) refer also to the fact that aid under some of the measures would have been granted only after having verified the actual damage suffered by each undertaking. Indeed, it cannot be excluded that in specific cases the aid granted under the measures did not exceed the amount needed to make good the actual damage suffered by the beneficiary concerned as a direct result of the disaster and that the individual aid in these cases could be regarded as compatible with the internal market under Article 107(2)(b) of the TFEU. However, the measures in question are not, by virtue of their nature and operational arrangements, designed to rule out any form of overcompensation of damage and only to make good the damage caused by the natural disaster. As explained in the previous point ("Aid to make good damage caused by natural disasters"), they have a far wider application as they do not require the establishment of a direct link between the aid and the damage suffered as a result of the respective natural disaster. By not establishing this link they do not limit the compensation to the amount needed to make good the damage actually suffered by the undertakings. Even when beneficiaries are required to prove that they have suffered a relevant loss, as in the Piedmont case, the legal bases do not contain provisions limiting the aid amount to the ascertained amount of loss caused by the floods. As for the comments provided by the Italian authorities on the impact of the 2009 earthquake on the social and economic fabric of the Abruzzo region, and more specifically on the area affected by this exceptionally violent and destructive seismic event, the Commission recalls again that, according to the Treaty and in line with the Commission's standard

practice⁶⁶, there must be a clear and direct link between the event that caused the damage and the State aid intended to remedy it. This link must be established at the level of each firm and not at the macroeconomic level as in case of the measure under investigation (specifically for the 2009 earthquake in Abruzzo, the notified measure under State aid case SA.35083 (2012/C)).

- (133) It must therefore be concluded that the comments provided by third parties during the formal investigation have not allayed the Commission's doubts and that the measures in question constitute aid that is incompatible with the internal market.

Consequences of the Decision on aid granted under the measures under investigation

- (134) This Decision must be implemented immediately, including recovery of aid granted unlawfully and declared incompatible. The Commission notes that a negative decision on an aid scheme does not detract from the possibility that certain advantages granted under the scheme are regarded, in whole or in part, as not being aid or as aid compatible with the internal market on their own merits (for instance, because the individual benefit is granted to individuals that are not carrying out an economic activity and that are therefore not to be regarded as undertakings, or because the individual grant is in line with the applicable *de minimis* regulation, or because the individual benefit is granted in conformity with an approved aid scheme or an exemption regulation).
- (135) Italy shall cancel any outstanding payments of aid under any scheme referred to in recital (109) of the present Decision, and this with effect from the date of adoption of this decision. None of these schemes shall be used from the date of the present Decision as a reference basis for the granting or the payment of aid in the future.
- (136) As for individual aid already paid out as part of the measures under investigation before the date of the opening decision and of the suspension injunction (see recital (54)), it shall be considered compatible with the internal market pursuant to Article 107(2)(b) of the TFEU provided that a clear and direct link can be established between the damage suffered by individual undertakings as a result of the natural disasters in question and the State aid granted under the measures under investigation⁶⁷. Care should be taken that any overcompensation for damage suffered by individual undertakings is ruled out. Furthermore, any compensation for such damage received from any source shall be deducted and it must be ensured that there is no cumulation of

⁶⁶ See, for example, Commission Decision of 20 October 2004 (2005/315/EC) on a scheme implemented by Italy for firms investing in municipalities seriously affected by natural disasters in 2002.

⁶⁷ For example, in the case of individual aid granted to undertakings in the area affected by the 2009 earthquake in Abruzzo, the aid shall be considered compatible pursuant to Article 107(2)(b) of the TFEU if the eligible costs are calculated in line with Commission decision C(2009)8042 of 16.10.2009 for State aid case N 459/A/2009 - *Aid scheme for compensation for damage caused by the earthquake in Abruzzo of 6 April 2009 outside the field of Annex I of the Treaty*, OJ C 278 of 18.11.2009, pag. 3

aid under the scheme in question with aid under other measures for the same eligible costs.

