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Subject: State aid SA.51229 (2018/N) – Italy
**Norma Retrofit: measures to support noise reduction on freight
wagons in Italy**

Sir,

1. PROCEDURE

- (1) On 27 November 2018, the Italian authorities notified the above-mentioned measure in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (TFEU).

2. DESCRIPTION OF THE MEASURE

2.1. Objective

- (2) The measure covers a State aid scheme supporting the reduction of noise pollution caused by railway freight wagons, by encouraging the railway undertakings or wagons' owners to make use of more silent technology. The objective of the notified measure is to better protect residents living adjacent to existing rail tracks from noise, which should consequently contribute to a greater acceptance of the development of rail freight transport.

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- (3) The Italian authorities claim that without the measure there would be insufficient incentive to retrofit existing freight wagons with silent technology and to adhere to the limiting values set out in the Annex of the Rolling Stock Noise Regulation¹, which are only obligatory for wagons placed in service after 1 January 2015. The objective of the scheme is to achieve a noise emission standard for freight wagons operating on the State's rail network that is higher than mandatory rules.

2.2. Legal basis

- (4) The legal basis for the aid scheme is provided in Article 47 paragraphs 10 and 11 of the Decree-Law of 24 April 2017 n°50². This Decree-Law was converted into law, with amendments, through Law of 21 June 2017, n° 96.
- (5) The notified measure is the decree of implementation of Article 47 paragraphs 10 and 11 (the “Implementing Decree”). The Implementing Decree will only be adopted by Italy after the Commission has authorised the scheme.

2.3. Budget and duration

- (6) The scheme has been allocated an overall budget of EUR 20 million.
- (7) The aid will be granted only after the Commission has authorised the scheme for a maximum period of three years.

2.4. Beneficiaries and conditions for granting the aid

- (8) The beneficiaries under the scheme are railway undertakings and undertakings that own wagons who fulfil the following cumulative conditions:
- (a) are established in an EEA country;
 - (b) operate freight transport on the Italian railway network;
 - (c) own freight wagons that entered into circulation before 1 January 2015;

¹ Commission Regulation 1304/2014 of 26 November 2014 on the technical specification for interoperability relating to the subsystem ‘rolling stock — noise’ amending Decision 2008/232/EC and repealing Decision 2011/229/EU, OJ L 356 of 12 December 2014, p. 56..

² Italian Official Journal No.144 of 23 June 2017 – Ordinary Supplement No. 31. These paragraphs read as follow: “10. In order to promote, in application of Regulation (EU) No 1304/2014, the renewal of the braking systems of freight wagons for the reduction of noise caused by such wagons and to compensate railway undertakings for the increased operating costs, a Fund for the financing of measures for the modernisation of freight wagons is included in the estimates of the Ministry of Infrastructure and Transport with a budget of EUR 20 million for 2018. The administrative burden shall be covered by a corresponding reduction in the expenditure authorisation referred to in Article 10 (1) of Decree-Law No 193 of 22 October 2016, converted, with amendments, into Law No 225 of 1 December 2016. 11. The resources of the Fund referred to in paragraph 10 shall be allocated to railway undertakings or rail wagon keepers in accordance with Regulation (EU) 2015/429, in accordance with the rules laid down by Decree of the Ministry of Infrastructure and Transport, to be submitted, within 30 days of the entry into force of this provision, to prior notification to the European Commission, pursuant to Article 108 of the Treaty on the Functioning of the European Union”.

- (d) retrofit these freight wagons as from the date of entry into force of the Implementing Decree.
- (9) The beneficiaries must register the wagons that have been retrofitted in a retrofitting register kept by the railway infrastructure operator within 12 months of the date of the retrofit.
- (10) To the extent that the conditions above are cumulatively respected, the beneficiaries starting the retrofitting after the entry into force of the Implementing Decree may apply for a grant on the basis of a request form provided by the Minister of Transport.
- (11) The beneficiaries are allowed to apply for a grant every year for the entire duration of the scheme by providing data on the wagons' mileage run in the relevant year. The sum of annual grants for a wagon is paid to the beneficiary in the consecutive year following the application for aid until the limit equal to 50% of the eligible investment costs per retrofitted wagon is reached (see recital (19)).
- (12) The granting authority (i.e. the Minister of Transport) shall transfer the financial resources to the railway infrastructure operator RFI S.p.A. for the subsequent payment of the aid to the final beneficiaries. The railway infrastructure operator RFI S.p.A. will transfer the aid to the beneficiaries only after having effectively received the financial resources and upon formal indication by the granting authority of the amounts to be paid to the beneficiaries. No financial benefit is retained by RFI S.p.A.

