OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER

delivered on 17 May 2001 [1]

1. By application lodged on 13 August 1999, the Italian Republic requests that the Court of Justice annul Commission Decision No C(1999) 1364 final of 11 May 1999 concerning aid granted by Italy to promote employment. [2]

The Commission considers the following measures to be incompatible with the common market, unless they fulfil specific conditions: the reductions in social security contributions granted by Laws Nos 863/84, 407/90, 169/91 and 451/94 to employers who take people on via fixed-term training and work experience contracts, and the aid provided under Law No 196/97 for the conversion of those contracts into open-ended contracts.

I — The Italian legislation

2. The documents before the Court reveal that the training and work experience contract is a fixed-term contract for the employment of young people aged between 16 and 32, although the age limit may be raised at the discretion of the regional authorities. There are two types of training and work experience contract: the first type concerns activities requiring a high level of training. The contract has a maximum duration of 24 months and must provide for at least 80 to 130 hours of training to be given at the workplace for the full period of the contract; the second type, which is intended for the less skilled professional levels, must last no more than 12 months and include 20 hours of training.

3. Employers who take people on via training and work experience contracts benefit from the following reductions in social security contributions during the period of the contract: 25% for firms located in areas other than the Mezzogiorno; 40% for firms in the commercial and tourism sector, with fewer than 15 employees, established in areas other than the Mezzogiorno; and total exemption for craft firms and firms in areas where the level of unemployment is above the national average. In order to qualify for these reductions, the employer must not have reduced staff numbers in the previous 12 months, except where he is taking on employees with a different qualification.

1 — Original language: Spanish.

2 — 2000/128/EC: Commission Decision of 11 May 1999 concerning aid granted by Italy to promote employment (OJ 2000 L 42, p. 1).

The employer must also have kept on at least 60% of employees whose training and work experience contract expired in the previous 24 months. For training and work experience contracts for the less skilled professional levels, reductions are also subject to the condition that the contract be converted into an open-ended contract. The reductions apply only after conversion and for a period equal to the period covered by the training and work experience contract.

4. Article 15 of Law No 196/97, amending Law No 451/94, stipulates that firms in the areas covered by Objective 1 of Regulation No 2081/93,[3] which, on expiry, convert training and work experience contracts of a maximum duration of 24 months into open-ended contracts continue to enjoy exemption from social security contributions for a further year. They must return any aid received if they dismiss the employee within 12 months of the end of the assisted period. Under Article 1 of the Regulation, Objective 1 is to promote the development and structural adjustment of regions whose development is lagging behind.

II — The contested Decision

5. The Italian authorities notified the Commission of a draft law concerning measures to promote employment, which was subsequently approved by Parliament (Law No 196/97 of 24 June 1997[4]) and entered in the register of notified aid. As a result of the additional information supplied by Italy, the Commission's investigation was extended to other aid schemes established by Laws Nos 863/84, 407/90, 169/91 and 451/94, which regulate training and work experience contracts and were entered in the register of non-notified aid. In August 1998, the Commission informed the Italian Government of its decision to initiate the procedure under Article 88(2) EC in respect of aid granted since November 1995[5] to promote employment provided for in Laws Nos 863/84, 407/90, 169/91 and 451/94, and in respect of aid for converting fixed-term training and work experience contracts into open-ended contracts under Article 15 of Law No 196/97.

6. In the proceedings before the Commission, observations were presented by the

3 — Council Regulation (EEC) No 2081/93 of 20 July 1993 amending Regulation (EEC) No 2052/88 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1993 L 193, p. 5).

4 — Published in GURI No 154 of 4 July 1997.

5 — As the contested Decision was adopted on 11 May 1999, the Commission refers throughout it to the articles of the EC Treaty under their new numbering, even though the aid scheme being examined applied from November 1995.

interested third parties, represented by the Confederazione generale dell'industria italiana (Confindustria),[6] and the Italian authorities. After examining them, the Commission adopted the Decision whose annulment is sought by Italy.

7. Article 1 of the contested Decision provides:

'1. The aid granted unlawfully by Italy since November 1995 for employment under the training and work experience contracts provided for in Laws Nos 863/84, 407/90, 169/91 and 451/94 is compatible with the common market and the EEA Agreement provided that it concerns:

— the creation of jobs in the recipient firm for persons who have not yet found employment or have lost their previous employment within the meaning of the guidelines on aid to employment,[7]

— the employment of workers experiencing particular difficulties in entering or re-entering the labour market. For the purposes of this Decision, "workers experiencing particular difficulties in entering or re-entering the labour market" shall mean young persons under the age of 25, [university graduates] up to the age of 29 and the long-term unemployed, i.e. out of employment for more than one year.

2. Aid for training and work experience contracts which does not satisfy the conditions set out in paragraph 1 is incompatible with the common market.'

Under Article 2:

'1. The aid granted by Italy under Article 15 of Law No 196/97 for the conversion of training and work experience contracts into open-ended contracts is compatible with the common market and the EEA Agreement provided that it complies with the net job creation requirement as defined in the Community guidelines on aid to employment.

6 — Confindustria was one of the applicants in Case T-126/00 in which an action was brought before the Court of First Instance for the annulment of the same Decision as the one in the application I am examining. By order of 19 January 2001, that action was declared manifestly inadmissible because it was time-barred. Annulment of the measure is also sought by the Federazione Associazioni Imprese Distribuzione and others in Case T-124/00, in which, by order of 19 February 2001, the Court of First Instance decided to suspend proceedings pending judgment by the Court of Justice in the present case.

