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Subject: State aid N 341/07 and N 367/07 – Italy – Piedmont – R&D schemes

1. PROCEDURE

The Italian authorities have notified the above mentioned measures with electronic notifications dated respectively 19 June 2007 (SANI/517) and 28 June 2007 (SANI/535). Since the two measures are under the responsibility of the same regional authority, have the same objective and have many common characteristics, the Commission has decided to assess them jointly. The Commission requested supplementary information on the two measures with letter of 24 July 2007. The Italian authorities replied with letter dated 27 September 2007, registered at the Commission on 1st October 2007 (A/37926)

2. DESCRIPTION OF THE MEASURE

2.1. Objective

Following the expiry of many of the existing schemes and the adoption of the new Community Framework for State aid for Research and Development and Innovation¹ (the "R&D&I Framework"), the Regional authorities of Piedmont have reviewed the

¹ OJ C 323 of 30.12.2006, pages 1-26.

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existing measures in favour of R&D and have decided to reorganise the support granted in favour of R&D activities.

The measure notified under N 367/07 is called Ri1 (hereafter "measure Ri1") and will be the main R&D scheme in the region, which will support projects through calls for proposals. It aims to replace the existing aid scheme in the region. The Italian authorities have presented an evaluation of the existing schemes (see below the next section).

The measure notified under N 341/07 is called Ri7 (hereafter "measure Ri7") and concerns the support to strategic R&D projects, technology platforms and large projects, which may also be part of national and international programmes. This measure is completely new, also in its design. The sectors concerned are defined as science-push – biotechnology, nanotechnology, new materials, and new energy sources – and demand-pull – aerospace, logistics, design and multimedia, environmental security, agri-food, health, transport, culture. ICT is considered as a horizontal theme that can be considered in any platform or scientific domain.

2.2. Evaluation of existing aid measures

As mentioned above, the Italian authorities have provided some information on the evaluation of the existing schemes in the region:

- Support to co-operative R&D carried out by SMEs in the context of the Coordinated Action named Manunet. Information on this scheme was transmitted to the Commission which registered it as XS 130/07. Projects have been presented by potential beneficiaries. The evaluation and granting phase will be finished by the end of 2007. This scheme will be absorbed by the measure Ri1.
- Support to R&D activities was also granted under the scheme notified to the Commission as N 625/06². 179 projects have been presented, out of which only 59 have received support from the region, with 104 enterprises involved (68 SMEs and 36 large enterprises). Around 350 international experts were involved in the evaluation phase of the proposals. This scheme will be absorbed by the measure Ri1.
- Support to R&D activities was also granted in 2004 and 2005 through another scheme, registered at the Commission as XS 82/04. This scheme was targeted at SMEs and funded 98 projects in 2004 and 135 projects in 2005. This scheme will be absorbed by the measure Ri1.
- Support to R&D activities in assisted areas was also granted by the Region on the basis of the approved scheme N 102/02³. This scheme ended on 31/12/2006 and was able to support 763 projects, with a maximum amount for project capped at € 150 000. This scheme will be absorbed by the measure Ri1.

The Regional authorities have verified the presence of an incentive effect in those cases where aid was granted to large enterprises, notably under the scheme N 625/06. They have also analysed the incentive effect of the schemes on the SMEs through a customer satisfaction analysis, conducted on the basis of sampling. The result of this analysis

² The Commission raised no objections with letter dated 20 October 2006 - C(2006)5111.

³ The Commission raised no objections with letter dated 11 February 2003 – C(2003)102.

confirm that in the vast majority of the cases (80%) the aid granted by the Region had an incentive for the beneficiaries SMEs either to shorten the duration of projects, or to carry out more ambitious projects, or to carry out the projects altogether.

2.3. Legal base

The legal base for both new measures is the Legge Regionale 34 of 21/11/2004, combined with the 2006-2008 Plan for productive activities, and the Legge Regionale n. 4/2006 (articles 4 and 5). Then there are the following implementing regulations:

- for the measure Ri1, Delibera della Giunta Regionale 5-5553 dated 26/3/2007;
- for the measure Ri7, Delibera della Giunta Regionale 6-5554 dated 26/3/2007.

The measures are subject to a standstill clause until the approval by the European Commission.

