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NOTIFICAZIONE AI SENSI DELL'ARTICOLO 297 DEL TFUE

Oggetto: DECISIONE DELLA COMMISSIONE (19.12.2016)

Il Segretariato Generale Vi prega di trasmettere al Ministro degli Affari Esteri e delle Cooperazione Internazionale la decisione allegata.



Per il Segretario generale

Robert ANDRECS

All. : C(2016) 8480 final

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EUROPEAN COMMISSION

Brussels, 19.12.2016

C (2016) 8480 final

Subject: State Aid SA.45482 (2016/N) – Italy – Rail freight transport support scheme

Sir,

1. PROCEDURE

- (1) Pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (TFEU) by electronic notification dated 24 August 2016 the Italian authorities notified an aid scheme aimed at the compensation of access tariffs and external costs related to the provision of rail freight transport services. By letters dated 27 September and 28 October 2016, the Italian authorities submitted additional information to complement their notification.
- (2) By letter dated 21 November 2016, the Italian authorities provided a language waiver and agreed that the decision will be adopted in English as the authentic language.

2. DESCRIPTION OF THE MEASURE

2.1. Objective

- (3) In terms of technical characteristics and operational flexibility, the railway sector suffers from inherent disadvantages compared to road. The average cost of access to railway infrastructure for rail transport operators is higher in Italy, while the use of the road transport network is lower than the EU average. The share of rail transport in the overall transport of goods remains constantly below the EU average.¹ The vast majority of goods are, therefore, transported by road with the resulting negative impacts on the environment as well as other negative externalities such as congestion and accidents. As railway transport does not allow for direct-door-to-door delivery, it generates additional expenses.

¹ http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Freight_transport_statistics

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- (4) The notified measure is part of a global logistic plan launched by Italy to support intermodality.² It is aimed at preserving and strengthening the position of rail transport by introducing subsidies. The level of these subsidies is set so as to make railway transport more attractive while being well below the value of the ensuing external cost savings (the differential with the external costs incurred when transporting goods by alternative means).
- (5) Under the rail freight transport support scheme emphasis is placed on regions in the South of Italy and the islands where the differences between rail and road infrastructure are larger in comparison with the rest of the country in terms of infrastructure capacity, technical specifications and hence infrastructure charges, and where the development of rail freight services is less advanced in comparison with the rest of the country.
- (6) The notification covers two schemes. First, a so-called "transitional scheme" that will apply to rail freight services performed to/from the South of Italy and the islands in the period from 1 January 2015 to 31 December 2015. Second, a so-called "definitive scheme" that will apply, for one component, to rail freight services performed to/from the South of Italy and the islands and, for the other component, to rail freight services performed in the entire territory of Italy, in the period from 1 January 2016 to 31 December 2017.³
- (7) Each scheme has two components, in other words two sub-schemes:
 - a) Aid for the compensation of infrastructure charges;
 - b) Aid for the reduction of external costs.

2.2. Legal basis

- (8) The legal basis of the schemes is Law No 190 of 23 December 2014.
- (9) Concerning the definitive scheme, that law was modified by Law No 9 of 22 January 2016, which stipulated that the method of determining the aid grants would be laid down in an implementing decree to be adopted by the Ministry for Infrastructure and Transport.
- (10) An implementing decree for grants relating to services provided in 2015 was adopted on 5 February 2016. A text concerning the grants for 2016 and 2017 has yet to be approved. The draft implementing decree for 2016-2017 was attached to the notification.

2.3. Duration and budget

- (11) The duration of the transitional scheme is from 1 January 2015 to 31 December 2015 and of the definitive scheme from 1 January 2016 to 31 December 2017.
- (12) The budget set aside by the Italian authorities has an annual maximum ceiling of EUR 100 million per year (2015-2017).

² As is 'Ferrobonus', a scheme targeting final users and multimodal transport operators, which was approved by the Commission decision of 24 November 2016, SA.44627 (2016/N), Italy - 'Ferrobonus' - incentive for rail transport, not yet published.

³ Taking into account the historical situation of the rail freight market in Italy and the funds at their disposal, the Italian authorities initially decided to limit compensation for the second component (aid for the reduction of external costs) also to the South of Italy. By the end of 2015, considering the market response and effective potential use of public funds available, it was decided to extend the measure to the entire Italian territory.

- (13) For the transitional scheme, the expected payments are estimated at EUR 55 million. For the definitive scheme, at this stage, the expected payments are estimated at EUR 200 million.
- (14) According to the information submitted with the notification, Italy ensured that the schemes were given ample public coverage (both as regards the aid for 2015 and for 2016-2017). Thus, railway undertakings transporting goods by rail have already taken the aid into account in the negotiations with their customers, although actual disbursement of the aid is still pending.
- (15) Pursuant to Article 4 of the implementing decree relating to 2015 grants, the aid beneficiaries are required to include a description of the effects of the measure in their annual reports intended for the Ministry of Infrastructure and Transport, including the impact of the aid on the prices charged to their customers. The Italian authorities have provided the Commission with several examples illustrating how the aid has already been reflected in the prices charged.

