

COMMISSION

COMMISSION DECISION

of 26 November 2003

on the aid scheme which Italy (Region of Piedmont) is planning to implement for the reduction of airborne pollution in its territory

(notified under document number C(2003) 3520)

(Only the Italian version is authentic)

(Text with EEA relevance)

(2006/63/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

(2) By letter D/50722 of 3 February 2003, the Commission requested additional information on the notified scheme.

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

(3) The Italian authorities submitted additional information by letter of 25 March 2003, registered on 28 March (A/32278).

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

(4) By letter SG(2003) D/229965 dated 28 May 2003, the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the proposed measure.

Having regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁾,

(5) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽²⁾. The Commission called on interested parties to submit their comments within the prescribed period (one month), pursuant to Article 6(1) of Regulation (EC) No 659/1999.

Having called on interested parties to submit their comments pursuant to the provisions cited above,

Whereas:

(6) The Commission received comments from interested parties on 29 August 2003 (Bundesverband der deutschen Gas- und Wasserwirtschaft e. V. (BGW), Germany), 1 September 2003 (Federal Ministry of Finance, Germany) and 2 September 2003 (OMV Erdgas, Austria).

1. PROCEDURE

(1) By letters dated 16 December 2002, registered by the Commission on 18 December (A/39321), and 20 December 2002, registered on 31 December (A/39483), the Italian authorities notified, pursuant to Article 88(3) of the EC Treaty, an aid scheme planned by the Region of Piedmont for the extension of the network of service stations for the sale of natural gas used as motor fuel.

(7) Italy's official response — after two extensions of the deadline had been requested by the Italian authorities on 10 July and 5 August 2003 and granted by the Commission on 7 August 2003 — was submitted by letter of 10 October 2003 (A/37006).

⁽¹⁾ OJ L 83, 27.3.1999, p. 1.

⁽²⁾ OJ C 183, 2.8.2003, p. 5.

2. DETAILED DESCRIPTION OF THE SCHEME

2.1. Legal basis and objective of the scheme

- (8) The notified aid is based on the following legal provisions:

A. Principal legislation

- Decision of the Regional Council (DGR) No 67-7675 of 11 November 2002 'Scheme for the extension of the network for the sale of natural gas used as motor fuel. Transfer to the municipalities of funds to be allocated to companies intending to set up service stations for the sale of natural gas used as motor fuel. Time limits for the submission of applications and criteria for assessing them';

B. Secondary legislation

- Law No 426 of 9 December 1998 'New measures in the environmental field';
- Ministerial Decree of 22 December 2000 'Identification of the national gas pipelines network for the purposes of Article 9 of Legislative Decree No 164 of 23 May 2000';
- Ministerial Decree No 256 of 17 July 1998 'Rules on incentives for motor vehicles powered by natural gas or liquefied petroleum gas (LPG)';
- Ministerial Decree of 28 May 1999 'Grant of loans to local authorities by Cassa Depositi e Prestiti for financing the measures in the environmental field provided for by Law No 426 of 9 December 1998';
- Ministerial Decree of 5 April 2001 'Direct grants to members of the public for the purchase of electric vehicles and vehicles powered by natural gas or LPG and for setting up service stations for the sale of natural gas and LPG';
- Decision of the Regional Council No 13-7622 'Extension of the use of natural gas, LPG and other innovative means of propulsion with a low environmental impact in the public service

vehicle fleet. Establishment of allocation criteria and transfer of funds to the Provinces';

- Decision of the Regional Council No 62-6806 'General criteria and arrangements for funding by the Plan for investment in local public transport in Piedmont under Law No 194/98. Allocation to the Regional Transport Directorate of EUR 9 009 895,07 under heading 25192/2002'.

