

DECISIONS

COMMISSION DECISION

of 17 July 2013

on State aid SA.33412 (12/C) (ex 11/N) which Italy is planning to implement for the development of logistics chains and the upgrading of intermodality

*(notified under document C(2013) 4392)***(Only the Italian text is authentic)****(Text with EEA relevance)**

(2013/487/EU)

THE EUROPEAN COMMISSION,

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

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

Having called on interested parties to submit their comments pursuant to the provisions cited above, and having regard to their comments ⁽¹⁾,

Whereas:

(4) The Commission decision to initiate the procedure ('the opening decision') was published in the *Official Journal of the European Union* ⁽²⁾. The Commission called on interested parties to submit their comments.

(5) Italy submitted its comments on the opening decision by letter dated 9 August 2012.

(6) By letters dated 15, 30 and 31 October 2012 interested parties submitted their comments on the opening decision. The Commission forwarded those comments to Italy on 19 December 2012 to give it the opportunity to react. Italy's comments were received by letter dated 16 January 2013.

1. PROCEDURE

(1) By electronic notification of 27 July 2011 the Italian authorities notified the Commission, in accordance with Article 108(3) TFEU, of their intention to modify an aid scheme aimed at encouraging the transfer of heavy goods vehicles from road to sea. This notification was registered under case number SA.33412.

(2) A meeting took place between the Commission and Italian representatives on 14 September 2011. Following this meeting, the Commission requested additional information on the notified change on 23 September 2011, 9 December 2011, 7 March 2012 and 16 May 2012. The Italian authorities provided the requested information on 19 October 2011, 9 November 2011, 11 January 2012, 19 March 2012 and 12 June 2012.

(3) By letter dated 25 July 2012, the Commission informed Italy that it had decided to initiate the formal investigation procedure laid down in Article 108(2) TFEU in respect of the modification of the scheme for the development of logistics chains and the upgrading of intermodality.

2. DETAILED DESCRIPTION OF THE MEASURES

2.1. Background

(7) The measure provides for the modification of a State aid scheme aimed at supporting the modal shift of heavy goods vehicles from road to sea. Subsidies will be granted to road haulage companies which make use of existing or new maritime routes instead of road transport.

(8) The initial aid scheme was authorised by the Commission on 20 April 2005 for a three year period between 1 January 2007 and 31 December 2009 (hereinafter 'the 2005 decision') ⁽³⁾.

(9) Under that scheme, road haulage companies receiving aid were required to maintain the same number of journeys or the same quantity of goods transported during the subsidised period for an additional three years after the expiry of the scheme ⁽⁴⁾.

⁽²⁾ See footnote 1.

⁽³⁾ State aid N 496/2003 (OJ C 79, 1.4.2006, p. 26).

⁽⁴⁾ See recitals 7, 21, 28 and 29 of the 2005 decision.

⁽¹⁾ OJ C 301, 5.10.2012, p. 49.

(10) Recital 26 of the 2005 decision imposes an obligation on the Italian authorities to regularly report to the Commission on the evolution and impact of the aid on transport policy and the environment.

(11) The Commission was sent an implementation report highlighting the main trends in the market from 2007 to 2009 and underlining the need for a two-year extension of the initial scheme.

(12) The report pointed out, *inter alia*, that:

(a) the overall amount of aid effectively granted had been less than what was allocated and authorised by the 2005 decision;

(b) there had been a steady increase in the frequency of journeys on domestic routes during this period, as shown below.

Frequency	2007	2008	2009
Domestic routes	325 819	349 406	372 110
EU routes ⁽¹⁾	136 030	139 722	107 203
Total	461 849	489 128	479 313

⁽¹⁾ Most of these journeys are to and from Spain.

According to the information provided by the Italian authorities, the decrease in the number of journeys on EU routes registered in 2009 (resulting indirectly in a decrease in the level of the public contribution) is a direct consequence of the economic downturn, which had a significant impact on the market.

(c) The trend in freight volumes is similar, namely a stable increase on domestic routes and a decrease on intra-EU routes. Nonetheless, the overall freight volume steadily increased during the reference period.

(d) The overall number of journeys in 2010 was forecast to be 564 519.

2.2. Objective of the aid scheme

(13) As mentioned in recital 3, the aim of the scheme is to facilitate the modal shift of freight from road to sea.