2.4. Beneficiaries

- (16) Law No 190 of 23 December 2014 identifies railways undertakings as the beneficiaries of the measure. This is confirmed in the implementing decree for 2015 grants and in the draft implementing decree for 2016-2017 grants, which provide that railway undertakings within the meaning of Article 3 of Recast Directive 2012/34/EU of 21 November 2012 establishing a single European railway area⁴ are eligible to benefit from the aid.
- (17) The Italian authorities report that, for 2015, 11 railway undertakings in total applied to benefit from the aid.
- (18) The total number of beneficiaries for the entire period (2015-2017) could reach 50.

2.5. Other eligibility criteria

- (19) Under the transitional scheme, the aid will be granted for the compensation of infrastructure charges and the reduction of external costs only for journeys originating from or destined for the South of Italy and the islands.⁵
- (20) Under the definitive scheme, the aid for the compensation of infrastructure charges will be granted only for journeys originating from or destined for the South of Italy and the islands. However, under the definitive scheme, coverage of the aid for the reduction of external costs will be extended to the entire Italian territory.
- (21) The Italian authorities have indicated that aid will be granted for rail freight services provided under an electric traction system.

2.6. Eligible costs and aid intensity

- (22) The Italian authorities have indicated that the quantification of the eligible costs under the notified schemes is based on the results of the calculation of the external cost differential between rail transport and alternative transport modes, provided in the study of Price Waterhouse Coopers Advisory Spa (PWC) dated 5 November 2015 and updated in March

⁴ OJ C 343 of 14.12.2012, p. 32.

⁵ Abruzzo, Molise, Lazio, Campania, Apulia, Basilicata, Calabria, Sardinia and Sicily

and September 2016 (hereinafter "the PWC study"). The study was commissioned by the Italian authorities in the context of the preparation of the measures in support of rail freight transport in Italy.

- (23) The PWC study refers among other sources to the Update of the Handbook on External Costs of Transport, Report for the European Commission of 8 January 2014.⁶
- (24) The final version of the PWC study was submitted to the European Commission on 27 September 2016. The PWC study has been published on the website of the Ministry of Infrastructure and Transport⁷, as well as on the website of *Rete Autostrade Mediterranee S.p.A.*, the managing entity for the Motorways of the Sea.⁸

2.6.1. Aid for the compensation of infrastructure charges under the transitional scheme (2015) and under the definitive scheme (2016-2017)

- (25) The eligible costs for the compensation of infrastructure charges are:
- the costs incurred for infrastructure use, payable in 2015 for the carriage of goods, including the cross-border carriage of goods, originating from or destined for the regions of Abruzzo, Molise, Lazio, Campania, Apulia, Basilicata, Calabria, Sardinia and Sicily; and
 - the costs incurred for rail ferry operations and related services.
- (26) According to the PWC study, the quantification of the cost differential for accessing rail infrastructure points to higher infrastructure and ferry costs for rail freight transport from/to the regions within the scope of the measure (namely regions in the South of Italy and the islands). The cost differential amounts to EUR 1.30 per train-km for flows from/to the regions on the Italian peninsula and EUR 1.83 per train-km for flows from/to Sicily⁹, due to the additional costs related to rail ferry transportation.
- (27) According to the Italian authorities, the particular infrastructure constraints and related costs in the South of Italy and the islands put rail freight at a particular disadvantage compared to road transport. This is less so in the rest of Italy where infrastructure capacity, charges, interoperability and technical aspects are more balanced between rail and road transport.
- (28) The aid intensity for the compensation of infrastructure charges for 2015 and 2016-2017 corresponds to 100% of the eligible costs, as defined in recitals (25) and (27) above.

⁶ <http://ec.europa.eu/transport/themes/sustainable/studies/doc/2014-handbook-external-costs-transport.pdf>

⁷ www.mit.gov.it

⁸ www.ramspa.it

⁹ The PWC Study calculations are based on ferry rail services flows to/from Sicily. The calculations and methodology for Sicily applied *mutatis mutandis* to ferry rail services flows to/from Sardinia which would entail similar or higher costs.

2.6.2. *Aid for the reduction of the external costs under the transitional scheme (2015) and under the definitive scheme (2016-2017)*

- (29) The eligible costs for reducing the negative externalities related to freight transportation correspond to the part of the external costs¹⁰ that can be avoided when rail transport is compared to road transport.
- (30) According to the PWC study, the external cost differential between road and rail falls within the range of EUR 9.42 - 15.04 per train-km, on the basis of a calculation of mean tonnage transported by road vehicles.¹¹ This translates into total avoided external costs for the entire country of approximately EUR 680 million per year.
- (31) The Italian authorities have indicated that the aid intensity for the reduction of the external costs for 2015 and 2016-2017 corresponds to 50% of the eligible costs, as defined in recitals (29) and (30) above.