- (9) The scheme concerns the extension of the network of service stations for the distribution of natural gas (methane) used as motor fuel. There are currently only 12 such stations in the territory of Piedmont, compared with 80 in Emilia-Romagna and 64 in Veneto. The number is deemed insufficient to attain the Kyoto target of reducing CO₂ emissions — as laid down in national and regional legislation — and to lessen the environmental impact of other hazardous airborne substances by reducing the level of the following pollutants in the region: (a) nitrogen dioxide; (b) fine particulates; (c) benzene. These pollutant emissions are a consequence of traffic congestion and the excessive use of a certain mix of traditional motor fuels. For this reason, the Region of Piedmont has focused its action on public and private transport, in terms of both traffic/structure of the vehicle fleet and fuel distribution.

2.2. Form of the measure

- (10) The proposed measure is provided in the form of a grant.

2.3. Intensity, recipients and eligible costs

- (11) The grant amounts to EUR 150 000 per service station. No intensity is indicated. Both the eligible costs and the recipients are described in Section 4 'Comments from Italy'.

2.4. Budget and duration

- (12) The budget amounts to around EUR 5 million. The duration of the scheme is conditional on the budget allocation. The latter is scheduled for the years 2002, 2003 and 2004.

3. GROUNDS FOR INITIATING THE PROCEDURE

- (13) In its decision of 28 May 2003 (hereinafter the decision initiating the procedure), the Commission set out the doubts raised by the notified scheme with regard to a number of issues.

3.1. Aid amount

- (14) The Commission pointed out that the aid amount exceeded the EUR 100 000 maximum that may be granted over a period of three years to any one enterprise under Commission 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⁽³⁾ and noted that the Italian authorities did not intend to reduce the planned grants of EUR 150 000 per service station, on the ground that the said amount was the minimum incentive needed to spur investments in new service stations in the region.

3.2. Distance of the network from intra-Community borders and possible impact of the measure on intra-Community trade as the aid is not *de minimis*

- (15) In its decision initiating the procedure, the Commission noted that, at first sight, trade was potentially affected as natural gas is traded internationally and service stations could be located close to the border.

3.3. Ownership of the natural gas service stations and identity of the aid recipients

- (16) In its decision initiating the procedure, the Commission referred to a previous decision it had taken in a similar case: Decision 1999/705/EC of 20 July 1999 on the State aid implemented by the Netherlands for 633 Dutch service stations located near the German border⁽⁴⁾. That Decision was subsequently upheld by the Court of Justice in its judgment of 13 June 2002⁽⁵⁾.

3.4. Environmental impact of the measure

- (17) The Commission stated that in the notification the Italian authorities had not clearly demonstrated that the environmental benefits which the scheme was intended to promote would materialise.
- (18) Two points raised by Decision 1999/705/EC and the subsequent Court judgment in Case C-382/99 are especially relevant for the present case.

- (19) In its decision initiating the procedure, the Commission stressed the need for correct identification of the 'recipient', which could be a person other than and not coinciding with the 'service station'. That would be the case, for example, if (a) the same owner possessed or operated several service stations or (b) the same dealer applied for aid more than once. It was quite possible for a large oil company to have *de facto* control over service station operators by virtue of an exclusive purchasing agreement or any other agreement.

- (20) Therefore, in order to verify that there was no incompatible cumulation of aid, the Commission classified service stations in six categories, of which the three most relevant were:

(a) dealer-owned/dealer-operated (Do/Do) service stations, where the dealer owns the service station, operates it at his own risk and is linked to the oil company (the supplier) by an exclusive purchasing agreement;

(b) company-owned/dealer-operated (Co/Do) service stations, where the dealer rents the service station, operates it at his own risk and is linked to the supplier by an exclusive purchasing agreement;

(c) company-owned/company-operated (Co/Co) service stations, where the service station is operated by employees or subsidiaries of the oil company. They bear no risk and are not free to choose their supplier.

- (21) The burden of proving the real ownership of the service stations — and the nature of the contractual agreement linking the supplier to the dealer — lay with the Italian authorities. To that end, the Commission submitted two questions to the Italian authorities, with regard to (1) the proposal to amend the scheme so as to bring it into line with all the provisions of Regulation (EC) No 69/2001⁽⁶⁾ and (2) the ownership structure of the service stations and the size of the recipient enterprises. In particular, the Commission wanted to know whether some or all of the new stations would be part of any selling network belonging to large companies or multinational oil groups.

