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Subject: State aid SA.36621 (2013/N) — Italy

Investment Aid to the Port of Capo D'Orlando

Sir,

1. PROCEDURE

- (1) By notification on 2 May 2013, Italy notified an investment project for port infrastructure in the municipality of Capo D'Orlando (Messina), Sicily. Additional information was provided by e-mail of 13 June 2013, by letters of 9 July 2013, 10 September 2013 and 31 October 2013, and by email of 7 November 2013.

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2. DESCRIPTION

2.1. The objective of the notified project

- (2) The Port of Capo D'Orlando is located on the Tyrrhenian coast of Sicily, in the province of Messina. Sicily has the status of assisted region under Article 107(3)(a) of the Treaty¹.
- (3) Currently, the activities performed in the existing port of Capo D'Orlando are those connected to fisheries, to sea and coastal passenger water transport, and nautical sports.
- (4) The objective of the investment project is to upgrade and develop the existing infrastructure in order to expand the existing port. The project includes both sea and land interventions: (i) as regards the sea interventions, the project foresees the prolongation and reinforcement of the existing external breakwater dock (*molo sopraflutto*) and the counter breakwater dock (*molo sottoflutto*), the construction of the dock "Martello" (*molo Martello*), dredging and nourishments, and the construction of floating pontoons; (ii) the land interventions involve the realisation of a parking lot, a yacht club, commercial areas for shops, but also areas for the public authorities (e.g. the tax, customs and maritime authorities), a dock for the stop-over of passenger ferries, functional areas for the unloading of fishing boats and ship repair, and the relevant access roads.
- (5) The project is part of the regional strategic plan for the development of touristic ports and, more in general, it should contribute to the Sicilian regional development by means of creating 59 new direct jobs and 378 new indirect jobs. The Italian authorities confirmed that the Region of Sicily has issued a letter of intent to award the aid pursuant to point 38 of the Regional aid guidelines (2007-2013) and have provided copy of the letter. Finally, in their letter dated 31 October 2013, the Italian authorities also committed to respect all the limitations and conditions of the Guidelines on Regional State aid 2007/2013.

2.2. Planned investments

- (6) The projects comprehends investments with a total amount of EUR 48.5 million and involves the following interventions and investment costs:

Project Part	Investment Costs (EUR)
Modification and prolongation of the external breakwater dock (<i>Molo sopraflutto</i>)	17.070
Breakwater (<i>Pennello di contenimento</i>)	53
Realisation of the dock Martello (<i>Molo Martello</i>)	475
Prolongation of the counter-breakwater dock (<i>Molo sottoflutto</i>)	1.074

¹ See Commission Decision of 28.11.2007 on State aid N 324/2007 – Italy - Regional aid map 2007-2013, Summary published in OJ C 90 of 11.04.2008. The full text of the Decision (authentic language English translation) is available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_N324_2007.

Internal moorings and dredging	6.654
Ancillary works (e.g. dyke at the nearby river Bongiorno to prevent floods in the port)	80
Land nourishment (<i>Ripascimenti</i>)	2.485
Electric plant - sea works	1.984
Fire system - sea works	129
Hydric system – sea works	234
Clean water plant - sea works	270
Parking lot of 7,500 sqm and around 160 places and yacht club	9.048
Building for ship repairing	788
Services and control areas	1.168
Access roads	1.246
Electric plant - land works	307
Hydric and sanitary system – land works	340
Fire system - land works	143
Sewers	187
Intervention at the “ <i>cava mercadante</i> ”	138
Floating pontoons	4.616
TOTAL investment costs (without VAT)	48.490

- (7) The above-mentioned investment costs relate to two different types of infrastructure: some costs relate to the touristic part of the infrastructure (namely, the marina and the commercial activities) amounting to EUR 19.8 million, and others relate to the part of the basic infrastructure which can be used for any transport activities (namely, the areas dedicated to fishing, and the areas dedicated to ferry connections) amounting to EUR 28.7 million. In particular, the Italian authorities explained that the latter part of the project is meant to solve the problem of the frequent presence of sand and materials at the bottom of the port caused by the insufficient length of the external breakwater dock and the insufficient protection from the waves. These interventions are therefore necessary to ensure better and safer transport connections for goods and local passengers. The Italian authorities also specified that these interventions also aim at providing the port with specific areas for fishing boats, including berths and an area for ship-repairing. Furthermore, the Italian authorities explained that the interventions regarding the basic transport infrastructure will allow the provision of ferry connections with the Aeolian Islands and the Port of the Municipality of Sant'Agata Militello and other remote touristic locations in the future. The project can be therefore divided in two parts as described in the table below:

