



**I.P.R. F.T.T.** Member State *de jure*  
of the United Nations

# International Provisional Representative of the FREE TERRITORY OF TRIESTE

Rappresentanza Internazionale Provvisoria del Territorio Libero di Trieste  
Začasno Mednarodno Predstavništvo Svobodnega Tržaškega Ozemlja  
Provisorische Internationale Vertretung des Freien Territoriums Triest

SG/2020/02/01-en

8 February 2020

**To the European Commission**  
**Directorate-General Competition**  
**State Aid Greffe**  
[stateaidgreffe@ec.europa.eu](mailto:stateaidgreffe@ec.europa.eu)

**Procedure: State aid SA.38399 (2018/E) — Corporate Taxation of Ports in Italy**

**Subject:** intervention pursuant to art. 108(2) TFEU, submit by the International Provisional Representative of the Free Territory of Trieste – I.P.R. F.T.T. represented by Mr. Paolo G. Parovel, Secretary-General, with offices in Trieste | Trst, Piazza della Borsa 7, 34121; email: [secretariat@ipr-fft.one](mailto:secretariat@ipr-fft.one)

**Synthesis:** the Procedure considers among Italian and EU ports also the international Free Port and the customs port of the present-day Free Territory of Trieste, the civil administration of which is sub-entrusted to the Italian Government by the Governments of the United States of America and of the United Kingdom of Great Britain and Northern Ireland in their role of primary administering Governments on behalf of the UN Security Council; the aforementioned inclusion is thus incorrect, and it gives rise to breaches of arts. 3(5), 5(2), 21(1), 52 (2) TEU, of art. 351 TFEU, as well as being barred under art 355(3) TFEU.

**Previous correspondence:** preliminary information by the I.P.R. F.T.T. to the European Commission sent on 31 May 2018 (SG 2018/05/02) and on 20 July 2018 (SG 2018/06/05); interlocutory answers of the Commission dated 15 June 2018 COMP.H.3/PS/DC and 28 June 2018 COMP.H.3/PS/hvds.

**Attached documentation:** Expertise SG/2017/LC/M-V-en, “The Italian corpus juris that ratifies and enforces the international legal obligations of the Italian Republic and of the Italian Government respect to the present-day Free Territory of Trieste and the consequent obligations respect to other States and the United Nations”.

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The International Provisional Representative of the Free Territory of Trieste congratulates the European Commission, and it has the honor to draw its attention on the following circumstances regarding the aforementioned procedure on the non-subjection of the economic activities of Italian port authorities to the Italian corporate income tax.

1. The Italian legal order establishes that the Italian State may only subject to income taxes natural or legal persons within its sovereign territory (artt. 3 e 73 TUIR - Decree of the President of the Italian Republic No. 91/1986) and that, likewise, only the supply of goods and services, as well as imports that take place within its territory, are subject

to the Value Added Tax - VAT of the Italian State (art. 1 of the Decree of the President of the Italian Republic No. 633/1972).

2. The aforementioned procedure incorrectly considers among Italy's ports - and thus among EU ports - also the international Free Port and the customs port of the present-day Free Territory of Trieste, the civil administration of which is sub-entrusted to the Italian Government by the Governments of the United States of America and of the United Kingdom of Great Britain and Northern Ireland as primary administering Governments on behalf of the United Nations.

3. Indeed, from the examination of the documentation relating to the procedure published on the Official Journal of the European Union of 10 January 2020 it results that:

a) the incorrect inclusion of the international Free Port and of the customs port of the present-day Free Territory of Trieste within the procedure occurred because the sub-administering Italian Government has assigned their management to an Italian Port Authority named «*Autorità Portuale di Sistema del Mare Adriatico Orientale: Trieste e Monfalcone*» (Port System Authority of the Eastern Adriatic Sea: Trieste and Monfalcone);

b) the procedure should therefore involve that Italian Port Authority only for matters relating to the management of the Italian port of Monfalcone;

c) in the merit of the procedure, the replies of Italian authorities do not refute the objections of the Commission, not even when it comes to aid pre-dating 1958 (Italian Port Authorities are established under a 1994 Italian law);

d) it follows that it is reasonable expecting the final decision of EU authorities to be unfavorable to Italy;

e) furthermore, Italian authorities omitted to duly inform the Commission that the international Free Port and the customs port of Trieste are not Italian or EU ports.

f) the seriousness of this omission of the Italian authorities does now make it necessary for this Representative to directly intervene in this procedure pursuant to art. 108(2) TFEU.

