# COMMISSION DECISION

## of 9 July 2003

## on the State aid C 11/2002 (ex N 382/2001) which Italy is planning to implement in favour of certain heavy goods vehicles designed for the carriage of goods by road in order to divert heavy goods traffic from trunk road 33 (SS 33) from Lake Maggiore to the A26 motorway

*(notified under document number C(2003) 2154)*

**(Only the Italian text is authentic)**

**(Text with EEA relevance)**

(2004/261/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on Italy and the interested parties to submit their comments pursuant to the provisions cited above [1], and having regard to their comments,

Whereas:

### 1. PROCEDURE

(1) By letter dated 12 June 2001, Italy notified the revised versions of draft regional laws Nos 14 and 87 on the 'diversion of heavy goods traffic from trunk road 33 (SS 33) in the Lake Maggiore area to the A26 motorway'.

It furnished the Commission with supplementary information by letters dated 4 September 2001 and 21 January 2002. In particular, in their letter dated 14 January 2002 (DG TREN/A/51067), the Italian authorities sent the Commission a draft Memorandum of Understanding between the Ministry of Infrastructure and Transport, the Piedmont Region, the road hauliers' associations and the motorway concessionary Autostrade SpA.

(2) By letter dated 27 February 2002, the Commission informed Italy of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of this aid.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [2]. The Commission called on Italy and the interested parties to submit their comments.

(4) Italy forwarded its comments to the Commission by letters dated 17 May 2002 (DG TREN/A/59000) and 17 January 2003 (SG(2003)A/1199). The Commission has received no comments from interested parties.

### 2. DETAILED DESCRIPTION OF THE AID

#### 2.1. Brief description of the initial measures

(5) For the purpose of maintaining the safety of the citizens concerned, protecting the environment and developing tourism in the area of Lake Maggiore, the Piedmont Region proposes to implement a seasonal traffic diversion system for all heavy goods vehicles over 7,5 tonnes from trunk road 33 in the area of Lake Maggiore to the A26 motorway.

(6) To that end, the Piedmont Region proposes to pay up to 40 % of the tolls incurred by such vehicles for the use of the motorway. In accordance with national legislation on the temporary diversion of heavy goods traffic, the Italian authorities justify the measure with reference, *inter alia*, to the fact that in the case in point, the toll motorway is the only possible alternative to the main road.

#### 2.2. Detailed description of the current measures

(7) In accordance with the final versions of draft regional laws Nos 14/2000 and 87/2000, the Piedmont Region plans, on a temporary basis between 1 July and 30 September 2003, to divert certain categories of heavy goods traffic in the Lake Maggiore shore area from the trunk road to the A26 toll motorway; this concerns the sections between Gravellona Toce and Castelletto Ticino and Gravellona Toce and Borgomanero in both directions. This measure is designed to maintain the safety of citizens living near the shores of Lake Maggiore, an area endangered during the summer months, when the local roads are affected by a significant increase in traffic due to tourism. This measure is designed to protect the environment (with particular reference to reducing pollution) and to develop tourism in the area, while reducing journey times for road-based freight transport.

[1] OJ C 87, 11.4.2002, p. 2.
[2] See footnote 1.

(8) The vehicles concerned are motor vehicles over 7,5 tonnes for the carriage of goods by road and, in particular, buses, road tractors, trailers, articulated vehicles and vehicles used to carry materials for the building, road maintenance and mining sectors ([3]). These vehicles are identified directly by Autostrade SpA, the concessionary for the A26 motorway, by means of the Telepass electronic toll system and the payment receipts issued when vehicles pass through the motorway toll gates.

(9) By letter dated 17 January 2003 (SG(2003)A/1199) Italy extended the scope of the measure to Italian and Community heavy goods vehicles over 7,5 tonnes paying the motorway tolls by systems other than Telepass, specifically those paying tolls using cash, Bancomat, credit card and Viacard ([4]).