Recovery

- (137) According to the Treaty and the established case law of the Court of Justice, when the Commission finds that aid is incompatible with the internal market, it is competent to decide that the State concerned must abolish or alter it⁶⁸. The Court has also consistently held that the obligation of a State to abolish aid regarded by the Commission as being incompatible with the internal market is designed to re-establish the previously existing situation⁶⁹. In this context, the Court has established that that objective is achieved once the recipient has repaid the amounts granted, thus forfeiting the advantage that it had enjoyed over its competitors on the market, and the situation prior to the payment of the aid is restored⁷⁰.
- (138) Following that case law, Article 14(1) of Regulation (EC) No 659/1999 stipulates that "where negative decisions are taken in respect of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the recipient".
- (139) Thus, once the aid under investigation is found to constitute unlawful and incompatible State aid, it must in principle be recovered in order to re-establish the situation that existed on the market prior to the granting of the aid. However, Regulation (EC) No 659/1999 provides for limits to ordering recovery. Article 14(1) provides that "the Commission shall not require recovery of the aid if this would be contrary to a general principle of Community law" such as the protection of legal certainty or legitimate expectations. The Court of Justice has also recognised one exception to the obligation for a Member State to implement a recovery decision addressed to it, namely the existence of exceptional circumstances that would make it absolutely impossible for the Member State to execute the decision properly⁷¹.
- (140) Since these exceptions were raised by interested parties (Confindustria and Studio Legale Chiti) and by the Italian authorities in the context of the formal investigation, the Commission must examine whether they apply to the present case in order to determine if recovery is required.
- (141) As for the legitimate expectations invoked by Confindustria (recital (80)) the Commission reminds that, in principle, the beneficiary of a non-notified aid cannot challenge a recovery order by submitting that it holds a legitimate expectation that the grant of aid is lawful⁷², as a diligent undertaking should normally be able to determine whether the aid was notified⁷³. Moreover, in the cases at hand the Commission itself has not provided the Italian authorities or

⁶⁸ Case C-70/72 *Commission v Germany* [1973] ECR 813, paragraph 13

⁶⁹ Joined Cases C-278/92, C-279/92 and C-280/92 *Spain v Commission* [1994] ECR I-4103, paragraph 75

⁷⁰ Case C-75/97 *Belgium v Commission* [1999] ECR I-030671, paragraphs 64 and 65

⁷¹ Case C-404/00, *Commission v Spain*, ECLI:EU:C:2003:

⁷² Case C-148/04 *Unicredito Italiano* ECLI:EU:C:2005:774, para. 104

⁷³ Case C-5/89 *Commission v Germany* ECLI:EU:C:1990:320, para. 14

the beneficiaries with any element or fact that may have given rise to legitimate expectations.⁷⁴

- (142) In its comments (see recital (80)) Confindustria invoked also the ten-year prescription period foreseen in Article 15 of Regulation (EC) No 659/1999. In accordance with this Regulation, where negative decisions are taken in cases of unlawful aid, the Commission shall order the Member State concerned to take all necessary measures to recover the aid from the beneficiaries; however, the powers of the Commission to recover aid shall be subject to a prescription period of 10 years. The prescription period is interrupted by any action taken by the Commission or by a Member State, acting at the request of the Commission, with regard to the unlawful aid, and starts running afresh after each interruption. It is recalled that the Commission was informed of the existence of the measures in question in 2011 and that it took action in respect of the unlawful aid measures by requesting information from the Italian authorities on 25 July 2011. Moreover, the Commission adopted the decision opening the formal investigation on 17 October 2012 while the law introducing the first of the measures under investigation was adopted by Italy on 27 December 2002 (see recital (22)). Therefore, with regard to none of the rebate measures dealt with in this decision is the recovery of the aid prescribed under Article 15 of Regulation (EC) No 659/1999.
- (143) As for the argument by Studio Legale Chiti (see recital (73)) that from late 1994 until 2011 no national or Community authority raised any questions about the lawfulness of the benefits, the Commission notes that the aid under investigation was granted only with the entry in force of the rebate measures. Until that point in time, all undertakings were required to pay the full amount due for taxes and contributions. Therefore, undertakings only started benefitting from the reduction of amounts due for taxes and contributions in 2003. Given these circumstances, there can neither be a claim of prescription (as invoked by Confindustria, see recital (142)) nor of legitimate expectations (within the meaning of Confindustria's further submissions (see recital (141)), also bearing in mind that mere inaction of national or Community institutions cannot provide grounds for legitimate expectations. Hence, the argument put forward by the interested party is rejected on the basis of the reasoning presented in the above mentioned recitals.
- (144) As for the argument referred to as legal certainty by Studio Legale Chiti (see recital (73)), there are no reasons for distinguishing this case from the *Lucchini* case⁷⁵. Therefore, the Commission considers that the existence of final judgments by national Courts does not prevent recovery.