⁽³⁾ OJ L 10, 13.1.2001, p. 30.

⁽⁴⁾ OJ L 280, 30.10.1999, p. 87.

⁽⁵⁾ Case C-382/99 *Netherlands v Commission* [2002] ECR I-5163.

⁽⁶⁾ See footnote 3.

- (22) The Commission deemed the Italian authorities replies insufficient as they did not rule out the possibility of applications for aid being repeatedly submitted by different service stations belonging to the same large enterprise(s), and they furthermore failed to provide evidence that the contractual relationship ⁽⁷⁾ was such as to bind the dealer (operating the service stations) to the supplier without leaving him any leeway.

3.5. Eligible costs

- (23) The Commission noted that the investment aid was not clearly linked to any eligible cost provided for by the Community guidelines on State aid for environmental protection ⁽⁸⁾, and in particular point 37 thereof. Neither did the investment aid notified under the scheme in question correspond to any of the cases covered by points 29 (aid to improve on Community standards), 30 (energy saving), 31 (combined production of electric power and heat) or 32 (aid to promote renewable sources of energy) of the environmental aid guidelines ⁽⁹⁾.

3.6. Final remarks

- (24) Notwithstanding its doubts, the Commission recognised that there was an a priori presumption that any distortions of competition would indeed be limited.
- (25) The Commission also noted that the scheme was not in line with any other guidelines or frameworks.

4. COMMENTS FROM ITALY

4.1. Environmental impact of the measure

- (26) In their comments, the Italian authorities took the view that — in order to attain the Kyoto targets, which had been embodied in both Community and Italian legislation — it was necessary to act on one of the most polluting human activities, namely road transport (mobility). CO₂, PM₁₀, PM_{2.5} and NO₂ were the main pollutants produced by this activity and natural gas was the best alternative to traditional fuels. Its wider use should have an impact on public transport, public service vehicle fleets and road haulage (freight transport).

⁽⁷⁾ Such as an exclusive purchasing agreement or other binding agreements — and possibly special exclusive clauses linking the supplier and the service stations.

⁽⁸⁾ OJ C 37, 3.2.2001, p. 3.

⁽⁹⁾ Points 68 to 71 of the Community guidelines on State aid for environmental protection refer to the commitment laid down in the Kyoto Protocol, signed by the Member States and by the Community, to limit or reduce greenhouse gas emissions but also stress that 'it is still too early to lay down the conditions for authorising any such aid [granted by Member States]'.

- (27) Moreover, in Piedmont, motor vehicle traffic in urban centres with more than 10 000 inhabitants was subject to limitations. In this respect, natural gas could play an important role in attaining the objective of sustainable mobility.

- (28) The claimed impact on pollutant emissions of replacing vehicles (buses, trucks, vans, etc.) powered by traditional fuels with natural gas-driven vehicles was supported by statistical evidence provided by the Piedmont regional authorities.

- (29) The Commission itself had proposed that 20 % of petrol and diesel fuel used in the road transport sector be replaced by alternative fuels, and natural gas had been identified as one of the fuels that could contribute significantly to the attainment of that objective.

4.2. Aid amount

- (30) In their comments, the Italian authorities took the view that EUR 150 000 per service station was the minimum level of incentive needed to stimulate and promote such investments — both when the infrastructure is built as part of an entirely new station for the supply of natural gas as motor fuel and when it is limited to a new outlet (dispenser or pump, with the annexed infrastructure) built at an existing station. The amount of EUR 150 000 was based on an estimate of the minimum incentive in a sector where profitability under normal market conditions was deemed to be still low, due to long pay-back periods and very slim profit margins. This was demonstrated by the fact that in the past 25 years only six sales outlets had been built.

