

Commission Decision (EU) 2020/1412 of 2 March 2020 on the measures SA.32014, SA.32015, SA.32016 (11/C) (ex 11/NN) implemented by Italy for Tirrenia di Navigazione and its acquirer Compagnia Italiana di Navigazione (notified under document C(2020) 1110) (Only the Italian text is authentic) (Text with EEA relevance)

- Article 1 (1) The compensation granted to Tirrenia and the berthing priority...
- Article 2 (1) The prolongation of the rescue aid from 11 July...
- Article 3 (1) The exemption from the indirect taxes on the transfer...
- Article 4 (1) The use of funds to upgrade ships for liquidity...
- Article 5 (1) The award of the new Convention for the period...
- Article 6 (1) Italy shall recover the incompatible aid referred to in...
- Article 7 (1) Recovery of the aid referred to in Article 6...
- Article 8 (1) Within two months following notification of this Decision, Italy...
- Article 9 This Decision is addressed to the Italian Republic. The Commission...
Signature

Changes to legislation: There are currently no known outstanding effects for the Commission Decision (EU) 2020/1412. (See end of Document for details)

- (1) OJ C 28, 1.2.2012, p. 18 and OJ C 84, 22.3.2013, p. 58.
- (2) The former Tirrenia Group consisted of the companies Tirrenia di Navigazione S.p.A., Adriatica S.p.A., Caremar - Campania Regionale Marittima S.p.A., Saremar - Sardegna Regionale Marittima S.p.A., Siremar – Sicilia Regionale Marittima S.p.A., and Toremar - Toscana Regionale Marittima S.p.A.
- (3) State aid — Italian Republic — State aid SA.32014 (11/C) (ex 11/NN), SA.32015 (11/C) (ex 11/NN), SA.32016 (11/C) (ex 11/NN) — State aid to the companies of the former Tirrenia Group (potential State aid under the form of public service compensation and potential aid in the context of the privatisation) (SA.28172 (CP 103/2009), SA.29989 (CP 393/2009), SA.30107 (CP 414/2009), SA.30206 (CP 3/2010), SA.31645 (CP 234/2010), SA.31715 (CP 248/2010)) — Invitation to submit comments pursuant to Article 108(2) of the Treaty on the Functioning of the European Union (OJ C 28, 1.2.2012, p. 18).
- (4) All amendments concerned measures in favour of Saremar.
- (5) State aid — Italian Republic — State aid SA.32014 (2011/C), SA.32015 (2011/C), SA.32016 (2011/C) — Italy — State aid to the companies of the former Tirrenia Group and their acquirers — Invitation to submit comments pursuant to Article 108(2) TFEU (OJ C 84, 22.3.2013, p. 58).
- (6) Commission Decision (EU) 2018/261 of 22 January 2014 on the measures SA.32014 (2011/C), SA.32015 (2011/C), SA.32016 (2011/C) implemented by the Region of Sardinia in favour of Saremar (OJ L 49, 22.2.2018, p. 22).
- (7) See Judgment of 6 April 2017 in Case T-219/14 *Regione autonoma della Sardegna (Italy) v Commission*, ECLI:EU:T:2017:266.
- (8) Fintecna (Finanziaria per i Settori Industriale e dei Servizi S.p.A.) is wholly owned by the Italian Ministry of the Economy and Finance and is specialised in managing shareholding and privatisation processes, as well as dealing with projects to rationalise and restructure companies facing industrial, financial or organisational difficulties.
- (9) Commission Decision 2001/851/EC of 21 June 2001 on the State aid awarded to the Tirrenia di Navigazione shipping company by Italy (OJ L 318, 4.12.2001, p. 9).
- (10) Commission Decision 2005/163/EC of 16 March 2004 on the State aid paid by Italy to the Adriatica, Caremar, Siremar, Saremar and Toremar shipping companies (Tirrenia Group) (OJ L 53, 26.2.2005, p. 29).
- (11) In particular: Adriatica, Caremar, Siremar, Saremar and Toremar.
- (12) Joined Cases T-265/04, T-292/04 and T-504/04 *Tirrenia di Navigazione v Commission*, ECLI:EU:T:2009:48.
- (13) This transfer was formalized on 1 June 2011.
- (14) Article 19-ter, paragraph 10 of the 2009 Law.
- (15) This includes the deferred payment by CIN of part of the purchase price for its acquisition of the Tirrenia business branch and several alleged additional aid measures in the context of the privatisation of the Siremar business branch (e.g. counter-guarantee and capital increase by the State for CdI, the entity that initially acquired the Siremar business branch).
- (16) In particular, the ‘Bonus Sardo – Vacanza’ project, which forms part of Measure 7, was not assessed in the 2014 Decision and will also not be assessed in this Decision.
- (17) Before 2007, this route was also operated under the public service regime in the high season.
- (18) Before 2008, this route was also operated under the public service regime in the high season.
- (19) In particular, in the period 2009-2012 SNAV cancelled 76 sailings on this route while Tirrenia only cancelled 19 sailings (i.e. four times less). Furthermore, of these 76 cancellations by SNAV, 19 were due to bank holidays and the remaining 57 due to adverse weather conditions. Despite having almost the same departure time, Tirrenia only cancelled five sailings (or ten times less than SNAV) due to adverse weather conditions. The remaining cancellations by Tirrenia were due to *force majeure*, i.e. seven were due to staff going on strike and another seven as a result of technical issues.
- (20) More specifically, Tirrenia used two ships built between 1999 and 2000, while SNAV provided its service using vessels dating from 1973, 1974, 1980 and in only one case 1989.