(10) As regards the application of the measure exclusively to vehicles over 7,5 tonnes, it should be emphasised that, in the Italian legal system, this is the category to which temporary diversions normally apply ([5]).

(11) The conditions for the application of the measure have been defined in a draft Memorandum of Understanding concluded between the Ministry of Infrastructure and Transport, the Piedmont Region, Autostrade SpA and the road hauliers' associations. On the basis of this agreement, the Piedmont Region has undertaken to provide partial compensation for the tolls due as a result of the enforced use of the A26 motorway, specifically up to 40 %, within a maximum budget of approximately EUR 155 000. The road haulage associations, for their part, have undertaken to ensure that their members pay at least 40 % of the above tolls. In addition, Autostrade SpA is offering a 20 % reduction to this category of vehicles.

(12) The reduction will either be shown on the invoices of road hauliers using the Telepass electronic toll payment system or will be available directly to road hauliers using cash, Bancomat, credit cards or Viacard when they pay tolls at Autostrade SpA toll gates. The Piedmont Region undertakes to reimburse Autostrade SpA for the toll reductions it has borne (up to 40 %).

(13) The amount of toll to be paid varies, according to category of vehicle and the section of motorway involved, from EUR 0,77 to EUR 5,4 per vehicle per journey.

(14) The measure is necessitated because the toll-charging A26 motorway is the only alternative to the Lake Maggiore trunk road, to which access will be limited. In the Italian legal system ([6]), whenever the local authorities decide to divert heavy goods traffic temporarily for reasons other than public safety, road safety or health protection, they must indicate one or more alternative routes, including at least one which does not require the mandatory use of toll motorways.

(15) By letter dated 17 January 2003 (SG(2003)A/1199) the Italian authorities notified the Commission of the results of a study designed to measure the level of pollution caused by a vehicle with a maximum weight of 26 tonnes travelling on the following routes in both directions: between Castelletto Ticino and Gravellona Toce and between Borgomanero and Gravellona Toce, using either the A26 motorway or roads SS 33, SS 142 and SR 229 ([7]). This study shows that, even though the motorway route is 10 km longer than the routes via the national roads, using the A26 motorway nonetheless considerably reduces fuel consumption and hence the levels of polluting emissions. Based on the forecasted increase in the number of vehicles using the above motorway if the diversion of heavy goods vehicles in the Lake Maggiore area is applied, the Italian authorities also assessed the overall quantity of diesel which could be saved in the years 2003, 2004 and 2005. According to Italy, the reduction in fuel consumption would have the effect of reducing polluting emissions and would thus help improve environmental conditions in the area, particularly the level of atmospheric pollution ([8]).

(16) At present, the measure seems to be experimental in nature and to be confined to the period 1 June to 30 September 2003. Until the results of the experiment are confirmed, the Piedmont Region plans to set up a working party made up of a representative of each body signing the draft agreement.

([3]) See Article 54(1) paragraphs (d), (e), (h), (i) and (n) of the Italian Highway Code, Legislative Decree No 285 of 30 April 1992 (Official Journal of the Republic of Italy No 114, 18.5.1992), as amended by Legislative Decree No 360 of 10 September 1993 (Official Journal of the Republic of Italy No 217, 15.9.1993). See also the Decree of the Minister for Infrastructure and Transport of 5 December 2001 and Article 7 of Presidential Decree No 495 of 16 December 1992.

([4]) See, in particular, paragraph 5 of the draft Memorandum of Understanding.

([5]) See also the Decree of the Minister for Infrastructure and Transport of 5 December 2001 and Article 7 of Presidential Decree No 495 of 16 December 1992.

([6]) See Ministerial Circular No 62 of 5 August 1993, Articles 6 and 7 of Legislative Decree No 285 of 30 April 1992 and Article 7 of Presidential Decree No 495 of 16 December 1992 (Official Journal of the Republic of Italy No 303, 28.12.1992) as amended by Presidential Decree No 610 of 16 September 1996 (Official Journal of the Republic of Italy No 284, 4.12.1996).

