II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 30 July 1997

concerning aid granted by the Friuli-Venezia Giulia Region (Italy) to road haulage companies in the Region

(Only the Italian text is authentic)

(Text with EEA relevance)

(98/182/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93(2) thereof,

Having given the interested parties notice to submit their comments pursuant to the abovementioned Article [1],

Whereas:

I

The Commission first became aware of the existence of Regional Law No 4 of 7 January 1985 of the Italian Region of Friuli-Venezia Giulia (hereinafter referred to as 'Law No 4/85') through another aid case. As the aid scheme provided for by that law had never been notified to the Commission under Article 93(3) of the Treaty, it was regarded as a case of non-notified aid.

On 29 September 1995 the Commission wrote asking the Italian authorities for further information. By fax of 27 October 1995 the Italian authorities asked for an extension of the time allowed for replying to the letter. This was agreed to by the Commission on 9 November 1995. A reply was received after the prescribed period in two letters dated 10 January 1996 registered at the Directorate-General for Transport on 11 January 1996. However, those letters contained only incomplete information about the aid scheme introduced by Law No 4/85.

In response to a letter dated 30 May 1996 from the Italian authorities, the Commission, in a letter dated 19 June 1996, again pointed out that not all the information requested in the letter dated 29 September 1995 had been provided, in particular as regards the text of Law No 4/85. A meeting was held in Brussels on 18 July 1996 between the Commission and the Italian authorities, at which the text of Law No 4/85 was finally communicated. On 18 November 1996 the Commission received further information relating to another aid case, but which also directly concerned the aid in question.

On 13 February 1997 a meeting was held between the Italian authorities and the Commission, at which the former again referred to the specific problems facing regional hauliers. They also presented the draft restructuring plan for road haulage in the Region, the outline of which was contained in the report sent in November 1996.

By letter dated 14 February 1997, the Commission informed the Italian Government of its decision to initiate a procedure against the aid scheme for commercial road hauliers in the Friuli-Venezia Giulia Region.

[1] OJ C 98, 26. 3. 1997, p. 16.

The Commission invited the Italian authorities to comment on that decision and informed the other Member States and interested parties by publishing the letter [1] in the *Official Journal of the European Communities*.

The Italian authorities sent their comments in a letter dated 27 March 1997, registered at the Commission on 3 April 1997. The Commission did not receive comments from any third party.

II

Law No 4/85 replaces the scheme introduced in 1981 by Regional Law No 28/81, but most of the information that the Commission has relates to the Law No 4/85. The two aid schemes, which are aimed at promoting the development of the commercial road haulage sector in the Friuli-Venezia Giulia Region, comprise the following three measures:

Article 4 provides for a reduction of interest of up to 60 % (70 % in the case of associated undertakings) on loans of less than 10 years' duration aimed at developing companies' infrastructure, that is, premises for warehousing, storage and handling of goods, and fixed and mobile equipment.

According to the Italian authorities' report of 18 November 1996, the budget for the period 1985 to 1995 was ITL 13 000 million (ECU 6,7 million), 155 applications were accepted and the average rate of subsidies actually granted ranged from 13 % to 26 % of the total cost of the loans and interest. The budget for the period 1981 to 1985, under the previous aid scheme, was ITL 930 million (ECU 0,4 million) and 14 applications were accepted.

Article 5 provides for financing the cost of leasing new vehicles and computer technology, where they are acquired through leases of three or five years duration. Up to 25 % of the cost of purchasing the goods is covered (30% in the case of cooperatives and consortiums). Regional Law No 3/88 subsequently reduced the maximum to 20% for all beneficiaries and it was reduced to 15 % by Regional Law No 2/89.

According to the Italian authorities' report of November 1996, the budget for this measure for the period 1985 to 1995 was ITL 23 300 million (ECU 11,8 million). During that period, 1 691 applications were accepted and the average financing rate was around 19 %. In 1993, 83 applications were accepted and the average financing rate was restricted to 10 %. Under the previous scheme, ITL 5 790 million (ECU 2,9 million) was granted in subsidies, for a total of 305 applications.