	Amount	Basic transport infrastructures			Touristic infrastructures			
		Public remit	Transport areas	Basic works	Commercial activities	Yacht Club	Parking lot	Marina
External breakwater dock	17070			17070				
Breakwater (<i>Pennello Contenimento</i>)	53			53				
"Martello"	475							475

Dock								
Counter-breakwater dock	1074		1074					
Internal moorings and dredging	6654							
Of which connected to the external breakwater € 2059.5				2059.5				
Of which internal moorings € 2059.5								2059.5
Of which dredging € 1230				1230				
Of which pavements of docks €1305								1305
Ancillary works	80							80
Nourishments (<i>Ripascimenti</i>)	2485			2485				
Electric plant - sea works	1984	32	350		15	32	57	1498
Fire system - sea works	129	2	23		1	2	4	97
Water plant - sea works	234	4	41		2	4	7	177
Clean water plant - sea works	270	4	48		2	4	8	204
Sewers	187	3	33		1	3	5	141
Parking lot and yacht club	9048			381	1258	2677	4732	
Ship repair area	788			788				
Services and control areas	1168	169	241	758				
Access roads	1246			1246				
Electric plant - land works	307							
Water and sanitary plant - land works	340			216	60	128	227	124
Fire system - land works	143	7	28					
Works at "cava mercadante"	138			138				

Floating pontoons	4616		190					4426
Total	48489	221	28.45 million	1339	2850	5040	10587	
		28.7 million		19.8 million				

2.3. Financing of the investment project

- (8) As indicated in recital (6) above, the total cost of the investment project is EUR 48.490 million. The public funding of EUR 20,024,471 for this project will be provided partly from the European Regional Development Fund (ERDF) (EUR 12.6 million), and partly from national funds (EUR 7.4 million) from the Sicilian Region pursuant to the Regional Decree no. 1947/S5/TUR dated 19 December 2006. The remaining EUR 28.5 million will be funded by the private concessionaire - who was awarded the contract to build and operate the port (see below recitals (11)-(13)).
- (9) On 31 October 2013, the Italian authorities provided an analysis of the project which divided the infrastructure in two parts (see above the table in recital (7)) and requested two different aid amounts, respectively: (i) aid for the transport infrastructure of EUR 14.08 million (of which EUR 221 000 for public remit works and EUR 13.859 million for the other basic infrastructure works – such as 48.71 % of the investment costs totalling EUR 28.45 million); and (ii) regional aid of EUR 5.94 million, being 30 % of the investment related to touristic activities (totalling EUR 19.8 million). In particular, the Italian authorities also provided an analysis based on the funding gap ratio method² which shows that the part of the investment related to the basic transport infrastructure has a negative NPV of – EUR 13.18 million over a reference period of 25 years. The FGR, calculated as the ratio between the above-mentioned financial net present value of the project and the discounted total cost of the project (EUR 26.38 million) amounts to 49.96 %.

2.4. The beneficiary and chronology of the project

- (10) The infrastructures resulting from the project shall be property of the Italian State³, who is the owner of the land and the infrastructure (*demanio*) on which the port will be realised. Pursuant to the national law⁴, the administrative functions regarding the release of the maritime land concession (*concessione demaniale marittima*) on behalf of the State are conferred to the Regions or Municipalities, with some exceptions (notably, ports with international or

² The Funding Gap Ratio is calculated as the ratio between the financial net present value of the project and the discounted total cost of the project.

³ Pursuant to Article 49 of the Italian Navigation Code (*Codice della Navigazione*) the ownership of non-movable assets built on State owned land remain the property of the State at the end of the concession period.

⁴ Article 105, para 2, of the Legislative Decree 31 March 1998, no. 112, as modified by the Law 16 March 2001, no. 88

national importance are excluded). In Sicily, the competence for granting the maritime land concession for touristic ports is attributed to the Regional Department for the Territory and the Environment (*Assessorato Regionale del Territorio e dell'Ambiente*) by Article 75 of the Regional law no. 4/2003.