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- (21) The initial Convention also allowed for a freight connection to be operated from Genova to Cagliari but this possibility was only used until July 2008 and not during the prolongation period.
- (22) After 25 November 2010, by decision of the Interdepartmental Conference on the establishment of the annual subsidy set up under Article 11 of Law No 856/1986 between the Ministry of Infrastructure and Transport, the Ministry of Economy and Finance, and the Ministry of Economic Development (the ‘Interdepartmental Conference’), any amount of overcompensation is deducted from future advance subsidy payments.
- (23) Comitato Interministeriale per la Programmazione Economica.
- (24) *Gazzetta Ufficiale della Repubblica Italiana* (‘GURI’) No 50 of 28 February 2008.
- (25) As pursuant to Article 1, letter 999 of Law No 296 of 27 December 2006 and Article 1, letter (e) of Decree Law 430/1997.
- (26) The desired rate of return for an equity investor given the risk profile of the company and associated cash flows.
- (27) Authorisation for State aid pursuant to Articles 107 and 108 of the TFEU — Cases where the Commission raises no objections (OJ C 102, 2.4.2011, p. 1).
- (28) Communication from the Commission — Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p. 2).
- (29) See recitals 79-81 for more details.
- (30) Article 4 (4-*quater*) of Decree Law No 134 of 28 August 2008, converted into Law No 166 of 27 October 2008, concerning urgent measures for the restructuring of large insolvent companies (‘*Disposizioni urgenti in materia di ristrutturazione di grandi imprese in crisi*’).
- (31) See recital 27 for more background on the use of the term ‘business branch’ in this context.
- (32) The Financial Times, Il Corriere della Sera, Il Sole 24 Ore, La Repubblica, Il Giornale, Il Mattino, and Il Giornale di Sicilia.
- (33) Delloyd, Naftemporiki, Fairplay, Lloyd’s List and Tradewinds.
- (34) Five entities were excluded because they did not provide adequate evidence of being able to ensure the continuity of the public maritime transport service since the natural persons concerned clearly did not have the necessary financial means.
- (35) According to the Italian authorities, the other five entities invited to participate in the due diligence phase indicated they were no longer interested in participating in the transaction.
- (36) In that letter of 2 February 2011, the Extraordinary Commissioner invited the interested entities to submit, before 15 March 2011, a final, unconditional and binding offer for the acquisition of the Tirrenia business branch, together with a first-call bank guarantee for an amount of EUR 20 million, covering the obligations undertaken in the offer and a business plan consistent with the public service obligations provided for in the draft new Convention under the 2010 Law.
- (37) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1).
- (38) Including, but not limited to, caps on tariffs, the termination of certain services and the sale of transport capacity on certain routes to other operators.
- (39) As Moby and CIN were the only companies operating these routes, Onorato Partecipazioni committed to (1) keep or increase the aggregated supply of transport services on the routes Civitavecchia – Olbia and Genova – Olbia; (2) respect a tariff cap, using the high season prices set by Moby in 2014; (3) sell 10 % of transport capacity in the high season, with a 20 % discount on tariffs, to unrelated third parties.
- (40) Patent and intellectual property rights; concessions, licences, trademarks and similar rights; other intangible assets.
- (41) Systems and machinery; industrial and commercial equipment; other tangible assets.
- (42) The day on which the new Convention is signed by CIN and the responsible Ministry.
- (43) At the legal interest rate on an annual basis without capitalisation accruing from the entry into force until settlement of the balance.