2.6.3. *The cost of rail transport*

- (32) The PWC study contains an analysis of the cost of operation of rail freight transport in Italy.¹²
- (33) On this basis, the PWC study has concluded that the aid, as regards both components (the aid for the compensation of the infrastructure charges and the aid for the reduction of the external costs, will have an intensity in the range of 13% - 21% of the total cost of rail transport.
- (34) The implementing decree of the Ministry of Infrastructure and Transport for the transitional scheme and the draft implementing decree of the Ministry of Infrastructure and Transport for the definitive scheme include an express provision stipulating that for each beneficiary the aid is limited to 30% of the total annual cost of rail transport nationwide, including ancillary expenses such as inspection, train assembly and disassembly and operation.

2.7. Aid amount

- (35) The analysis carried out by PWC, based *inter alia* on observation of the rail freight market in Italy, concludes that the South Italian network, in terms of capacity, infrastructure charges, interoperability and technical aspects is particularly disadvantaged when compared to road transport.
- (36) As regards the aid for the reduction of external costs, the Italian authorities indicate that 2015 was a bridge-year during which the support measures were being fine-tuned. Article 3 (1), a) and b) of the implementing decree sets a maximum amount for the aid that may be granted under the transitional and definitive schemes. The implementing decree for 2015 took as a reference 50% of the lower end of the range identified in the PWC study for the

¹⁰ 'External cost' is an economic term, referring to the cost that certain activities, e.g. transport, impose upon society. It is expressed in monetary terms. The external costs of transport are generally not borne by transport users and hence not taken into account when they make a transport decision. The internalisation of these costs means including such effects in the decision making process of the transport users. For instance, this can be done directly, through providing the right incentives to transport users.

¹¹ Under the PWC study the average trainload in Italy is assumed to be around 382 tonnes.

¹² Rate ranges between EUR 17.82 and EUR 26.61 per train-km, based on data for 2015.

external cost savings in the South and the islands. The implementing decree for 2016-2017 reflects a different approach consisting in setting a lower maximum aid amount given the concomitant application of Ferrobonus¹³, another measure in support of rail freight transport based on the external cost savings. The Italian authorities indicate that the maximum effective amount of aid to be paid for the reduction of external costs will be EUR 2.50 per train-km. However, as regards the aid for the reduction of the external costs to be paid for 2016-2017, the Italian authorities noted that, considering the current estimation of the available funds, the effective amount of the contribution related to the external cost saving would rather be close to EUR 1.67 per train-km.

2.7.1. Transitional scheme

- (37) The aid for the compensation of infrastructure charges in the South of Italy and the islands for 2015 amounts to EUR 1.30 per train-km and to EUR 1.83 per train-km for services involving train ferries.
- (38) The aid for the reduction of the external costs in the South of Italy and the islands amounts to EUR 4.76 per train-km.
- (39) Subsidy rates may be adjusted annually in line with inflation.

2.7.2. Definitive scheme

- (40) The aid for the compensation of infrastructure charges in the South of Italy and the islands for 2015 amounts to EUR 1.30 per train-km and to EUR 1.83 per train-km for services involving train ferries.
- (41) The aid for the reduction of the external costs in the entire Italian territory amounts to maximum EUR 2.50 per train-km.
- (42) Subsidy rates may be adjusted annually in line with inflation.

2.8. Summary of the notified measures

- (43) The table below summarises the main characteristics and outlines the specificities of the four measures which are part of the notification. Each sub-scheme has been given a number (1) – (4).

Characteristics	Transitional scheme	Definitive scheme
Legal basis	Article 1, paragraph 294 of Law No 190/2014	Article 11, paragraph 2 <i>bis</i> , <i>ter</i> and <i>quater</i> of Decree Law No 185/2015 ¹⁴
Type of services covered	Rail freight services	Rail freight services

¹³ See footnote 2 above.

¹⁴ Those provisions were added to the text when it was converted into law by Law No 9 of 22 January 2016.

Type of aid	Aid to compensate infrastructure charges (1)	Aid to compensate infrastructure charges (3)
	Aid for the reduction of external costs (2)	Aid for the reduction of external costs (4)
Geographical scope	Journeys connecting the South and the islands ¹⁵ (1)	Journeys connecting the South and the islands (3)
	Journeys connecting the South and the islands (2)	The entire territory of Italy (4)
Duration	01.01.2015-31.12.2015	01.01.2016-31.12.2017
Overall budget	EUR 100 million	EUR 200 million
Annual budget	EUR 100 million (payments estimated at EUR 55 million)	EUR 100 million (payments –estimated at EUR 100 million in 2016)
Beneficiaries	Railway undertakings	Railway undertakings
Aid amount (in EUR)	EUR 1.30 per train-km and EUR 1.83 per train-km for services involving train ferries (1)	EUR 1.30 per train-km and EUR 1.83 per train-km for services involving train ferries (3)
	Up to EUR 4.76 per train-km (2)	Up to EUR 2.50 per train-km (4)