Article 6 of Law No 4/1985 provides for the financing of up to 50 % of the cost of operating and replacing fixed and mobile equipment for cooperatives and consortia. The investment must be intended for the construction or purchase of facilities or equipment needed to fulfil the aims of the cooperative or consortium, or must contribute to the operation and development of service centres for housing, maintenance and repair of vehicles, or to related facilities and equipment. According to the limited information received from the Italian authorities, grants have been made for investment in company headquarters, and for lorry and trailer parks, offices, swap-bodies and warehousing premises.

Following initiation of the procedure, the Italian authorities reported that aid for investment in combined transport equipment had been granted under Article 6 of Law No 4/85. According to that information, between 10 % and 15 % of the total subsidies granted under the scheme was for the purchase of swap-bodies and corresponding attachment devices for intermodal vehicles and semi-trailers.

According to the abovementioned report, a budget of ITL 1 074 million (ECU 0,5 million) was committed for the period 1985-1995 and 14 applications were accepted, the average financing rate being 32 %. For the scheme introduced by Law No 28/81 the budget was ITL 480 million (ECU 0,2 million) for a total of 23 applications accepted.

On several occasions the Italian authorities stressed that, although budgets are indeed scheduled up to the year 2004 for financing of interest payments and up to 1999 for leasing transactions, the granting of subsidies has been suspended since 1995 following the Commission's comments on the aid scheme established by that law.

Potential beneficiaries of the aid scheme are commercial haulage companies, cooperatives and companies associated as cooperatives or consortia which are registered in the register of road hauliers for Friuli-Venezia Giulia and registered with the Friuli-Venezia Giulia Regional

[1] OJ C 98, 26. 3. 1997, p. 16.

Chamber of Commerce, Industry, Craft Trades and Agriculture. Potential beneficiaries of the measures set out in Article 6 of Law No 4/85 are transport cooperatives and consortia which have their registered office in the Region, and also any affiliated companies whose registered office may be outside the Region, provided they do not comprise more than 20% of the associates.

2 202 applications have been accepted since 1981, the majority of them (over 80%, according to the Italian authorities) from very small firms possessing a single vehicle and involved solely in local or regional transport.

III

Road haulage cabotage was closed to Community competition until 1 July 1990, when Council Regulation (EEC) No 4059/89 of 21 December 1989 entered into force. That Regulation laid down the conditions under which non-resident carriers can operate national road haulage services within a Member State ([1]), and introduced cabotage quotas, Italy being allocated 1 767 authorisations.

That Regulation was replaced by Council Regulation (EEC) No 3118/93 ([2]), which is currently in force, which set 1 July 1998 as the date for full liberalisation of cabotage operations, established a transitional period as of 1 January 1994 and set an initial Community-wide quota of 30 000 authorisations, to be increased annually by 30 %.

Between 1990 and 1993, 14% of Community road cabotage operations in tonne-kilometre terms was carried out in Italy, which means that it was the second most attractive country in the Community for Community carriers.

The international road haulage market has been open to Community competition since 1969, when Council Regulation (EEC) No 1018/68 of 19 July 1968 on the establishment of a Community quota for the carriage of goods by road between Member States ([3]) entered into force, although even before that date there were a number of bilateral agreements between Member States. Participation in international haulage was subject to Community quotas until the adoption of Council Regulation (EEC) No 881/92 of 26 March 1992 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States ([4]). The market has thus been fully open to competition since 1 January 1993.

According to the report received by the Commission on 18 November 1996, in the Friuli-Venezia Giulia Region there are approximately 31 700 own-account hauliers compared with 3 250 commercial haulage companies; however, the latter's share of the total regional load capacity is 56 %.

Following initiation of the procedure, the Italian authorities stated that in 1993 international road haulage operations carried out by carriers from Friuli-Venezia Giulia represented 4 % of total haulage in Italy (based on tonnage; the figure is 16 % calculated on the basis of tonne-kilometres). International haulage operations where the Region was the point of departure or destination represented only 5,4 % (in tonnes) of all transport operations in the Region carried out by regional, national and foreign carriers. Expressed in tonne-kilometres the figure would probably be greater ([5]).