7 — Guidelines on aid to employment (OJ 1995 C 334, p. 4).

The workforce employed by a firm shall be calculated without taking account of jobs resulting from the conversion and jobs created through fixed-term contracts or not guaranteeing sufficiently stable employment.

2. Aid for the conversion of training and work experience contracts into open-ended contracts which does not satisfy the requirement laid down in paragraph 1 is incompatible with the common market.'

Article 3 states:

'Italy shall take all necessary measures to recover from the recipients the aid which does not satisfy the conditions of Articles 1 and 2 and has already been unlawfully paid.

Repayment shall be made in accordance with the procedures of Italian law. The amounts to be repaid shall bear interest from the date on which the aid was paid until the date on which it is effectively recovered. The interest shall be calculated on the basis of the reference rate used to calculate the net grant equivalent of regional aid.'

III — The action brought by Italy

8. The Italian Government requests that the Court of Justice annul the Decision in its entirety and, in the alternative, annul Article 3, under which the Commission requires Italy to recover aid unlawfully granted, together with interest. It bases its action on one consideration of a general nature and on eight specific pleas.

9. Generally, the applicant considers that, when comparing the characteristics, nature and aims of the scheme established for training and work experience contracts with the Guidelines on aid to employment, the Commission has adopted a purely financial viewpoint, without taking into account that those contracts constitute a fundamental means of taking action in the labour market, in order to implement an active policy in the field of employment, in particular in connection with young persons, who have traditionally been considered to comprise the weak segment of the market.

10. The Commission maintains that the investigation carried out to assess the nature of aid and its compatibility with the common market leaves aside any consideration of its effectiveness. It states that, in this case, its only criterion for determining the nature of the aid within the meaning of the Treaty has been its impact on

competition and on trade between Member States, and that its compatibility with the common market is determined by application of the exceptions provided for in Article 87(2) and (3) EC.

11. Nobody disputes that employment policy remains an area of national responsibility, in which the Community plays a major coordinating role.We need only look at the 2001 Employment Guidelines, which have just been adopted via Council Decision 2001/63/EC, [8] which lay down horizontal objectives for creating suitable conditions for full employment.

12. As is expressly stated in Paragraph 3 of the Guidelines on aid to employment, published in December 1995, the tax and financial measures which may be adopted by the Member States will be called upon to play an increasing role in encouraging firms to hire workers experiencing utmost difficulty in entering the labour market. However, it is also stated in Paragraph 3 that, although the objective of the measures is to improve the situation of workers, it must be recognised that firms also benefit in that they are able to reduce their costs because of the role they play in implementing the measures. That is why the Commission must ensure that the proliferation of measures to promote employment does not adversely affect the parallel measures taken to reduce artificial distortion of competition, under Articles 87 and 88 EC.

That is the framework within which the Commission had to operate to adopt the contested Decision, exercising the powers conferred upon it by the Treaty in respect of State aid, and trying to strike the fine balance between the positive effects of the Italian scheme and the distortion of competition and trade.

13. The Court has consistently held that, as regards the application of Article 87(3) EC, the Commission enjoys a wide discretion, the exercise of which involves assessments of an economic and social nature which must be made within a Community context. [9] Since the examination of the compatibility of an aid scheme with the common market involves a complex economic appraisal, the Court's review of the Commission's act is confined to verifying whether the Commission complied with the relevant rules of procedure and the obligation to state reasons, whether the facts on which the contested finding was based have been accurately stated and

8 — Council Decision of 19 January 2001 on Guidelines for Member States' employment policies for the year 2001 (OJ 2001 L 22, p. 18).

9 — Case C-278/95 P *Siemens* v *Commission* [1997] ECR I-2507, paragraph 35; Case C-355/95 P *TWD* v *Commission* [1997] ECR I-2549, paragraph 26; and Case C-156/98 *Germany* v *Commission* [2000] ECR I-6857, paragraph 67.

whether there has been any manifest error of assessment or a misuse of powers. [10]

In the eight specific pleas in its application, Italy claims that some of these defects are present in the Decision. Since it refers, in the main, to the inadequacy of the statement of reasons and to misuse of powers, I shall first examine the general school of thought regarding those defects and then ascertain whether they are present in each of the situations in which they are alleged to exist.

A — *The Commission's obligation to state reasons for the measures it adopts in the sphere of State aid*

14. The Court has consistently held that the statement of reasons required by Article 253 EC must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question, in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the Court of Justice to carry out its review. It is also clear from the relevant case-law that it is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure, the nature of the reasons given and the interest which the addressees of the measure or other persons to whom it is of direct and individual concern may have in obtaining explanations. [11]

15. The Court of Justice has also held that the fact that the contested Decision is based on the Guidelines has a particular significance as regards the content of the obligation to state reasons. [12]

16. According to the case-law of the Court of First Instance, in the statement of reasons of the decisions which it has to adopt to ensure implementation of the rules governing competition, the Commission is not obliged to adopt a position on all the arguments relied on by the parties concerned; it is sufficient for it to set out the

10 — Case 138/79 *Roquette Frères* v *Council* [1980] ECR 3333, paragraph 25; Joined Cases 142/84 and 156/84 *BAT and Reynolds* v *Commission* [1987] ECR 4487, paragraph 62; Case C-174/87 *Ricoh* v *Council* [1992] ECR I-1335, paragraph 68; Case C-225/91 *Matra* v *Commission* [1993] ECR I-3203, paragraph 25; and Case C-56/93 *Belgium* v *Commission* [1996] ECR I-723, paragraph 11.