4. For all those reasons, this Representative is directly intervening in this procedure pursuant to art. 108(2) TFEU with this letter, and recalling in full its previous exchange of letters and information with the Commission on the subject (May-June 2018), as well as reserving to provide the Commission any further information and documentation needed to grant full respect of the rights and duties of all parties directly or indirectly involved in it.

5. This Representative thus clarifies to the Commission that the international Free Port and the customs port of the present-day Free Territory of Trieste cannot be subject to Italian corporate income tax or to Italian taxation at all, because they are not ports of the Italian State, or ports of the European Union.

6. The sovereignty of the Italian State over Trieste and over its port begun in 1920 and ceased on 15 September 1947, at the coming into force of the Treaty of Peace between the Allied and Associated Powers with Italy, signed on 10 February 1947 in Paris (UNTS, Vol. 49, No. 747), which establishes the Free Territory of Trieste under the expected provisional regime of Government (art. 21; Annexes VI, VII, IX, X) and also the international Free Port of Trieste as its State corporation (Annex VI art. 34, Annex VII art. 2 fourth paragraph, Annex VIII, art. 2).

7. Furthermore, the Treaty of Peace establishes that all States have general rights over the international Free Port of the Free Territory of Trieste (Annex VIII artt. 1, 5.1, 10 and 16), and also special rights and obligations for the Central European Countries without direct access to the sea: Switzerland, Czechia, Slovakia, Austria, Hungary (Annex VI, art. 33, Annex VIII, art. 21) as well as for four Permanent Members of the UNSC: France, United Kingdom of Great Britain and Northern Ireland, United States of America, Russia (Annex VIII, art. 21).

8. The international Free Port of Trieste does therefore exist under the law exclusively as a State corporation of the Free Territory of Trieste, established under the 1947 Treaty of Peace with Italy, and managed in accordance with the specific provisions laid down within the Treaty itself.

9. The final borders of the present-day Free Territory of Trieste with Italy are those established at arts. 4 and 21 of the 1947 Treaty of Peace, and its final borders with Slovenia are those established under UN Resolutions S/RES/753(1992), A/RES/46/238, S/RES/754(1992), A/RES/46/236, S/RES 777(1992), A/RES/47/1, giving raise to the conditions laid down in art. 30.3 of the Vienna Convention on the Law of Treaties (the efficacy of the bilateral Italian-Yugoslav convention of 10 Novembre 1975 was exclusively limited, under its art. 7, to bilateral relations between the two Signatory states, without prejudice to the rights and obligations of third parties).

10. The Italian Government exercises on the present-day Free Territory of Trieste and on its international Free Port only a sub-mandate of temporary civil administration that is entrusted to its responsibility, under a Memorandum of Understanding signed on 5 October 1954 in London, by the Governments of the United States of America and of the United Kingdom of Great Britain and Northern Ireland in their role of primary administering Governments on behalf of the UNSC.

11. The 1947 Treaty of Peace with Italy and the 1954 Memorandum of Understanding are multilateral instruments of international law, in force (cfr.: *U.S. Department of State, Treaties in Force – A List of Treaties and Other International Agreements of the United States in Force on January 1, 2019*), and they are implemented and enforced within the Italian legal order with a rank superior to that of any other Italian law in force with DlgsCPS (Legislative Decree of the Provisional Head of State) No. 1430/47 ratified with Italian Law No. 3054/52, with the DPR (Decree of the President of the Italian Republic) No. 27 October 1954, and with Italian Constitutional Law No. 1/1963 (arts. 1, 2, 4, 70).