2.3. National legal basis

(14) The aid scheme is based on:

(a) Article 3(2-quater) of Decree Law No 209 of 24 September 2002, converted with amendments by Law No 265 of 22 November 2002;

(b) Decree of the President of the Italian Republic No 205 of 11 April 2006;

(c) Article 2(250) of Law No 191 of 23 December 2009;

(d) Decree of the Italian Ministry of Infrastructure and Transport of 31 January 2011 approving the extension of the scheme for 2010; the corresponding Decree for 2011, which is subject to authorisation by the Commission, has been already agreed. However, during the formal investigation procedure Italy undertook to shorten the extension by one year.

2.4. Budget

(15) The overall budget for the proposed modification is EUR 60 million (EUR 30 million for 2010 and EUR 30 million for 2011).

2.5. Duration

(16) The Italian authorities notified the modification of the scheme in the form of a two-year extension (2010 and 2011). The Italian authorities have confirmed that no aid has yet been paid out for the operation of maritime services in 2010 and 2011 and that the measure would be implemented only following authorisation by the Commission.

2.6. Modifications to the State aid regime

(17) The modifications notified by the Italian authorities concern:

(a) the extension of the aid scheme to 2010 and 2011;

(b) a new overall budget of EUR 60 million, i.e. EUR 30 million for each year of the extension.

(18) During the formal investigation procedure Italy undertook to reduce the extension from two years to only one.

(19) The Italian authorities have confirmed that no additional measures, such as those authorised by the 2005 decision, would be implemented during the extension.

2.7. Grounds for the modification

- (20) The Italian authorities explained that fulfilment of the planned objectives (stabilising the modal transfer generated by the initial scheme and the further development of the subsidised routes) has been jeopardised as a result of the economic crisis.

- (21) During the formal investigation procedure Italy also undertook to extend the obligation to continue commercial operation of the transport services, without aid, by an additional year.

2.8. Cumulation

- (22) Cumulation with regional subsidies for the same purpose is allowed for up to 30 % of the total transport costs.

2.9. Beneficiaries

- (23) All Union road haulage companies, including temporary or permanent groupings and associations of transport operators which embark their vehicles and trailers (whether or not accompanied by drivers) on freight ships in order to use specific shipping routes identified by decree of the Minister of Infrastructure and Transport, may request grants under the scheme.

2.10. Form of the aid and aid intensity

- (24) The aid will take the form of a non-reimbursable grant, the level of which corresponds to the difference between the external costs of maritime and road transport.
- (25) This difference will be calculated on the basis of an updated study by Friends of the Earth⁽⁷⁾. The factors taken into account in these calculations are greenhouse gases, atmospheric pollution, noise, congestion and accidents. This study was updated on the basis of the results of the first period of application of Ecobonus scheme. The difference in the social and environmental costs incurred by using the Motorways of the sea instead of road transport led to the saving of EUR 411 million.
- (26) This study shows that a full heavy goods vehicle 14 metres long travelling 100 km by road generates external costs of around EUR 212,58, whereas the external costs of 100 km travelled by sea are estimated

at around EUR 79,37. The difference is EUR 133,21 for a 100 km stretch. This average will form the basis of the discounts applicable to road hauliers when using the selected shipping routes. The amount will be adapted to the specific market conditions on the routes identified.

2.11. Procedure

- (27) Beneficiaries will have to carry out a certain number of journeys, which will be set annually for each selected route. Applicant companies must have carried out at least 80 journeys a year on an individual route.
- (28) An extra 'bonus' will be granted, in addition to the basic aid, to those companies that exceed more than 1 600 journeys a year on a given shipping line. Nevertheless, the maximum 30 % aid intensity may not be exceeded. The purpose of this extra aid is to encourage companies to form associations and to increase the occupancy rate of ships used for freight transport.
- (29) The eligible maritime lines will be identified by a ministerial decree on the basis of the following criteria:
- (a) suitability of the maritime route for fostering the shift of substantial amounts of traffic from road to sea;
 - (b) suitability of the maritime route for reducing congestion on the Italian road network;
 - (c) foreseeable environmental improvement through the use of the maritime route compared with the corresponding road route.
- (30) The new maritime routes selected will be routes currently not adequately served by sea.
- (31) Applications must contain a commitment from the beneficiaries to maintain the same number of journeys or transport the same quantity of goods as during the subsidised period over the three years following the expiry of the scheme. During the investigation of the present measure by the Commission Italy extended the above three-year period by one year.
- (32) Aid will be granted only on condition that tariffs are maintained at the same level, in line with the rate of inflation.