11 — Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395, paragraphs 15 and 16; Case C-466/93 *Atlanta Fruchthandelsgesellschaft and Others (II)* [1995] ECR I-3799, paragraph 16; *Belgium* v *Commission*, cited above in footnote 10, paragraph 86; Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63; and Joined Cases C-15/98 and C-105/99 *Italy and Sardegna Lines* v *Commission* [2000] ECR I-8855, paragraph 65.

12 — Case C-288/96 *Germany* v *Commission* [2000] ECR I-8237, paragraph 84.

facts and the legal considerations having decisive importance in the context of the decision. [13] These judgments were approved by the Court of Justice on appeal. [14]

B — *Misuse of powers*

17. Misuse of powers is one of the pleas most frequently invoked by applicants seeking the annulment of a measure. However, it is very difficult to establish its existence. The Court considers that misuse of powers is the adoption by a Community institution of a measure with the exclusive or main purpose of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case. [15] Misuse of procedure by an Institution which, in order to avoid the particular complexity of one procedure, uses another which it finds easier, is treated by the Court in the same way as misuse of powers, which provides grounds for the annulment of the vitiated act. [16]

13 — Case T-44/90 *La Cinq* v *Commission* [1992] ECR II-1, paragraph 41, and Case T-459/93 *Siemens* v *Commission* [1995] ECR II-1675, paragraph 31.

14 — *Siemens* v *Commission*, cited in footnote 9 above, paragraph 16.

15 — Case C-84/94 *United Kingdom* v *Council* [1996] ECR I-5755, paragraph 69, and Case C-48/96 P *Windpark Groothusen* v *Commission* [1998] ECR I-2873, paragraph 52.

16 — Case 148/87 *Frydendahl Pedersen* v *Commission* [1988] ECR 4993, paragraph 12.

It is also settled case-law that a misuse of powers is deemed to exist only if it is proven that its perpetrator, in adopting the contested decision, was pursuing an objective other than that pursued by the rules in question. [17]

IV — The specific pleas in the application

A — *First plea: misuse of powers and inadequate statement of reasons as regards the definition of 'young persons'*

18. Italy alleges, specifically, that the Decision's definition of 'young persons' is illogical. Although the statistics provided in the administrative procedure show that unemployment, given its specific characteristics among young people in Italy, and especially in the Mezzogiorno region, affects persons in the age group up to 32 years, the Commission decided to include in that category only those aged under 25, or 29 in the case of graduates. However, the Guidelines on aid to employment do not establish any limit. This age restriction introduces an unacceptable rigidity to the notion of 'young people', which is difficult

17 — Case 135/87 *Vlachou* v *Court of Auditors* [1988] ECR 2901, paragraph 27; and Case C-107/90 P *Hochbaum* v *Commission* [1992] ECR I-157, paragraph 14.

to reconcile with the general meaning of the term in the Guidelines, which varies according to the specific characteristics of the different labour markets; it has been shown that, in Italy, particularly in the south, for a series of social and economic reasons, the age limit for young persons is undoubtedly higher than the 25 years established in the contested Decision.

19. The Commission maintains that, even though the Guidelines on aid to employment do not establish any age limit, both the Community measures and those implemented by the Member States generally for the benefit of young people are directed at persons aged under 25. Therefore, the fixing of a variable, arbitrary limit depending on the characteristics of each national labour market would lack objectivity and would have no logical connection with those measures.

20. I agree with Italy that the Guidelines on aid to employment do not specify who is included in the category of 'young persons' for the purposes of examining the compatibility of an aid scheme with the common market. I also agree that it may be a positive sign that the term has been given a general meaning, since the age limit which defines 'young persons' varies according to the specific characteristics of the different labour markets. It also varies from State to State, according to the education programmes, the school-leaving age, and the number and duration of stages in university courses.

21. I do not agree, however, that these reasons may provide justification for a Member State, however high its unemployment rate, to decide unilaterally that workers of up to 32 years old, in general, and up to 35 or even 45 in some areas,[18] who experience particular difficulty in entering or re-entering the labour market, must be classed as 'young people' and be entitled to benefit from aid to employment. The Commission also states, in Paragraph 78 of the Decision, that, although unemployment is highest in southern Italy, it cannot be said that the percentage of jobseekers is higher in the 25 to 34 age group than in the 15 to 24 age group. In Paragraph 81, the Commission refers to a Report on the situation of young persons, submitted by the Italian authorities, which shows that '65% of unemployed persons in the 15 to 24 age group stated that they had been seeking employment for over a year (long-term unem-

18 — The Commission points out, in its rejoinder, that, in exercise of the power conferred on them by domestic law, some regions have raised the age limit in order that workers may have access to the training and work experience contracts. It has been fixed at 35 years of age in Lazio, 38 in Calabria, 40 in Campania, Abruzzo and Sardinia, and 45 in Basilicata, Molise, Apulia and Sicily.

ployed); that figure rose to 68% for the 25 to 34 age group.[19] On the basis of that information, the Commission therefore concludes that the trend should be examined from the standpoint of structural unemployment and not in terms of the raising of the age limit for the definition of "young persons"'.

