

Proposal for a Regulation of the European Parliament and of the Council concerning the granting of aid for the coordination of transport by rail, road and inland waterway

(2000/C 365 E/11)

(Text with EEA relevance)

COM(2000) 5 final — 2000/0023(COD)

(Submitted by the Commission on 28 July 2000)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 71, 73 and 89 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

(1) The elimination of disparities liable to distort the conditions of competition in the transport market is an essential objective of the common transport policy.

(2) Significant progress has now been made in the liberalisation of the inland transport sectors:

(a) in the road haulage sector competition was introduced to international operations on 1 January 1993, and cabotage operations, first introduced on 1 July 1990, are from 1 July 1998 on no longer subject to any quota ⁽¹⁾,

⁽¹⁾ Council Regulation (EEC) No 4059/89 of 21 December 1989 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State (OJ L 390, 30.12.1989, p. 3) replaced by Council Regulation (EEC) No 118/93 of 25 October 1993 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State (OJ L 279, 12.11.1993, p. 1) and Council Regulation (EEC) No 881/92 of 26 March 1992 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States (OJ L 95, 9.4.1992, p. 1) respectively.

(b) the transport of passengers by road is liberalised with the exemption of national regular services ⁽²⁾,

(c) in the railways sector access to infrastructure for international groupings and railway undertakings offering international combined transport services has been introduced, and management independence and separation of accounts for infrastructure and services have been provided for ⁽³⁾,

(d) the inland waterways sector has been progressively liberalised leading to the free conclusion of contracts and free negotiation of prices as regards both national and international inland waterway transport in the Community from 1 January 2000 ⁽⁴⁾, and

(e) the market for combined transport services has been fully liberalised since 1 July 1993 ⁽⁵⁾.

(3) However the process of liberalisation in all inland transport sectors is not complete, and moreover harmonised charging mechanisms to compensate for the unpaid costs of transport modes have not yet been established. In those circumstances there is liable to exist State aid which meets the needs of coordination of transport and which for this reason remains compatible with the EC Treaty insofar as the aid does not infringe other provisions of Community law.

⁽²⁾ Council Regulation (EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus (OJ L 74, 20.3.1992, p. 1) as last amended by Council Regulation (EC) No 11/98 of 11 December 1997 (OJ L 4, 8.1.1998, p. 1) and Council Regulation (EC) No 12/98 of 11 December 1997 laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State (OJ L 4, 8.1.1998, p. 10).

⁽³⁾ Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (OJ L 237, 24.8.1991, p. 25).

⁽⁴⁾ Council Directive 96/75/EC of 19 November 1996 on the systems of chartering and pricing in national and international inland waterway transport in the Community (OJ L 304, 27.11.1996, p. 12).

⁽⁵⁾ Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States (OJ L 68, 17.12.1992, p. 38).

- (4) Articles 87 to 89 EC Treaty and Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 (new Article 88) ⁽¹⁾ shall apply to aid intended for transport by rail, road, and inland waterway.
- (5) Article 73 provides an exemption from the prohibition contained in Article 87(1) and accordingly this Regulation does not prejudice the prior question as to whether there is aid in the sense of Article 87(1). This regulation is also without prejudice to other Treaty articles such as Article 86(2).
- (6) Insofar as Article 73 EC Treaty declares aid compatible with the common market which represents reimbursement for the discharge of obligations inherent in the concept of a public service, it is implemented by Council Regulation (EEC) No 1191/69 ⁽²⁾ as modified. Insofar as Article 73 declares aid compatible with the common market which meets the needs of coordination of transport it accordingly remains appropriate to lay down in a Council Regulation the circumstances in which aids shall be considered to meet such needs.
- (7) Council Regulation (EEC) No 1107/70 ⁽³⁾ was designed to achieve the aims described above; whereas, however, it is now necessary to adapt it to fit the framework on access to the market now in force.
- (8) It is now Community policy to encourage public/private partnerships for new transport infrastructure projects, particularly in the case of projects seen as important to the development of the trans-European network ⁽⁴⁾. The State aid rules should be applied in such a way as not to penalise those infrastructure projects which contain some private sector participation as against those which do not; whereas, accordingly, it is appropriate to provide a general exception for aid to infrastructure managers rather than one targeted at specific kinds of projects.
- (9) Public financing of the management, maintenance or provision of inland transport infrastructure open to all potential users in accordance with Community law and managed by the State does not fall under Article 87(1) EC Treaty as in this case no advantage is conferred to an undertaking competing with other undertakings.
- (10) State support granted to an infrastructure manager, public or private but separate from the State, for the management, maintenance or provision of inland transport infrastructure is presumed to be compatible with the common market if that manager was chosen by an open and non-discriminatory tender, as it was thereby assured that the amount of State support represents the market price to achieve the desired result.
- (11) However, if any particular aid to a manager of infrastructure does not fall under this presumption of compatibility, it should still be permitted as compatible with the EC Treaty to the extent it is necessary to enable the realisation of the project or activity concerned and provided it does not give rise to a distortion of competition to an extent contrary to the common interest. By way of example, State support for the construction and operation of combined transport terminal infrastructure liable to attract significant traffic flows from competing terminals instead of leading to modal shift from road to environmentally friendly modes of transport, is deemed to distort competition to an extent contrary to the common interest.
- (12) Furthermore, the requirements of any Community legislation on infrastructure charging that may be in force should be taken into account in assessing the amount of aid that is proportionate. In the rail sector this approach is compatible with Article 7(3) of Council Directive 91/440/EEC, which provides that Member States may accord railway infrastructure managers, having regard to Articles 73, 87 and 88 EC Treaty, financing consistent with the tasks, size and financial requirements, in particular in order to cover new investments, and whereas the same principles should apply to infrastructure managers in all inland transport sectors.
- (13) The Community has for some time advocated a policy of achieving a sustainable transport system, which permits and encourages measures to compensate for unpaid additional costs of other competing transport modes, such as infrastructure damage, pollution, noise, congestion, health and accident costs.
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- ⁽¹⁾ Council Regulation (EC) No 659/99 of 22 March 1999 laying down detailed rules for the application of Article 93 of the Treaty, (OJ L 83, 27.3.1999, p. 1).
- ⁽²⁾ Council Regulation (EEC) No 1191/69 of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (OJ L 156, 28.6.1969, p. 1).
- ⁽³⁾ Council Regulation (EEC) No 1107/70 of the Council of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway (OJ L 130, 15.6.1970, p. 1).
- ⁽⁴⁾ Council conclusions of the 2031st Council meeting — Transport, paragraphs 4 and 5 on Public-Private Partnerships (PPPs) in the context of trans-European network (TEN) projects, 11007/97 (Press release: Luxembourg 9.10.1997).