2.4. Beneficiaries

Beneficiaries can be SMEs⁴ and large enterprises as well as research organisations defined accordingly to point 2.2 d) of the Community Framework for State aid for R&D&I (hereafter the R&D&I Framework).

In measure Ri7 beneficiaries have to be consortia of enterprises and research organisations.

Enterprises can come from all sectors. The estimated number of beneficiaries is above 1000 for the measure Ri1 and between 101 and 500 for the measure Ri7. In order to be allowed to participate in the projects enterprises must have at least an establishment or an operational unit in the region at the time of the granting of the aid. In the case of measure Ri7, member of consortia can be also enterprises and research organisations located outside of the Region.

Are excluded from the scope of the measures enterprises that are in difficulty within the meaning of the Community Guidelines on State aid for rescue and restructuring undertakings in difficulty⁵.

The Italian authorities have specified that if support will be granted under the schemes to research organisations, defined according to section 2.2 of the R&D&I Framework, they will ensure that funding will be directed to the non-economic activities and that there will be separation of accounting with economic activities in order to avoid an indirect advantage to those economic activities.

The Italian authorities have specified the conditions for collaboration between research organisations and enterprises. In the case of contract research, they have in particular indicated that the research organisations will render their services at market rate.

⁴ Defined on the basis of the Ministerial Decree dated 18 April 2005 which transposed into Italian law the definition of SMEs contained in Regulation n. 70/2001.

⁵ OJ C 244, 1/10/2004, p.2.

In the case of collaboration projects, the Italian authorities will ensure that one of the following conditions will apply:

- (1) the participating undertakings bear the full cost of the project.
- (2) the results which do not give rise to intellectual property rights may be widely disseminated and any intellectual property rights to the R&D&I results which result from the activity of the research organisation are fully allocated to the research organisation.
- (3) the research organisation receives from the participating undertakings compensation equivalent to the market price for the intellectual property rights which result from the activity of the research organisation carried out in the project and which are transferred to the participating undertakings. Any contribution of the participating undertakings to the costs of the research organisation shall be deducted from such compensation.

Collaboration will entail no indirect advantage for the collaborating enterprises, where the assessment of the contractual agreement between the partners leads to the conclusion that any intellectual property rights to the R&D&I results as well as access rights to the results are allocated to the different partners of the collaboration and adequately reflect their respective interests, work packages, and financial and other contributions to the project.

2.5. Activities supported and eligible costs

Both measures will support feasibility studies and R&D activities falling under the categories of industrial research and experimental development⁶. Fundamental research will not be supported by the schemes.

Expenditures incurred before the demand for support will not be eligible. The contribution from the Regional authorities will be paid only for costs incurred and must not represent any profit for the beneficiaries. Invoices from firms belonging to the same group will not be eligible.

For both measures costs eligible for receiving the support will be the following:

- Personnel involved in the research activities;
- Costs of instruments, equipment, but only for the extent and for the period used for the research project. If such instruments and equipment are used beyond the research project, only the depreciation costs corresponding to the life of the project will be available;
- Costs for building and land to the extent and for the duration used for the research project; With regard to buildings, only the depreciation costs corresponding to the life of the research project, as calculated on the basis of good accounting practice are considered as eligible. For land, costs of commercial transfer or actually incurred capital costs are eligible;

⁶ For the definition of industrial research and experimental development the legal basis of the schemes uses the definitions contained in section 2.2 of the R&D&I Framework.

- Cost of contractual research, technical knowledge and patents bought or licensed from outside sources at market prices, where the transaction has been carried out at arm's length and there is no element of collusion involved, as well as costs of consultancy and equivalent services used exclusively for the research activity;
- Additional overhead costs directly imputable to the research activities, including missions expenses for projects involving international co-operation;
- Other operating expenses directly related to the research activities.

Costs for feasibility studies will be the same as for R&D projects. If feasibility studies are part of a project, they can reach maximum 5% of the total costs of the project.

Both measures will also support aid for industrial property rights costs for SMEs. The following costs will be eligible:

- All costs preceding the grant of the right in the first legal jurisdiction, including costs relating to the preparation, filing and prosecution of the application as well as costs incurred in renewing the application before the right has been granted;
- Translation and other costs incurred in order to obtain the granting or validation of the right in other legal jurisdictions;
- Costs incurred in defending the validity of the right during the official prosecution of the application and possible opposition proceedings, even if such costs occur after the right is granted.