2.5. Form of aid, eligible costs and aid intensity

- (13) The aid will take the form of a direct grant.
- (14) The eligible costs are the additional costs resulting from the investments in noise abatements or the fitting of the brake blocks.
- (15) The quantification of the eligible costs under the notified scheme is based on the number of kilometres covered by the retrofitted freight wagon in the 12 months following the investments and on the number of axis of the retrofitted freight wagon.
- (16) Following consultations with the interested stakeholders (namely the companies of the Mercitalia hub and the associations Assofer and Fercargo), Italy decided to cap the amount of subsidised kilometres to a maximum of 11 000 kilometres per wagon and the amount of eligible costs per axis to a maximum of EUR 1 013. On this basis, the Implementing Decree quantifies in EUR 0.046/axis*km the maximum amount of aid per axis and per km (the so-called “contribution factor”), corresponding to 50% of the average investment costs³.
- (17) The aid amount is calculated by multiplying the contribution factor by the retrofitted wagon's mileage in Italy and the number of axis retrofitted per wagon. Considering the cap of 11 000 kilometres per wagon, the maximum envisaged

³ Calculated as follows: (EUR 1 013 per axis / km 11 000) * 50% = EUR 0.092 per axis/km * 50% = EUR 0.046 per axis/km.

subsidy per retrofitted wagon travelling on the Italian territory corresponds to a subsidy of EUR 506 per axis (equal to 50% of the eligible investment costs per retrofitted wagon)⁴.

- (18) The aid amount will be paid to the beneficiary per wagon in the consecutive year following the investment. The wagons that in the 12 months following the retrofit have not covered the maximum amount of 11 000 kilometres may receive a subsidy also in the subsequent year until the limit of 50% of the eligible investment costs per retrofitted wagon is reached.
- (19) The aid will be granted within the limits of available financing. On the basis of the resources available and of the number of axis for which aid has been requested, the Italian authorities will determine on a yearly basis the contribution factor to be allocated proportionally among the beneficiaries, within the maximum amounts provided in the Implementing Decree (i.e. EUR 0.046/axis*km). The final amount of aid cannot in any event exceed 50% of the eligible investment costs per retrofitted wagon.

2.6. Cumulation

- (20) The aid may be cumulated with aid received under other local, regional or national schemes to the extent that the total amount received for the retrofitting of one wagon does not exceed 50% of the eligible costs.

2.7. Monitoring and control

- (21) The Minister of Transport will control that the aid intensity is respected. In addition, applicants must bring evidence of retrofit in their request form for grant and are bound to keep all the necessary documents proving the nature and date of the retrofitting as well as the effective distance effectuated by the retrofitted wagons. Any aid which has been overpaid or unduly received has to be paid back.

2.8. Companies in difficulty

- (22) Undertakings in difficulty, as defined in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty⁵, are not eligible for the aid.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid pursuant to Article 107(1) TFEU

- (23) Pursuant to Article 107 (1) of the Treaty on the Functioning of the European Union ("TFEU") "any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market".

⁴ Calculated as follows: EUR 0.046 per axis/km * 11 000 km = EUR 506 per axis.

⁵ OJ C 249, 31.07.2014, p. 1.

- (24) The criteria laid down in Article 107(1) TFEU are cumulative. Therefore, in order to determine whether the measure constitutes State aid within the meaning of Article 107(1) TFEU, all the above-mentioned conditions need to be fulfilled. Namely, the financial support must:
- (a) be granted by the State or through State resources;
 - (b) favour certain undertakings or the production of certain goods;
 - (c) distort or threatens to distort competition,
 - (d) affect trade between Member States.
- (25) The Commission notes that the measure involves aid granted to the beneficiaries on the basis of the decision of the Italian authorities. Therefore, even though the railway infrastructure manager is the entity paying the aid, the resources are transferred to the latter by the State, which has the control of its use. Therefore the aid is imputable to the State and constitutes State resources.
- (26) The financial support reduces the costs borne by both the railway undertakings and the wagons owners, which they would have to bear on their own under normal market conditions. The measure is furthermore directed at rail freight transport only, to the exclusion of rail passenger transport or other transport sectors. In addition, the public financing is directed only at railway undertakings and wagon owners that retrofit their wagons. The Commission concludes therefore that the measure confers a selective advantage to the respective undertakings.
- (27) As the advantage strengthens the beneficiary's position in relation to its competitors, it has also a potentially distorting effect on competition. Railway freight transport is liberalised at EU level and open to competition. Therefore, when aid is granted by a Member State strengthening the position of an undertaking compared with other undertakings in intra-EU trade, the latter must be regarded as affected by that aid.
- (28) On the basis of the above considerations, the Commission concludes that the aid scheme involves aid within the meaning of Article 107(1) TFEU.