- (14) With regard to the transport of goods, aid schemes which provide for such measures in connection with the use of infrastructure and which do not disproportionately hamper the attainment of other Community objectives, should be supported. Accordingly Member States should be required to demonstrate with a reasonable degree of transparency that such schemes compensate for specific incremental unpaid costs of competing modes of transport and they should be limited in time. However, until internalisation of specific unpaid external and infrastructure costs is achieved within or across land transport modes, any such State scheme authorised by the Commission may in principle be renewed. With regard to passenger transport this issue can be taken into account when transport operators apply for exclusive rights or financial compensation in accordance with Community legislation and in particular, Council Regulation (EEC) No 1191/69.
- (15) Other aid provided in liberalised sectors should be considered under Article 87 EC Treaty, particularly under the notion of development of a sector set out in subparagraph (3)(c) thereof.
- (16) Aid granted under this Regulation is notifiable in accordance with Article 87(3) EC Treaty and Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 (new 88) of the Treaty, except where this Regulation provides otherwise.
- (17) Aid for the management, maintenance or provision of infrastructure other than combined transport, inland waterway and road terminals which forms an integral part of an existing open transport network having a single infrastructure manager can be monitored effectively by the Commission on the basis of a periodic general information requirement rather than a specific pre-notification requirement.
- (18) However, in the case of aid for the management, maintenance or provision of the aforementioned terminals, or where the infrastructure concerned has a manager separate from the network manager, or where its capacity is wholly or partly reserved to one or more transport undertakings (as opposed to the granting of an access right on open infrastructure), there may be a greater impact on competition and therefore the pre-notification requirement should not be removed.
- (19) To ensure transparency and effective monitoring, it is appropriate to establish rules concerning the records that Member States should keep regarding the aid exempted by this Regulation. For the purposes of the annual report to be provided to the Commission by

Member States, it is appropriate for the Commission to establish its specific requirements, including, having regard to the wide availability of the necessary technology, information in computerised form.

- (20) Council Regulation (EEC) No 1192/69 ⁽¹⁾ was introduced to eliminate disparities which arise by reason of the imposition of exceptional financial burdens on, or the grant of benefits to, railway undertakings by public authorities. However, following Council Directive 91/440/EEC Member States are now required to ensure that railway undertakings are afforded a status of independent operators behaving in a commercial manner and adapting to market needs, and therefore such disparities have either been eliminated or should be eliminated.
- (21) Article 4, paragraphs (2), (3) and (4) of Council Regulation (EEC) No 1192/69 have become obsolete. Insofar as Member States continue to support railway undertakings under Article 4(1) of Council Regulation (EEC) No 1192/69 for a transitional period, the Commission will have to assure that such support is strictly limited to an amount necessary to compensate railway undertakings for the remaining financial burdens and it is therefore required that such compensation is notified to it under Article 88(3) EC Treaty. The exemption from the notification obligation contained in Regulation (EEC) No 1192/69 should be revoked,

HAVE ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation shall apply to aid, which meets the needs of coordination of transport by rail, road and inland waterway.

Article 2

Definitions

In this Regulation the following terms have the following meanings:

- *transport infrastructure*: permanent facilities for the movement or transshipment of passengers and goods and associated safety and navigational assets essential for the management of these facilities,
- *infrastructure manager*: any public, private or mixed public/private undertaking managing, maintaining or providing transport infrastructure,

⁽¹⁾ Council Regulation (EEC) No 1192/69 of 26 June 1969 on common rules for the normalisation of the accounts of railway undertakings (OJ L 156, 28.6.1969, p. 8).