2.9. Procedure for granting the aid

- (44) The modalities are identical as regards the aid for the compensation of the infrastructure charges and the aid for the reduction of the external costs.
- (45) The granting authority for the schemes is the Italian Ministry for Infrastructure and Transport – Directorate General for Transport and Railway Infrastructure. The aid will be disbursed by the Italian infrastructure manager (*Rete Ferroviaria Italiana*) on an annual basis to railway undertakings that have performed freight transport services falling within the scope of this decision.
- (46) Potential beneficiaries will report the train-kilometres accumulated during the reference period. This report will include the train-kilometres covered for the purposes of rail freight transport on the entire national railway infrastructure, excluding transport falling within the scope of the Alpine Rolling Highway and the costs incurred for using the infrastructure, payable in the reference periods for the carriage of goods, including the cross-border carriage of goods, originating from or destined for the regions of Abruzzo, Molise, Lazio, Campania, Apulia, Basilicata, Calabria, Sardinia and Sicily, as well as the costs incurred for rail ferry operations paid directly to the infrastructure manager.

¹⁵ Abruzzo, Molise, Lazio, Campania, Apulia, Basilicata, Calabria, Sardinia and Sicily

- (47) An accompanying declaration signed by the potential beneficiaries shall list all similar EU, State or regional grants requested for the same purpose as those granted under this measure or falling under European funding, specifically indicating that such fees do not exceed the overall subsidy limits set in the notified schemes, including charges ancillary to rail transport such as checking, train formation and shunting.
- (48) The granting authority shall simultaneously inform the infrastructure manager and the railway undertakings of the grants determined on the basis of the reported data. It shall also inform the Italian Ministry of Economic Affairs and Finance of the resources to be transferred to the infrastructure manager for the subsequent award of grants to the individual railway undertakings.
- (49) The infrastructure manager shall reimburse the individual railway undertakings providing detailed information about each reimbursement to the granting authority.
- (50) When awarding the grants, the infrastructure manager shall take into account any amounts relating to fees for using the railway infrastructure, or charges for ferries or related services that have not been paid for the rail services that are the subject of the grant, reducing the amount payable to each recipient accordingly.
- (51) The Italian authorities have confirmed that no aid has been previously disbursed.

2.10. Monitoring, repayment mechanism and reporting

- (52) The granting authority will verify the reliability and accuracy of the data reported by the potential beneficiaries in terms of train-km travelled. Moreover, at all stages of the procedure, the granting authority may perform checks and inspections to verify compliance with all other terms and conditions of the notified schemes.
- (53) The granting authority shall draw up an annual report concerning the implementation of the notified schemes.

2.11. Cumulation of aid and suspension in the event of unlawful aid

- (54) Cumulation with other EU, national or regional grants, including similar contributions, granted on the basis of external cost savings (such as excise duty exemption on electricity consumption¹⁶, regional grants) is possible provided that the cumulated amounts do not exceed (i) 100% of the eligible costs for the aid for compensation of the infrastructure charges and (ii) 50% of the eligible costs for the aid for the reduction of the external costs and (iii) for both measures, 30% of the total transport cost.
- (55) Aid applicants must make a declaration to that effect (see recital (47) above).
- (56) Similarly, rail freight undertakings must undertake to report all traffic and subsidy data to demonstrate that the limit of 50% of the external costs avoided as a result of rail transport is respected, also with reference to any other measures that may be combined with the current scheme.

¹⁶ The consumption of electricity for motor power for rail operation is exempted in Italy since 1924. The corresponding value of the tax is EUR 3.1 per MWh (this represents a benefit of approximately EUR 0.08 per train-km or EUR 0.2 per 1000 tonne-km). The tax exemption granted in the form of excise duty exemption by virtue of Article 15(1)(e) of Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity (OJ L 283 of 31.10.2003, p. 51) does not form part of this notification.

- (57) Where it is found that the limits referred to above are exceeded, the Ministry of Infrastructure and Transport shall, via the infrastructure manager, recover a corresponding proportion of the grant awarded, if necessary by reducing the amount of any future grants to the concerned railway undertakings.
- (58) Last, payment of aid under the notified schemes will be suspended if an undertaking receives unlawful aid that has been declared incompatible by a Commission decision. This suspension will remain in place until the undertaking has repaid the unlawful and incompatible aid, plus any interest owed at the time the aid is reclaimed, or until it has deposited it in a blocked account.

2.12. Potential impact on competing transport modes

- (59) The main vectors of the Italian freight market are road transport, sea transport (including inland navigation routes) and rail transport. They account respectively for 56.49%, 27.16%, and 10.51% of total traffic. Table 1 below provides a complete picture of freight transport in Italy, in terms of traffic volumes and market shares.

Table 1. Distribution of traffic among different transport modes¹⁷

Mode	2005	2008	2009	2010	2011	2012	2013
Road ¹⁸	155,872	136,952	130,847	134,261	114,736	101,380	102,320
	65.64%	62.44%	62.77%	61.93%	57.69%	55.52%	56.49%
Rail	22,761 ¹⁹	23,831	17,791	18,616	19,787	20,244	19,037
	9.59% ²⁰	10.87%	8.53%	8.59%	9.95%	11.09%	10.51%
Maritime cabotage ²¹	46,839	47,017	49,173	53,156	53,708	50,287	49,112
	19.76%	21.47%	23.62%	24.58%	27.08%	27.58%	27.16%
Inland navigation ²²	89	64	76	135	144	81	89
Air ²³	982	999	864	1,013	1,026	976	991

¹⁷ Source: *Conto Nazionale Trasporti 2013-2014*, http://www.mit.gov.it/mit/mop_all.php?p_id=23697.

¹⁸ Road transport includes only vehicles exceeding 3.5 tons and journeys longer than 50 km.

¹⁹ In tonnes-km.

²⁰ This value represents the market share.

²¹ Cabotage navigation also includes traffic to the islands.

²² Limited market shares, not reported.

²³ Limited market shares, not reported.

Oil via pipelines²⁴	10.907	10.455	9.714	9.606	9.476	9.636	9.593
	4.59%	4.77%	4.66%	4.43%	4.76%	5.28%	5.30%
Total	237,450	219,318	208,465	216,787	198,877	182,604	181,142

2.12.1. Inland navigation

- (60) Inland waterways do not constitute an alternative to road and rail routes in Italy due to the specific morphology of the Italian territory and the lack of adequate, connected and well-equipped infrastructure.
- (61) The main waterway infrastructures in Italy are located in the Emilia Romagna, Veneto and Lombardy regions. The traffic that transits through these infrastructures has been estimated at less than 1% of total freight.²⁵

2.12.2. Maritime transport

- (62) The maritime sector in Italy consists of about 260 ports and 1900 docks, mostly concentrated in the South of Italy and the islands. The Italian authorities aim at promoting a long-term balance among the different freight transport modes. In this context the Italian authorities intend to take action aimed at strengthening intermodal freight transport that involves short-sea shipping. A scheme called 'Marebonus' has been designed in parallel to the notified schemes, with the objective to tackle the structural disadvantages of maritime transport relative to road transport. That scheme, which has been notified to the Commission, is based on incentives per vehicular unit.

2.13. Evaluation obligation

- (63) According to a commitment provided by Italy, the notified schemes will be subject to an evaluation. This evaluation will form part of a future evaluation exercise, covering the cumulated impact of all rail subsidy schemes in the Italian territory (including in particular Ferrobonus, even if the beneficiaries are different).

3. ASSESSMENT

3.1. Existence of aid

- (64) Pursuant to Article 107 (1) TFEU, *"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, in so far as it affects trade between Member States, be incompatible with the internal market"*.

²⁴ Covers only journeys longer than 50 km.

²⁵ In tonnes.km.

- (65) The notified schemes:
- (a) involve State resources given that the subsidies are granted from the budget of the central government;
 - (b) confer an economic advantage as it relieves the direct beneficiaries of a part of the operational costs which they would normally have to bear and enables them to transport their goods at a reduced price;
 - (c) are selective in nature because it is confined to certain segments of the transportation services market, i.e. freight transport by rail, and
 - (d) are liable to distort competition and affect trade between Member States since it concerns rail freight markets which have been liberalised by Union law.
- (66) Therefore, the notified schemes constitute State aid within the meaning of Article 107(1) TFEU.

3.2. Lawfulness of the aid

- (67) The Commission notes that the notified schemes have not been implemented so far. Therefore Italy is in compliance with the obligation laid down in Article 108(3) TFEU.

3.3. Compatibility of the aid

3.3.1. Legal basis

- (68) The notified schemes fall within the scope of Article 93 TFEU and have therefore to be assessed on that basis.
- (69) Article 93 TFEU states that State aid shall be compatible with the Treaty if it meets the needs of coordination of transport. The concept of "aid meeting the needs of coordination of transport" refers to the need for public intervention arising notably in the presence of market failure. In this regard, the Commission notes that measures of coordination of transport may be needed when certain modes of transport do not bear the costs of the negative externalities which they impose on society.
- (70) As expressed in the Commission's White Paper on Transport Policy²⁶, the fundamental charging principle for infrastructure use is that charges must cover not only infrastructure costs, but also external costs, namely costs connected to accidents, air pollution, noise and congestion. This approach has been applied in a number of the Commission State aid decisions over the years.²⁷

²⁶ Roadmap to a Single European Transport Area—Towards a competitive and resource efficient transport system, COM(2011)144 of 28.03.11.

