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Subject: COUNCIL REGULATION on the application of Articles 93, 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of State aid in the rail, inland waterway and multimodal transport sector

COUNCIL REGULATION (EU) 2022/...

of ...

on the application of Articles 93, 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of State aid in the rail, inland waterway and multimodal transport sector

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 109 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament¹,

¹ Opinion of ... (not yet published in the Official Journal).

Whereas:

- (1) Council Regulation (EU) 2015/1588¹ empowers the Commission to declare by means of regulations that certain specified categories of aid to undertakings operating in different sectors, such as aid in favour of environmental protection, are compatible with the internal market and are not subject to the notification requirements of Article 108(3) of the Treaty ('notification requirements'). However, Regulation (EU) 2015/1588 does not cover, among others, aid to support transport by rail and inland waterway or multimodal transport as defined in Regulation (EU) No 1315/2013 of the European Parliament and of the Council². Those sectors have become increasingly relevant at Union level in the context of the European Green Deal and of the Sustainable and Smart Mobility Strategy set out by the Commission in its communications, respectively, of 11 December 2019 and 9 December 2020.
- (2) According to Article 93 of the Treaty, aid in relation to rail, inland waterway and multimodal transport is deemed compatible with the Treaties if it meets the needs of coordination of transport or if it represents reimbursement for the discharge of certain obligations inherent in the concept of a public service.

¹ Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid (OJ L 248, 24.9.2015, p. 1).

² Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1).

- (3) The Commission has applied Article 93, Article 107(1) and Article 108 of the Treaty in numerous decisions concerning certain categories of State aid to undertakings active in the rail, inland waterway and intermodal transport sectors and has developed guidelines for the purpose of assessing certain categories of State aid that are deemed to meet the needs of transport coordination. In the Commission's experience, such aid does not give rise to any significant distortion to competition, provided that it is granted based on open, transparent and non-discriminatory procedures and that clear compatibility conditions can be established on the basis of the experience acquired.
- (4) Therefore, with a view to simplifying administration in cases where distortion to competition is limited to a minimum, the Commission should be empowered to declare by means of regulations that aid for the coordination of transport or reimbursement for the discharge of certain obligations inherent in the concept of a public service as referred to in Article 93 of the Treaty is compatible with the internal market and is not subject to the notification requirements.
- (5) State aid representing reimbursement for the discharge of public service obligations in relation to public passenger transport services is already covered by Regulation (EC) No 1370/2007 of the European Parliament and of the Council¹, including where a Member State decides to apply that Regulation to public passenger transport by inland waterways and national sea waters. Public service compensation concerning public passenger transport should therefore be excluded from the scope of this Regulation.

¹ Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1).

- (6) When adopting regulations declaring certain categories of aid not subject to the notification requirements pursuant to this Regulation, the Commission should specify: the purpose of the aid; the categories of beneficiaries; the thresholds limiting the aid; the conditions governing the cumulation of aid and the conditions of monitoring, and should attach any further detailed conditions in order to ensure the compatibility with the internal market of aid covered by this Regulation.
- (7) It is important for all parties to be able to check whether an aid is granted in compliance with the applicable rules. Transparency of State aid is therefore essential for the correct application of Treaty rules and leads to better compliance, greater accountability, peer review and ultimately more effective public spending. For that reason, each Member State should be required to provide summaries of information concerning aid implemented by it which is covered by a regulation adopted pursuant to this Regulation. In order to ensure the transparency of the measures adopted by each Member State, those summaries should be published by the Commission.
- (8) Pursuant to Article 108(1) of the Treaty, the Commission is to keep under constant review all existing systems of aid, in cooperation with Member States. For that purpose and in order to ensure the largest possible degree of transparency and adequate control, each Member State should record and compile information about the application of the regulations adopted pursuant to this Regulation. At least once a year, each Member State should also provide the Commission with a report on the application of such regulations. The Commission should make those reports accessible to all the other Member States.

- (9) Before adopting regulations pursuant to this Regulation, the Commission should enable all interested persons and organisations to submit their comments in order to gather feedback which is as comprehensive and as representative as possible. For that purpose it should publish drafts of such regulations.
- (10) The Advisory Committee on State aid established by Regulation (EU) 2015/1588 should be consulted at the same time as the publication of a draft regulation pursuant to this Regulation. However, in the interest of transparency, that draft regulation should also be made public on the website of the Commission at the same time.
- (11) The control of the granting of aid involves factual, legal and economic issues of a very complex nature and great variety in a constantly evolving environment. The Commission should therefore regularly review the categories of aid which should not be subject to the notification requirements. To that end, it should submit an evaluation report on the application of this Regulation to the European Parliament and the Council every five years,

HAS ADOPTED THIS REGULATION:

Article 1
Block exemptions

1. The Commission may adopt, subject to Article 5 of this Regulation, regulations declaring that the following categories of aid, within the meaning of Article 107(1) of the Treaty, are compatible with the internal market and are not subject to the notification requirements of Article 108(3) of the Treaty:
 - (a) aid for the coordination of transport;
 - (b) aid for reimbursement for the discharge of certain obligations inherent in the concept of a public service, excluding public service compensation in relation to public passenger transport services, which is covered by Regulation (EC) No 1370/2007.