12. The obligations established by the 1947 Treaty of Peace with Italy respect to the Free Territory of Trieste are directly binding on 15 EU Member States as either Signatories of that Treaty (Italy, France, Belgium, The Netherlands, Greece, Poland), their Successors (Czechia, Slovakia, Slovenia, Croatia), or as Signatories of other Peace Treaties that bound them to respect it (1947: Hungary, Roumania, Bulgaria, Finland; 1955: Austria). France is also the Depositary of the 1947 Treaty of Peace with Italy.

13. Upon accepting the role of provisional Government of the present-day Free Territory of Trieste in 1954, the Italian Government committed also to represent it in European and international organizations of which the Free Territory was a Member State since 1947 or soon after (eg. ERP, OEEC, EPU, ECMT, ICEM, ICPO - Interpol, etc.), yet, it soon stopped to exercise the duly representation within those organizations, as it avoided to conclude proper agreements between the administered Free Territory and the Community organizations established since 1958.

14. Furthermore, the sub-administering Italian Government has progressively discontinued the enforcement of the proper taxation and international port system of the Free Territory of Trieste, which are those established by the 1947 Treaty of Peace, and it has unlawfully substituted them with the taxation and port system of the Italian State.

15. Those omissions and abuses committed by the sub-administering Italian Government made it necessary and legitimate establishing the International Provisional Representative of the Free Territory of Trieste – I.P.R. F.T.T. as an agency that, since 2015, acts upon delegation of the citizens, residents, and enterprises of the Free Territory and of other States entitled with rights over the international Free Port.

16. This is why the I.P.R. F.T.T. has a legitimate mandate to act as a subject of international law, before all organizations and in compliance with all appropriate legal instruments to obtain full respect of the rights of the present-day Free Territory of Trieste as well as of the consequent rights and obligations of all other States.

17. As part of the exercise of said mandate, since 2017 the I.P.R. F.T.T. opened three pending civil lawsuits against the administering Italian Government for violations of the tax system of the Free Territory of Trieste (the lawsuits are No. 1757/17, now No. 139/19; No. 4277/18) and for violations of the regime of its international Free Port, as well as for illegal agreements with the People's Republic of China (lawsuit No. 5209/19).

18. Furthermore, with its letter of 20 June 2018 (SG 2018/06/05) the I.P.R. F.T.T. has already informed the President of the European Commission of the necessity to rectify the defaults of the sub-administering Italian Government by establishing relations between the present-day Free Territory of Trieste and the European Union.

19. Indeed, in case EU authorities were to regard the present-day Free Territory of Trieste, its international Free Port, and its customs port as part of the Italian State and of the European Union within one of their decisions, that would constitute a breach of arts. 3(5), 5(2), 21(1), 52(2) TEU, and of art. 351 TFEU, as well as being barred under art. 355(3) TFEU; also, such a decision would cause an international dispute both within the

EU, due to the lack of jurisdiction of Community authorities, and on superior levels, as such a decision would constitute a breach of international law and of the provisions of the UN Charter at the expenses of all States.

20. In particular, art. 5(2) TEU limits the competences of the EU to those conferred upon it by the Member States, arts. 3(5) and 21(1) TEU bound its external relations and activities to the principles of the United Nations Charter and of international law, and art. 351 of TFEU (ex art. 307 TEC, ex art. 234 TEEC) establishes that the provisions of EU Treaties do not affect the rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand and one or more third countries on the other.

21. For those reasons, EU authorities have never denied the legal existence of the present-day Free Territory of Trieste, placed under the sub-administration of the Italian Government, and they did recognize that the international Free Port of Trieste is outside the customs territory of both Italy and the Community (see, in particular, Council Directive 69/75/EEC of 4 March 1969 on the harmonisation of provisions laid down by law, regulation or administrative action relating to free zones, the minutes of its approval, including the declaration of the European Council and of the European Commission about the international Free Port of Trieste, and also Note No. 3722/3522 issued by the Italian Ministry of Finances on 11 January 1991).