IV

Article 92 of the Treaty states that 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 is, in so far as it affects trade between Member States, incompatible with the common market. This concept of aid therefore calls for analysis of three fundamental factors: use of State resources, distortion of competition and effect on trade.

V

The concept of State aid applies just as much to aid granted by regional or local authorities as it does to aid granted by central authorities of a Member States ([6]). In the present case, Article 1 of Regional Law No 4/85 and Article 1 of Regional Law No 28/81 explicitly authorize the regional authorities to allocate funds to road haulage companies with the aim of promoting and developing the Friuli-Venezia Giulia Region. The funds are therefore State resources within the meaning of Article 92(1) of the Treaty.

([1]) OJ L 390, 30. 12. 1989, p. 3.
([2]) OJ L 279, 12. 11. 1993, p. 1.
([3]) OJ L 175, 23. 7. 1968, p. 13.
([4]) OJ L 95, 9. 4. 1992, p. 1.
([5]) Data obtained from an article on road haulage operations in 1993 published in the July-September 1995 issue of the quarterly review *Sistemi di Trasporto*.
([6]) Judgments of the Court of Justice in Case C-323/82 *Intermills v. Commission* [1984] ECR 3809 and in Case C-284/84 *Germany v. Commission* [1987] ECR 4013.

VI

In initiating the procedure, the Commission contended that the aid scheme may produce distortion of competition, since it seeks to improve the competitive position of commercial road haulage companies in the Friuli-Venezia Giulia Region by reducing their normal business running costs, whereas such costs have to be borne in full by their competitors, namely own-account hauliers and commercial haulage companies outside the Region.

In their letter dated 27 March 1997, the Italian authorities emphasised the huge costs which regional carriers have had to meet in order to adapt their fleets to environmental protection requirements imposed by neighbouring Austria, which has greatly benefited carriers in that country, especially *vis-a-vis* carriers from the neighbouring Friuli-Venezia Giulia Region. They also made reference to the favourable conditions enjoyed by Austrian carriers as compared to Italian carriers in general, and to those of Friuli-Venezia Giulia in particular, arising from the fact that, prior to its accession to the European Union in 1994, Austria was able to grant considerable State aid to its carriers without conditions, leading to an imbalance in the market in their favour.

However, account must be taken of the fact that Austria, as a member of the EEA, has been subject to Community rules on State aid, as transposed in the EEA Agreement, since 1994; furthermore, even prior to its accession, a number of agreements were made between the member countries of EFTA and the Community, which have included rules in this sector since 1972.

As regards the information given by the Italian authorities relating to Austrian legislation, it transpires that this is a reference to the system of transit rights (ecopoints), set up under the Agreement of 2 May 1992 between the European Community and the Republic of Austria on transit of goods by rail and road. It is not, therefore, a unilateral measure imposed by Austria, but rather an agreement approved by Council Decision 92/577/EEC of 27 November 1992 concerning the conclusion of the Agreement between the Community and the Republic of Austria on the transit of goods by road and rail ([1]), which affects all Member States, and whereby certain advantages are conferred on Italy due to its proximity to Austria.

The Italian authorities also argued that the carriers of the Region are at a disadvantage as compared with carriers from Slovenia and Croatia, since the latter countries can freely intervene in the transport sector as they are not subject to the rules on State aid. According to the Italian authorities, that unfavourable situation for the Region of Friuli-Venezia Giulia justifies their request to continue with short-term aid measures, in order to prevent the sector from becoming completely uncompetitive. It would appear from this that the Italian authorities thus regard the subsidies not as aid but rather as compensation for the disadvantages in question.

However, the Court of Justice has confirmed (see in particular its judgment in Joined Cases 6 and 11/69 *Commission v. France* ([2])) that disparities in legislation giving rise to distortions of competition cannot be regarded as justifying compensatory State aid.