Exceptional circumstances: absolute impossibility of recovery

- (145) Under Article 288 of the TFEU, the Member State to which a recovery decision is addressed is obliged to execute the decision. As indicated above, the Court has identified one exception to this obligation, namely where the

⁷⁴ Joined Cases C-182/03 and C-217/03 *Belgium and Forum 187 v Commission* ECLI:EU:C:2006:416, para. 147.

⁷⁵ Case C-119/05 *Lucchini*, ECLI:EU:C:2007:434

Member States demonstrates the existence of exceptional circumstances that would make it absolutely impossible to execute the decision.

- (146) Member States usually raise this argument in the context of the discussions with the Commission after the adoption of the decision ordering recovery⁷⁶. However, in this case, Italy already argued prior to the adoption of the decision that for certain measures recovery should not be ordered because it would be absolutely impossible to implement such a recovery order. Since Italy raised this issue in the context of the formal investigation, and since a general principle of law states that no one can be obliged to do the impossible, the Commission considers it appropriate to deal with that question already in this Decision⁷⁷.
- (147) It should first be recalled that the Court of Justice has consistently given a very strict interpretation to the concept of "absolute impossibility". The condition that recovery would be absolutely impossible is not fulfilled where the Member State merely informs the Commission of the legal, political or practical difficulties involved in implementing the decision⁷⁸. The only instance where "absolute impossibility" could be accepted is where recovery would, from the beginning, be impossible in objective and absolute terms⁷⁹.
- (148) In the case at hand, the Italian authorities have argued that in many instances the precise calculation of the amount of incompatible aid to be recovered would be absolutely impossible. Under the Italian Civil Code (Article 2200 thereof) and tax law, undertakings have a duty to keep business and accounting records only for 10 years. The reconstruction of the documentary evidence for damage caused by a natural disaster has to be done on the basis of official documents (business and accounting records) drawn up at the time of the event. It would therefore no longer be possible to determine, on the one hand, the amount of damage suffered by individual beneficiaries, and, on the other, the amount already compensated from other sources (insurance, other aid measures) for events that happened more than 10 years ago. For most of the measures under investigations more than 10 years have elapsed since the natural disaster. This is the case for all the events relating to case SA.33083 (2012/C), i.e. the earthquake in Eastern Sicily of 1990, the floods in Northern Italy of 1994, the earthquake in Marche and Umbria of 1997, the earthquake in Molise e Puglia in 2002 as well as the earthquake and eruptions of the Etna in the province of Catania of 2002. Therefore, Italy argues that for these events records of evidence of damage (and compensations) will no longer be available.
- (149) Under Article 107(2)(b) TFEU aid to make good damages caused by natural disasters is compatible with the internal market, and only aid exceeding the damage suffered is incompatible and must be recovered. However, the vast

⁷⁶ Case C-214/07 *Commission v Spain* [2008] ECR I-8357, paragraphs 13 and 22.

⁷⁷ As already in Commission Decision C(2012) 9461 final of 19.12.2012 on State aid case SA.20829 – Italy - *Scheme concerning the municipal real estate tax exemption granted to real estate used by non-commercial entities for specific purposes*

⁷⁸ Case C-404/00 *Commission v Spain* [2003] ECR I-6695, paragraph 47.

⁷⁹ Case C-75/97 *Belgium v Commission ('Maribel I')* [1999] ECR I-3671, paragraph 86; Case C-214/07 *Commission v France* [2008] ECR I-8357, paragraphs 13, 22 and 48.

majority of beneficiaries that have suffered damage as a result of natural disasters that occurred more than ten years ago no longer have the documents needed to prove that they suffered damage and the amount of the damage suffered, as under Italian national law, companies are not required to keep business and accounting records for more than ten years. As a result, by ordering the recovery of the amount of aid exceeding the level of damage for which the beneficiaries can still provide proof, the Member State would be required to recover also aid that is compatible with the internal market under Article 107(2)(b) of the TFEU and to which undertakings that suffered damage as a consequence of a natural disaster were entitled.