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- (44) Most notably, Banca Profilo assumed that the entire Tirrenia business branch would be liquidated at the expiry of the new Convention. Ecorys on the contrary assumes that the vessels operating both under public service obligations (i.e. in the low season) and on a commercial basis (i.e. in the high season) would continue to operate the latter services and would then be sold at the end of their useful life. Ecorys did however not establish whether it would be viable to continue to operate these services in the high season only (e.g. staff's current employment contracts cover both the high and low seasons).
- (45) Ecorys notes that while such prolongation cannot be excluded, the uncertainties and lack of any reliable information as to the public service conditions of a future renewal make it reasonable to assess the value of the Tirrenia business branch regardless of a possible future extension of the public service regime.
- (46) Ecorys calculated this value as the difference between the costs incurred to dismiss all staff and the adjusted net value of the assets of the Tirrenia business branch.
- (47) Ecorys considers that this ratio indicates whether the labour cost has a significant incidence in the budget of the Tirrenia business branch, in comparison with similar companies.
- (48) Ecorys considers that this ratio indicates whether the labour cost of the Tirrenia business branch is disproportionate as compared to similar companies.
- (49) In particular: from 24 December to 6 January, from the Wednesday before Easter to the following Tuesday, on the public holidays of 25 April, 1 May, 2 June, 1 November and 8 December, and two weeks in August following an agreement with the supervisory ministries.
- (50) As laid down by Article 19, paragraph 13-*bis* of Decree Law 78/2009, converted into Law 102/2009, and by paragraph 19 of Article 19-*ter* of the 2009 Law.
- (51) These safety standards were then detailed in the Council Directive 98/18/EC of 17 March 1998, transposed in Italian law by Legislative Decree No 45 of 4 February 2000, and in Directive 2003/24/EC of the European Parliament and of the Council of 14 April 2003, transposed in Italian law by Legislative Decree No 52 of 8 March 2005 and in Directive 2003/25/EC of the European Parliament and of the Council, transposed in Italian law by Legislative Decree No 65 of 14 March 2005.
- (52) All the funds (i.e. EUR 7 000 000) provisioned by paragraph 19 of Article 19-*ter* of the 2009 Law and EUR 16 750 000 from the funds provisioned by Law 102/2009.
- (53) The FAS is a national fund that supports the implementation of Italian Regional policy. Its resources are mainly earmarked for regions identified as such by the Italian authorities.
- (54) *Gazzetta Ufficiale della Repubblica Italiana*, No 137 of 16 June 2009.
- (55) Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) ([OJ L 364, 12.12.1992, p. 7](#)). The Commission notes that the Maritime Cabotage Regulation does not require Member States to privatise their maritime transport companies but only to liberalise this specific market.
- (56) The letter of formal notice was adopted on 28 January 2010 but only notified to Italy the next day.
- (57) Even if the formal transfer of ownership of Tirrenia, Toremar and Siremar only occurred in 2012.
- (58) See Judgment of 24 July 2003 in Case C-280/00 *Altmark Trans*, [ECLI:EU:C:2003:415](#).
- (59) Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest ([OJ L 312, 29.11.2005, p. 67](#)).
- (60) Community framework for State aid in the form of public service compensation ([OJ C 297, 29.11.2005, p. 4](#)).
- (61) Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) TFEU to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest ([OJ L 7, 11.1.2012, p. 3](#)).
- (62) Communication from the Commission: European Framework for State aid in the form of public service compensation ([OJ C 8, 11.1.2012, p. 15](#)).
- (63) This paragraph reads as follows: 'Aid for providers of SGEIs in difficulty will be assessed under the Community guidelines on State aid for rescuing and restructuring firms in difficulty'.

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- (64) For a detailed description of the criterion, see recital 301(4).
- (65) See Case C-205/99 *Analir and others*, ECLI:EU:C:2001:107, paragraphs 27-28.
- (66) There was one Extraordinary Administration and one Extraordinary Commissioner covering both companies.
- (67) In particular, two tender procedures were organized. One procedure for Tirrenia's fast ferries Aries, Taurus, Capricorn, Scoppio, Scatto and a separate procedure for Tirrenia's motor ship Domiziana. The former tender procedure also covered Siremar's fast ferry Guizzo.
- (68) To illustrate that not all of Tirrenia's employees had to be taken over by the buyer, Italy mentions that Tirrenia's workforce numbered 1 414 at the moment when the due diligence took place while after the transfer of ownership to CIN this figure had fallen by 12 % to 1 239 (of which 313 on temporary contracts). In addition, of the 18 managers employed by Tirrenia, only four became employees of CIN.
- (69) This includes different risk-free rates, betas, cost of debt, and some differences in how to calculate liquidation value (most notably personnel severance costs).
- (70) For instance, Banca Profilo used the 10-year Italian government bond rates as the risk-free rate since the Tirrenia business branch operates exclusively in Italy. Ecorys however used the lower German government bond rates but which according to Banca Profilo underestimate the capital cost of the business branch.
- (71) In particular, Italy refers to the judgment of 24 October 2013 in Joined Cases C-214/12 P, C-215/12 P and C-223/12 P *Land Burgenland*, ECLI:EU:C:2013:682, paragraphs 93-96.
- (72) [OJ L 92, 13.4.2010, p. 19.](#)
- (73) Tirrenia in EA refers in particular to the judgment of 15 June 2005 in Case T-17/02 *Fred Olsen, SA*, ECLI:EU:T:2005:218, paragraph 215.
- (74) Tirrenia in EA refers to the judgments of 10 May 2005 in Case C-400/99 *Italy v Commission*, ECLI:EU:C:2005:275; and of 4 March 2009 in Joined Cases T-265/04, T-292/04 and T-504/04 *Tirrenia di Navigazione v Commission*, ECLI:EU:T:2009:48.
- (75) Tirrenia in EA adds that even in the high season, Tirrenia had to comply with the requirements set out in the Convention concerning route frequency and number of ferries and also had to apply reduced fares to residents and special categories of passengers. Tirrenia was however free to determine the fees for all other passengers on a competitive basis.
- (76) See: <http://www.tirreniadinavigazioneamministrazionestraordinaria.it/>
- (77) Judgment of 28 February 2012 in Case T-282/08, *Grazer Wechselseitige Versicherung AG v European Commission*, ECLI:EU:T:2012:91.
- (78) Tirrenia in EA refers to the judgment in Joined Cases T 268/08 and T 281/08 *Land Burgenland and Austria v Commission*, ECLI:EU:T:2012:90, paragraphs 70, 72 and 87.
- (79) These measures include: (1) obligation on Moby to terminate the freight service on the Livorno - Cagliari route, in the event that a new operator expresses an interest in operating this service; (2) obligation on Moby to terminate the Genova - Porto Torres service so as to avoid overlapping operations with CIN; (3) obligation on both Moby and CIN to sell 10 % of the mixed passenger and freight transport capacity on each of the Civitavecchia - Olbia and Genova - Olbia routes to other operators; and (4) obligation on both Moby and CIN to avoid signing and terminate any code-sharing or any other type of agreements for the sale of tickets with competitors, or with parties related to competitors, on the Civitavecchia-Olbia, Genova-Porto Torres and Genova- Olbia routes.
- (80) Concerning the sale of the Tirrenia and Siremar business branches (our note).
- (81) The Commission has also taken this fact into account in its proceedings concerning the proposed merger between CIN and the Tirrenia business branch (Case M.6362, later closed as the notification was withdrawn by the parties).
- (82) In particular CIN refers to page 6 of the Report where the expert clarifies that the range relating to the value of the segment 'has been identified based on the assumption of the continued application of the public service Convention between the business segment and the Italian State and on the payment of the corresponding contributions according to the draft Convention applicable and specifically reflected in the Segment Plan on the basis of the Range. [...] Merely by way of example, a 10 % reduction in contributions could cause, with all other assumptions in the plan prepared by the

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undertaking's management unchanged, a decrease in the Range equal to approximately EUR 35,0 million.⁷