²⁷ For the most recent and relevant decision-making practise – see, e.g., Commission decision of 24 November 2016, SA.44627 (2016/N), Italy - '*Ferrobonus*' - incentive for rail transport, not yet published; Commission decision of 29 April 2016, SA.41033 (2016/N), Italy - *Integrated transport scheme in the Province of Trento*, OJ C 220, 17.06.2016, p. 2; Commission decision of 26 May 2015, SA.40404 (2014/N), France and SA.39606 (2015/N), Italy - *Régime d'aide au service transitoire d'autoroute ferroviaire alpine*, OJ 66 of 19.2.2016, p. 2; Commission decision of 13 June 2014, SA.38152 (2014/N), Italy - *Aid in favour of rail freight transport in Emilia Romagna region*, OJ C 282 of 22.8.2014, p. 23; Commission decision of 6 January 2014, SA.36758 (2013/N), Denmark - *Prolongation of environmental aid scheme for the transport of goods by rail for the period 2014-2017*, OJ C 280 of 22.8.2014, p. 10; Commission decision of 16 December 2011, SA.32603 (2011/N), Italy - *Subsidy scheme*

- (71) As regards the railway transport sector, and in particular railway undertakings, Section 6 of the Community guidelines on State aid for railway undertakings²⁸ (hereinafter "the Railway Guidelines") provides guidance on the application of Article 93 TFEU.
- (72) According to point 98 of the Railway Guidelines, aid for the needs of transport coordination can take several forms, including:
- aid for infrastructure use, that is, aid to railway undertakings to compensate them for infrastructure charges that do not have to be paid by other undertakings providing transport services by other modes of transport; and
 - aid for reducing external costs that is designed to encourage a modal shift to rail because it generates lower external costs than other modes such as road transport.
- (73) Given the context of the notified schemes, the Commission finds it appropriate to assess separately (i) the compensation for the additional infrastructure charges by applying the rules for aid for rail infrastructure use, specified under section 6.3 of the Guidelines; and (ii) the compensation for the reduction of external charges by applying the rules for aid for reducing external costs, also specified under section 6.3 of the Guidelines.

3.3.2. *Existence of additional costs for the use of railway infrastructure*

- (74) According to point 102 of the Railway Guidelines, the eligible costs as regards aid for infrastructure use are the additional costs for infrastructure use paid by rail transport but not by a more polluting competing transport mode.
- (75) With regard to infrastructure costs in the notified schemes, the Italian authorities take the additional costs for infrastructure use for the carriage of goods, including the cross-border carriage of goods, originating from or destined to the South of Italy and the islands. This includes costs incurred for rail ferry operations and related services.
- (76) In the case of the notified schemes, rail freight flows to/from the South of Italy and the islands suffer an additional cost per unit of traffic for infrastructure use as compared to road transport. Indeed, the general imbalance in this respect is particularly acute in the South of Italy and the islands in terms of available and developed infrastructure. This is mainly due to inferior railway infrastructure standards commanding a lower train tonnage. Thus, railway undertakings pay a higher track access charge per tonne transported compared to road transport which makes extensive use of the Italian toll-free highways.
- (77) The infrastructure fees that are payable can therefore be regarded as additional costs paid by rail transport users for the use of railway infrastructure in the Southern and insular parts of Italy but not by a more polluting competing transport mode and these additional costs can be regarded as eligible costs within the meaning of the Railway Guidelines.

"Ferrobonus" for combined transport, OJ C 88 of 24.3.2012, p. 1; Commission decision of 5 July 2005, SA. 17724 (N 249/04), Belgium - *Régime d'aide pour le transport combiné*, OJ C 280 of 12.11.2005, p. 9.

²⁸ OJ C 184 of 22.7.2008, p.13.

3.3.3. Existence of external costs savings

- (78) According to point 103 of the Railway Guidelines, the eligible costs as regards aid for reducing external costs are the part of the external costs which rail transport makes it possible to avoid compared with competing transport modes.
- (79) Point 104 of the Railway Guidelines states that "Member States may put in place a time-limited compensation scheme for the use of railway infrastructure for the demonstrably unpaid environmental, accident and infrastructure costs of competing transport modes in so far as these costs exceed the equivalent costs of rail".
- (80) The notified schemes concern only rail freight based on electric traction. Electrified rail freight transportation generates lower negative externalities than road transport in terms of accident and pollution costs. This transport mode also has considerable spare capacity and can therefore play a role in shifting traffic away from the congested parts of the road networks. The PWC study confirms that the use of electric rail generates external costs that are significantly lower than those generated by the use of road for freight transportation.
- (81) The Commission has reviewed the PWC study on external costs savings provided by the Italian authorities based on the updated Handbook on estimation of external cost in the transport sector published by the Commission.²⁹ The Commission considers the data provided by the Italian authorities to be a "transparent, reasoned and quantified comparative cost analysis between rail transport and the alternative options based on other modes of transport" as required in point 105 of the Railway Guidelines. The methodology used and calculations performed are publicly available.
- (82) The part of the external costs which rail transport makes it possible to avoid compared with road transport can be considered in this case to correspond to the eligible costs of the scheme in line with points 103 to 105 of the Railway Guidelines.