- (150) In principle, the Commission would have to order the recovery of the incompatible aid granted by Italy under the measures referred to in recital (109). However, (a) these measures benefitted undertakings located in areas affected by natural disasters, (b) aid to compensate the damage caused by a natural disaster constitutes aid which is, in law, compatible with the internal market under Article 107(2)(b) of the TFEU, (c) most of these natural disasters happened more than 10 years before the date of the present Decision, and finally (d) under National law the aid beneficiaries are not required to keep records for a period longer than 10 years and therefore it would be impossible in objective and absolute terms to determine the precise amount of damage they had suffered as a direct consequence of the natural disaster. In view of this, the Commission accepts that, given the very specific circumstances of the aid measures that are the object of the present Decision, for the natural disasters that occurred more than 10 years before the date of the present Decision, it is legally and factually impossible to obtain the information necessary to calculate the precise amount of incompatible aid to be recovered. Therefore, enforcing a recovery order under these conditions would be impossible in objective and absolute terms.
- (151) However, this impossibility to calculate the precise amount of incompatible aid to be recovered does not apply to undertakings without operative location (e.g. the actual head office or an operative unit) in the area affected by the natural disaster at the moment of the event. These beneficiaries of the measures referred to in recital (109) shall not be excluded from recovery since they could not have suffered any direct damage caused by the natural disaster, and therefore would not be entitled to aid compatible with the internal market under Article 107(2)(b) of the TFEU. The Italian authorities shall verify the existence of an operative location by consulting public registries of the time of the event.
- (152) In conclusion, the Commission finds that, given the specific nature of the cases in question, it would be absolutely impossible for Italy to recover any aid illegally granted under the measures under investigation for all natural disasters which occurred more than 10 years before the date of the present decision, with the exception of beneficiaries without an operative location in the area affected by the natural disaster at the moment of the event. Apart from the latter group of beneficiaries, recovery of the aid arising from the unlawful and incompatible schemes for the natural disasters which occurred more than

10 years before the date of the present decision should therefore not be ordered.

VII. CONCLUSION

- (153) The Commission finds that Italy has unlawfully implemented the aid measures referred to in recital (109) in breach of Article 108(3) of the Treaty on the Functioning of the European Union.
- (154) Since no grounds of compatibility can be identified for the measures in question, they are found to be incompatible with the internal market.
- (155) Pursuant to Article 14 of Regulation (EC) No 659/1999, where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary.⁸⁰ The Commission shall not require recovery of the aid if this would be contrary to a general principle of Union law.
- (156) In the light of the exceptional circumstances discussed in recitals from (147) to (152), for all aid granted under the measures in question to individual beneficiaries in areas hit by natural disasters more than ten years before the date of the present decision, recovery of the aid should not be ordered, with the exception of beneficiaries without an operative location in the area affected by the natural disaster at the moment of the event. Italy has demonstrated that it would be absolutely impossible to calculate the precise amount of incompatible aid to be recovered. Individual beneficiaries eligible for aid deemed compatible with the internal market by virtue of the derogation under Article 107(2)(b) of the TFEU may no longer have at their disposal the documents needed to provide evidence of the damage caused by the natural disaster and to demonstrate whether or not they already received compensation for (all or part of) the damage suffered. However, aid granted under all measures in question to individual beneficiaries without an operative location in the area affected by the natural disaster at the moment of the event shall be recovered (also for natural disasters that happened more than ten years before the date of the present decision). Italy shall verify the existence of operative units on the basis of information in public registers of the time of the event.
- (157) The Commission will therefore require Italy to take all necessary measures to recover only the incompatible aid granted and paid out to individual undertakings under the measures referred to in recital (109), other than in individual cases that satisfy the conditions in order to be deemed compatible with the internal market by virtue of the derogation under Article 107(2)(b) of the Treaty as explained in recital (136), because the individual grant is in line with the applicable *de minimis* regulation, or because the individual benefit is granted in conformity with an approved aid scheme or an exemption regulation as explained in recital (134). Within two months of the notification of this Decision, Italy must order aid recipients to repay the aforementioned illegal and incompatible State aid.

⁸⁰ Cf. footnote 3

- (158) In compliance with Article 14(2) of Regulation (EC) No 659/1999 the amount to be recovered shall bear interest, calculated in compliance with Article 9 of Commission Regulation (EC) No 794/2004⁸¹, from the date on which it was put at the disposal of the beneficiary and until full recovery.
- (159) The Commission requests Italy to send back the attached form concerning progress in the recovery procedure, to draw up a list of recipients and to specify clearly the measures taken for an immediate and effective recovery of the aid. It also requests Italy to send within two months of the date of notification of this Decision all the documents that prove that procedures have been initiated to recover illegal and incompatible aid from the recipients (for example, administrative documents, circulars, recovery orders issued, etc.).

HAS ADOPTED THIS DECISION:

Article 1

The State aid schemes in question (Article 9, comma 17 of Law n. 289 of 27.12.2002, as amended; Article 4, comma 90, of Law n. 350 of 24.12.2003, as amended; Article 1, comma 363 of Law n. 266 of 23.12.2005, as amended; Article 1, comma 1011, of Law n. 296 of 27.12.2006, as amended; Article 2, comma 109, of Law n. 244 of 24.12.2007, as amended; Article 6, commi 4-bis and 4-ter of Decree-Law n. 185 of 29.11.2008, as amended; Article 33, comma 28 of Law n. 183 of 12.11.2011, as amended; and all the relevant implementing acts under the abovementioned laws), reducing taxes and contributions due by undertakings in areas hit by natural disasters in Italy since 1990 and unlawfully put into effect by Italy in breach of Article 108(3) of the Treaty on the Functioning of the European Union, are incompatible with the internal market.

Article 2

Individual aid granted under the measures referred to in Article 1 does not constitute aid if, at the time it is granted, it fulfils the conditions laid down by *de minimis* Regulations (EC) No 1407/2013 or No 717/2014.

Article 3

Individual aid granted under the measures referred to in Article 1 which, at the time it is granted, fulfils the conditions laid down by a Regulation adopted pursuant to Article 1 of Regulation (EC) No 994/98 or by any other approved aid scheme is compatible with the internal market, up to maximum aid intensities applicable to that type of aid.

Article 4

1. Italy shall recover from the beneficiaries the incompatible aid granted under the scheme based on Article 33, comma 28 of Law n. 183 of 12.11.2011, as

⁸¹ Commission Regulation (EC) No 794/2004 of 21 April 2004 *implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty*, OJ L 140, 30.4.2004, p. 1.

amended, and all related relevant implementing acts under the abovementioned law.

2. Italy shall recover also the incompatible aid granted under the other schemes referred to in Article 1 from all beneficiaries without an operative location in the area affected by natural disasters at the moment of the event.
3. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiaries until their actual recovery.
4. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004 and with Regulation (EC) No 271/2008 amending Regulation (EC) No 794/2004.
5. Moreover, Italy shall cancel all outstanding payments of aid under all schemes referred to in Article 1 with effect from the date of adoption of this Decision.

Article 5

1. Recovery of the aid referred to in Article 4 shall be immediate and effective.
2. Italy shall ensure that this Decision is implemented within four months following the date of notification of this Decision.

Article 6

1. Within two months following notification of this Decision, Italy shall submit the following information:
 - (a) the list of beneficiaries that have received aid to be recovered under Article 4, and the total amount of aid received by each of them under the relevant scheme;
 - (b) the total amount (principal and recovery interest) to be recovered from each beneficiary;
 - (c) a detailed description of the measures already taken and planned to comply with this Decision;
 - (d) documents demonstrating that the beneficiaries have been ordered to repay the aid.
2. Italy shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 4 has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiaries

Article 7

This Decision is addressed to the Republic of Italy.

Done at Brussels, 14.8.2015.

For the Commission

Margrethe VESTAGER
Member of the Commission

Notice

If the decision 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 the decision. Your request specifying the relevant information should be sent by registered letter or fax to:

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

Information about the amounts of aid received, to be recovered and already recovered

Identity of the beneficiary	Total amount of aid received under the scheme (°)	Total amount of aid to be recovered (°) (Principal)	Total amount already reimbursed (°)	
			Principal	Recovery interest

(°) Million of national currency