Under both measures the Italian authorities intend also to grant aid for the loan of highly qualified personnel seconded from a research organisation or a large enterprise to an SME under the following conditions:

- The seconded personnel must not be replacing other personnel, but must be employed in a newly created function within the beneficiary undertaking and must have been employed for at least two years in the research organisation or the large enterprise, which is sending the personnel on secondment. The seconded personnel must work on R&D&I activities within the SMEs receiving the aid.
- Eligible costs are all personnel costs for borrowing and employing highly qualified personnel, including the costs of using a recruitment agency, as well as a mobility allowance for the seconded personnel.

2.6. Amount and duration

The combined budget of the measures is €130 million yearly (€90 million for measure Ri1 and €40 million for measure Ri7). The measures will last until 31 December 2013.

The aid will be paid out through grants and soft loans. The grants will be attributed through successive calls for proposals. In the measure Ri7 the calls will define the technical/scientific domains and/or the technological platforms: consortia will apply in order to lead these domains and platforms.

2.7. Intensities

The Italian authorities have indicated that aid will be granted under both measures according to the following intensities.

For feasibility studies carried out by SMEs, up to 75% for studies related to industrial research, and up to 50% for studies related to experimental development. For feasibility studies carried out by large enterprises, the intensities will be respectively of up to 65% and 35%.

For R&D projects, the intensity of the support for the enterprises will be as follows:

- 50% GGE for activities carried out by large enterprises falling in the category of industrial research⁷;
- 25% GGE for activities carried out by large enterprises falling in the category of experimental development;
- if the beneficiary is a small enterprise, defined on the basis of the EC definition⁸, it will qualify for an extra bonus of 20 percentage points;
- if the beneficiary is a medium-sized enterprise, defined on the basis of the EC definition⁹, it will qualify for an extra bonus of 10 percentage points;
- if projects respects one of the characteristics below, it will qualify for an extra bonus of 15 percentage points:
 - i) if the project involves effective collaboration between at least two undertakings which are independent of each other and the following conditions are fulfilled:
 - no single undertaking must bear more than 70 % of the eligible costs of the collaboration project;
 - the project must involve collaboration with at least one SME or be cross-border, that is to say, the research and development activities are carried out in at least two different Member States.
 - (ii) the project involves effective collaboration between an undertaking and a research organisation, particularly in the context of co-ordination of national R&D policies, and the following conditions are fulfilled:
 - the research organisation bears at least 10 % of the eligible project costs;
 - the research organisation has the right to publish the results of the research projects insofar as they stem from research implemented by that organisation;

⁷ The categories of research that are applicable are those of the R&D&I Framework, section 2.2 on the Definitions.

⁸ See footnote 3.

⁹ See footnote 3.

- (iii) only in case of industrial research, if the results of the project are widely disseminated through technical and scientific conferences or published in scientific or technical journals or in open access repositories (databases where raw research data can be accessed by anyone), or through free or open source software.

For the purposes of points (i) and (ii) subcontracting is not considered to be effective collaboration. For projects where industrial research and pre-competitive development activities are combined, the intensity will be the weighted average of the respective intensities. If the project is carried out in accordance with the objectives of a specific project or programme undertaken as part of the Community's current framework programme for R&D, it will respect the conditions mentioned above and will qualify for an extra 15 percentage points.

In the case of loan of highly qualified personnel the maximum aid intensity shall be 50 % of the eligible costs, for a maximum of 3 years per undertaking and per person borrowed.

2.8. Incentive effect

For both measures, the Italian authorities have indicated that they will give support to large enterprises and to projects for SMEs above EUR 7.5 million only if at least one of the following conditions is respected in order for the measure to have an incentive effect:

- *increase in project size*: increase in the total project costs (without decreased spending by the aid beneficiary by comparison with a situation without aid); increase in the number of people assigned to R&D&I activities;
- *increase in scope*: increase in the number of the expected deliverables from the project; more ambitious project illustrated by a higher probability of a scientific or technological breakthrough or a higher risk of failure (notably linked to the higher risk involved in the research project, to the long-term nature of the project and uncertainty about its results);
- *increase in speed*: shorter time before completion of the project as compared to the same project being carried out without aid;
- *increase in total amount spent on R&D&I*: increase in total R&D&I spending by the aid beneficiary; changes in the committed budget for the project (without corresponding decrease in the budget of other projects); increase in R&D&I spending by the aid beneficiary as a proportion of total turnover.