⁽⁷⁾ Lombard P.L. and Malocchi A., Navigation and environment – a comparison with the external costs of other transport modes, Milan Franco Angeli. In this respect, the Commission underlines that there are other methods of calculating the external costs of different transport modes, in particular that used by the Commission for Marco Polo projects: <ftp://ftp.jrc.es/pub/EURdoc/JRC81002.pdf>

- (33) Aid may be granted retrospectively, after examination of the relevant documents, within the limits of the funding made available and allocated for this particular purpose. If the aid to be granted exceeds the available funds for the year in question, the size of the contributions will be laid down by a special ministerial decision.

3. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

3.1. Existence of aid

- (34) In the opening decision the Commission started by noting that the modified scheme conferred an advantage on road hauliers and constituted State aid within the meaning of Article 107(1) TFEU at this level.
- (35) The Commission also considered that shippers providing sea transport to the road hauliers could also benefit from an indirect advantage as a result of the modified scheme.

3.2. Compatibility of the aid

- (36) As regards the compatibility of the modified scheme, the Commission first observed that the initial scheme was declared compatible with the internal market on the basis of Article 107(3)(c) TFEU.
- (37) It noted, however, that the notified modification of the scheme appeared to contravene a condition of the 2005 decision by which road hauliers benefiting from the initially approved scheme undertook to maintain the same number of journeys or transport the same quantity of goods during the subsidised period in the three-years following the expiration of the scheme, without receiving aid.
- (38) The Commission further noted that, were the shippers providing maritime services to road hauliers to be considered indirect beneficiaries of the scheme⁽⁶⁾, the Commission would also have to assess the compatibility of this aid on the basis of point 10 of the Community guidelines on state aid to maritime transport ('the Maritime Guidelines')⁽⁷⁾.
- (39) Given that in this case the aid received by the shippers would finance the operation of existing routes and extend beyond the three-year period, the Commission expressed doubts as to the compatibility of the modified scheme with the internal market.

4. COMMENTS FROM INTERESTED PARTIES

- (40) The Commission received comments from three associations of transport operators, namely CETM, ANITA and the Short Sea Promotion Centre.
- (41) The interested parties basically supported the position taken by Italy regarding the economic downturn and its overall impact on transport activities.
- (42) In particular, the third parties underlined the impact of the economic downturn on the transport sector, which was so extensive that it precluded further development of intermodal traffic level as initially forecast.

5. COMMENTS FROM ITALY

- (43) Italy's observations on the opening decision are summarised below.
- (44) First, Italy argued that the commitment to maintain traffic levels after the expiry of the scheme was given by the road hauliers in a completely different market context. As the magnitude and length of the crisis could not have been predicted at that time, the Commission ought to take into account the exceptional circumstances that led to the need to modify the scheme as notified.
- (45) It was projected that the intermodal shift would be stabilised once maritime traffic, in terms of journeys and tonnage, had increased by one third in 2011 compared with 2007. This target was estimated on the basis of a study carried out by CETENA and COFIR in June 2002 as a part of the 'Extraordinary Research Programme for the Development of Sea and River Coasting Vessels'.
- (46) However, starting in the second half of 2008 the economic downturn hit the haulage companies participating in the scheme halfway through its implementation, making it difficult for them to stabilise the intermodal transport levels reached. In particular, the Commission should take into consideration the fall in the number of journeys and tonnage, generated by a drop in contracts and the economic downturn.
- (47) Second, in support of the notified modification, Italy pointed out that the budget for the initial scheme had not been fully used, meaning that the funds required for the notified modification still fell within the initial budget limit.

⁽⁶⁾ See recital 33.

⁽⁷⁾ OJ C 13, 5.10.2012, p. 3.

(48) Third, the Commission should take into account the fact that no complaint had been received, at either national or Union level, from any of the stakeholders. This should be taken as an indication that there had not been any undue distortions of competition.

(49) Finally, Italy argued that if the potential benefits of the measure for maritime companies were qualified as aid within the meaning of Article 107 TFEU, this would necessarily mean that the Commission should also assess the effects of the measure on other connected activities, such as dock maintenance, shipping agents and port operators. According to the Italian authorities, such approach would contravene both previous practice and case law.

(50) In order to alleviate Commission's concerns about the compatibility of the notified extension, Italy undertook during the formal investigation procedure to amend the notified measure as follows: a shortening of the extension from two years to only one year and a concomitant extension of the commercial operation of the transport services, without aid, by one additional year.

6. ITALY'S COMMENTS ON THE INTERESTED PARTIES' COMMENTS

(51) By letter dated 16 January 2013, the Italian authorities submitted to the Commission their own observations on the comments of the interested parties in the formal investigation procedure.

(52) The Italian authorities supported the comments submitted by the three abovementioned transport associations, notably those concerning the absence of undue distortions of competition and the qualification of a potential advantage for shipping companies.