The Commission considers that even if distortions did indeed exist as a result of external factors, all Community carriers would have been on an equal competitive footing as regards such distortions and that they cannot therefore serve to justify the introduction of an aid scheme which distorts competition between carriers within the Community. Also, the current competition conditions for transport operations carried out in Italy by Croatian and Slovenian carriers are governed by bilateral agreements between Italy and those third countries, including practical measures for the monitoring of the agreements.

The Commission considers that the aid therefore benefits operators engaged in a specific activity (namely commercial road haulage) in a specific Region, by reducing the normal business running costs in such a way as to engender a distortion of competition.

VII

Furthermore, commercial road haulage companies in the Friuli-Venezia Giulia Region are in competition with road haulage companies from the rest of Italy and from other countries, as well as with own-account hauliers.

The Italian authorities asked for the *de minimis* rule to be applied, since the subsidies involved are relatively small. However, the Community guidelines on aid to

([1]) OJ L 373, 21. 12. 1992, p. 4.

([2]) [1969] ECR 523.

SMEs and the *de minimis* rule were not adopted until 1992 ([1]), were modified in 1996 ([2]), and, in accordance with point 2.2 of those guidelines, are not applicable to the transport sector since there are specific rules on competition in that sector.

A distinction must be made between companies exclusively engaged in transport operations at national, regional or local level, and those engaged in international transport.

The former are in competition with other Italian carriers and with Community carriers engaged in cabotage in Italy.

However, it must be taken into account that before Regulation (EEC) No 4059/89 entered into force, the national haulage market was not open to Community competition, as explained above. In view of the absence of Community competition, the granting of aid to companies exclusively engaged in transport operations at national, regional or local level could not have had any effect on intra-Community trade.

The Commission therefore considers that the subsidies granted between 1981 and 1 July 1990 under Regional Laws No 28/81 and No 4/85 to transport companies in Friuli-Venezia Giulia exclusively engaged in transport operations at national, regional or local level do not constitute State aid within the meaning of Article 92(1) of the Treaty.

However, aid granted to commercial road haulage companies in the Friuli-Venezia Giulia Region from the date on which Regulation (EEC) No 4059/89 entered into force, that is from 1 July 1990 onwards, are to be regarded as State aid within the meaning of Article 92 of the Treaty, since it may have affected trade between Member States.

Following initiation of the procedure, the Italian authorities stated that over 80 % of beneficiaries were very small firms possessing a single vehicle and involved solely in local or regional transport. Nevertheless, because of cabotage, the Commission considers that the local nature of the activity cannot be taken as a criterion for ruling out any effect on trade, even though cabotage is subject to quotas.

Companies from the Friuli-Venezia Giulia Region engaged in international transport have since 1969 been in competition with other Italian companies involved in the same activity.

According to the Italian authorities, hauliers from the Region play only a very small part in international transport operations, and can therefore be regarded as having little significant effect on competition in this sector. The Commission, however, considers that the limited nature of the competition cannot preclude the application of Article 92(1) of the Treaty to the road haulage sector.

Where the position of companies in a particular sector involved in trade between Member States is strengthened, this trade must be considered to be affected within the meaning of Article 92(1) of the Treaty. The aid provided for under Laws No 4/85 and No 28/81 strengthens the financial position and hence the scope of commercial haulage companies in the Friuli-Venezia Giulia Region *vis-a-vis* their competitors since 1 July 1990 for companies engaged in national transport and since 1969 for companies engaged in international transport and may accordingly affect trade between Member States.

VIII

Since some of the financial measures in favour of commercial road haulage companies thus constitute aid within the meaning of Article 92(1) of the Treaty, it must be considered whether any of the derogations provided for in Articles 77, 92 and 93 of the Treaty apply.

Article 3(1)(d) of Council Regulation (EEC) No 1107/70 of 4 June 1970 on the granting of aid for transport by rail, road and inland waterway ([3]), as last amended by Regulation (EC) No 543/97 ([4]), authorises such aid 'until the entry into force of Community rules on access to the transport market, where aid is granted as an exceptional and temporary measure in order to eliminate, as part of a reorganisation plan, excess capacity causing serious structural problems, and thus to contribute towards meeting more effectively the needs of the transport market'.