3.3.4. Necessity and proportionality of the aid measures

- (83) According to points 107 (a) and 109 of the Railway Guidelines, there is a presumption of necessity, proportionality and absence of overcompensation of the aid for rail infrastructure use when the intensity of the aid stays below the following values: up to 100% of the eligible costs and up to 30 % of the total cost of rail transport.
- (84) As regards the first of these values, the aid for rail infrastructure use is strictly limited to the cost differential between rail and road, as quantified in the PWC Study (recital (26) of the present decision). As regards the second of these values, the compensation for the rail infrastructure charges is estimated to fall between 13% and 21% of the total cost of rail transport in Italy. Subject to verification of the actual costs as compared to the data provided in the PWC report, the 30% ceiling will be respected [EUR 1.83 < 0.30* EUR 17.82].
- (85) According to points 107 (b) and 109 of the Railway Guidelines, there is a presumption of necessity, proportionality and absence of overcompensation of the aid for reducing external costs when the intensity of the aid is below the following values: 50% of the eligible costs and up to 30% of the total cost of rail transport.
- (86) As regards the first of these values, under the notified schemes, the maximum aid amount for external costs savings is EUR 4.76 per train-km for 2015 and EUR 2.50 per train-km for

²⁹ http://ec.europa.eu/transport/themes/sustainable/studies/sustainable_en.htm

2016 and 2017. Under Ferrobonus, the aid amount is EUR 2.50 per train-km. The Ferrobonus scheme does not apply in 2015.

- (87) The Commission takes the view that the proportionality and the necessity of the notified scheme should be assessed taking into account the impact of the Ferrobonus scheme.
- (88) The maximum cumulated aid amount for Ferrobonus and the rail freight transport support scheme in 2016-2017 corresponds to EUR 5.00 per train-km. The external costs differential according to the PWC study submitted by Italy varies between EUR 9.42 and EUR 15.04/train-km.
- (89) For 2015, the Commission observes that the aid amount of EUR 4.76 is marginally above the lowest end of the range of 50 % of the external cost savings (EUR 4.71), as presented in the PWC study. This difference represents 1.1 percentage points.
- (90) For 2016-2017, the Commission observes that the cumulated aid amount of EUR 5.00 is marginally above the lowest end of the range of 50% of the external cost savings (EUR 4.71). The difference represents 6 percentage points.
- (91) As regards the second of these values, the implementing decrees stipulate that for each beneficiary the aid cannot exceed 30% of the total cost of rail transport including ancillary expenses, and they include a commitment of the granting authority to ensure compliance with this limit. The Commission notes that the values related to the total cost of rail transport are based on a full costs analysis provided in the PWC study. For 2015, the aid falls below the lowest range of the rail transport cost in Italy, as evaluated in the PWC study. For 2016-2017, the aid is slightly above the lowest range of the rail transport cost, representing a difference of 4 percentage points.
- (92) However, the Commission takes into account the circumstance that the value for 2016-2017 does not represent only the aid granted under the rail freight transport support scheme, but also incorporates the cumulated impact of the aid granted under the recent Ferrobonus scheme, although the latter is targeted to other categories of beneficiaries, namely the final users and the multimodal transport operators. Furthermore, the Commission takes due account of the estimated values concerning the aid to be effectively disbursed for 2016-2017 (EUR 1.67 per tonne-km) which brings the cumulated aid amount (EUR 4.17) well below 50% of the lowest range of the external cost differential (EUR 4.71). Finally, it should be noted that, under both the transitional and the definitive schemes, the assessment of the compliance with the presumptions thresholds, set out in point 107 (b) of the Railway Guidelines, subtracted the values corresponding to the aid for the compensation of the infrastructure charges from the rail transport cost. However, it should be noted that the compensation of 100% of the infrastructure charges is only foreseen for railway undertakings operating in the South of Italy and the islands.
- (93) The Commission notes that part of the aid for the compensation of the infrastructure charges as well as the aid for the reduction of the external cost savings concerns rail freight services that occurred in the past.
- (94) In this regard, the Commission observes that, with reference to the recital (8) of this decision, the internal legal basis of both the transitional and definitive schemes was adopted prior to the period covered by the aid, i.e. on 23 December 2014.
- (95) Furthermore, the Commission observes in this context that, in direct reliance on the aid measures resulting from the adoption of the law and advertising within the market of the

implementation of aid aimed at the coordination of transport, several new the rail market started providing rail freight services in the South of Italy and the islands, where previously the only provider had been the national rail incumbent, Trenitalia.³⁰ The Commission takes the view that these market developments demonstrate the incentive effect of the measures.