2. Regulations adopted pursuant to paragraph 1 shall specify for each category of aid:
 - (a) the purpose of the aid;
 - (b) the categories of beneficiaries;
 - (c) thresholds expressed in terms of:
 - (i) aid intensities in relation to a set of eligible costs;

- (ii) maximum aid amounts; or
- (iii) the maximum level of State support in, or related to, the aid for certain types of aid where it may be difficult to precisely identify the aid intensity referred to in point (i) or the amount of aid referred to in point (ii), in particular financial engineering instruments or risk capital investments or those of a similar nature, without prejudice to the qualification of the measures concerned in the light of Article 107(1) of the Treaty;

(d) the conditions governing the cumulation of aid; and

(e) the transparency and monitoring rules set out in Article 2.

3. In addition, regulations adopted pursuant to paragraph 1 may, in particular:

(a) set thresholds or other conditions for the notification of awards of individual aid;

(b) exclude certain sectors from their scope;

(c) attach further conditions for the compatibility of aid with the internal market.

Article 2
Transparency and monitoring

1. Regulations adopted pursuant to Article 1(1) shall include detailed rules to ensure transparency and monitoring of aid.
2. Where a Member State implements aid schemes or individual aid not subject to notification requirements pursuant to regulations adopted pursuant to Article 1(1), it shall provide the Commission with summaries of the information regarding such aid. The Commission shall publish those summaries.
3. Each Member State shall record and compile all the information regarding the application of the regulations adopted pursuant to Article 1(1). Where the Commission has information which provides reasons to believe that a regulation adopted pursuant to Article 1(1) is not being applied properly, the Member State concerned shall provide the Commission with any information that the Commission considers necessary to assess whether aid granted under that regulation complies with all its conditions.
4. At least once a year, each Member State shall provide the Commission with a report on the application of the regulations adopted pursuant to Article 1(1), in accordance with the Commission's specific requirements. The Commission shall make those reports accessible to all the other Member States. The Committee referred to in Article 5 shall examine and evaluate those reports once a year.

Article 3

Period of validity and amendment of regulations

1. Regulations adopted pursuant to Article 1(1) shall specify their period of validity and shall provide for a transitional period in case their period of validity is not extended when they expire.
2. Where a regulation adopted pursuant to Article 1(1) is repealed or amended by a new regulation, the new regulation shall provide for a transitional period of six months to allow for the adjustment of aid covered by the repealed or amended regulation.

Article 4

Hearing of interested persons and organisations

Before the adoption of a regulation pursuant to Article 1(1), the Commission shall publish a draft thereof to enable all interested persons and organisations to submit their comments within a time limit fixed by it. That time limit shall be at least one month. At the same time, the Commission shall make public that draft regulation on its website.

Article 5

Consultation of the Advisory Committee on State aid

1. The Commission shall consult the Advisory Committee on State aid established by Regulation (EU) 2015/1588 (the ‘Committee’):
 - (a) at the same time as a draft regulation pursuant to Article 1(1) is published pursuant to Article 4; and
 - (b) before adopting any regulation pursuant to Article 1(1).
2. The Commission shall consult the Committee at a meeting it shall call by means of electronic communication. The drafts and documents to be examined shall be annexed to the electronic communication. The meeting shall take place no earlier than two months after the electronic communication. That period may be reduced in the case of the consultations referred to in paragraph 1 of this Article where justified by reasons of urgency or for the extension of the period of validity of a regulation adopted pursuant to Article 1(1).

3. A representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft, within a time limit which the chairman of the Committee may lay down according to the urgency of the matter, where necessary by taking a vote.
4. The opinion of the Committee shall be recorded in the minutes of the meeting. Each Member State may ask to have its position recorded in the minutes of the meeting. The Committee may recommend the publication of the opinion in the *Official Journal of the European Union*.
5. The Commission shall take into account the opinion delivered by the Committee and shall inform the Committee of the manner in which its opinion has been taken into account.

Article 6

Evaluation report

Every five years, the Commission shall submit an evaluation report on the application of this Regulation to the European Parliament and to the Council. It shall first submit a draft of that report to the Committee for its consideration.

Article 7
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

For the Council
The President