The Italian authorities stated, in their response to the initiation of the procedure, that there is no problem of excess capacity in the haulage sector in the Friuli-Venezia Giulia Region, but rather an undercapacity in vehicle fleets of about 20 % as compared to real needs — in other words, an excessive workload is being placed on existing equipment and personnel in the Region, with a potentially adverse impact on safety.

The Commission therefore considers that the aid in question is not covered by the exemption set out in Article 3(1)(d) of the above Regulation, since it is not part of any

([1]) OJ C 213, 19. 8. 1992, p. 2.
([2]) OJ C 213, 23. 7. 1996, p. 4, and OJ C 68, 6. 3. 1996, p. 9.
([3]) OJ L 130, 15. 6. 1970, p. 1.
([4]) OJ L 84, 26. 3. 1997, p. 6.

reorganisation plan for the sector within the meaning of that provision, and it is not in response to excess capacity in the sector. The conditions for applying that provision are therefore not fulfilled.

In their response to the initiation of the procedure, the Italian authorities argued that the vehicle fleets in the Region are very old, giving rise to detrimental effects as regards atmospheric pollution, noise and safety. This requires a financial input for vehicle replacement, which the operators in the sector would have difficulty in providing. The Italian authorities also maintained that the granting of aid for fleet replacement was apparently not disallowed by the Commission in the past, as evidenced by its answer to parliamentary question No E/1883/96.

The Commission considers that subsidies for vehicle leasing constitute aid of a type which is difficult to reconcile with the common market, notably because it involves an increase in capacity, which is contrary to the spirit of Article 3(1)(d) of Regulation (EEC) No 1107/70. Furthermore, the Commission's answer to the parliamentary question cited by the Italian authorities confined itself to stating that any such aid must be submitted for Commission approval, pursuant to Article 93 of the Treaty, which does not in any way imply that the Commission would be in favour of aid for vehicle replacement.

As mentioned above, between 10 % and 15 % of the subsidies were for the financing of combined transport equipment. Provided such subsidies are of a temporary nature and are aimed at encouraging the development of combined transport, they are exempt under Regulation (EEC) No 1107/70, as amended by Regulations (EEC) No 1658/82 ([1]) and No 1100/89 ([2]) in the case of aid granted up to 31 December 1992, and under Regulation (EEC) No 1107/70, as amended by Regulations (EEC) No 3578/92 ([3]) and (EC) No 543/97 in the case of aid granted after that date, insofar as they concern investment in transport equipment specifically adapted for, and used solely for, combined transport.

The aid for combined transport under the scheme set up by Laws No 28/81 and No 4/85 was for the purchase of swap-bodies and corresponding attachment devices for intermodal vehicles and semi-trailers. This aid thus fulfils the conditions for exemption outlined above, aimed at encouraging the development of combined transport.

The Commission therefore considers that such aid may benefit from the exemption provided for in Article 3(1)(e) of Regulation (EEC) No 1107/70 until 31 December 1997.

The Commission considers that the exemptions under Article 92(2)(a) and (b), and Article 92(3)(b) and (d) of the Treaty are not applicable in this case, because the aid in question cannot be regarded as aid of a social character granted to individual consumers, aid to make good the damage caused by natural disasters or other exceptional occurrences, aid towards a project of common European interest, and is not aid to promote culture and heritage conservation.

Article 92(3)(a) and (c) provide for exemptions for aid to promote the economic development of certain areas. The Italian authorities stated in their letter in response to the initiation of the procedure that two-thirds of the Region's territory is in areas of industrial decline (Objective 2) or less-favoured areas (Objective 5b).

First, however, the planned aid is not part of a regional development plan covering all sectors of the Region's economy, but rather is a purely sectoral measure affecting only the commercial road haulage sector in the Friuli-Venezia Giulia Region; secondly, not all the territory in the Region is in areas qualifying for the exemptions. The Commission therefore considers that the exemptions under Article 92(3)(a) and (c) are not applicable in this case.