- (96) According to point 110 of the Railway Guidelines, in principle, the aid has to be reflected in the price demanded from the shipper. To allow shippers to benefit from the compensation in question, under the notified schemes, railway undertakings commit to ensure that the contribution to the costs is reflected in the rates charged for the services provided. Moreover, railway undertakings will be obliged to cooperate as requested with any studies, checks and assessments carried out by or on behalf of the Italian government in relation to the implementation and effects of the compensation scheme.
- (97) According to point 111 of the Railway Guidelines, where aid is granted for the purposes of compensating infrastructure charges and reducing external costs, there must be realistic prospects of keeping the traffic transferred to rail so that the aid leads to a sustainable transfer of traffic. The Commission observes that the scheme has been designed in order to address the imbalance between rail and road transport infrastructure, which is particularly acute in the South of Italy. This is of special importance in view of the need for specific investments in the rail infrastructure of Southern Italy.
- (98) In this context, the Commission considers positively the recent market developments subsequent to the announcement of the present scheme, according to which at least 11 railway undertakings have been providing rail freight services in the Southern and insular parts of Italy.
- (99) This context provides a solid basis to believe that a temporary compensation of the higher costs generated by rail usage will lead to not only a temporary but also to a sustainable transfer of freight from rail to the road transport.
- (100) The data provided by Italy shows that railway undertakings have already passed on to the market a significant part of the subsidies even though the aid has not yet been disbursed.

3.3.5. Conclusion on proportionality and necessity of the aid measures and other conditions

- (101) In view of the above, the Commission considers that the aid is necessary and proportionate and that the other conditions laid down in the Railway Guidelines are met. In particular, and with reference to recitals (89) to (91) of this decision, the Commission considers that the fact that the maximum possible aid amounts exceed very slightly the 50% and 30% ceilings laid down in Points 107 (a) and (b) of the Railway Guidelines does not affect its conclusion that the aid for the reduction of the external costs savings for 2015 and for 2016-2017 meets the requirements of necessity and proportionality.

3.3.6. The aid scheme is granted on non-discriminatory terms, the aid scheme is transparent and time-limited

- (102) The notified schemes do not set out any restrictive conditions based on the nationality of the undertaking or other characteristics. The aid is therefore granted on non-discriminatory terms.

³⁰ 11 operators applied to benefit from the transitional scheme and 23 operators applied to benefit from the definitive scheme.

- (103) The notified schemes are transparent as the conditions for benefiting from them are clearly stipulated in the relevant legal acts. Finally, the aid schemes are limited in time and their duration is in line with the time limits laid down in point 97 of the Railway Guidelines.

3.3.7. Effect on competition and trade not contrary to the common interest

- (104) Point 96 of the Railway Guidelines stipulates that "distortion of competition which is inherent in aid must not jeopardise the general interests of the [Union]. By way of illustration, aid likely to shift traffic flows from short sea shipping to rail would fail to meet these criteria".
- (105) The notified schemes are designed to reduce imbalances between railway and road transport modes. Concerning potential negative effects on alternative transport modes, the Commission is of opinion that they would be very limited as regards the inland navigation, for reasons principally related to the very low share of this transport mode in the Italian freight transportation system.
- (106) To assess the potential negative impact that the notified schemes could have on short-sea shipping, the Commission takes into account the data on distribution of traffic volumes in Italy among transport modes.³¹ These show a net preponderance of the maritime sector over rail. Furthermore, the share of maritime transport recorded a positive trend during 2005-2012.³² The Commission observes that this trend was neither reversed nor impacted by other schemes to incentivise a modal shift to rail that applied in the period 2010-2011.
- (107) In addition, the Commission observes that the notified schemes cover freight traffic with reference to a block train, which is a cargo shipping method specific to rail transportation. The Commission notes that short sea shipping appears to operate on a different basis: the notified Marebonus scheme, for example, is designed to provide support on the basis of a vehicular unit. The Commission concludes that the incentives granted under the current scheme are unlikely to be attractive to operators currently transporting goods via short sea shipping.
- (108) In view of the above, the Commission takes the view that the notified schemes are designed to reduce imbalances between railway transport and road transport and are unlikely to shift traffic flows from short sea shipping to rail.
- (109) The Commission concludes that the notified aid schemes do not give rise to a distortion of competition to an extent contrary to the common interest according to point 96 of the Railway Guidelines.

4. CONCLUSION

- (110) The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the Treaties as it meets the needs of coordination of transport pursuant to Article 93 of the Treaty on the Functioning of the European Union.
- (111) If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to

³¹ See Table I.

³² See Table I.

agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic languages on the Internet site:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>

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

European Commission

Directorate-General Competition
State Aid Greffe
B-1049 Bruxelles
Fax: +32 2 296 12 42

Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe Vestager

Member of the Commission