3.2. Lawfulness of the aid

- (29) Pursuant to the standstill clause of Article 108(3) TFEU and to Article 3 of Council Regulation No 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 TFEU, new aid measures must not be put into effect before the Commission has taken a decision authorising such aid. In this context, aid measures can be considered to be put into effect when the legally binding act providing for the aid is adopted.
- (30) The Commission notes that the Implementing Decree has not yet been adopted and that Italy has therefore respected the standstill obligation under Article 108(3) TFEU.

3.3. Compatibility of the aid

- (31) Article 93 TFEU provides that “aids shall be compatible with the Treaties if they meet the needs of coordination of transport [...]”. The concept of aid meeting the needs of coordination of transport refers to the need for governmental intervention arising in the absence of a competitive market or in the presence of market failures. In this regard, the Commission notes that measures focused on the reduction of noise pollution in the rail transport sector may be needed when other modes of transport do not bear the costs of noise pollution they cause.
- (32) The Commission considers in line with its constant decision practice that aid is compatible with the internal market on the basis of Article 93 TFEU if the following conditions are met: (i) the aid contributes to an objective of common interest, (ii) the aid is necessary, and provides an incentive effect, (iii) the aid is proportionate and (iv) the aid does not lead to distortions of competition contrary to the common interest.
- (33) As regards railway transport undertakings the rules for the interpretation of Article 93 TFEU have been set out in Section 6 of the Railway Guidelines⁶.
- (34) According to point 95 of the Railway Guidelines, aid which meets the needs of transport coordination has to be considered compatible with the TFEU. Point 96 of the Railway Guidelines provides that for a given aid measure to be considered to ‘meet the needs’ of transport coordination, the aid has to be necessary and proportionate to the intended objective. Furthermore, the distortion of competition which is inherent in aid must not jeopardise the general interests of the Union.
- (35) In accordance with the Commission's previous decision-making practice⁷, the principles set out in the Railway Guidelines concerning aid for the needs of transport coordination apply also when the direct beneficiaries of the scheme are not railway undertakings. The compatibility assessment of the present scheme regarding railway undertakings and the owners of wagons as defined in recital 8 will therefore be carried out on the basis of Section 6 of the Railway Guidelines and of its subsection 6.3 concerning aid for interoperability (points 100 to 112).

Objective of common interest

- (36) Point 98 (c) of the Railway Guidelines provides that aid for the needs of transport coordination can take several forms, one of which is aid for promoting the reduction of noise pollution in the rail transport sector.
- (37) As set out in the Commission's communication on rail noise abatement measures addressing the existing fleet⁸ noise is one of the most widespread public health threats in industrialised countries and the contribution of rail transport to noise pollution is significant, with nearly 14 million people affected according to the

⁶ Communication from the Commission - Community guidelines on State aid for railway undertakings, OJ C 184 of 22 July 2008, p. 13.

⁸ Communication from the Commission to the European Parliament and the Council on rail noise abatement measures addressing the existing fleet, COM(2008) 432 final of 8 July 2008.

European Environment Agency.⁹ The Commission staff working document on rail freight noise reduction¹⁰ stresses the high cost of making freight wagons more silent which may negatively impact on the competitiveness of the rail sector and concludes that public financial support to operators and wagon keepers can speed up retrofitting and reduce noise emissions without the negative modal shift towards roads.

- (38) The scheme aims at creating incentives for railway undertakings and wagon owners to adopt higher standards for wagons, which are not subject to mandatory rules. Therefore, the Commission concludes that aid granted under the scheme for retrofitting freight wagons which aims at protecting residents from noise pollution contributes to an objective of common interest and that such aid is an appropriate means of achieving this objective.