- (83) CIN emphasizes that the occasional services actually offered by 'competing' operators are absolutely not comparable, either in terms of the frequency of connections (which, where they exist, are essentially limited to the high season), or of the frequencies offered, to the services guaranteed by CIN on the basis of the public service obligations stipulated in the new Convention.
- (84) CIN considers that this risk is particularly relevant because it does not have exclusive rights and therefore does not have the certainty of operating the services on an exclusive basis.
- (85) This included only the number of crew personnel (on-board staff, also when on leave or off-duty), without specifying the number of overhead and on-shore staff allocated to each route. CIN also points out that the applicable regulations provide precise guidance as to working time, security and safety of the staff, to ensure enough quantity and the right quality of the crew for each connection.
- (86) See sections 5.2.1, 5.2.2, 5.2.3 and 5.2.4 for more details.
- (87) In particular, Pan Med mentioned that Grimaldi operated freight services on the routes Ravenna – Catania, Salerno – Cagliari, Palermo – Cagliari, and Trapani – Cagliari. According to Pan Med, Moby and Sardinia Ferries operated the route Civitavecchia – Olbia on a seasonal basis while Moby would have operated all year long on the Genova – Olbia route. According to Pan Med, Moby would have also operated a weekly connection between Civitavecchia and Arbatax.
- (88) Palermo, Catania, Ragusa, Trapani, as well as the airports of Lampedusa and Pantelleria.
- (89) The Commission will not assess this unsubstantiated claim further in this Decision since the analytical accounts provided by the Italian authorities show that Tirrenia recorded a loss on this route in 2010.
- (90) Pursuant to Article 11 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([OJ L 83, 27.3.1999, p. 1](#)).
- (91) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union ([OJ L 248, 24.9.2015, p. 9](#)).
- (92) Additionally, Grimaldi contests that as the review of the economic and financial balance of the new Convention happens only every three years and allegedly on a voluntary basis, there is essentially no way to take the variations in fuel cost into account when setting the compensation.
- (93) This point is further developed by the AGCM in its decision N° 27 053, paragraphs 198-207. See section 6.2 for more details.
- (94) GURI No 240 of 13 October 1990.
- (95) See Judgment of 24 July 2003 in Case C-280/00 *Altmark Trans*, ECLI:EU:C:2003:415.
- (96) [OJ C 8, 11.1.2012, p. 4](#).
- (97) See, in particular, Case 730/79 *Philip Morris v Commission*, ECLI:EU:C:1980:209, paragraph 11; Case C-53/00 *Ferring*, ECLI:EU:C:2001:627, paragraph 21; Case C-372/97 *Italy v Commission*, ECLI:EU:C:2004:234, paragraph 44.
- (98) Case T-214/95 *Het Vlaamse Gewest v Commission*, ECLI:EU:T:1998:77.
- (99) Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries ([OJ L 378, 31.12.1986, p. 1](#)).
- (100) In particular, this measure is assessed under Case SA.15631.
- (101) Case C-590/14 P *DEI and Commission v Alouminion tis Ellados*, ECLI:EU:C:2016:797, paragraph 45.
- (102) Joined Cases T-127/99, T-129/99 and T-148/99 *Territorio Histórico de Álava - Diputación Foral de Álava and others v Commission*, ECLI:EU:T:2002:59, paragraph 175.
- (103) Commission Communication C(2004) 43 – Community Guidelines on State aid to maritime transport ([OJ C 13, 17.1.2004, p. 3](#)).
- (104) See Case C-205/99 *Analir and others*, ECLI:EU:C:2001:107.