([7]) Test carried out on 23 October 2002 using an IVECO AS 440 S 45 tractor (240 horse power) linked to a semi-trailer, max. 40,5 tonnes.

([8]) See, in particular, the Regional Plan for redevelopment and air quality (*Piano regionale per il risanamento e la qualità dell'aria*, Official Journal of the Piedmont Region No 47, 21.11.2002) adopted by Decision of the Regional Executive on 21 November 2002 pursuant to Decree of the Minister for the Environment No 60/2002. Under this programme, eight municipalities in the area concerned are among those with atmospheric pollution levels above the upper limit and requiring action to be taken by the regional administration.

### 2.3. **Reasons for initiating the procedure**

(17) In its decision to initiate the formal investigation procedure, the Commission noted that, in this instance, the measure planned by the Italian authorities seemed to be covered by Article 87(1) of the EC Treaty. In particular, it harnesses State resources, confers financial advantage exclusively upon the road sector, particularly the carriage of freight by heavy goods road vehicles over 7,5 tonnes using the Telepass electronic toll payment system, exempting them from costs they would normally incur. The Commission also observed that the measure applies to only a limited part of the national road network. It considered, moreover, that the measure may be regarded as operating aid which, in view of the extent to which the road freight transport sector is open to competition, distorts or risks distorting intra-Community trade.

(18) The Commission has expressed doubts regarding the measure's compatibility with Article 87(2) or (3) and with Article 73 of the Treaty. In particular, the Commission felt there was a risk that the measure in question was not aimed at improving modal balance but seemed rather to have the effect of favouring road transport over other modes, particularly rail and short sea shipping.

(19) Consequently, in its Decision of 27 February 2002, the Commission invited Italy to respond within one month of receiving the Decision and to provide answers to the supplementary questions and all useful information needed to assess the measure. The Commission also invited interested third parties to submit their comments.

## 3. **COMMENTS BY ITALY**

(20) By letter dated 17 May 2002 (DG TREN/A/59000) Italy clarified the content of the measure further. Subsequently, by letter dated 17 January 2003 (SG(2003)A/1199) Italy informed the Commission of the amendments made to the aid scheme. The comments forwarded can be summarised as follows.

(21) Initially, the Italian authorities had emphasised that the measure in question would apply to both Italian heavy goods vehicles and to those of other Member States in the same categories travelling on the designated section of motorway and using the Telepass system. To justify the fact that only vehicles using the electronic Telepass toll payment system could benefit from the aid, the Italian authorities pointed out that the majority of vehicles from Italy or any other Member State already subscribed to the system for their operations. Italy subsequently decided to extend the scope of the measure to include Italian and Community heavy goods vehicles over 7,5 tonnes paying tolls by means other than the Telepass system.

(22) Italy maintains that the aid measure is compatible with the guidelines on State aid for environmental protection ([9]) and, in particular, paragraphs 50 and 51 thereof. According to the Italian authorities, the measure is necessary to contribute significantly to protection of the environment, safety and public health compromised by the congestion due to road traffic on the trunk road SS 30 at Lake Maggiore. In addition, the regional authority's action is set out in an agreement, the 'Memorandum of Understanding' signed by the regional administration and the road haulage associations, thus complying with paragraph 51 of the above guidelines.

(23) In particular, in support of the fact that the measure contributes to environmental protection, the Italian authorities report the results of the study carried out on a maximum 26-tonne vehicle which travelled the following routes between Castelletto Ticino and Gravellona Toce and between Borgomanero and Gravellona Toce in both directions, both via the A26 motorway and via the SS 33 and SR 229 roads. The Italian authorities insist that using the A26 motorway would appreciably reduce fuel consumption and hence the level of polluting emissions. In fact, according to Italy, increasing the number of vehicles using the A26 motorway would reduce levels of fuel consumption and polluting emissions more generally, thus improving environmental conditions in the Lake Maggiore area. The Italian authorities submit that the traffic diversion would help improve environmental conditions, particularly in terms of reducing the level of atmospheric pollution in certain municipalities along the road route which, under Piedmont regional law No 43/2000 ([10]), belong to regional areas 1 and 2, characterised by pollution levels exceeding the air quality limits.

(24) The regional authorities suggest, moreover, that the measure can be justified on the basis of Article 73 of the EC Treaty. In this respect, Italy notes that the protection of public safety is related to the concept of 'public service' cited in Article 73. As for the need for 'coordination of transport', the Italian authorities point out

([9]) OJ C 37, 3.2.2001, p. 3.
([10]) Regional law No 43 of 7 April 2000, provisions for environmental protection in terms of atmospheric pollution. Initial implementation of the Regional Plan for redevelopment and air quality.

that the area's topography, high value as a tourist destination and typical character would not at present allow freight movements to be favoured by increasing rail traffic or — even less — maritime traffic. The proposed scheme, on the other hand, would improve traffic management and restore some dignity and safety to the areas concerned.

(25) Italy points out the strictly experimental nature of the measure for the period 1 June to 30 September 2002, stressing that, if the Commission does not complete the examination procedure in due time, the measure will be applied during the period concerned. The Italian authorities further specify that the action cannot in any way damage the general objectives pursued.

(26) The Commission has not received officially any other comments from interested parties.

## 4. ASSESSMENT OF THE MEASURE: EXISTENCE OF AID

(27) Article 87(1) of the EC Treaty states that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market.

### 4.1. Transfer of State resources

(28) In the case in point, it should be noted that the Piedmont Region contributes up to 40 % of the toll payment due from certain road hauliers using the A26 motorway by reimbursing Autostrade SpA for the reduction it offers the road hauliers. There is undeniably a transfer of State resources. As regards the 20 % reduction granted directly to the road hauliers by Autostrade SpA, however, it should be noted that, in consideration of the eminently private nature of this company, there is no transfer of State resources ([11]).

### 4.2. Existence of financial benefits

(29) The financial benefit for certain heavy goods vehicles is clear too from the fact that the regional action enables Autostrade SpA to apply toll reductions in their favour. The undertakings benefiting from the aid would, as a result, be exempted from all or part of the costs they would normally have had to incur under their normal management or in the course of their normal operations using the motorway.

### 4.3. Selectivity of the measure

(30) With regard to the selectivity of the measure, it has been ascertained that it applies only to the freight transport by road, in particular the specific category of heavy goods vehicles over 7,5 tonnes among all freight vehicles ([12]), for the use of a rather limited section of the national road network.

### 4.4. Effect on intra-Community competition and trade

(31) It has been ascertained that the proposed measure, by exempting certain undertakings from the costs they would incur in the course of normal operations, should be defined as operating aid and as such likely, in principle, to distort competition ([13]) with regard to undertakings, whether Italian or from other Member States, which do not benefit from the measure concerned.

(32) In fact, taking account of the extent to which the road-based freight transport sector is open to competition ([14]), it can be assumed that the vehicles benefiting from the compensation are operating in the same market as those that do not benefit from the reduction in toll payments and that the measure, by favouring the former, may thus distort normal competition in the road transport sector. Nor can it be excluded that competition between different modes of transport may be affected. In addition, the aid may have repercussions on Community trade.

([11]) Following privatisation in December 1999, the bulk of Autostrade SpA's capital is now in the hands of private shareholders.

([12]) See Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers (OJ L 42, 23.2.1970, p. 1), as last amended by Directive 2004/3/EC of the European Parliament and of the Council (OJ L 49, 19.2.2004, p. 36). Motor vehicles intended for freight transport are all the vehicles registered as class N with at least four wheels, or three wheels and a maximum weight exceeding 1 tonne. In particular, class N1 includes vehicles with a maximum weight of 3,5 tonnes, class N2 those whose maximum weight is between 3,5 and 12 tonnes, and class N3 vehicles of more than 12 tonnes.