- (31) In support of their arguments, the Italian authorities provided the Commission with estimates of the operating margin of an average operator, based on the costs calculated for a standard service station for the sale of natural gas as motor fuel connected to a pipeline with a normal pressure of between 5 and 12 bars. The operating margin, gross of both variable and fixed costs, amounted to EUR 0,069 per cubic metre of gas sold. Net of the variable costs, the margin fell to EUR 0,040 per cubic metre (standard margin applied by the operator), which would be further reduced by the annual overheads (staff, maintenance and administrative costs), estimated at EUR 10 000 per year.

- (32) In the example provided by the Italian authorities, natural gas accounted for only 2,51 % of the annual turnover of the service station.

4.3. Investment costs of the service stations

- (33) In their reply, the Italian authorities provided a detailed breakdown of the eligible investment costs. These were limited to the machinery and equipment needed for the supply of natural gas and the safety of the installation and included:

- substations,
- compressors,
- damping cylinders,
- control panels,
- housings for compressors,
- refrigeration units,
- electrical substations,
- check weight twin dispensers (nozzles),
- canopies for the dispensers,
- other equipment needed for the supply of the gas and the safety of the installation.

- (34) The total cost of the above machinery/equipment (the only eligible costs) averaged around EUR 500 000, for a compression system capable of handling gas delivery pressures of between 5 and 12 bars.

- (35) Other, non-eligible costs included: the connection to the gas pipeline, the electricity grid and other public utilities (around EUR 100 000 on average, but with possible variations that greatly depended on distance and the lie of the land); the purchase of land; construction works (road links); ancillary costs (planning, acquisition of permits and licences). Such costs were entirely borne by the investor.

- (36) Although it is not necessary to analyse any further the investment costs indicated by the Italian authorities for installing an additional sales outlet for natural gas at an existing service station, since the assessment concludes that the proposed measure does not constitute State aid, the Commission considers that a maximum cost of EUR 300 000 for installing a gas distribution outlet is acceptable, on the basis of market conditions in other Member States.

4.4. Distance of the network from the intra-Community borders and possible impact of the measure on intra-Community trade

- (37) Given the particular structure of Italy's domestic supply and the strategic choices made in the past in order to diversify supplies and reduce its dependence on oil, methane (natural gas) accounted for a very significant share of the main motor fuels supplied in Italy.

- (38) The following table compares the situation in Italy with that in other European countries ⁽¹⁰⁾.

Country	LPG outlets	Methane outlets
Austria	15	8
Belgium	625	8
Bulgaria	36	0
Croatia	16	1
Denmark	465	1
Finland	3	5
France	1 962	12
Germany	396	356 (51 under construction)
Greece	35	n/a
Ireland	150	2
Italy	2 126	402
Luxembourg	12	5
Norway	31	4
Netherlands	2 200	9
Poland	3 300	8
Portugal	140	5
United Kingdom	1 254	13
Czech Republic	350	12
Russia	342	208
Slovakia	25	4
Slovenia	6	n/a
Spain	39	10
Sweden	11	23
Switzerland	14	27
Turkey	181	3
Ukraine	n/a	87
Hungary	40	3

⁽¹⁰⁾ Assogasliquidi Consorzio ECOGAS.

- (39) The following table compares the situation of different Italian regions.

Region	Methane outlets
Valle d'Aosta	0
Piedmont	12 ⁽¹⁾
Liguria	7
Lombardy	29
Veneto	68
Friuli-Venezia Giulia	4
Trentino-Alto Adige	3
Emilia-Romagna	81
Marche	44
Abruzzo	12
Molise	3
Tuscany	51
Umbria	16
Lazio	13
Apulia	20
Campania	19
Basilicata	3
Calabria	1
Sicily	6
Sardinia	0
'White outlets' (independent outlets, not broken down by region): all fuels	[976]
Total for Italy	392

⁽¹⁾ The figure for Piedmont is 14 if two 'white outlets' are taken into account.

- (40) Out of 1 974 ⁽¹¹⁾ outlets for the supply of motor fuels in Piedmont (down from 3 753 in 1980), 14 are authorised also for the supply of methane, of which only 12 are operational and just six have been built in the past 25 years. The provinces of Turin and Alessandria have the largest share (six outlets each), followed by Cuneo and Novara, with just one outlet. Asti, Biella, Verbania and Vercelli have none.

- (41) The planned budget for the scheme will allow only 33 new outlets to be built. On the demand side, Piedmont has a total fleet of 5 500 methane-fuelled vehicles

(0,16 % of the total). Nationwide, the figure is 330 000 vehicles (0,80 % of the total fleet).

- (42) With regard to the proximity of the methane outlets to the border with France and the possible impact on intra-Community trade, the Italian authorities put forward the following arguments:

- The range of a methane-fuelled motor vehicle was around 300 km, meaning that refuelling was only possible at a station that was within reach during opening hours (no self-service was allowed by law in Italy).
- The territorial distribution of the pipelines heavily influenced the location of the service stations since, if an outlet was to be economically viable, it had to be positioned at short distance from the closest pipeline. A map provided by the regional authorities showed the path of the two pipelines closest to the border between Italy and France: (1) the 'Val di Susa' pipeline linked Salbertrand to Bardonecchia, via Oulx; (2) the 'Val Chisone' pipeline followed the alignment of the valley between Roure and Cesana Torinese, mid-way between Sestrière and Clavière, on the French border; the two pipelines were connected through Sauze d'Oulx.
- The regional authorities of Piedmont argued that natural gas service stations in Italy were not in any way in competition with existing or future French service stations and did not distort or threaten to distort competition such as to affect trade between Member States within the meaning of Article 87(1) of the EC Treaty. On the contrary, the anticipated growth in the number of natural gas-driven vehicles in Piedmont could be expected — through cross-border traffic flows — to result in increased sales of natural gas also by non-Italian service stations, located in France or other Member States.

- (43) In conclusion, the situation described above ruled out any negative cross-border impact of Piedmont's natural gas service stations and merely suggested that the measure would have a localised — i.e. regional — effect at present and a potential positive impact in the future.

4.5. Ownership of the natural gas service stations and identity of the aid recipients (nature of the agreement between the supplier and the dealer)

- (44) The fuel supply (distribution) sector was liberalised in 1998 ⁽¹²⁾.

⁽¹¹⁾ Situation updated to June 2003.

⁽¹²⁾ Under Legislative Decree No 32/1998.

- (45) All operators meeting the subjective and objective — such as minimum performance and safety standards, environmental protection, etc. — requirements were eligible for authorisation. The licence was issued by the competent municipality. The measure did not make any distinction based on the size or market power of the investor and was addressed to both large oil companies and independent dealers, either already operating on the market or wishing to enter it for the first time. The budget constraints made possible the construction of just 33 new outlets and the recipients would be selected by means of an open procedure (public tender).
- (46) The licensee could decide to operate the outlet itself or to entrust it to a third-party operator by means of either a loan for use of not less than six years' duration (renewable) or a fuel supply contract ⁽¹³⁾.
- (47) The licensees could be either oil companies which operated under their own brand (ERG, Tamoil) or independents (so-called *retisti* or network operators). Based on evidence provided by the Italian authorities, 65 % of all fuel distribution outlets in Piedmont belonged to oil companies whereas 35 % belonged to independents.
- (48) When the licensee was an oil company, the prevailing pattern — both in Piedmont and nationwide — was the company-owned/dealer-operated pattern (Co/Do), where the dealer rents the service station, operates it at his own risk and is linked to the supplier-licensee by either an exclusive purchasing agreement (*somministrazione*) or a loan for use (*comodato petrolifero*) ⁽¹⁴⁾. In this case, the outlet displays the brand of the oil company, the latter being the owner of the installation. The company makes all the necessary investments needed for the transformation and upgrading of the outlet. The operator buys the fuel from the company and pays for it with a deferment of three to four days. The dealer, having become the sole owner of the fuel (natural gas/LPG), sells it at a price set freely by him but the company has the right to suggest a selling price and/or indicate a maximum sale price.
- (49) Only in 10 instances had Piedmont seen the adoption of the company-owned/company-operated (Co/Co) pattern, where an oil company owns the service station and
- operates it itself. In none of those cases did the service station sell natural gas.
- (50) The contracts/agreements between the oil companies (the owner-licensee) and the operators' association had been notified to and approved by the Italian competition authority.
- (51) With regard to the remaining 35 % of outlets — the dealer-owned/dealer-operated (Do/Do) pattern — the operator (*retista*) concluded an exclusive purchasing agreement ⁽¹⁵⁾ with an oil company and used the company's brand.