7. ASSESSMENT OF THE AID

7.1. Existence of aid

(53) Under Article 107(1) TFEU, unless otherwise provided for in that Treaty, 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 provision of certain goods, in so far as it affects trade between Member States, is incompatible with the internal market.

(54) The criteria laid down in Article 107(1) are cumulative. Therefore, in order to determine whether a notified measure constitutes State aid within the meaning of Article 107(1) TFEU, all the criteria need to be fulfilled. To constitute State aid the financial support must:

(a) be granted by the State or through State resources,

(b) favour certain undertakings or the production of certain goods (selectivity),

(c) confer an economic advantage on recipient undertakings,

(d) distort or threaten to distort competition and affect trade between Member States.

(55) In this case the public financing of the proposed modification is granted by the State and through State resources. Further, it favours only certain undertakings and is therefore selective.

(56) The Commission considers that the proposed modification confers an economic advantage on the road hauliers engaged in transport operations eligible for the scheme by relieving them of part of their operational costs.

(57) The Commission also observes that the scheme as modified, although aimed directly at the road hauliers, indubitably leads to an increase in the market demand for certain maritime services and thus in the revenues they earn. The Commission therefore concludes that the modified scheme confers an economic advantage on the maritime companies.

(58) Finally, when aid granted by a Member State strengthens the position of an undertaking in respect of other undertakings competing in intra-Union trade, these latter undertakings must be regarded as affected by that aid⁽⁸⁾. It is sufficient that the recipient of the aid competes with other undertakings on markets open to competition⁽⁹⁾. In this case, the beneficiaries operate in competition with other undertakings in the Union. Therefore, the notified measure is liable to distort competition and affect trade within the internal market.

⁽⁸⁾ See, in particular, Case 730/79 *Philip Morris v Commission* [1980] ECR 2671, paragraph 11; Case C-53/00 *Ferring* [2001] ECR I-9067, paragraph 21; Case C-372/97 *Italy v Commission* [2004] ECR I-3679, paragraph 44.

⁽⁹⁾ Case T-214/95 *Het Vlaamse Gewest v Commission* [1998] ECR II-717.

- (59) In the light of these findings the Commission considers that the aid scheme as modified involves aid within the meaning of Article 107(1) TFEU for both road hauliers and maritime companies.

7.2. Lawfulness of the aid

- (60) The measure has not been put into effect before formal approval by the Commission. The Commission takes note of the fact that under the extended scheme the aid will be paid out only after approval by the Commission. Therefore, the Italian authorities have fulfilled their stand-still obligation under Article 108(3) TFEU.
- (61) At the same time, since the notified extension concerns a period of time which has already elapsed, the Commission finds that any increase in the demand for maritime services as a result of the scheme necessarily occurred when the services were used.

7.3. Compatibility of the aid

- (62) The Commission notes that the only modification to the previous scheme is the extension over time and consequent additional funding. No additional measures will be subsidised under the extension. All other elements remain the same as the scheme assessed by the Commission in its decision of 20 April 2005.
- (63) During the formal investigation procedure Italy undertook to shorten the extension from two years to only one year. It also undertook to extend the obligation to continue commercial operation of the services, without aid, by one additional year.
- (64) Point 10 of the Maritime Guidelines sets out several criteria for assessing the compatibility of a measure designed to improve the intermodal chain and to decongest roads. However, here the Commission believes that these conditions must be assessed in the light of the particular circumstances of this case (modification of an existing aid scheme already directly approved under Article 107(3)(c) TFEU) and the exceptional circumstances that significantly altered the market conditions that existed at the time the scheme was first approved by the Commission.

7.3.1. *First condition: The aid must not exceed three years in duration and its purpose must be to finance a shipping service connecting ports situated in the territory of the Member States*

- (65) In this case Italy has sufficiently demonstrated that the economic crisis has significantly affected the operation of transport services, with the result that the beneficiaries could not fulfil their commitment to continue the commercial operation of the services in question after the initial funding period of three years⁽¹⁰⁾. In addition, Italy undertook to prolong the requirement to operate the services commercially by an additional year. Moreover, the scheme undoubtedly serves to finance shipping services connecting Union ports.
- (66) Therefore, even if the overall duration of the scheme as amended is four years, the Commission considers that in the particular circumstances of this case it is justified to deem such a limited extension as compliant with the above condition.