([13]) See, in particular, the Judgment of the Court of First Instance of 8 June 1995 in Case T-459/93, *Siemens* v *Commission*, ECR II-1678, paragraphs 48 and 77, and the Judgment of 30 April 1998 in case T-214/95, *Vlaams Gewest* v *Commission*, ECR II-717, paragraph 64 or 46.

([14]) See in particular Council Regulation (EEC) No 881/92 of 26 March 1992 (OJ L 95, 9.4.1992, p.1), which guarantees, as of 1 January 1993, the full opening of the international freight transport sector to competition in favour of any holder of the Community licence under this Regulation, as well as Council Regulation (EEC) No 3118/93 of 25 October 1993 (OJ L 279, 12.11.1993, p.1), thanks to which every quantitative restriction on cabotage was gradually abolished and the national freight transport market was fully opened to competition as of 1 July 1998.

## 5. COMPATIBILITY OF THE AID

(33) Although it may qualify as aid under Article 87(1) of the Treaty, the measure in question must also be examined in the light of the derogations or exceptions laid down in paragraphs 2 and 3 of Article 87. We should also examine its compatibility with Article 73 of the Treaty and with the Community guidelines on State aid for environmental protection ([15]).

### 5.1. Evaluation of the measure in the light of the exceptions provided for in Article 87

(34) As regards compatibility with Article 87(2), the Italian measure cannot be deemed to be covered by these exceptions because it is not aid having a social character, granted to individual consumers, nor is it aid to make good the damage caused by natural disasters or exceptional occurrences, nor aid granted in order to compensate for the economic disadvantages caused by the division of Germany.

(35) As for the possibility of derogation laid down in subparagraphs (a) and (b) of Article 87(3), it should be noted that the aid in question cannot be considered aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, nor can it be considered aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State. In addition, considering the nature of the exceptions provided in subparagraphs (d) and (e) of Article 87(3), the latter are not applicable in the case in point.

(36) As regards the exception indicated in subparagraph (c) of Article 87(3), the Commission takes the view that none of the Community guidelines which implement this exception can be invoked in the case in point. In particular, as regards the application of the exception in the environmental context, it should be noted that, regardless of the arguments put forward by the Italian authorities, the measure in question does not fulfil the conditions laid down by the Community rules on environmental aid, in particular in order to benefit from the exceptions laid down in paragraph E 3.2 of the Community guidelines on State aid for environmental protection.

(37) In fact, in the first place, the measure does not make reference to a tax as mentioned in paragraph E 3.2 of the guidelines but instead to a toll payment, i.e. payment of a specific sum for the use of infrastructure based on the distance travelled and the category of motor vehicle ([16]). It follows that the measure in question cannot even be presented as a new tax introduced for environmental reasons in line with paragraph 51.1 of the guidelines. Nor is the measure in line with the derogations indicated in paragraph 51.2 since it cannot be considered an 'existing tax' with an appreciable positive impact in terms of environmental protection, which might be justified for some undertakings if a significant change in economic conditions had placed them in a particularly difficult competitive situation.

(38) Consequently, the derogation laid down by Article 87(3)(c), in particular in the environmental context, cannot be applied in the case in point.

### 5.2. Compatibility of the measure with Article 73 of the Treaty

(39) It should be noted, firstly, that Italy has removed the preferential treatment given to users of the Telepass system, chiefly used by Italian road hauliers and to a lesser extent by those from other Member States. To achieve this, the Italian authorities have made provision for the scope of the measure to be extended to other means of payment (including cash) generally accessible to road hauliers from other countries. This overcomes the main doubt regarding the measure's potential discriminatory effects between operators from different Member States. The Commission therefore considers that this amendment is a decisive element in the examination of the measure.

(40) The measure should be examined in terms of its compatibility with Article 73 of the Treaty and also with Council Regulation (EEC) No 1107/70 of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway ([17]), in particular Article 3(1)(b) thereof.