5. COMMENTS FROM INTERESTED PARTIES

- (52) All the interested parties that submitted comments pursuant to Article 6(1) of Regulation (EC) No 659/1999 ⁽¹⁶⁾ supported the position taken by the Region of Piedmont with regard to the need to promote the use of natural gas in the transport sector to achieve environmental objectives.
- (53) OMV Erdgas pointed to the favourable environmental effects expected from the proposed initiative and the importance of promoting the use of natural gas as an objective of environmental policy. The use of natural gas as motor fuel had triggered a major conversion effort by the main car manufacturers in Europe (Fiat, Opel, Volvo, Renault, VW, Ford and Mercedes) and was deeply affecting the commercial vehicle sector too. Yet the market for natural gas was not mature and needed further investments. The first step in that direction was the development of an appropriate service station infrastructure which, given the limited number of natural gas-driven vehicles on the roads in Europe, was as yet not profitable. The proposal for a Directive presented by the Commission on 7 November 2001 set a target share of the motor fuel market for natural gas of 10 % by 2020 ⁽¹⁷⁾. Support for the establishment of the natural gas infrastructure was therefore necessary and justified. OMV Erdgas also pointed to the substantial difference between the scheme proposed by Piedmont and the Dutch scheme: in the latter case, Dutch service stations located along the border with Germany were granted aid in order to compensate for excise differentials in the border region and allow Dutch outlets to compete on an equal footing with German stations across the border. This was not the case in Piedmont.
- (49) Only in 10 instances had Piedmont seen the adoption of the company-owned/company-operated (Co/Co) pattern, where an oil company owns the service station and

⁽¹³⁾ In Italian these are called *contratto di comodato* and *contratto di somministrazione* respectively.

⁽¹⁴⁾ In relation to the discussion of the Dutch precedent, see points 17 to 22 above.

⁽¹⁵⁾ In Italian *contratto di convenzionamento*; the duration of these contracts is variable, often one year, and at all events less than five.

⁽¹⁶⁾ See footnote 1.

⁽¹⁷⁾ These observations, although not necessarily fully shared by the Commission, are not examined in detail since the assessment concludes that the proposed measure does not constitute State aid.

(54) In its observations, the Federal Government of Germany also stressed the substantial difference between the Dutch and Italian cases. First, the *de minimis* rule was clearly not applicable to the measure adopted by the Region of Piedmont and any discussion on that basis would be pointless. Second, the German Government took the view that the measure fell to be assessed under the Community guidelines on State aid for environmental protection, because of its stated objective (as distinct from its effect). The other arguments put forward by the German Government did not differ from those of OMV Erdgas⁽¹⁸⁾.

(55) BGW (Bundesverband der deutschen Gas- und Wasserwirtschaft e. V.), the Federal Association of the German Gas and Water Industry, welcomed the initiative of the Region of Piedmont and described similar developments and actions pursued in Germany to develop the market for natural gas in road transport. The central argument was that natural gas service stations in Italy were not in any way in competition with German stations, and there was no distortion or threat of distortion of competition affecting trade between Member States within the meaning of Article 87(1) of the EC Treaty. On the contrary, the anticipated growth in the number of natural gas-driven vehicles in Piedmont could be expected — through cross-border traffic flows — to result in increased sales of natural gas in German service stations too, a positive development in itself. It should be observed that the same argument was used by the regional authorities of Piedmont in relation to France.

6. ASSESSMENT

6.1. Legality of the aid

(56) The Italian authorities have fulfilled their obligation under Article 88(3) of the Treaty by notifying the scheme to the Commission before putting it into effect.

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

(57) Article 87(1) of the Treaty states that 'any aid granted by a Member State or through state resources in any form

whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market'.

(58) The scheme provides an advantage through state resources (grants of EUR 150 000 from the budget of the Piedmont Region) to certain undertakings (the licensees, owners of the service stations). The measure is therefore selective in scope. Nevertheless, based on the evidence provided by the Italian authorities after the Commission decided to initiate the formal investigation procedure, the effect on trade between Member States within the meaning of Article 87(1) of the Treaty has been demonstrated to be nil.

(59) Trade could, however, be affected by the measure if there was competition between the Italian outlets receiving the grant from the Piedmont Region and methane outlets in another Member State. In this context, it should be stressed that the only Member State with which Piedmont has a common border is France. Most of this border is mountainous and can therefore be crossed by vehicle only through passes or toll tunnels. In addition, the outlets have to be connected to the existing pipelines within the regional borders: as mentioned above, the path of the two pipelines closest to the border between Piedmont and France cross the Alps at Bardonecchia and Cesana Torinese, which are accessible from France by the Fréjus toll tunnel and the Montgenèvre pass respectively. Contrary to the case covered by Decision 1999/705/EC, it is therefore inconceivable that a driver would cross the border in order to buy cheaper methane, especially since the range of a methane-fuelled engine is smaller than a petrol engine (300 km versus at least 600 km) and refuelling with methane is possible only during service station opening hours.

(60) Trade could also be affected by the measure if the same undertaking could receive several grants through the building of several methane distribution outlets. In this connection, it should be mentioned that only 33 new outlets are expected to be built given the budget constraints. The grants will be allocated following a public tender. In practice, only existing service stations will receive the grant as a service station will never be viable if it sells only methane. Out of the 1 974 service stations in the Piedmont Region, only 10 are company-owned/company-operated (Co/Co) and are therefore owned by oil companies. The remaining 1 964 service

⁽¹⁸⁾ Other Commission documents or programmes cited by the German Government in support of its position are: the Commission Green Paper 'Towards a European strategy for the security of energy supply'; Directive 1999/30/EC (on limit values for various substances in ambient air); the Commission White Paper 'European transport policy for 2010'; the Civitas I and Civitas II (Clean urban transport) Community R & D programmes; and the Commission communication on alternative fuels for road transportation and on a set of measures to promote the use of biofuels (COM(2001) 547 final).

stations are dealer-owned/dealer-operated (Do/Do) (around 35 %) and company-owned/dealer-operated (Co/Do) (around 65 %). There is, in the present case, no similar mechanism to the PMS (price management system) clause which would result in the grant being passed through to the oil company in the Do/Do and Co/Do patterns as was the case in Decision 1999/705/EC ⁽¹⁹⁾. Therefore, the same company can receive several grants only in the Co/Co pattern. If it is assumed that the 33 grants will be distributed in proportion to the share of existing Co/Cos, Do/Dos and Co/Dos, it is not possible for an oil company to receive more than one grant. It should also be mentioned that currently none of the 14 service stations which sell methane are Co/Cos. The Italian authorities have furthermore undertaken not to grant any aid to service stations of that type. Given the above, it is therefore inconceivable that an oil company could receive several grants resulting in intra-Community trade being affected within the meaning of Article 87(1) of the EC Treaty.

6.3. Conclusion

- (61) In the light of the foregoing, the Commission finds that the aid scheme notified by the Region of Piedmont for

the extension of the network of service stations for the sale of natural gas used as motor fuel does not constitute State aid within the meaning of Article 87(1) of the EC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The measure which Italy (Region of Piedmont) is planning to implement for the reduction of greenhouse gas emissions, pursuant to Decision of the Regional Council (DGR) No 67-7675 of 11 November 2002, does not constitute State aid.

Article 2

This Decision is addressed to the Republic of Italy.

Done at Brussels, 26 November 2003.

For the Commission

Mario MONTI

Member of the Commission

⁽¹⁹⁾ See in particular point 85 of the Decision.