22. We must not lose sight of the fact that the Commission has to examine the compatibility of an aid scheme in a Community context. This means that any exception to the fundamental incompatibility established by Article 87(1) EC must be formulated, interpreted and applied as uniformly and regularly as possible, because that is the only way to ensure consistency and equality of treatment in the implementation of the rules governing State aid.

23. In the interests of that uniformity, and in the absence of a definition of 'young persons' in the Guidelines on aid to employment,[20] the Commission, from the time the Article 88(2) procedure was initiated, bore in mind that the measures adopted to assist young people both at Community level and those introduced in most of the Member States concerned young people under the age of 25.[21] The same criterion appears in Paragraph 76 of the Decision. Furthermore, as stated in Paragraph 85, after considering the information supplied by the Italian authorities and by Confindustria concerning the age at which university degrees are gained in Italy (26.8 as against a European average of 25.7), the Commission maintained that, solely as regards university graduates, the statistics and the institutional factors relating to the length of studies justified extending the definition of 'young persons' to include the 25 to 29 age group.

24. In my view, the Commission has set out very thoroughly the criteria which led it to fix at 25 years or, in the case of university graduates, 29 years, the age limit for defining 'young persons'; therefore, the statement of reasons for the contested Decision is not inadequate.

25. As regards whether there is misuse of powers, Italy has not established that the Commission, in setting those age limits, was pursuing different aims from those it was required to pursue in the examination of State aid.

19 — Secondo rapporto sulla condizione giovanile, for 1997, Istituto Nazionale di Statistica (ISTAT).

20 — Nor in the rest of the Community regulations, as far as I have been able to ascertain. In fact, I have found only one similar age limit, in Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid (OJ 2001 L 10, p. 20), Article 2(g) of which defines as 'disadvantaged worker', amongst others, 'any young person under 25 who has not previously obtained his first regular paid employment.'

21 — It also cites, in support of that limit, the International Labour Office's Report on employment and the young.

26. I consider, therefore, that this plea is unfounded and should be rejected.

B — *Second plea: infringement of the law, misuse of powers and inadequate statement of reasons when evaluating the circumstances in which the amount of aid is proportionate to job creation*

27. In Italy's view, the statement made by the Commission in Paragraph 91 of the Decision is unfounded. It ought to have proved, on objective evidence, that solely in the case of the aid to help workers with particular difficulties in entering or re-entering the labour market — namely, young people under 25, graduates up to the age of 29 and the long-term unemployed (out of work for more than a year) — or in the case of the aid allocated to job creation, does total aid not exceed the amount needed to promote employment.

28. The Commission points out that, after concluding that the training and work experience contracts were in the nature of aid, in that they distorted competition by strengthening the financial position and opportunities of the recipient firms with respect to competitors who did not receive the aid, it found that aid was compatible with the common market only if it were intended for workers who had not yet found employment or who had lost their employment, or if it were allocated to creating new jobs. Only in those cases did total aid not exceed the amount needed to stimulate employment, taking account of the employer's obligation to provide training for the worker and the particularly high unemployment rate in the Italian labour market.

29. I cannot agree with Italy on this point, for two reasons. First, in order to judge Paragraphs 91 and 92 of the Decision, it is necessary to keep in mind some of the earlier paragraphs, to be specific, Paragraphs 76 to 90, which contain the information and reasoning on which the Commission relies.

Second, in order to evaluate aid to employment, the Commission is required to follow the criteria laid down in Chapter IV of the Guidelines for application of the derogations established in Article 87(2) and (3) EC. In accordance with that rule, the Commission encourages aid to promote job creation. The fact that, in addition, vocational training is provided for the worker, will contribute significantly to a favourable assessment. However, in any event, the fourth indent of Paragraph 21 of the Guidelines requires the Commission to ensure that the level of aid does not exceed the amount needed to promote the creation of new jobs.

30. In that connection, the Commission has decided that the aid referred to in Paragraphs 91 and 92 of the Decision complies with the provisions of the Guidelines and qualifies for the exemptions laid down for aid to employment; it has taken into account the training content of the training and work experience contracts, the particularly serious unemployment situation in Italy, the proportionality between the social security contributions qualifying for the reduction and the remuneration of the workers, and the fact that the measures meet the needs of the regions concerned.

31. The Commission has adhered to the Guidelines on aid to employment when assessing the compatibility of the Italian aid scheme with the common market and has not, therefore, infringed the law. The statement of reasons in the Decision is not inadequate, since the reasons for the statement made in Paragraph 92 in respect of compatible aid are given in Paragraphs 86 to 91. Nor has Italy adduced any evidence to show that, when the Commission determined the circumstances in which the amount of the aid is proportionate to job creation, it was pursuing aims other than those it was required to pursue when examining State aid.