(41) In accordance with Article 73, aids shall be compatible with the Treaty if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of public service. Article 3(1)(b) of the above Regulation provides that Member States may adopt transport coordination measures 'until the entry into force of common rules on the allocation of infrastructure costs, where aid is granted to undertakings which have to bear expenditure relating to the infrastructure used by them, while other undertakings are not subject to a like burden. In determining the amount of aid thus granted account shall be taken of the infrastructure costs which competing modes of transport do not have to bear'.

(42) In general, the concept of transport coordination is considered to be equivalent to government intervention in the market for reasons of transport policy.

([15]) OJ C 37, 3.2.2001, p. 3.

([16]) See, in particular, Article 2(b) of Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures (OJ L 187, 20.7.1999, p.42).

([17]) OJ L 130, 15.6.1970, p. 1.

(43) In the case in point, it should be noted firstly that the regional government's intention, in diverting heavy goods traffic from roads near the lake shores to other roads, is to improve traffic management in the Lake Maggiore area. Traffic movement in the vicinity of the lake is made difficult by the topography of the area, aggravated in the summer season by an appreciable increase in the volume of traffic. The measure therefore fulfils a need for transport coordination inasmuch as it permits the local authorities to reduce the number of motor vehicles travelling on the roads near the lake and to improve road traffic management during the period concerned.

(44) It should also be noted that there are no Community rules on the allocation of infrastructure costs in force at present. It should be noted, furthermore, that the motor vehicles affected by the measure (those over 7,5 tonnes) will have to incur expenditure corresponding to the infrastructure used, while other undertakings are not subject to it (since they can use the lake shore road). The amount of compensation is therefore deemed proportional.

(45) Considering that the measure involves coordination of transport, which will be applied in the absence of Community rules on the allocation of infrastructure costs, and that the undertakings concerned are obliged to bear the costs for the infrastructure they use whereas other undertakings are not, the conditions referred to in Article 3(1)(b) of Regulation (EEC) 1107/70 are deemed to have been met, and Italy is therefore authorised to adopt a measure which will be applied for a very limited period, concerns specific infrastructure and involves a strictly local problem.

(46) It should be noted, in addition, that the measure must be re-examined in the event that Community rules on the allocation of infrastructure costs are introduced, and that any other similar measure must in any case be evaluated in the light of its own particular characteristics.

(47) The Commission considers that the harm to intra-Community trade is practically non-existent, considering the extremely limited nature of the aid. Considering also the brief period in which it will be applied, the measure has a very limited impact on competition and does not, in any case, entail distortions to competition counter to the general interest.

(48) As regards the compatibility of the aid with European transport policy, the Commission notes that the measure in question, by improving public safety of local roads in the area, complies with the objectives of the common transport policy [18].

## 6. **CONCLUSIONS**

(49) The Commission concludes that the measure in question is State aid pursuant to Article 87(1) of the Treaty.

(50) Nevertheless, in accordance with Article 73 of the Treaty and with Article 3(1)(b) of Regulation (EEC) No 1107/70, the Commission considers the aid to be compatible with the Treaty,

HAS ADOPTED THIS DECISION:

*Article 1*

The State aid up to a maximum of EUR 155 000 which Italy plans to implement in order to divert heavy goods vehicles over 7,5 tonnes from trunk road SS 33 from Lake Maggiore to the A26 motorway in the period 1 June to 30 September 2003 is compatible with the common market pursuant to Regulation (EEC) No 1107/70 in application of Article 73 of the Treaty.

Implementation of the aid, up to a maximum of EUR 155 000, is accordingly authorised.

*Article 2*

This Decision is addressed to the Republic of Italy.

Done at Brussels, 9 July 2003.

*For the Commission*
Loyola DE PALACIO
*Vice-President*

[18] See, in particular, the White Paper of 2002, 'European transport policy for 2010: time to decide', which recommends stepping up road safety, p. 16.