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- (105) Communication from the Commission on the interpretation of Council Regulation (EEC) No 3577/92 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage), Brussels, COM(2014) 232 final, 22.4.2014.
- (106) See Case T-454/13 *SNCM v Commission*, ECLI:EU:T:2017:134, paragraphs 130 and 134.
- (107) See Case T-289/03 *BUPA and Others v Commission*, ECLI:EU:T:2008:29, paragraph 186.
- (108) See Case 66/86 *Ahmed Saeed Flugreisen*, ECLI:EU:C:1989:140, paragraph 55; Case C-266/96 *Corsica Ferries France*, ECLI:EU:C:1998:306, paragraph 45; Case T-17/02 *Fred Olsen v Commission*, ECLI:EU:T:2005:218, paragraph 186 *et seq.*
- (109) The Commission notes that in any case, for two of the three freight-only routes there is no mixed service operated under a public service regime on the same route. It is only on the route Napoli – Cagliari that CIN had to operate both a mixed service and a freight-only service and the latter had to be abolished in 2014 (see recital 103) to restore the economic-financial balance of operations.
- (110) Based on data the Commission retrieved from the websites of the Istituto Nazionale di Statistica (for maritime transportation) and the Associazione Italiana Gestori Aeroporti (for air transportation).
- (111) Up to the merger of Tirrenia and Adriatica (see also recital 13).
- (112) See Case C-205/99 *Analir and others*, ECLI:EU:C:2001:107, paragraph 71.
- (113) The new Convention also allows for this connection to be operated from Genova instead of Livorno but this possibility has never been used in practice.
- (114) For background see: https://ec.europa.eu/commission/presscorner/detail/en/IP_18_3450
- (115) For completeness, the Commission notes that even if Italy had been aware (and this has neither been argued nor shown) of Grimaldi's or Pan Med's intentions to start operating on this route, it could still have concluded that Grimaldi's or Pan Med's services would not be sufficient to meet the public service need (e.g. because they would not have been equivalent in terms of ports served, quality or capacity offered, or because the continuity and regularity of this service could not be guaranteed).
- (116) In particular, it concerns Minoan Lines Shipping, La Méridionale, Moby, Grandi Navi Veloci, Liberty Lines, Grimaldi Group, Corsica Ferries, SNAV, and Caronte & Tourist. Companies of the former Tirrenia Group (e.g. Caremar, Toremar) have been excluded from the benchmark group.
- (117) The Commission recalls that 2009 was the last year when Tirrenia operated on normal terms (i.e. it had not yet entered the extraordinary administration)
- (118) The total amount of compensation received by CIN over the period 2012-2018 is equal to the net cost incurred in the provision of the public service, including a return on capital of approximately 3,4 %.
- (119) Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.4.2004, p. 1).
- (120) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114).
- (121) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).
- (122) Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).
- (123) Under Article 21 of Directive 2004/18/EC.
- (124) Article 1(4) of Directive 2004/18/EC reads: “‘Service concession’ is a contract of the same type as a public service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in this right together with payment.”
- (125) Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (OJ C 262, 19.7.2016, p. 1).
- (126) In footnote 146 of the Notion of Aid Communication, the Commission observes that the Union Courts often refer, in the context of State aid to an ‘open’ tender procedure. The use of the word

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- ‘open’ however does not refer to a specific procedure under the Public Procurement Directives. Therefore, the Commission considers that the word ‘competitive’ appears more appropriate, without intending to deviate from the substantive conditions set out in the case law.
- (127) In particular: Decree Law No 134 of 28 August 2008, converted into Law No166 of 27 October 2008.
- (128) Furthermore, as explained above (see recital 373), Article 36(1) of Directive 2004/18/EC did not apply to this tender. Therefore, Italy had actually no obligation to provide in the call selection criteria.
- (129) The Commission points out that Italy was also not obliged to provide a detailed description of the exact assets for sale and the new public service contract in the call for expressions of interest since Article 36(1) of Directive 2004/18/EC was not applicable to this tender procedure.
- (130) In addition, since Article 36(1) of Directive 2004/18/EC was not applicable to this tender procedure Italy was also not obliged to describe in the call for expressions of interest how the subsequent phases of the tender procedure would be organised.
- (131) In addition, the Commission notes that Italy was not obliged to detail the (possible) payment conditions in the call because Article 36(1) of Directive 2004/18/EC was not applicable to this tender procedure.
- (132) See Judgment of the General Court of 28 February 2012, *Land Burgenland and Austria v Commission*, Joined Cases T-268/08 and T-281/08, ECLI:EU:T:2012:90, paragraph 87.
- (133) Obtained by discounting the deferred payments at their value at the moment of the sale.
- (134) See Judgment of the Court of Justice of 24 October 2013, *Land Burgenland v Commission*, Joined Cases C-214/12 P, C-215/12 P and C-223/12 P, ECLI:EU:C:2013:682, paragraphs 94-95.
- (135) See Judgment of the Court of Justice of 24 October 2013, *Land Burgenland v Commission*, Joined Cases C-214/12 P, C-215/12 P and C-223/12 P, ECLI:EU:C:2013:682, paragraph 96.
- (136) Article 63(2) of Legislative Decree 270/1999 requires that any potential acquirer of a business branch of a large company in extraordinary administration must commit to maintain the level of the workforce (i.e., the number of workers) and to continue business activities for at least two years after the acquisition.
- (137) Except in well-specified circumstances.
- (138) A draft of this contract was made available in the data room to all bidders. Furthermore, its key provisions were already laid down in Article 19-ter of Decree Law No 135 of 25 September 2009.
- (139) Ferrando & Massone Srl.
- (140) This is because when a ship is not yet at the end of its useful life, its value for shipping purposes would be higher than its scrap value. In the scenario where the ships are sold separately it is likely that at least some ships would have to be sold at their scrap value. Therefore, by bundling the ships with the public service contract, all ships keep operating and can hence be sold at a higher price than their scrap value.
- (141) See more specifically the Commission’s reply to question 68 in its Staff Working Document ‘Guide on the application of the Union rules on State aid, public procurement and the internal market to services of general economic interest’ of 29 April 2013 (see: http://ec.europa.eu/competition/state_aid/overview/new_guide_eu_rules_procurement_en.pdf).
- (142) Commission Decision in Case SA.42710, SGEI – fast passenger maritime connection between Messina and Reggio Calabria – Italy (OJ C 40, 2.2.2018, p. 4).
- (143) Commission Decision in Case SA.42366, Public service compensations granted to bpost during the period 2016-2020 – Belgium (OJ C 341, 16.9.2016, p. 5).
- (144) Article 30 of Directive 2004/18/EC, Article 1(9)(a) of Directive 2004/17/EC.
- (145) Commission Decision in Case SA.22843, Public service delegation Corsica 2007-2013 awarded to SNCM and CMN (OJ L 220, 17.8.2013, p. 20).
- (146) Under Presidential Decree No 633 of 26 October 1972, transfers of going concerns or business units to another company are not considered a supply of goods and therefore are exempt from VAT.