7.3.2. *Second condition: The service must be of such a kind as to permit transport (of cargo essentially) by road to be carried out wholly or partly by sea, without diverting maritime transport in a way which is contrary to the common interest*

- (67) As mentioned above, the purpose of the subsidised scheme is to support the maritime transport of goods by contributing to the operating costs associated with moving freight by maritime transport.
- (68) The Commission also takes into consideration the relatively modest budget of the notified modification.
- (69) The Commission is therefore satisfied that the measure helps to attain a Union objective and that the potential distortion of competition caused by the aid is outweighed by the wider benefits that the scheme will provide by transferring freight traffic from road to water, thus encouraging a modal shift towards a more sustainable

⁽¹⁰⁾ On this point, the Commission notes a discrepancy between the Maritime Guidelines and the Community guidelines on State aid for railway undertakings (OJ C 184, 22.7.2008, p. 13) in which, for similar schemes promoting an intermodal shift from road transport to rail transport, no corresponding three-year limit is prescribed. Thus, when revising the Maritime Guidelines, the Commission will specify that under certain circumstances, State aid for short sea shipping may be declared compatible for a period of more than three years.

transport system. Therefore, the Commission is satisfied that the modification in question concerns an aid scheme that permits transport by road to be carried out wholly or partly by sea and that there is no diversion of maritime transport contrary to the common interest.

7.3.3. Third condition: The aid must be directed at implementing a detailed project with a pre-established environmental impact, concerning a new route or the upgrading of services on an existing one, associating several ship-owners if necessary, with no more than one project financed per line and with no renewal, extension or repetition of the project in question

(70) The aid has been calculated so as to compensate maritime services for the unpaid external costs of competing with road services. The amount of aid to be granted by journey corresponds to the difference of the external costs generated by maritime and road transport, calculated on the basis of an updated study completed by Friends of the Earth. The factors taken into account in these calculations are greenhouse gases, atmospheric pollution, noise, congestion and accidents. The Commission notes that the findings of the study demonstrate clearly that this intermodal sea-road project leads to substantial savings in external costs.

(71) The Commission considers that the planned level of aid is based on a reasonable comparative analysis of the external costs of both modes of transport and that it is limited to the amount necessary to encourage the switch to maritime services. Hence the aid is directed at implementing a detailed project with a pre-established environmental impact.

(72) With regard to the condition that project should concern only new routes or upgrading of existing services, the Commission observes that the scheme was already approved directly under Article 107(3)(c) TFEU. Therefore, the assessment of the notified extension of the scheme in the light of this condition of the Maritime Guidelines is not relevant as the amendment will necessarily apply to routes that have already been financed under the existing scheme.

(73) As under the initial scheme, the beneficiaries will be free to choose the most convenient maritime line and the most competitive operator for each of the selected

routes. These provisions guarantee a non-discriminatory treatment among shipping operators. Therefore, the Commission considers that this condition is met.

7.3.4. Fourth condition: The purpose of the aid must be to cover up to 30 % of the operational costs of the service in question

(74) The subsidy granted to selected projects is limited to 30 % of operating costs.

7.3.5. Fifth condition: The aid must be granted on the basis of transparent criteria applied in a non-discriminatory way to ship-owners established in the Community. The aid should normally be granted for a project selected by the authorities of the Member State through a tender procedure in compliance with applicable Community rules

(75) The Commission notes that the criteria applied for awarding the aid are transparent and that ship-owners in the Union are treated in a non-discriminatory way.

7.3.6. Sixth condition: The service which is the subject of the project must be of a kind to be commercially viable after the period in which it is eligible for public funding

(76) As mentioned above, the economic downturn prevented haulage companies from stabilising the intermodal transport levels reached. Therefore, the projects could not achieve viability after the three years of aid. Nonetheless the Commission takes into account that Italy has undertaken to prolong by an additional year the beneficiaries' obligation to operate the services commercially after the four years of subsidy; Therefore, the Commission considers that this condition is met.

7.3.7. Seventh condition: The aid must not be cumulated with public service compensation (obligations or contracts)

(77) As mentioned above, the aid cannot be cumulated with public service compensation.

8. CONCLUSION

(78) The Commission therefore concludes that the modification of the scheme through a one-year extension is compatible with the internal market under Article 107(3)(c) TFEU,

HAS ADOPTED THIS DECISION:

Article 1

The measure which Italy is planning to implement on the basis of Article 2(250) of Law No 191 of 23 December 2009 and the Decree of the Italian Ministry of Infrastructure and Transport of 31 January 2011 for the development of logistics chains and the upgrading of intermodality is compatible with the internal market within the meaning of Article 107(3)(c) of the Treaty on the Functioning of the European Union.

Implementation of the measure is accordingly authorised.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 17 July 2013.

For the Commission

Joaquín ALMUNIA

Vice-President