- (11) The project will be realised through a Project Financing. The procedure has been originally initiated by the Municipality of Capo D'Orlando in 2006 by means of a tender (*avviso di project financing*) for the design, construction and operation of the infrastructure under Article 21, para 2, lett. b) of Law no. 109/94. The Italian authorities explained that the tender for the award of the contract was public, open, non-discriminatory, and compliant with the national public procurement law. The first phase was meant for the selection of a promoter (*promotore*) on the basis of the most economically advantageous offer criterion. In this phase, 9 preliminary projects (*progetto preliminare*) were received. The results of the merit ranking (*graduatoria di merito*) showed the Temporary Association of Undertakings (ATI) Franco Giuseppe Srl – Società Cooperativa Eurovega Costruzioni as the winner. On 25 July 2009 the notice for the second phase of the tender was published on the Supplement to the Official Journal of the European Union no. 141. The Italian authorities explained that, in compliance with the results of the tender procedure, the concession contract to design, build and operate the infrastructure was awarded in 2010 to the ATI Franco Giuseppe Srl – Società Cooperativa Eurovega Costruzioni, which then became Società Porto Turistico di Capo D'Orlando S.p.A. (hereinafter "the Concessionaire"). The Municipality also requested and obtained on behalf of the future concessionaire, the preliminary consent of the Region for the release of the maritime land concession in compliance with the Regional law no. 3/2009.
- (12) At the time, the expected total cost of the investment was EUR 23.1 million, the duration of the concession contract was 40 years, and the contribution of the Concessionaire to the investment costs was EUR 15.7 million, with an expected Financial Rate of Return (FRR) of the entire operation of 11.4 %.
- (13) Under the current notified project the investment costs amount to EUR 48.5 million and shall be covered partly with public funds (EUR 20 million) and partly with the contribution made by the Concessionaire (EUR 28.5 million). The concession contract has also been extended to 60 years. The Italian authorities explained that the project had to be modified due to unforeseen new legislative requirements and regulatory requests from public authorities in the context of the Steering Committee (*Conferenza di Servizi*) for the approval of the final project (*progetto definitivo*) in 2011⁵. The high increase of the investment costs led to an increase of the duration of the concession contract in order to guarantee the economic-financial balance of the concession with a lower expected FRR of 7.6 %. According to the Economic-Financial plan of the Concessionaire, the FRR is only slightly above the Weighted Average Cost

⁵ Decision of the Municipal Government (*Giunta Comunale*) n. 247 of 20 September 2011

of Capital (WACC)⁶. The details of the additional costs and justifications are summarised in the table below:

Modifications	Additional cost (EUR million)	Motivation of the Entity or Public authority
Additional dredging	1.432	Opinion of the Regional Agency for the Protection of the Territory (ARTA) on the basis of survey (<i>rilievo batimetrico</i>)
Adjustments to the external and counter breakwater docks	5.072	Opinions of the Civil Engineering Department (<i>genio civile</i>) of the Region of Sicily and the Ministry of Infrastructures in the <i>Conferenza di Servizi</i> . Opinion of ARTA
Refill of the existing dock with artificial stones (<i>tetrapodi</i>)	3.062	Opinions of the Civil Engineering Department (<i>genio civile</i>) of the Region of Sicily and the Ministry of Infrastructures in the <i>Conferenza di Servizi</i> .
Internal quays: increase of surface and adjustments anti-seismic	0.863	Opinion of the Authority for the Cultural Heritage (Sovrintendenza Beni Culturali) on the anti-seismic legislation (Ministerial Decree dated 14 January 2008)
Land nourishment (<i>ripascimenti</i>)	1.664	Opinion of the ARTA
Adjustments to the technological systems of the jetties	3.883	Opinions of the Civil Engineering Department (<i>genio civile</i>) of the Ministry of Infrastructures and of the maritime authority
Anti-seismic adjustments of the buildings and parking lot	3.882	Opinion of the Authority for the Cultural Heritage (<i>Sovrintendenza Beni Culturali</i>) on the anti-seismic legislation
Adjustments to the viability (access roads)	1.059	Opinion of the Maritime Authority
Modifications to the green areas and <i>Cava Mercadante</i>	0.116	Opinion of the Authority for the Cultural Heritage (<i>Sovrintendenza Beni Culturali</i>)
Adjustments to the safety and risks provisions	2.779	Adjustments deriving from the modified amount of the total costs
Adjustments to the technical costs	1.561	Adjustments deriving from the modified amount of the total costs
TOTAL	25.379	

⁶ In principle, DG REGIO recommends for the programming period 2007-2013, that a 5% real rate is considered as the reference parameter for the opportunity cost of capital in the long term.

2.5. Impact on competition

- (14) According to the Italian authorities, the investment project shall not result in a substantial distortion of competition at European and international level.
- (15) The number of moorings that the marina will have is 662, which represents 0.35 % of the Italian moorings, and 0.032 % of the European ones. The data provided by the Italian authorities show also a forecast that only 10 % of the moorings will be used by international tourists.
- (16) According to the Italian authorities, the Strategic Plan of the Region of Sicily lists six marinas in the Province of Messina and one marina in the Province of Palermo, which could be potentially in competition with the port of Capo D'Orlando. However, only one marina (the port of Portorosa) could be comparable in size with the one in Capo D'Orlando, the others offering a lower number of moorings and services. Furthermore, all those ports, including the one in Portorosa, are only active during summer, whereas the port of Capo D'Orlando will offer services for the whole year.

2.6. Legal basis

- (17) The legal basis for the public funding from the *Programma Operativo FESR 2007-2013 – Regione Sicilia* is the Commission Decision C(2007) 4249 of 7 September 2007⁷ - as modified by the Commission Decision C(2012) 8405 of 15 November 2012 - and in particular the Decision of the General Director DDG no. 2289 dated 17 September 2012⁸. The legal basis for the national contribution from the Region of Sicily is the Regional Decree of 19 December 2006 no. 1947/S5/TUR.

2.7. Form and duration of the aid

- (18) As indicated in recital (8) above, the public funding for this project takes the form of a direct grant from the ERDF and the Region of Sicily. The aid shall be disbursed until 2015, when the construction works are scheduled to be concluded.

2.8. Cumulation

- (19) The Italian authorities commit that aid received for this project cannot be cumulated with aid received from other local, national or EU sources for the same eligible costs.

⁷See

http://ec.europa.eu/regional_policy/country/prordn/details_new.cfm?LAN=10&gv_PER=2&gv_PAY=IT&gv_reg=ALL&gv_PGM=1044&gv_defL=7&lang=10

⁸ See for the Italian text: http://pti.regione.sicilia.it/portal/page/portal/PIR_PORTALE/PIR_LaStrutturaRegionale/PIR_AssInfrastuttureMobilita/PIR_InfrastruttureMobilitaTrasporti/PIR_POFESR20072013/DDG%202289-S8%20del%201-8-2012.pdf

3. ASSESSMENT

3.1. Existence of aid

- (20) Article 107(1) TFEU provides 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 and affects trade between Member States is incompatible with the internal market.
- (21) It follows that, for a measure to constitute State aid within the meaning of Article 107(1) TFEU, the following cumulative criteria must be met:
- (a) the measure must be granted by the State or through State resources,
 - (b) confer an advantage on the recipient undertaking(s),
 - (c) favour certain undertakings or the production of certain goods (selectivity),
 - (d) distort or threaten to distort competition and affect trade between Member States
- (22) In the present case, the existence of state aid must be examined at the level of:
(i) the owner, (ii) the concessionaire, and (iii) the end-users.

3.1.1. Existence of aid at the level of the owner

3.1.1.1. Economic activity and notion of undertaking

- (23) According to the case-law of the Court of Justice of the European Union ("CJEU")⁹, whenever an entity is engaged in an economic activity, regardless of its legal status and the way in which it is financed, it can be considered as an undertaking for the purposes of Union law.
- (24) The *Leipzig-Halle* judgment¹⁰ clarified that it is the future use of the infrastructure, i.e. whether the infrastructure shall be commercially exploited or not, which determines whether the construction of such infrastructure is an economic activity and accordingly whether the funding with public resources of the construction of such infrastructure falls within the scope of EU state aid rules or not. Also the Commission established in a series of decisions that the

⁹ See e.g. Case C-41/90 *Hofner and Elser* [1991] ECR I-1979, para. 21; C-160/91 *Poucet and Pistre v. AGF and Cancava* [1993] ECR I-637, para. 17; Case C-35/96 *Commission v. Italy* [1998] ECR I-3851.

¹⁰ Joined Cases T-455/08 *Flughafen Leipzig-Halle GmbH and Mitteldeutsche Flughafen AG v. Commission* and T-443/08 *Feistaat Sachsen and Land Sachsen Anhalt v. Commission* [2011] ECR II-0000 see also Case T-128/89 *Aéroports de Paris v. Commission* [2000] ECR II-3929, confirmed by the ECJ, Case C-82/01P [2002] ECR I-9297, and Case T-196/04 *Ryanair v. Commission* [2008] ECR II-3643, paragraph 88.

construction and exploitation of some types of port infrastructures constitutes an economic activity.¹¹

- (25) The notified project concerns the construction of a port infrastructure that, as explained in recitals (10)-(13) above, shall be commercially exploited through a concession. The Concessionaire will operate the infrastructure providing services on the market against remuneration and therefore the infrastructure will be used for economic activity.
- (26) However, the infrastructure in question is designed, built and operated under a 60-year concession contract by the Concessionaire whose investments are partly supported by public authorities (see recital (8) above). The role of the public authorities is limited to granting public resources to the Concessionaire and carrying out certain other administrative tasks (granting of land concession or initiation of the tender proceedings and the filing of the request to the Region to issue the land concession for the Concessionaire).
- (27) Given the particularly long period of the concession contract, the fact that the infrastructure is designed and built by the operator, and the limited intervention by the State, the position of the Concessionaire in this case is akin to having ownership over the infrastructure. Accordingly, the Commission does not need to assess in this case whether the conditions for the existence of aid are present on the level of the State, Region or the Municipality.

3.1.2. Existence of aid at the level of the Concessionaire

3.1.2.1. Transfer of State resources

- (28) As indicated in recital (8) above, the project is co-funded with EU and resources coming directly from the budget of the Sicilian region. The former funds are placed at the disposal of the Italian authorities, and therefore amount to State resources for the purposes of Article 107 (1) TFUE.
- (29) As regards imputability to the State of the public financing, it is noted that the Italian authorities enjoy a high degree of control in the selection at national level of the projects of this nature to be financed. The notified project was directly chosen by the Italian State. Therefore, the notified measure is imputable to the State.

3.1.2.2. Selectivity

- (30) As the public financing is granted specifically to the Concessionaire, the measure is selective in nature.

¹¹ See e.g. Commission Decision of 15.12.2009 in State Aid case no. N 385/2009 – *Public financing of port infrastructure in Ventpils Port*, OJ C 72 of 20.03.2010; Commission Decision in State aid case no. 44/2010 *Public financing of port infrastructure in Krievu Sala* – Latvian Republic, OJ C 215 of 21.7.2011, p. 19; Commission Decision on State aid case no. SA.30742 (N/2010) - Lithuania – *Construction of infrastructure for the passenger and cargo ferries terminal in Klaipeda*, OJ C 121 of 26.4.2012, p. 1.

3.1.2.3. Distortion of competition and affectation of trade

- (31) According to an established case law, when the financial support granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in intra-Union trade, than there is at least a potential effect on trade between Member States and competition¹².
- (32) As indicated in recitals (14)-(16) above, the Commission notes that the port could be at least potentially in competition with similar ports in Sicily, such as those in Portorosa or Milazzo. Furthermore, since the beneficiary will in principle provide services to transport undertakings and tourists of any origin, it has a potential effect on the provisions of shipping and tourist services which are sectors open to competition and trade at EU level. Moreover, different undertakings from several Member States compete for the adjudication of port concessions, as confirmed by the fact that the notice for competition has been published on the Supplement no. 141 to the EU Official Journal (see recital (11) above). Therefore, the aid granted to the concessionaire strengthens its position in the market for port concessions, which is open to any operator from the EU.

3.1.2.4. Economic advantage for the Concessionaire

- (33) The concession contract for the construction and operation of the port was concluded on the basis of a public, open and non-conditional tender, in compliance with national public procurement law – see recital (11) above.
- (34) The Commission notes that the concession contract was deeply modified after its award. The modifications concerned various technical aspects of the works which led to an increase of the investment costs from EUR 23.1 million to EUR 48.5 million and consequently the duration of the concession contract was extended from 40 to 60 years (see recitals (11)-(13) above). Therefore, the outcome of the tendering procedure in the present case would not provide any valid indication as regards the question of whether or not the use of public resources confers an economic advantage to the Concessionaire.
- (35) The Commission also takes into account that the Concessionaire will exploit for profits an asset which it will build with a significant financial contribution by public authorities and for a very long period of time and the funding gap analysis provided by Italy suggests that financing for the project would not have been available on the market. It therefore appears that the Concessionaire benefits of an advantage that would not be obtainable under normal market conditions. In any event, as further shown below, aid to the Concessionaire stemming from the notified measures would be compatible with the internal market.
- (36) However, not all the activities of a port operator are necessarily of an economic nature.

¹² See e.g. Case 730/79 *Philip Morris v. Commission* [1980] ECR 2671, para. 11, and Case C-372/97 *Italy v. Commission* [2004] ECR I-3679, para. 44.