22. Arts. 52(2) TEU and art. 355 (3) TFEU (ex Article 299(2), first subparagraph, and Article 299(3) to (6) TEC, formerly art. 79.1 ECSC Treaty) establish that the provisions of Community treaties apply to the European territories for whose external relations a Member State is responsible, as were the territories subject to the former UN international trusteeship system, and as is the present-day Free Territory of Trieste, a State subject to the special UNSC trusteeship system under UNSC Resolution S/RES/16 (1947).

23. Consequently, this provision was applied to the present-day Free Territory of Trieste, entrusted to the temporary civil administration of the Italian Government under a special trusteeship mandate, since 21 December 1954, in compliance with art. 79.1 of the ECSC Treaty (documents: *COMMISSION EUROPÉENNE - Secrétariat général - Haute Autorité CECA: inventaire des dossiers 1952-1967 Volume 2 - 7456 - Application du Traité CECA au Territoire de Trieste (Traité CECA, article 79). Vol. 2 (-FR, IT-) CEAB 1, no. 149*).

24. The same norm is included also in successive Community treaties, however, its application is subject to the aforementioned art. 234 TEEC, later art. 307 TEC and current art. 351 TFEU, mandating that existing rights and obligations be not affected.

25. In particular, when it comes to the present-day Free Territory of Trieste sub-entrusted to the temporary civil administration of the Italian Government, the existing rights and obligations are those established by the 1947 Treaty of Peace with Italy (which are directly binding on 15 EU Member States) and of the additional 1954 Memorandum of Understanding that enforces part of its provisions.

26. Consequently, the European Union and the sub-administering Italian Government cannot legitimately apply to the present-day Free Territory of Trieste the provisions of EU Treaties in case of conflict:

a) with the provisions of the Treaty of Peace that establish the Free Territory of Trieste as a sovereign State under the expected Provisional Regime of Government since 15 September 1947 (art. 21; Annexes VI and VII);

b) with the provisions of the Treaty of Peace that enforce, within the Provisional Regime of Government, all applicable provisions of Annex VI – Permanent Statute (Annex VII, art. 2 fourth paragraph);

c) with the provisions of the Treaty of Peace that prevent the Free Territory of Trieste from renouncing sovereignty (Annex VI, art. 24);

d) with the provisions of the Treaty of Peace that establish the international Free Port of Trieste as a State corporation of the Free Territory of Trieste (Annex VIII art. 2.1);

e) with the regulation of the international Free Port of Trieste (Annex VI art. 34; Annex VIII), that does also establish tax exemptions (art. 5.2) and the body that has exclusive management powers over it (art. 18);


f) with the obligations vested upon the sub-administering Italian Government pursuant to the 1954 Memorandum of Understanding regarding the Free Territory of Trieste, signed in London.

27. For the reasons detailed above, EU authorities cannot include the international Free Port and the customs port of the present-day Free Territory of Trieste within infringement procedures regarding ports of the Italian State.

28. For the same reasons, all measures of the Italian Government forcing or having forced to the present-day Free Territory of Trieste, to its international Free Port, or to its customs port the application of Community laws that are incompatible with the rights and obligations in force established under the 1947 Treaty of Peace with Italy and under the 1954 Memorandum of Understanding constitute a breach of EU Treaties.

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This Representative avails itself of this opportunity to renew to the President and to the other Members of the European Commission the assurances of its highest consideration, and to duly renew our past invitation for them to establish the proper relations between the EU and the present-day Free Territory of Trieste, sub-entrusted to the temporary civil administration of the Italian Government by the Governments of the United States of America and of the United Kingdom of Great Britain and Northern Ireland in their role of primary administering Governments on behalf of the UNSC.

  
Paolo G. Parovel  
I.P.R. F.T.T. Secretary General