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- (147) In particular, in case of insolvency proceedings such as the one involving Tirrenia in EA, earnings are determined according to the rules laid down in Article 183 of the Consolidated Income Tax Law. Based on that provision, an undertaking's earnings for the period from the start of the bankruptcy proceedings until their conclusion are the difference between the undertaking's assets at the beginning of the proceedings and the residual assets at their end. Before the end of proceedings, it is therefore not possible to anticipate if there is a tax liability and its size. Since the liquidation of Tirrenia in EA is still ongoing, it is impossible to conclude whether any income tax will be due at all.
- (148) The Italian authorities have only notified (see recital 4) the public service compensation granted under the new Convention, which the Commission has found not to constitute State aid. Furthermore, Italy has argued that the public service compensation granted to Tirrenia under the prolongation of the initial Convention was compatible and exempt from notification under the 2005 SGEI Decision. The Commission will assess whether this was indeed the case in section 7.3.1.
- (149) For completeness, the Commission notes that the transitional provision contained in Article 10(a) of the 2011 SGEI Decision, according to which any aid scheme put into effect before the entry into force of this Decision (i.e. before 31 January 2012) that was compatible with the internal market and exempted from the notification requirement in accordance with the 2005 SGEI Decision shall continue to be compatible with the internal market and exempted from the notification requirement for a further period of two years (i.e. until 30 January 2014 included). This means that aid which was granted under such a scheme in the period between the entry into force of the 2005 SGEI Decision on 19 December 2005 and the entry into force of the 2011 SGEI Decision on 31 January 2012 will be considered compatible with the internal market but only from the date on which it was granted until 30 January 2014 included. In any event, for aid granted in the time from 31 January 2012 onwards, the transitional provision of Article 10(a) of the 2011 SGEI Decision is not applicable and the compatibility assessment has to be made pursuant to the 2011 SGEI Decision.
- (150) The Commission notes that while these three routes used to be operated under the public service regime for the entire year, this was gradually reduced to the low season with the service being operated on a commercial basis during the high season (see recital 34). Nevertheless, since both the 2005 SGEI Decision and the 2011 SGEI Decision refer to 'annual traffic', the Commission cannot exclude the number of passengers carried when the service is operated on a commercial basis as suggested by Italy.
- (151) OJ C 249, 31.7.2014, p. 1.
- (152) See paragraph 140 of the 2014 Rescue and Restructuring Guidelines.
- (153) For reasons of brevity, the Commission does not include the detailed figures in this Decision.
- (154) For the decisions under assessment, this Conference is composed of the Ministry of Infrastructure and Transport, the Ministry of Economy and Finance, and the Ministry of Economic Development.
- (155) See decision of 30 December 2004 taken by the Interdepartmental Conference. This decision prolonged the initially foreseen depreciation period from 20 to 30 years for motor ferries and from 15 to 20 years for high-speed passenger crafts.
- (156) Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ L 318, 17.11.2006, p. 17).
- (157) As established in recital 436. The illegality of the aid granted for the other routes will be examined further in section 7.3.1.8.
- (158) This part of the result is almost entirely driven by the operation of the public service since Tirrenia had hardly any commercial activities in the period 1 January until 30 June 2012. Also, any profits or losses from e.g. sales of assets not related to the public service, were recorded under the extraordinary results.
- (159) For clarity it concerns the mixed routes Genova – Olbia – Arbatax, Civitavecchia – Cagliari – Arbatax, Napoli – Cagliari, Palermo – Cagliari, Trapani – Cagliari, Termoli – Tremiti Islands, and the freight routes Livorno – Cagliari, Napoli – Cagliari and Ravenna – Catania.
- (160) The Commission recalls in this context that these nine routes were found to constitute genuine SGEI (see section 7.3.1.2) and meet the requirements for public service obligations as established by the Maritime Cabotage Regulation. Furthermore, the Commission accepted the prolongation of Tirrenia's initial Convention in light of the privatisation process of that company and therefore its reasoned opinion of 21 June 2012 did not concern Tirrenia (see recital 121).