- (37) The Court of Justice has held that activities that normally fall under State responsibility in the exercise of its official powers as a public authority are not of an economic nature and do not fall within the scope of the rules on State aid. Such activities include security, air traffic control, police, customs¹³ and anti-pollution surveillance in ports¹⁴. The financing has to be strictly limited to the compensation of the costs to which they give rise and may not be used instead to fund other economic activities¹⁵.
- (38) Therefore, the financing of those activities and of infrastructure directly related to those activities does not constitute State aid. This means that the financing of infrastructure necessary for security reasons or essential for the control and supervision of the navigation falls within the public policy remit¹⁶.
- (39) In view of the above, the Commission notes that the planned investment into the areas for the public authorities (e.g. the tax, customs and maritime authorities) amounting to EUR 221,000 (less than 1% of the investment costs for the part of the infrastructure used for transport activities) falls within public policy remit, and hence the financing of this measure does not constitute State aid within the meaning of Article 107(1) TFEU.

3.1.3 Existence of aid at the level of port users

- (40) With regard to the end users of the new infrastructure, the Commission observes that they shall enjoy equal and non-discriminatory access to the new infrastructure. Moreover, the Concessionaire will have to base its pricing policy vis-à-vis end users on economic considerations, so as to obtain sufficient revenues enabling it to pay for the concession fee and also make a profit. In the light of these elements, the potential advantage for the users, if any, will be the minimum necessary to ensure the actual use of the infrastructure, while ensuring the profitability of the concessionaire.

3.2. Compatibility of the aid

- (41) To the extent that the notified public financing could amount to State aid, it must also be assessed if the aid is compatible with the Treaty.

3.2.1 Compatibility of the part of aid related to the touristic infrastructure

¹³ Commission Decision N309/2002 of 19 March 2003 on Aviation security - compensation for costs incurred following the attacks of 11 September 2001.

¹⁴ Case C-343/95, *Cali & Figli v Servizi ecologici porto di Genova*, [1996] ECR I-1547, paras.22 and 23

¹⁵ Case C 343/95 *Cali & Figli v Servizi ecologici porto di Genova* [1997] ECR I-1547; Commission Decision N309/2002 of 19 March 2003; Commission Decision N438/2002 of 16 October 2002, Aid in support of the public authority functions in the Belgian port sector.

¹⁶ See Commission Decision N620/2006 of 7 March 2007 on Einrichtung des Regionalflughafens Memmingen.

- (42) The Commission highlights that certain types of regional investment aid can be implemented without *ex ante* notification if the measure concerned fulfils the conditions of the General block exemption Regulation (GBER) and, in particular Article 13 thereof . These provisions do not allow, however, *ad hoc* regional aid to be granted, except in the specific circumstances described in Article 13, point 1, second subparagraph¹⁷. The present aid measure granted to the Concessionaire on an *ad hoc* basis does not therefore fall within the scope of application of the GBER.
- (43) As the aid aims at promoting regional development, the Commission has assessed the compatibility of the notified measure with the internal market in the light of the Guidelines on national regional aid for 2007-2013 ("the RAG").
- (44) In its assessment, the Commission has taken note of the following points:
- a) The Region of Sicily where this new project will be carried out is entirely eligible under Article 107(3)(a) of the TFEU, with a standard regional aid ceiling of 30 % gross grant equivalent (GGE).
 - b) In general, the Commission has an unfavourable attitude towards regional aid being granted in the form of *ad hoc* aid (cf. point 10 of the Regional aid guidelines 2007-2013). However, in this case, the project will have a positive impact on the municipality of Capo D'Orlando and the Region of Sicily by creating 59 new direct jobs and 378 indirect jobs (see recital (5) above). In particular, the project meets the criteria and objectives set out in the Operational Programme 'Sicily', which has a specific line of intervention dedicated to the realisation of structural and infrastructural interventions aimed at enacting the regional strategic plan of the touristic ports, giving priority to the realisation of safe harbours with flexible receptivity in minor islands and in larger touristic attractions.
 - c) As observed in recitals (14)-(16) above, the percentage of the moorings of the marina of Capo D'Orlando as compared to the national and European moorings is very limited, and therefore the aid for this part of the investment should not result in an unacceptable distortion of competition.
 - d) The notified aid intensity of 30 % GGE does not exceed the applicable regional aid ceiling of 30 % GGE. The Italian authorities have committed to ensure that the applicable regional aid ceiling will also be respected in case of combination of this *ad hoc* aid with aid from other sources and in accordance with the provisions of Regional aid guidelines 2007-2013 (see recital (5) above).

¹⁷ According to Article 13, point 1, second subparagraph, "ad hoc aid which is only used to supplement aid granted on the basis of regional investment and employment aid schemes and which does not exceed 50 % of the total aid to be granted for the investment, shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that the ad hoc aid awarded fulfils all the conditions of this Regulation".

e) The application for aid had been submitted by the beneficiary before the start of works on the project and the authority granting the aid issued a letter of intent to award the aid (see point 38 of the Regional aid guidelines 2007-2013) (see recital (5) above).

f) The beneficiary provides a financial contribution of at least 25 % of the eligible costs (see point 39 of the Regional aid guidelines 2007-2013).

g) The aid measure concerns job creation linked to the initial investment project as defined by point 34 of the Regional aid guidelines 2007-2013 which is carried out by the beneficiary and consists in the setting-up of the new establishment (touristic marina). This is in line with the provisions of points 34, 36 and 57 of the Regional aid guidelines 2007-2013.

h) The eligible expenditure of the project consists in the investment costs, therefore is defined in conformity with the Regional aid guidelines 2007-2013 and in particular with points 36, 50 and 56 thereof.

i) Since the PPP contract has a duration of 60 years, the obligation of the maintenance of the investment for a minimum period of 5 years after its completion is also met (see point 40 of the Regional aid guidelines 2007-2013).

3.2.2 Compatibility of the part of the aid related to the transport infrastructure

(45) According to established practice¹⁸, the appropriate legal basis for assessing compatibility of the State aid to port investment projects is Article 107(3)(c) of the Treaty, which stipulates that "aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest" may be found compatible with the internal market.

(46) It should therefore be examined if the notified public funding meets a clearly-defined objective of common interest, is necessary and proportional to this objective, and does not affect competition and intra-EU trade to an extent contrary to the common interest.

Objective of common interest

(47) In the Communication entitled *A Sustainable Future for Transport: Towards an integrated, technology-led and user-friendly system*¹⁹, the Commission underlined that the development of ports and intermodal terminals is key to achieving an integrated and intelligent logistic system in the EU.

¹⁸ See Commission Decisions on State aid cases *Ventspils Port*, *Krievu Sala* and *Klaipeda*, as cited in fn. 11 above.

¹⁹ COM(2009) 279/4, paragraph 46.

- (48) In the Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on *Strategic Goals and Recommendations for the EU Maritime Transport Policy until 2018*²⁰, the Commission underlines that providing new port infrastructures, as well as improving the use of the existing capacities, is essential to ensuring that EU ports can cope efficiently with their gateway function.
- (49) In the Commission's Communication *Ports: an engine for growth*²¹, the Commission underlines that ports can contribute significantly to the economic recovery and long term competitiveness of European industries in world markets while adding value and jobs in all EU coastal regions, and that funding and financing transport infrastructure and facilities is one of the key challenges for the EU transport network in the years to come. The Commission considers that port infrastructure for the transport of ferry passengers serves objectives of transport policy²².
- (50) Furthermore, in the Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - *Europe, the world's No 1 tourist destination – a new political framework for tourism in Europe*²³, the Commission recognises the substantial importance of maritime and coastal tourism as a catalyst for economic development and intends to carry out actions to encourage its development as part of the EU's integrated maritime policy. In the same Communication, the Commission also affirms that for many coastal areas, the decline in economic activities linked to fisheries and shipbuilding in particular have led to a fall in incomes and increased unemployment.
- (51) As indicated in recital (6) and (7) above, the project will allow solving the problem of the frequent presence of sand and materials at the bottom of the port caused by the insufficient length of the external breakwater dock and the insufficient protection from the waves, therefore ensuring better and safer transport connections for goods and local passengers. The project will also provide the port of Capo D'Orlando with specific infrastructures for fishing boats, including berths and areas for ship-repairing. Furthermore, ferry connections with the Aeolian Islands and the Port of the Municipality of Sant'Agata Militello and other remote touristic locations can be provided in the future.

²⁰ See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Strategic Goals and Recommendations for the EU Maritime Transport Policy until 2018, COM (2009) 8.

²¹ See Communication from the Commission: *Ports: an engine for growth*, COM (2013) 295.

²² See Commission Decision on State aid case no. SA.30742 (N/2010) - Lithuania – *Construction of infrastructure for the passenger and cargo ferries terminal in Klaipeda*, OJ C 121 of 26.4.2012, p. 1.

²³ See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - *Europe, the world's No 1 tourist destination – a new political framework for tourism in Europe*, COM/2010/0352 final

- (52) By supporting the transport activities of the port, the project will have wider positive effects on the regional economy in the Region of Sicily.
- (53) The above elements indicate that the project contributes to an objective of common EU interest.

Necessity and proportionality of the aid

- (54) As regards the necessity of the aid, the Commission's *Guide to the cost-benefit analysis of investment projects*²⁴ ("the Guide") places particular emphasis on two financial indicators to evaluate the financial sustainability of an investment, i.e. the *financial net present value* (FNPV) and the *financial internal rate of return* (FRR). These indicators measure the present (discounted) amount of the inflow of net benefits generated by the investment and, respectively, the capacity of the net revenues to remunerate the investment cost.
- (55) The part of the project which refers to transport activities has a funding gap/negative NPV of – EUR 13.18 million over a reference period of 25 years, which shows that the net revenues to be derived over a period of 25 years do not remunerate the investment costs. The formula for the calculation of the funding gap takes into account the residual value of the infrastructure at the end of its economic life (considered to be 25 years), which is added to the operating revenues. In addition, the Commission has consistently considered that port infrastructure projects require considerable capital investments that can only be recovered in the very long term, and their economic viability may not normally be ensured without public funding²⁵. Given the results of the funding gap analysis provided by the Italian authorities, it must be concluded that this part of the investment could not have been undertaken by a private investor without public support.
- (56) In the present case, moreover the duration of the concession is more than two times the economic life of the project on which the funding gap analysis is based. It could be argued therefore that revenues that the concessionaire is supposed to obtain after 25 years could put into question the necessity for the aid. However, the Commission believes that due to the high degree of uncertainty surrounding any financial forecast over such a long period of time, it is very unlikely that any private investor would have accepted to make an investment whose profitability prospects can be realised only several years after the estimated economic life of the infrastructure.
- (57) Therefore, the Commission considers that the public funding is necessary for the realisation of the project and has an incentive effect.
- (58) As regards proportionality (i.e. limiting public funding to the minimum necessary), it is first noted that the public funding provided for this part of the

²⁴ See http://ec.europa.eu/regional_policy/sources/docgener/guides/cost/guide02_en.pdf.

²⁵ See the recent Commission Decisions on port infrastructure projects cited in fn. 11 above.

project (48.71 %) is below the funding gap ratio identified for this project which is 49.96 %, which is in line with the practice of the Commission²⁶.

- (59) Therefore, the aid is necessary and proportionate to achieve the objective of common interest.

Distortion of competition and affectation of intra-EU trade

- (60) As regards the transport activities performed in the Port of Capo D'Orlando, they will have a local nature, serving mainly local fishermen. The ferry connections for passengers will also mainly ensure the public transport to and from the Aeolian Islands.
- (61) The above elements allow concluding that the aid for this project does not affect competition and intra-EU trade to an extent that would be contrary to the common interest.

3.2.3. Conclusion

- (62) On the basis of the foregoing findings (see recitals (41)-(61) above), the Commission concludes that the aid totalling EUR 20,024,471 is compatible with the Treaty partly under Article 107(3)(a) of the TFEU and partly under Article 107(3)(c).

4. DECISION

The Commission has accordingly decided that the State aid of EUR 20,024,471 that Italy intends to grant to Società Porto Turistico di Capo D'Orlando S.p.A. for the works to develop the Port of Capo D'Orlando constitutes State aid, which is compatible with the Treaty under Article 107(3)(a) and (c) of the Treaty.

This Decision is without prejudice to any possible scrutiny under environmental or Structural Funds rules. Similarly, the Decision does not prejudice any possible further analysis by the Commission as far as compliance with public procurement rules is concerned.

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 agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

²⁶ See Commission Decision of 31 January 2001 in case N 597/2000, Netherlands – *Subsidieregeling voor bijzondere bedrijfsaansluitingen op vaarwegen*, Commission Decision of 14 September 2001 in case N 208/2000, Netherlands – *SOIT*, Commission Decision of 15 November 2000 in case N 755/1999, Italy – *Bolzano*, and Commission Decision on 20 December 2010 in case N 490/2010, Belgium – *Verlenging van steunregeling N 550/2001 inzake publiek-private samenwerking voor de bouw van laad- en losinstallaties langs de waterwegen in het Vlaams Gewest*.

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

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-president