The exemption provided for in Article 92(3)(c) of the Treaty applies to aid aimed at facilitating the development of certain economic activities, where this does not adversely affect trading conditions to an extent contrary to the common interest. However, aid for leasing vehicles as referred to in Article 5 of Law No 4/85 is operating aid, which, according to the judgment of the Court of First Instance in Case T-459/93 *Siemens* v. *Commission* ([4]), is aid which is intended to relieve an undertaking of expenses it would normally have to bear in its day-to-day management or its usual activities, and therefore is not in principle covered by the abovementioned Article 92(3).

([1]) OJ L 184, 29. 6. 1982, p. 1.
([2]) OJ L 116, 28. 4. 1989, p. 24.
([3]) OJ L 364, 12. 12. 1992, p. 11.
([4]) [1995] ECR II-1679.

Furthermore, such an exemption cannot apply to the scheme under review since the latter involves measures which are not accompanied by any action aimed at an objective of common interest, such as a restructuring plan. While the Italian authorities did indeed make reference to restructuring the sector in their reply to the initiation of the procedure, that related to future restructuring and rationalization plans for the sector, which they plan to implement through new legislative aid measures for the Region.

Lastly, the Italian authorities have not claimed or demonstrated that the aid fulfils the conditions for any other derogation provided for in the Treaty or in Regulation (EEC) No 1107/70.

In view of the foregoing, the Commission considers that aid granted under Laws No 28/81 and No 4/85 to commercial road haulage companies in the Friuli-Venezia Giulia Region engaged in national transport operations from 1 July 1990 onwards, as well as for those engaged in international transport operations, is incompatible with the common market within the meaning of Article 92 of the Treaty.

IX

Under Article 93(3) of the Treaty, such aid should have been notified to the Commission in good time. Since the Italian Government implemented the aid scheme without having fulfilled this obligation, the scheme should be regarded as illegal.

In initiating the procedure, as communicated to the Italian authorities in its letter dated 14 February 1997, the Commission drew their attention to the Communication ([1]) reminding Member States that any aid illegally granted is liable to be the subject of a Commission decision requiring the Member State to recover it. Such action is considered necessary by the Commission in this instance in order to restore the fair conditions of competition which existed before the aid was granted,

HAS ADOPTED THIS DECISION:

Article 1

Subsidies granted under Laws No 28/1981 and No 4/1985 of the Friuli-Venezia Giulia Region (hereinafter referred to as 'the subsidies') up to 1 July 1990 to companies exclusively engaged in transport operations at local, regional or national level do not constitute State aid within the meaning of Article 92(1) of the Treaty.

Article 2

The subsidies not covered by Article 1 of this Decision constitute aid within the meaning of Article 92(1) of the Treaty and are illegal since they were introduced in breach of Article 93(3).

Article 3

The subsidies for financing equipment specifically adapted for, and used solely for, combined transport constitute aid within the meaning of Article 92(1) of the Treaty but are compatible with the common market by virtue of Article 3(1)(e) of Regulation (EEC) No 1107/70.

Article 4

The subsidies granted from 1 July 1990 onwards to companies engaged in transport operations at a local, regional or national level and to companies engaged in transport operations at an international level are incompatible with the common market since they do not fulfil any of the conditions for derogation provided for in Article 92(2) and (3) of the Treaty, or the conditions provided for in Regulation (EEC) No 1107/70.

Article 5

Italy shall abolish and recover the aid referred to in Article 4. The aid shall be reimbursed in accordance with the provisions of domestic law, together with interest, calculated by applying the reference rates used for assessment of regional aid, as from the date on which the aid was granted and ending on the date on which it is actually repaid.

Article 6

Italy shall inform the Commission within two months of the date of notification of this Decision of the measures taken to comply with it.

Article 7

This Decision is addressed to the Italian Republic

Done at Brussels, 30 July 1997.

For the Commission
Emma BONINO
Member of the Commission

([1]) OJ C 318, 24. 11. 1983, p. 3.