Necessity and proportionality and incentive effect of the aid

- (39) According to point 106 of the Railway Guidelines, the eligible costs cover, to the extent to which they contribute to the objective of coordinating transport, all investments relating to noise reduction both in rail infrastructure and in rolling stock.
- (40) Under the scheme, the eligible investment costs are calculated as the additional costs resulting from the investments in noise abatements and modernisation of the brakes system of the rolling stock. Hence, the eligible costs for the measure are limited to the extra costs, i.e. retrofitting costs that are necessary to achieve noise reduction of the rolling stock.
- (41) Point 107(c) of the Railway Guidelines provides that the necessity and proportionality of the aid will be presumed if the aid intensity does not exceed 50 % of the eligible costs. The Commission staff working document on rail freight noise reduction sets out that to minimise the possible distortion effect that financial support could have on competition it should be limited to 50 % of investment costs in order to comply with State aid rules.
- (42) Since the maximum aid intensity under the scheme is 50 % of the eligible costs, the notified measure is presumed to be necessary and proportionate in accordance with point 107(c) of the Railway Guidelines. In this respect the Commission also positively noted that the amount of aid is dependent on the wagon's mileage and therefore corresponds to the magnitude of noise reduction resulting from their use. Moreover, for wagons with low mileage, the effective aid intensity is expected to be even lower than the 50 % maximum aid intensity under the scheme.
- (43) Due to the high cost of retrofitting and in the absence of mandatory standards railway undertakings and owners of wagons would have insufficient incentive to undertake retrofitting operations without the aid. The eligible costs are the ones incurred after the approval of the Implementing Decree. Mandatory standards only apply to wagons, which were put into service, renewed or upgraded after as of January 2015. The scheme can therefore be considered necessary to incentivise

⁹ <https://www.eea.europa.eu/publications/noise-in-europe-2014>.

¹⁰ SWD(2015) 300 final, published on 22 December 2015, <https://ec.europa.eu/transparency/regdoc/rep/10102/2015/EN/10102-2015-300-EN-F1-1.PDF>

these railway undertakings and wagon owners to achieve noise emission standards that are not mandated by law.

- (44) Hence, the Commission concludes that the aid is proportionate and necessary.

The aid is granted on non-discriminatory terms and the aid scheme is transparent

- (45) The Italian authorities have further confirmed that all railway undertakings and wagon owners whose wagons operate in Italy will benefit from the same treatment and thus that the aid is granted on non-discriminatory terms. Moreover, the Italian authorities confirmed that they will ensure the publication of the relevant information on the notified scheme.

No effects on competition contrary to the common interest and limitation in time

- (46) Given that the aid scheme is an appropriate, necessary and proportionate means to ensure the protection of residents from noise pollution and is accessible to all wagon owners and railway undertakings operating in Italy, the aid does not lead to distortions of competition contrary to the common interest.
- (47) Finally, as stated in point 97 of the Railway Guidelines, in view of the rapid development of the transport sector, and hence the need for coordinating it, an aid notified to the Commission for the purpose of obtaining a decision on the basis of Article 93 TFEU, has to be limited to a maximum of five years in order to allow the Commission to re-examine it in the light of the results obtained and, where necessary, to authorise its renewal. Considering the notification submitted by the Italian authorities to the Commission covers a three-year period only, this condition is also fulfilled.
- (48) The Commission therefore concludes that the aid scheme does not give rise to a distortion of competition to an extent contrary to the common interest.

Cumulation

- (49) As described in recital 17, the aid received under this aid scheme may be cumulated with aid received from other local, regional or national schemes. Italy commits to ensure that the total aid amount received for the retrofitting of one wagon does not exceed 50 % of the eligible cost.
- (50) The Commission therefore concludes that the cumulation rules laid down in point 124 of the Railway Guidelines are respected.

Conclusion on the compatibility of the aid

- (51) In light of the above, the Commission considers that the present aid scheme fulfils the criteria of section 6 of the Railway Guidelines and of its subsection 6.3 concerning interoperability aid. The Commission thus concludes that the scheme meets the needs of coordination of transport and is therefore compatible with the internal market pursuant to Article 93 TFEU.

4. DECISION

- (52) The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 93 TFEU.
- (53) 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>.

Your request should be sent electronically to the following address:

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Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission