



State aid - Transport

Hanna Standtke

COMP F.2

These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union.

Agenda

- I. Legislative Framework*
- II. Regulation 1370/2007 on public passenger transport by rail and by road*
- III. Guidelines on State aid for railway undertakings*
- IV. Guidelines on State aid for airports and airlines*
- V. Guidelines on State aid to maritime transport*



Applicable Treaty Provisions (TFEU)

- **Inland transport** (i.e. transport by rail, road and inland waterways) - Articles: 106-108, Articles 93 and 96
- **Maritime and air transport** - Articles 106-108 (and Art. 100(2))



Inland transport

- **Regulation 1370/2007 (PSO Regulation)** – public service obligations in passenger services by rail and road (may be applied also to passenger transport by inland waterways)
- **Direct application of Article 93 for coordination of transport** (applies where no specific rules exist)
 - 5 conditions:**
 1. The aid must contribute to a well-defined objective of common interest;
 2. The aid must be necessary and provide an incentive effect;
 3. The aid must be proportionate;
 4. Access to the aid in question must be open to all users on a non-discriminatory basis;
 5. The aid must not lead to distortions of competition contrary to the common interest.
- **Railway Guidelines** (railway undertakings)

Regulation 1370/2007

- Scope: Public service obligations (PSOs) in rail and road passenger transport
 - Clear definition of the PSO and geographical area
 - Objective and transparent parameters for the calculation of the compensation
 - Duration
 - Quality rules
- Compensation \leq costs – revenues + reasonable profit from the contract (Art. 4 and Annex)
- General obligation to tender PSOs in an open, fair, transparent, non-discriminatory procedure
- Compensation granted in line with the Regulation is compatible aid and does not need to be notified to the Commission under Art. 108(3) TFEU



Railway Guidelines

- **Community guidelines on State aid for railway undertakings** OJ C 184, 22.7.2008, p. 13.
- **Scope** – railway transport undertakings

Please note:

- Railway infrastructure management must be separated from railway transport undertakings
- Funds paid to the manager of the infrastructure for general railway infrastructure are currently not considered as State aid

Railway Guidelines – Types of aid

1. **Railway infrastructure financing**
2. **Purchase and renewal of rolling stock**
3. **Debt cancellation**
4. **Restructuring of undertakings and freight divisions**
5. **Aid for coordination of transport**



- Aid for rail “infrastructure use”:
 - Infrastructure charges that are not paid by other modes of transport
- Aid for reducing “external costs”:
 - Encourage modal shift
- Aid for promoting “interoperability”:
 - Promote interoperability, removal of technical barriers and reduction of noise
- “R&D” in rail transport;

6. **Unlimited guarantees**



Aviation – Competition challenges

- Congestion at major hubs vs duplication of unprofitable (regional) airports
- Regional airports as an important tool for economic development and connectivity of citizens
- Airport-airline agreements
- International competition
- New environmental and security requirements



Aviation Guidelines

- **Guidelines on State aid to airports and airlines** OJ C 99, 4.4.2014, p.3.
- **Scope:** Investment and operating aid to airports & aid to airlines

Please note:
Investment in and operation of airports is an economic activity and falls under State aid rules (Aéroports de Paris and Leipzig-Halle judgments)

Aid to airports

Aid needs to contribute to a well-defined objective of common interest and cannot lead to a duplication of unprofitable infrastructure (“catchment area”)

- **Investment aid:**

- Demonstrated based on a “capital cost funding gap” (NPV of difference between negative and positive cash flows, including investment costs)
- Maximum aid intensities (percentage of eligible investment costs) depending on size of the airport



- **Operating aid:**

- Transitional period: In principle only allowed until 2024
- Very small airports (below 200.000 passengers p.a.) fall under Article 56a GBER
- Demonstrated based on the “expected operating funding gap” (discounted EBITDA clean of state subsidies)
- Maximum aid intensities (percentage of average funding gap from 5 years preceding the transitional period) depending on size of airports

Aid to airlines –

Agreements between public airports and airlines

- State aid or not?
 - fi Market Economy Operator test (MEOP): Would a private, profit-driven company have entered into the same agreement?
 - **Ex ante incremental profitability analysis** of the agreement = Only those costs/revenues can be included that are due to the airline's presence at the airport
 - **No room for public policy considerations**
- Compatibility Assessment
 - **Start-up aid** under the Aviation Guidelines
 - **Social aid** under the Aviation Guidelines/GBER
 - **PSO** under Regulation 1008/2008



General Block Exemption Regulation

(Article 56a GBER)

- Lists categories of State aid Member States can grant **without prior notification** and approval of the Commission if conditions are fulfilled
- **Investment aid for airports** with passenger traffic <3 million/year & freight traffic <200.000 t/year
- **Operating aid for airports** with passenger traffic <200.000/year (during two preceding financial years)

Aid for maritime transport

- **Guidelines on State aid to maritime transport**

(OJ C 13, 17.1.2004, p.3)

- **Scope:** Transport of goods and persons by sea

- **Types of aid:**

- Reduction in corporation tax, social security contributions and seafarers' income tax
- Aid for crew relief
- Aid for equipment useful for safety and for the prevention of pollution
- Training aid
- Aid for short-sea shipping services

- Requirement to register new capacities under **Community flag**.

fi PSO for maritime cabotage under Regulation (EEC) No 3577/92





European
Commission

Thank you for your attention!