For all cases subject to individual notification, the Italian authorities will request to the beneficiaries a full evaluation of the incentive effect which will then allow the Commission to assess the case.

2.9. Cumulation, monitoring and reporting

In both cases, the Italian authorities have indicated that the support received through this measure cannot be cumulated with any other aid. The only exception concerns other R&D&I aid for the same eligible costs, provided that the maximum intensities fixed in this decision are respected. There cannot be cumulation with de minimis aid for the same eligible costs, in order to avoid any circumvention of the maximum intensities set in this decision.

The Italian authorities will ensure strict monitoring of the projects through the assessment of regular reporting from the beneficiaries. The Italian authorities will provide an annual report on the implementation of the scheme. In the annual report, the Italian authorities will also describe the incentive effect of the measure on the R&D activities carried out by large firms.

Within twenty working days starting from the granting of any aid not subject of individual notification and which would be beyond EUR 3 million, the Italian authorities will submit to the Commission the information requested in the standard form laid down in the Annex to the R&D&I Framework.

The Italian authorities will keep detailed records regarding the granting of aid for all R&D&I measures, on the basis of the provision contained in point 10.1.3 second paragraph of the R&D&I Framework.

The Italian authorities will notify individually to the Commission, on the basis of the provisions contained in point 7.1 of the R&D&I Framework, all the following aid measures:

- In case the project is predominantly industrial research, EUR 10 million per undertaking, per project/feasibility study;
- for all other projects, EUR 7,5 million per undertaking, per project/feasibility study.

The Italian authorities will submit all the necessary information on these projects in order to allow an in-depth assessment. In those cases, granting of the aid is suspended until the approval by the Commission.

The Italian authorities have indicated that they commit to respect the Deggendorf jurisprudence, which is enforced in Italy through art. 1, paragraph 1223, of Law n. 296, of 27 December 2006. They will ensure that grants are not paid out to beneficiaries who have not reimbursed previous aid which had been declared illegal and incompatible, at least until such repayment has not been made to the State.

In particular, they have committed to ask to the potential beneficiaries a declaration stating that the firm has not benefited from any illegal and incompatible aid, or that in case it has benefited, that it has either paid it back or put it in a blocked account. The declaration must refer to at least three schemes declared illegal and incompatible by the Commission:

- Employment measure (case CR 49/98);
- Municipalizzate (case CR 27/99);
- Employment measures (case CR 62/03).

The full text of the two measures will be published on the internet, at the following internet address: www.regione.piemonte/industria/index.htm.

3. ASSESSMENT

3.1. Existence of aid

The measures under assessment involve state resources, as they will be financed through the budget of the state and the region. The measures will be selective, as they will benefit a limited number of firms, which will receive an advantage through this support. Finally, since these firms are or can be active in intra-community trade, the measures will also have an effect on trade. Thus, the schemes meet the conditions of Article 87 (1) of the EC Treaty.

The Commission has assessed whether the support given to research organisations under the schemes may involve State aid. It has first looked at those situations whether the support goes directly to the research organisations towards their non-economic activities, in the meaning of point 2.2. (d) of the R&D&I Framework. The public funding of such activities does not fall under Article 87 (1) of the EC Treaty.

If the same entity carries out activities of both an economic and non-economic nature, in order to avoid cross-subsidisation of the economic activity, the public funding of the non-economic activities will not fall under Article 87(1) of the EC Treaty, if the two kinds of activities and their costs and funding can be clearly separated. The Italian authorities confirmed that the economic and non-economic activities and their costs and funding will be separated.

As the scheme thus complies with point 3.1.1 of the R&D&I Framework, the Commission concludes that the financial support granted to research organisations in collaboration projects does not constitute State aid within the meaning of Article 87 (1) of the EC Treaty.

The Commission has then looked at those cases where a research organisation would work for an undertaking (contract research). As mentioned above in section 2.4, in case of contract research carried out by establishments on behalf of undertakings, the establishments are paid the market price for contractual research and the undertaking owns the results of the project, in line with point 3.2.1 of the R&D&I Framework.

Finally, the Commission has assessed the conditions for collaboration projects between a research organisation and an undertaking, to ensure that no indirect aid was passed to the enterprise through the conditions of such collaboration. As described in section 2.4 above, the Italian authorities will ensure that the conditions foreseen in point 3.2.2 of the R&D&I Framework will be fulfilled.

The Commission can therefore conclude that the enterprises directly benefiting from the scheme do not receive any additional indirect State aid through the participation in collaboration projects with publicly funded research organisations.

3.2. Legality of aid

The Italian authorities have fulfilled their obligation according to Article 88(3) EC Treaty by notifying the schemes before their implementation. The measures contain a standstill clause.

3.3. Compatibility

The Commission has then analysed the aid schemes under the relevant provisions of the Community framework for State aid for research and development and innovation (“R&D&I framework”)¹⁰. It has assessed the measures jointly because they originate from the same regional authority, share the same objective, which is the promotion of R&D&I, and have numerous features in common.

The Commission first notes that the regional authorities have undertaken an evaluation of the existing measures fostering R&D, which should be seen favourably, as mentioned in the first paragraph of section 5 of the R&D&I Framework.

Second, the Commission notes that the notified measures respect all the necessary conditions set out in the R&D&I Framework. In particular:

- As indicated in section 2.5 above, eligible activities are those defined in section 2.2 of the R&D&I Framework and respect section 5.1.1 of the R&D&I Framework.
- As indicated in section 2.5 above, the eligible costs, the aid intensities as well as the bonuses correspond to the relevant provisions of the R&D Framework (section 5.1.4, 5.12 and 5.1.3 respectively).
- As indicated in sections 2.5 and 2.7 above, aid will also be granted for technical feasibility studies, in respect of the provisions contained in section 5.2 of the R&D&I Framework.
- As indicated in sections 2.5 and 2.7 above, aid will be granted for industrial property rights costs for SMEs, in respect of the relevant provision contained in the R&D&I Framework (section 5.3).
- As indicated in sections 2.5 and 2.7 above, aid will be granted for the loan of highly qualified personnel, in respect of the relevant provision contained in the R&D&I Framework (section 5.7).
- As indicated in section 2.8 above, the Italian authorities will ensure that the aid will have an incentive effect for large enterprises according to the provision contained in section 6 of the R&D&I Framework; the Italian authorities have also undertaken to describe the incentive effect for the large firms respecting the provision contained in the last paragraph of section 6 of the R&D&I Framework.
- As indicated in section 2.9 above, the rules on cumulation of aid respect the provisions contained in section 8 of the R&D&I Framework.
- As indicated in section 2.9 above, the Italian authorities have committed themselves to respect the Deggendorf jurisprudence in order to avoid that further aid is granted to firms that have not yet paid back previous illegal and incompatible aid.

¹⁰ Community framework for State aid for research and development and innovation, in OJ C 323/1 of 30.12.2006.

- As indicated in section 2.9 above, the Italian authorities have committed to respect the relevant provisions concerning transparency and reporting, as foreseen in section 10.1 of the R&D&I Framework.
- As indicated in section 2.9 above, the Italian authorities have committed to notify individual aid beyond the thresholds foreseen in section 7.1 of the R&D&I Framework.
- As indicated in section 2.9 above, the Italian authorities have committed to respect the transparency provisions concerning publication of the text of the scheme on the Internet and conditions for transmission of information sheets to the Commission, as foreseen in section 10.1.2 and 10.1.3 of the R&D&I Framework.

4. CONCLUSION

In consequence, the Commission considers that the aid measures are compatible with the EC Treaty in application of its Article 87(3)(c).

The Commission reminds the Italian authorities to submit annual reports concerning the application of the scheme which allows the Commission to verify that all given conditions are fulfilled and which in particular demonstrate that the aid awarded to large enterprises in each case was necessary as an incentive.

The Commission reminds the Italian authorities about their commitment concerning transparency of the scheme, both concerning publication in the Internet and the conditions for the transmission of information sheets to the Commission.

The Commission further reminds the Italian authorities that, in accordance with Article 88(3) EC, all plans to refinance, alter or change this aid scheme have to be notified to the Commission.

The Italian authorities have indicated that the notification does not contain confidential information, which should not be disclosed to third parties. In consequence, there is agreement to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

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

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

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Yours faithfully,

For the Commission

Neelie Kroes
Member of the Commission