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- (161) See footnote 159 for the exact routes.
- (162) Even if this aid was granted before the entry into force of the 2014 Rescue and Restructuring Guidelines, according to paragraph 139 of these Guidelines, when examining aid to SGEI providers in difficulty, such as Tirrenia, the Commission must apply the provisions of the 2014 Rescue and Restructuring Guidelines, regardless of the date when the aid was granted. When the Commission assesses the compatibility under the 2014 Rescue and Restructuring Guidelines of aid granted to SGEI providers in difficulty before 31 January 2012, such aid will be deemed compatible with the internal market if it complies with the provisions of the 2011 SGEI Framework, with the exception of paragraphs 9, 14, 19, 20, 24, 39 and 60.
- (163) See paragraph 140 of the 2014 Rescue and Restructuring Guidelines.
- (164) With the exception of the upgrades to the vessel Clodia which were paid by Tirrenia.
- (165) As explained in recital 192, of the EUR 12 051 900 awarded to carry out ship upgrades required to respect international safety standards, Tirrenia effectively only used EUR 630 600 to pay for upgrades to the vessel Clodia.
- (166) Case C-301/87 *France v Commission*, ECLI:EU:C:1990:67, paragraph 41.
- (167) See footnote 166.
- (168) See footnote 159 for the exact routes.
- (169) Grimaldi's claim that other operators provided services considered equivalent to those provided by CIN under the new Convention cannot be accepted for several reasons. In particular, Grimaldi has not assessed the competitive situation at the moment of CIN's entrustment but instead refers to the AGCM's resolution which mainly focuses on the situation since 2015. Furthermore, even to the extent that another operator may have been present around the moment of CIN's entrustment, Grimaldi has not demonstrated that it concerns services equivalent to those provided by CIN. Indeed, the services offered by these other operators may be limited to the high season only, may have a different frequency or may not connect exactly the same ports. Therefore, it has not been demonstrated that the services provided by other operators are sufficient to meet the public service needs laid down in the new Convention.
- (170) See recitals 1 and 5 of this Decision.
- (171) Judgment of 12 July 1973, *Commission v Germany*, C-70/72, EU:C:1973:87, paragraph 13.
- (172) Judgment of 21 March 1990, *Belgium v Commission*, C-142/87, EU:C:1990:125, paragraph 66.
- (173) Judgment of 17 June 1999, *Belgium v Commission*, C-75/97, EU:C:1999:311, paragraphs 64 and 65.
- (174) National law governs the ranking of the State aid claim in the schedule of liabilities, provided the ranking complies with the principle of effectiveness and the principle of equivalence. See paragraph 64 of the Commission Notice on the recovery of unlawful and incompatible State aid, [C 247/1, 23 July 2019](#). In any event, the State aid claim cannot be ranked lower than ordinary unsecured claims. The final registration of the State aid claim also stops the accrual of additional recovery interest.
- (175) Case C-303/88 *Italy v Commission*, ECLI:EU:C:1991:136.
- (176) Case T-121/15 *Fortischem a.s. v. Commission*, ECLI:EU:T:2019:684, paragraph 208.
- (177) Case T-123/09 *Ryanair v. Commission*, ECLI:EU:T:2012:164, paragraph 156.
- (178) See recital 99.
- (179) See recital 384.
- (180) See recital 391.
- (181) See recital 13.
- (182) The fact that Onorato Partecipazioni later acquired full ownership and control over Moby and CIN (see also recital 82) does not change this fact.
- (183) An amended version of that Decision was adopted by the Commission on 19 December 2012 (see recital 5).
- (184) See recital 4.
- (185) See recital 398.

Changes to legislation:

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