32. Consequently, this plea must also be rejected as unfounded.

C — *Third plea: inadequacy of the statement of reasons in relation to the quantification of the aid considered incompatible*

33. The Italian Government alleges that the Commission's reasoning in respect of the quantification of impermissible aid is illogical and that there are no clear criteria for assessing the methods of promoting and supporting employment, since, unless it is concerned with one of the restrictively defined sets of circumstances, it refuses to describe the training and work experience contracts as a measure intended to create new jobs. However, in Paragraph 86 of the Decision, it is conceded that the condition attached to employment on training and work experience contracts, that a firm must retain in employment at least 60% of workers whose training and work experience contracts expired in the preceding 24 months,[22] is a further incentive to firms to maintain the jobs for longer. They are a particularly effective series of advantages, because they prevent firms from abusing the system by systematically providing employment under fixed-term contracts

22 — All the language versions of the Decision which I have used, including the copy notified to the Italian authorities at the appropriate time, which has been enclosed with the application, give this percentage as 50%. In its application, the Italian Republic states that the percentage is 60%. I have also ascertained that this is the percentage established by Article 16(11) of Decree-Law No 299 of 16 May 1994, published in GURI No 116 of 20 May 1994.

instead of open-ended contracts, and because they encourage firms to take on workers. Bearing in mind the criteria laid down in the Guidelines on aid to employment, the Commission should have established the level of aid in the light of the difficulties faced by small and medium-sized undertakings, and the disadvantages experienced by the region concerned.

34. The Commission states that the disputed recruitment constitutes aid for maintaining employment when there is no creation of new jobs in the recipient firm for workers who have not yet found their first job or who have lost the job they had, or when the persons taken on are not workers experiencing particular difficulty in entering or re-entering the labour market. That aid to maintaining employment is not restricted to the areas eligible for exemption under Article 87(3)(a) refers, since it applies to the country as a whole and is neither degressive nor limited in time.

35. I am unable to agree with the applicant. In fact, the Guidelines on aid to employment distinguish between aid to maintain jobs, which is given to a firm to persuade it not to lay off its workers and is calculated on the basis of the total number of employees at the time it is granted, and aid to provide a job for those who have never had one or who have lost the job they had, which is allocated according to the number of jobs created. Paragraph 17 of the Guidelines stipulates that job creation must be net and that the mere replacement of a worker, without an increase in the workforce, does not constitute genuine job creation.

Following these criteria, the Commission took the view, in Paragraphs 93 to 96, that aid for employment, where it is not intended to be for the benefit of persons under 25, graduates under 29 or persons who have been without employment for more than one year, or for the creation of new jobs, is aid to maintain jobs, which is treated as similar to operating aid. In this connection, the Commission argues that, although the aid is granted to firms to enable them to take on workers under training and work experience contracts, not to prevent them from dismissing workers, the fact is that the aid is not subject to the requirement that new jobs are created but only that there are no redundancies.

36. However, such aid can be authorised only if, under Article 87(2)(b) EC, it is intended to make good the damage caused by natural disasters or exceptional occurrences. Under certain conditions, aid to maintain jobs may be authorised in regions qualifying for exemption under

Article 87(3)(a), namely aid to promote the economic development of regions where the standard of living is abnormally low or where there is serious underemployment.

37. I agree with the Commission that such aid, intended to maintain employment, should be declared incompatible with the common market, because it is not restricted to the areas eligible for exemption under Article 87(3)(a) EC, since it applies to the country as a whole; nor is it covered by the situation described in Article 87(2)(b) EC; nor is it degressive or limited in time.

38. Therefore, adequate reasons are given for the quantification of the aid deemed incompatible in the Decision, and the plea should be rejected as unfounded.

D — *Fourth plea: infringement of the law, misuse of powers and inadequate statement of reasons in relation to the measures under Article 15 of Law No 196/97*

39. Under this provision, firms in Objective 1 areas which convert training and work experience contracts, which have a maximum duration of 24 months, into open-ended contracts on their expiry continue to enjoy the same advantages for a further year. The Italian Government maintains that the Commission's assertion, in Paragraph 103 of the Decision — that the conversion of fixed-term training and work experience contracts into open-ended contracts does not create additional jobs as these jobs already exist, although they are not stable jobs — is incorrect. In fact, the scheme establishes a chain reaction the aim of which is to facilitate the conclusion of training and work experience contracts by providing an incentive to convert the contract into an open-ended contract, thus encouraging firms to create jobs.

40. The Commission states that the conversion of fixed-term contracts into open-ended contracts does not create additional jobs because those jobs, although they are not stable jobs, do already exist. Such measures cannot be regarded as creating or maintaining employment; they merely seek to consolidate employment which has previously been precarious.

41. Here too, I disagree with the view of the Italian Government, for several reasons. First, the Commission has not infringed the law by considering that only conversions of fixed-term contracts into open-ended

contracts which observe the requirement to increase the number of jobs in the firm comply with the stipulations laid down in the Guidelines. Although the conversion is of great advantage to the worker and to the stability of employment in general, the fact is that the provision extends by one year the advantages already enjoyed by the employer during the two-year term of the contract, and acquiring those additional benefits is not conditional on creating a new job.

Second, that assessment is not vitiated by inadequate reasoning, since the Commission sets out, in Paragraphs 97 to 110, the factors which led it, in Paragraph 111, to regard the other cases of aid for the conversion of training and work experience contracts into open-ended contracts which do not comply with the net job creation requirement as aid to maintain employment. Such aid constitutes operating aid, which does not satisfy the conditions in Article 87(2) EC for it to be compatible or those in Article 87(3) EC for it to be considered compatible.

Finally, the Italian Government has not established that, in reaching this conclusion, the Commission was pursuing aims other than those which corresponded to it in respect of State aid under the Treaty.

42. For the reasons stated, the plea is unfounded and must be rejected.

E — *Fifth plea: Infringement and misapplication of Article 87(3)(a) EC in the assessment of the compatibility of the aid to maintain employment, and inadequate statement of reasons*

43. The applicant complains that the Commission has not examined the aid to maintain employment in the light of the Community provision which allows it to be considered compatible if it is intended to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. As regards the national distribution of the aid, it cannot be said merely that it is allocated to the whole country, since the reduction higher than 25% is granted only to employers who operate in areas in which the employment situation is very unstable. From this angle, reductions in social security contributions which may constitute aid to maintain

employment are granted only in areas with severe underemployment. [23]

44. The Commission reiterates that the aid examined in the Decision is incompatible with the common market, since it was not restricted to the areas exempted under Article 87(3)(a) EC but applied to the country as a whole, it was neither progressively reduced nor limited in time, and it did not comply with the requirements laid down in the Guidelines on aid to employment.

45. I do not agree with the Italian Government that the Commission has misapplied Article 87 EC. The circumstances in which aid to maintain employment may be authorised are stated, in full detail, in Paragraph 22 of the Guidelines on aid to employment, and are those referred to in Article 87(2)(b) and (3)(a) EC.

In the case of Italy, it was only necessary to consider whether it was possible to apply the exemption provided in Article 87(3)(a), which establishes that aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment may be declared compatible. According to the case-law of the Court of Justice, the use of the words 'abnormally' and 'serious' in the exemption contained in Article 87(3)(a) shows that it concerns only areas where the economic situation is extremely unfavourable in relation to the Community as a whole. [24]

It is stated in Paragraph 3.5 of the Guidelines on national regional aid [25] that these conditions are fulfilled if the region, being a geographical unit at level II of the Nomenclature of Statistical Territorial Units, has a per capita gross domestic product, measured in purchasing power standards, of less than 75.0% of the Community average. Furthermore, Paragraph 4.17 of the Guidelines establishes that operating aid must be both limited in time and progressively reduced.

Given that the aid provided for under Italian law was applicable to the Mezzogiorno area and to those areas with a level of unemployment above the national aver-

23 — In the applicant's opinion, the Commission should have taken into account the scheme for the overall reduction in social security contributions introduced by Article 27 of Law 30 of 28 February 1997 — (GURI No 50, S.G./1997), for firms situated in the areas referred to in Article 87(3)(a), and also the additional premium per person granted to those firms under Article 4(17) of Law 449 of 27 December 1997 (GURI No 302, S.O./1997); these schemes have already been recognised as compatible with Community law. The Italian Government states that, since the events disputed in this case, the Commission has authorised exemption from payment of social security contributions during the first two years for new recruitment in the Mezzogiorno area under open-ended contracts, in accordance with the provisions of Law No 448 of 23 December 1998 (GURI No 302, S.O./1998).

24 — Case 248/84 *Germany* v *Commission* [1987] ECR 4013, paragraph 19.

25 — OJ 1998 C 74, p. 9.

age, it is clear that it was not restricted to areas which may benefit from the exemption in Article 87(3)(a). Nor was it limited in time or progressively reduced.

46. I think that, in the light of the arguments put forward in Paragraphs 93 to 96 of the contested Decision, the statement of reasons provided by the Commission in relation to its assessment of the compatibility with the common market of the aid to maintain employment granted under Italian law, is adequate.

47. I consider, therefore that this plea also should be rejected as unfounded.

F — *Sixth plea: infringement of Article 87 EC and inadequate statement of reasons in relation to the effect of the aid deemed incompatible on trade within the Community and on competition*

48. In paragraph 62 et seq. of the contested Decision, the Commission examines the effect of the Italian legislation on aid to promote training and work experience contracts. It explains that, under Law No 862/84, aid to employment was applicable to all firms in a uniform, automatic and non-discretionary manner and on the basis of objective criteria. Therefore it was not aid, within the meaning of Article 87(1) EC, but a general measure. However, the laws adopted after 1990 varied the reductions according to the location of the recipient firm and the sector to which it belonged. This meant that some firms received greater reductions than those granted to their competitors. These selective reductions, whether the selectivity operates at individual, regional or sectoral level, constitute, for the differential part of the reduction, State aid within the meaning of Article 87(1) EC, which distorts competition and may affect trade between Member States.

The Commission adds that this aid distorts competition in so far as it strengthens the financial position and opportunities of the recipient firms in relation to competitors who do not receive the aid, and affects intra-Community trade where the recipient firms export some of their products to other Member States; equally, even where such firms do not export their goods, national production is favoured because firms established in other Member States have less chance of exporting their products to the Italian market.

49. The Commission draws two conclusions from this reasoning: (1) the meas-

ures under examination are normally prohibited under Article 87(1) of the EC Treaty and Article 62(1) of the EEA Agreement and may be deemed compatible with the common market only if they qualify for one of the derogations provided for by those instruments; and (2) the aid scheme should have been notified to the Commission at the draft stage in accordance with Article 88(3). In the absence of such notification, the aid is unlawful under Community law, and may be considered compatible with the common market only if it qualifies for exemption under the Treaty.

50. The Italian Government acknowledges that this is so but considers that, in the light of the special features of the Italian scheme of aid to employment, the Commission should have given some justification, even if only a few words, for the effect on trade and the mere possibility of a distortion of competition; these are circumstances which are not clear, if it is considered that there are factors such as the limited nature of the aid once some of the compatible components have been eliminated, and such as the fact that the part deemed incompatible is intended for small and medium-sized firms with fewer than 15 workers, craft firms or firms situated in areas of recession.

51. The Court of Justice requested that, at the hearing held on 4 April 2001, the parties should express their views on two questions: (1) whether the reduction in social security contributions granted to firms outside the production sector affects trade between the Member States within the meaning of Article 87(1) EC; and (2) whether, in this connection, adequate reasons were stated in the contested Decision.

52. The representative of the Italian Government pointed out that the contested Decision does not examine the real and specific effect of the aid on trade between Member States. In his view, the reduction in social security contributions granted to small firms, situated in southern Italy, which are service-providers, distribution or craft companies, has no effect on that trade. He added that it would be very unfair for those companies, which took on workers under training and work experience contracts, believing the reduction in contributions to be lawful, to be asked now to repay to the State the amount of the reduction.

53. The Commission stated that the Court of Justice has consistently held that, in the case of an aid programme, the Commission may confine itself to examining the characteristics of the programme in question in order to determine whether, by reason of the amounts or high percentages of aid, the nature of the investments for which aid is granted or other terms of the programme, it gives an appreciable advantage to recipients in relation to their competitors and is

likely to benefit in particular undertakings engaged in trade between Member States. [26]

It pointed out that, when considering an aid scheme as extensive as the Italian scheme, it confined itself to examining production industries. It drew attention to the fact that, as regards the effects of the provision in question on trade between Member States, the Court has consistently held that the relatively small amount of aid or the relatively small size of the undertaking which receives it does not as such exclude the possibility that intra-Community trade might be affected. [27] It emphasised that it had not been notified of the aid scheme in question and is not obliged, in such cases, to each sector or each individual instance of aid. The time to ascertain, case by case, whether the aid infringes the Treaty, is when recovery is effected. It cited, as examples of sectors in which aid will have had an effect on trade, the banking, insurance and transport sectors, but considered that, in others, such as the retail trade, social services or small-scale catering industry, the effect will have been imperceptible.

54. I still cannot agree with the Italian Government. The effect of the aid on trade and the distortion of competition had been established before the Commission came to examine its compatibility with the common market. In any event, if the Commission were required in its decision to demonstrate the actual effect of aid which had already been granted, that would favour those Member States which grant aid in breach of the duty to notify laid down in Article 88(3) EC, to the detriment of those which do notify aid at the planning stage. [28]

Furthermore, a Member State may not, by invoking a scheme such as the Italian one, make grants of aid which, if examined individually, would be regarded as State aid incompatible with the common market.

55. I consider, therefore, that the Commission has not infringed Article 87 EC, since it was not required, once it had been declared that part of the Italian employment aid scheme was incompatible, to re-examine its effect on intra-Community trade and competition.

56. For these reasons, I believe that this plea is unfounded and should be rejected also.

26 — *Germany* v *Commission*, cited in footnote 24 above, paragraph 18.

27 — Judgments in Case C-142/87 *Belgium* v *Commission* ('*Tubemeuse*') [1990] ECR I-959, paragraph 43; Joined Cases C-278/92, C-279/92 and C-280/92 *Spain* v *Commission* [1994] ECR I-4103, paragraphs 40 to 42; and *Germany* v *Commission*, cited in footnote 9 above, paragraph 32.

28 — Case C-301/87 *France* v *Commission* [1990] ECR I-307, paragraph 33.

G — *Seventh plea: misapplication of the 'de minimis' rule*

57. The Italian Government points out that the Commission has applied the '*de minimis*' rule incorrectly, with illogical restrictions. From the moment the Italian scheme was deemed to be only partially incompatible with the common market, the Commission could not consider all the measures taken in favour of firms which employed workers on training and work experience contracts in order to impose the limit of EUR 100 000 on each one for a period of three years. The Italian Government took the view that the limit should have been fixed only for the part of the reduction deemed to be incompatible. Otherwise, it would make no sense to distinguish between a compatible reduction and an incompatible reduction.

58. The Commission explains that Article 87 EC is not applicable to measures covered by the *de minimis* rule, according to which the total amount of the measures adopted in favour of firms which have concluded training and work experience contracts or have converted them into open-ended contracts may not exceed EUR 100 000 within a three-year period. The *de minimis* rule cannot justify the other measures.

59. The Italian Government misinterprets the rule. In its Notice on the *de minimis* rule for State aid,[29] the Commission states that, in an effort to reduce the administrative burden, and in the interest of small and medium-sized undertakings, it is introducing an absolute threshold figure for aid, below which Article 87(1) can be said not to apply, so that a measure need no longer be notified in advance. It also points out that, although any financial assistance given by the State to one firm may distort competition, not all aid has an appreciable effect on trade and competition between Member States. This is particularly true where the amount of aid involved is very small, and it is small amounts of aid which are usually granted to small and medium-sized undertakings.

There are three conditions for application of the rule: (1) the total maximum amount must not exceed EUR 100 000 over a three-year period; (2) that amount will include all public assistance considered to be *de minimis* aid, and the recipient must be able to obtain other aid under schemes approved by the Commission; and (3) that amount must apply to aid of all kinds, irrespective of the form it takes or the objective pursued, with the exception of export aid.

29 — OJ 1996 C 68, p. 9. The Commission has recently adopted Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid, OJ 2001 L 10, p. 30.

60. Pursuant to this rule, the Commission concluded, in the contested Decision, that the total amount of aid granted to firms which had concluded training and work experience contracts could not exceed EUR 100 000 over a three-year period. That did not mean that the firms could not obtain other aid, provided that it was compatible. What is not possible, without nullifying the aim of the rule, is to divide the aid covered by the *de minimis* rule into a compatible part and an incompatible part, since, as it is exempt from the requirement to give prior notification, there is no need to express an opinion as to its compatibility.

61. I think, therefore, that the Commission applied the *de minimis* rule correctly in the contested Decision. The plea is unfounded and should accordingly be rejected.

H — *Eighth plea: in the alternative, inadequate statement of reasons as regards the necessity, or at least the appropriateness of, effecting recovery of the aid declared incompatible*

62. The applicant considers that there are circumstances which justify foregoing the return of the unpaid social security contributions. It argues, first, that the aid scheme has regulated a general mechanism of employment law, not a measure with an economic-sectorial objective; second, the Community Guidelines on aid have not always been noted for their clarity, so that the principle of the legitimate expectations of economic operators has not been observed, since only recently has there been an awareness that such aid, as well as constituting a measure with a social aim, could prove to be factors affecting, even indirectly, the competitiveness of firms; third, the aid scheme has been in force in Italy for some time and its effects have become established; to remove it would therefore be extremely complicated; finally, the aid scheme has been applied to the whole fabric of Italian production, especially in southern Italy, which would be the worst affected by requests for repayment.

63. The Commission states that, pursuant to its Notice of 24 November 1983,[30] where aid which is incompatible with the common market has been granted unlawfully, it always requires the Member State

30 — OJ 1983 C 318, p. 3.

to seek repayment from the recipients, in order to restore the situation prevailing before the aid which has distorted competition and affected trade was granted.

64. I cannot agree with the Italian Government on this point either.

65. Under Article 88(2) EC, the Commission is to decide that the State concerned is to abolish or alter the aid if it finds that is not compatible with the common market. Where the proposed aid has already been granted, that decision may take the form of an order to the national authorities to recover the aid. [31] The Court of Justice has consistently held that the Commission is competent, when it has found that aid is incompatible with the common market, to decide that the State concerned must abolish or alter it. To be of practical effect, this abolition or modification may include an obligation to require repayment of aid granted in breach of the Treaty. [32]

Moreover, the Court considers that the recovery of unlawful aid is the logical consequence of the finding that it is unlawful. Consequently, such recovery cannot be regarded as disproportionate to the objectives of the Treaty in regard to State aid. [33]

66. In spite of the obligation to provide a statement of reasons for a measure, in the matter of State aid, where, contrary to the provisions of Article 88(3) EC, the proposed aid has already been granted, the Commission, which has the power to require the national authorities to order its repayment, is not obliged to provide specific reasons in order to justify the exercise of that power. [34]

Even so, the Commission has devoted Paragraphs 120 to 122 of the contested Decision to stating reasons, albeit briefly, for recovery of the aid, indicating the circumstances in which it must be done and referring expressly to its Notice of 24 November 1983.

67. I do not believe that the principle of legitimate expectations may be raised as a

31 — Case 310/85 *Deufil* v *Commission* [1987] ECR 901, paragraph 24.

32 — Case 70/72 *Commission* v *Germany* [1973] ECR 813, paragraph 13.

33 — *Belgium* v *Commission*, cited in footnote 27 above, paragraph 66.

34 — *Spain* v *Commission*, cited in footnote 27 above, paragraph 78, and Case C-75/97 *Belgium* v *Commission* [1999] ECR I-3671, paragraph 82.

valid objection to recovery of the aid because, in its Notice of 1983, the Commission informed potential recipients of State aid that aid granted unlawfully was unreliable, since they might be asked to return it.

Furthermore, under Article 14(1) of Regulation (EC) No 659/99, [35] where negative decisions are taken in cases of unlawful aid, the Commission is to decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary. The Commission is not to require recovery of the aid if this would be contrary to a general principle of Community law.

68. As regards the difficulties which a Member State may experience when implementing a Commission decision ordering it to recover aid unlawfully granted, the Court of Justice has consistently held that a Member State which, in giving effect to a Commission decision on State aid, encounters unforeseen and unforeseeable difficulties or becomes aware of consequences overlooked by the Commission, must submit those problems to the Commission for consideration, together with proposals for suitable amendments to the decision in question. In such cases, the Commission and the Member State must, by virtue of the rule in Article 10 EC, which imposes on each of them a duty of genuine cooperation, work together in good faith with a view to overcoming the difficulties whilst fully observing the Treaty provisions and, in particular, the provisions on aid. [36]

69. I consider, therefore, that this plea too is unfounded and should be rejected.

V — Costs

Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicant has been unsuccessful in all its pleas, I therefore suggest that it be ordered to pay the costs.

35 — 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 1999 L 83, p. 1).

36 — Case 52/84 *Commission* v *Belgium* [1986] ECR 89, paragraph 16; Case 94/87 *Commission* v *Germany* [1989] ECR 175, paragraph 9; Case C-183/91 *Commission* v *Greece* [1993] ECR I-3131, paragraph 18; Case C-349/93 *Commission* v *Italy* [1995] ECR I-343, paragraph 13; Case C-348/93 *Commission* v *Italy* [1995] ECR I-673, paragraph 17; and Case C-350/93 *Commission* v *Italy* [1995] ECR I-699, paragraph 16.

VI — Conclusion

70. In the light of the foregoing considerations, I propose that the Court of Justice should:

(1) dismiss in its entirety the action brought by the Italian Republic for the annulment of Commission Decision No C-1364 of 11 May 1999 on the aid scheme to promote employment; and

(2) order the applicant to pay the costs.