II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 20 April 2004

closing the procedure initiated against Italy, Friuli-Venezia Giulia Region, in respect of the measures provided for in Draft Law No 106/1/A — 'Aid for the establishment of infrastructure and services in the goods transport sector, for the restructuring of road haulage and the development of combined transport'

(notified under document number C(2004) 1376)

(Only the Italian version is authentic)

(Text with EEA relevance)

(2006/417/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular 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 invited the parties concerned to submit their comments in accordance with the abovementioned provisions [1],

Whereas:

1. PROCEDURE

(1) By letter of 5 February 2001, which was registered at the Secretariat-General on 9 February 2001, the Italian authorities, acting in accordance with Article 88(3) of the EC Treaty, notified the Commission of a draft regional Law concerning the development of combined transport. The notification was registered by the Secretariat-General of the European Commission under No N 134/01.

(2) As the notification was incomplete, the Commission requested additional information with letter D(01) 5496 of 5 April 2001. A reply to this letter was received on 20 June 2001 and registered as DG TREN A/61295.

(3) The Commission sent the Italian authorities a letter requesting further information on 27 August 2001. The Italian authorities asked for an extension of the deadline to reply to this request by letter dated 9 October 2001, which was registered as DG TREN A/67862. The extension was agreed to by the Commission Services by letter dated 9 November 2001. A meeting was held between representatives of the Commission and representatives of the Italian authorities on 19 December 2001. The reply to the second request for information was received by letter dated 24 July 2002, which was registered as DG TREN A/64121.

(4) The Commission sent the Italian authorities a new request for information on 7 October 2002. The reply was received by letter dated 21 November 2002 (reference No SG(2002) A/11582). A further meeting was held with representatives of the Italian authorities on 18 December 2002.

(5) The Commission requested further clarifications by letter dated 22 January 2003. The reply was sent by letter dated 25 March 2003 (reference No DG TREN A/16616).

(6) A final letter was sent by the Commission on 27 May 2003. The reply to this request was received by letter dated 4 July 2003 (reference No SG A/6389). Final clarifications were received by letter dated 17 July 2003 (reference No SG A/6942).

[1] OJ C 311, 20.12.2003, p. 18.

(7) The Commission decision to initiate the procedure on 11 November 2003 was published in the *Official Journal of the European Union* ([2]). Interested parties were invited by the Commission to submit comments.

(8) Italy submitted its comments by letter dated 27 January 2004, which was registered on 28 January 2004.

(9) The Commission did not receive comments from any other interested parties.

2. DETAILED DESCRIPTION OF THE AID MEASURE

2.1. Type of aid

(10) The aid measure in respect of which the procedure was initiated concerned start-up aid for the development of new rail and maritime services. The beneficiaries of the aid measure provided for in the draft regional Law were (public or private) entities operating in the cargo-handling sector, for a period not exceeding three years for the establishment of new rail cargo services with a modal interchange point in commercial ports or multimodal terminals in the Region and for the establishment of new maritime cabotage services departing from or heading to commercial ports in the Friuli-Venizia Giulia Region (Article 8 of draft Regional Law 106/1/A).

2.2. Grounds for initiating the procedure

(11) The Commission decision to initiate the procedure provided for in Article 88(2) of the Treaty and to request clarification from the Italian authorities arose from an initial examination of the notified scheme. In particular, concerns were expressed as to whether the implementing arrangements guaranteed that the measures were both necessary and strictly proportionate.

The Commission had doubts in particular regarding the issues set out in points 12 to 17.

(12) *Viability of the aid scheme*: Apart from national services, the measure was intended to encourage the creation of services between the Friuli-Venezia Giulia Region and central and eastern europe. The Commission considered that, for the scheme to be viable in the long term, the Italian authorities had to ensure that it had the support of the authorities of the States concerned.

(13) While the beneficiary was required to charge for the use of such new services in a manner commensurate with the intensity of the aid received, this did not seem sufficient to guarantee the future viability of these services.

(14) *Proportionality*: The planned intensity of 30 % of the real costs (defined as the difference between the costs incurred and the revenue received by the beneficiary in providing the service in question) would not have guaranteed compliance with the usual ([3]) maximum aid ceiling of 30 % of the eligible costs.

(15) *No undue distortion of competition*: The aid measure should not result in the diversion of traffic flows between neighbouring ports or existing intermodal services, thereby attracting traffic already transported intermodally.

(16) The draft Law did not include mechanisms to guarantee that the level of distortion of competition produced by the measure would be acceptable.

(17) The Commission considered that publication in the Region's Official Gazette and a summary notice in at least two daily papers, including one with a nationwide circulation, were insufficient means of guaranteeing transparency and equality of treatment for operators.

3. COMMENTS FROM ITALY

By letter dated 27 January 2004, the Italian authorities stated, through the Italian Permanent Representation, that they had decided to withdraw the notified measure contained in Article 8 of draft Law No 106/1/A.

4. CONCLUSIONS

In view of the withdrawal of the aid measure,

([2]) See footnote 1.

([3]) Maximum aid intensity provided for in COM(2002) 54 final of 4 February 2002 (Marco Polo proposal) — OJ C 126 E, 28.5.2002, p. 354; aid C 65/2000 — France 'Start-up aid for short-sea shipping services' (OJ C 37, 3.2.2001, p. 16).

HAS ADOPTED THIS DECISION:

Article 1

The Commission hereby closes the procedure initiated on 11 November 2003.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 20 April 2004.

For the Commission
Loyola DE PALACIO
Vice-President