- *transport undertaking*: any undertaking wishing to make use of any particular transport infrastructure, whether solely for its own benefit or in order to provide services to other persons or undertakings,
- *specific unpaid external and infrastructure costs*: costs not recovered from the user of transport infrastructure through specific charges. They may include infrastructure damage, pollution, noise, congestion, health and accident costs.

Article 3

Aid for infrastructure

1. Aid granted to an infrastructure manager for the management, maintenance or provision of inland transport infrastructure, shall be compatible with the EC Treaty provided that the aid compared to the total financing of the project:

- (a) is necessary to enable the realisation of the project or activity concerned and
- (b) does not give rise to a distortion of competition to an extent contrary to the common interest.

2. Assessment under this Article shall take into account the requirements of any Community legislation on infrastructure charging that may be in force at the time of the grant of the aid concerned.

Article 4

Aid for the use of infrastructure

1. A scheme for granting aid to transport undertakings for the purpose of the use of infrastructure for goods transport, shall be compatible with the EC Treaty to the extent that:

- (a) the scheme has a maximum duration of three years,
- (b) it is demonstrated on the basis of a comparative cost analysis that such aid is limited to compensation for specific unpaid external and infrastructure costs for the use of competing transport infrastructure, net of any such unpaid costs for the use of the infrastructure in question,
- (c) the scheme provides for aid to be granted on non-discriminatory terms to transport undertakings within the same transport mode, and
- (d) the aid does not give rise to a distortion of competition to an extent contrary to the common interest.

2. Assessment under this Article shall take into account the requirements of any Community legislation on the definition or estimation of external costs that may be in force at the time of the grant of the aid concerned.

Article 5

General conditions

1. Where an undertaking receiving any aid granted under this Regulation is not only engaged in the subsidised activity but also in another economic activity, the funds provided shall be kept in separate accounts and shall be managed without any possibility of transfer to such other activity.

2. In calculating the permissible amount of aid to be granted under any provision of this Regulation any aid granted for the same purpose coming from any other State or Community resources shall be taken into account.

Article 6

Notification

1. Aid, granted for the management, maintenance or provision of inland transport infrastructure other than terminals for combined transport, inland waterway or road operations shall not be required to be notified in accordance with Article 88(3) EC Treaty where the following conditions are satisfied:

- (a) the infrastructure forms an integral part of a network which has the same manager as the infrastructure concerned and access to which is open on non-discriminatory terms to any person or undertaking wishing to use it,
- (b) the capacity of the infrastructure is not wholly or partly reserved for the use of one or more transport undertakings.

2. Unimodal railway terminals and stations are considered to form an integral part of the railway network.

Article 7

Information requirements

- 1. In relation to aid falling within Article 6, Member States
 - (a) shall maintain detailed records. Such records shall contain all information necessary to establish that the conditions for exemption, as laid down in this Regulation, are fulfilled. Member States shall maintain a record for 10 years from the date on which the aid was granted. Member States shall, on written request, provide the Commission with copies of such records within a period of 20 working days, or such longer period as may be fixed in the Commission's request and

(b) are hereby required to provide the Commission on an annual basis, not later than 31 March for the preceding calendar year, with a summary information on aid schemes implemented and individual aid granted outside such schemes in the form provided for in the Annex and in particular with:

- a description of the supported project including the exact amount of the aid, the overall project costs, the identity of the beneficiary and the timing,
- future plans or arrangements for management of the infrastructure concerned and for access to the infrastructure concerned, and
- any other information likely to be relevant to a State aid assessment.

2. The first date on which such information will be provided shall be 31 March of the year following the first full calendar year to elapse after the entry into force of this Regulation. The information provided on that date should relate to the period from the date of entry into force of this Regulation until the end of such calendar year and should also be provided in a computerised form.

Article 8

Monitoring of this Regulation

An Advisory Committee is hereby established subject to Article 79 EC Treaty. It shall be composed of representatives of the

Member States and chaired by the representative of the Commission. The Committee may examine and give an opinion on all general questions regarding the operation of this Regulation.

Article 9

Revocation

1. Council Regulation (EEC) No 1107/70, as modified, is hereby revoked.
2. Articles 4(2), 4(3), 4(4), 13(2) and 13(3) of Council Regulation (EEC) No 1192/69, as modified, shall be deleted.

Article 10

Transitional arrangements and entry into force

1. Aid measures, which by virtue of Article 5 of Regulation (EEC) No 1107/70, as amended, have been exempted from the procedure provided for in Article 88(3) of the Treaty, shall remain exempted for a period of 12 months after the entry into force of this Regulation.
2. Member States shall amend such aid measures during this period so as to be made compatible with Article 6 of this Regulation and shall inform the Commission thereof.
3. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*. This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX

Form accompanying the summary information on any individual aid granted or aid schemes implemented

Member State (Region):

Date of implementation (aid scheme) or grant (individual aid):

Name and address of responsible authority:

Title of aid scheme implemented or name of beneficiary granted individual aid:

Objective of aid:

Legal basis:

Budget:

Aid intensity

Duration:

Other information (optional):
