Council of the European Union

Brussels, 20 July 2022
(OR. en)

11552/22

Interinstitutional File: 2022/0209(NLE)

RC 45
TRANS 508
COMPET 623

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	6 July 2022
To:	General Secretariat of the Council
No. Cion doc.:	COM(2022) 327 final
Subject:	Proposal for a 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

Delegations will find attached document COM(2022) 327 final.

Encl.: COM(2022) 327 final

EUROPEAN
COMMISSION

Brussels, 6.7.2022
COM(2022) 327 final

2022/0209 (NLE)

Proposal for a

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

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Context

As indicated by the Commission in its Annual Sustainable Growth Strategy 2021[1], measures addressing transport can strongly support the green transition by bringing significant greenhouse gas emission reductions and improvements to air quality, while fostering productivity growth and strengthening the resilience of industrial ecosystems. In that context, the Commission stressed the importance of investments in public transport and in infrastructure that supports the shift towards more sustainable and smart mobility, including seamless and efficient European multimodal networks as well as upgrading the Trans-European Transport Network for passengers and freight.

A well-functioning rail, inland waterway and multimodal transport system is key to ensuring connectivity across Europe, establishing a Single European Railway Area, fostering economic, social and territorial cohesion in line with Articles 170 and 174 of the Treaty on the Functioning of the European Union ("TFEU"), achieving EU climate goals (the "European Green Deal"[2]) and supporting the resilience of the EU industry and its value chains (the "New Industrial Strategy" as updated[3]), including the ones supporting the objectives of the digital transformation and digitalisation ('the European Digital Strategy'[4]). On 9 December 2020, the Commission adopted a Communication on its Sustainable and Smart Mobility Strategy (the "Commission's Sustainable and Smart Mobility Strategy")[5], in which the strengthening of rail and inland waterway transport, as well as multimodal transport, is an essential component of the green and digital transformation of European transport, which is in turn key to reach the Union's goal of climate neutrality by 2050.

Those objectives cannot be reached without major investments by the Member States. The range of investments that Member States may consider to support low-emission transport modes goes from investments in new or existing fleet to investments in rail infrastructure, transhipment terminals and maintenance workshops, also with a view to stimulating demand for a zero-emission fleet and for digital solutions that enable interoperability across transport modes and within sectors. This calls for State aid rules that allow those investments where

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1 Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank — Annual Sustainable Growth Strategy 2021, COM/2020/575 final.

2 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — The European Green Deal, COM(2019) 640 final.

3 Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – 'A New Industrial Strategy for Europe', COM(2020) 102 final, 10 March 2020 as updated by Communication from the Commission to the European Parliament, the Council. The European Economic and Social Committee and the Committee of the Regions - "Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery', COM(2021) 350 final.

4 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – 'Shaping Europe's digital future', COM(2020) 67 final, 19 February 2020.

5 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Sustainable and Smart Mobility Strategy – putting European transport on track for the future, COM/2020/789 final, SWD(2020) 331 final.

such public support is necessary while preserving and enhancing competition in rail, inland waterway and multimodal transport.

Pursuant to Article 93 TFEU, 'Aids shall be compatible with the Treaties if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service'. Article 93 TFEU is included under "Title VI – TRANSPORT", whose provisions exclusively apply to transport by rail, road and inland waterway, as laid down in Article 100(1) TFEU. The current proposal covers transport by rail and by inland waterway, including multimodal transport[6].

i) Aid that meets the needs of coordination of transport

The 2008 Community Guidelines on State aid for railway undertakings[7] ("Railway Guidelines") aimed at codifying and updating the Commission's practice concerning the compatibility with the Treaty of aid to undertakings in the rail transport sector following the evolution of the sectorial legal framework, in particular to accompany the gradual opening of the market to competition. The *fitness check*[8] of State aid rules, including the Railway Guidelines, carried out in 2020 has confirmed the need for a revision of the State aid rules applicable to rail, inland waterway and intermodal transport, given the major regulatory and market developments since 2008[9]. Against that background, the Commission is considering not only a revision of the Railway Guidelines, but also the adoption of specific block exemption rules to help rail, inland waterway and multimodal transport (both passenger and freight services) embrace the green and digital transition.

In particular, the Commission aims to increase legal certainty and reduce the administrative burden in relation to certain national aid measures supporting the modal shift of freight and passengers from road to less polluting transport modes and solutions, which are designed, based on vast decisional practice by the Commission, in a way that ensures that competition distortions are limited. Block exemption regulations increase legal certainty for Member States and aid beneficiaries in terms of how measures should be designed. At the same time, they simplify procedures, by exempting certain measures from the obligation under Article 108(3) TFEU to notify State aid to the Commission prior to its implementation, where it is possible, based on the decisional practice of the Commission, to define *ex ante* compatibility conditions ensuring that potential competition distortions are limited.

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6 'Multimodal transport' means the carriage of passengers or freight, or both, using two or more modes of transport, as defined in 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).

7 Communication from the Commission — Community guidelines on State aid for railway undertakings ("Railway Guidelines") (OJ C 184, 22.7.2008, p. 13).

8 The findings of the fitness check of the railway guidelines conducted by the Commission in 2019 and 2020 are available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2044-Fitness-check-of-2012-State-aid-modernisation-package-railways-guidelines-and-short-term-export-credit-insurance.

9 In particular, the Railway Guidelines predate the most recent (4th) railway package (2016), which will complete the liberalisation and market opening of the rail sector (https://transport.ec.europa.eu/transport-modes/rail/railway-packages/fourth-railway-package-2016_en). Other legislative developments occurred, e.g. the revision of the Eurovignette Directive (Directive (EU) 2022/362 of the European Parliament and of the Council of 24 February 2022 amending Directives 1999/62/EC, 1999/37/EC and (EU) 2019/520, as regards the charging of vehicles for the use of certain infrastructures, OJ L 69, 4.3.2022, p. 1), which introduced certain changes to the charging system for the use of road infrastructure. This may in turn affect the way costs differences between road and other modes of transport are calculated for the purpose of granting aid to promote the modal shift from road to less polluting transport modes.

The Commission has gained significant experience in relation to aid for the coordination of transport covered by Section 6.3 of the Railway Guidelines as well as aid to support transport modes and solutions that are less polluting and more sustainable than road-only transport, including aid to support intermodal transport[10] and inland waterway transport. In the Commission's experience, aid for the coordination of transport is instrumental to modal shift and, under certain conditions, does not give rise to any significant distortions of competition. Moreover, a block exemption of aid for the coordination of transport has been widely called for by Member States. It is therefore appropriate to enable the Commission to block-exempt aid provided by Member States in support of those measures, where certain conditions are fulfilled.

The block exemption would cover measures which fall under Article 93 TFEU and support the shift of freight and passengers from more polluting transport modes (in particular, road transport) to less polluting and more sustainable transport modes and solutions, in line with the Commission's decision-making practice.

ii) Aid that represents reimbursement for the discharge of certain obligations inherent in the concept of a public service

As regards aid for the discharge of certain obligations inherent in the concept of a public service (which is currently not covered by the Railway Guidelines), the Commission may also consider the possibility to block-exempt, under certain conditions, the compensation granted by Member States for the discharge of public service obligations in the rail, inland waterway and multimodal transport sectors, provided it is not covered by Regulation (EC) No 1370/2007 of the European Parliament and the Council of 23 October 2007[11] (Regulation (EC) No 1370/2007).

In particular, as regards freight transport, public service obligations may be an appropriate instrument to promote services in areas and segments where otherwise freight transport would occur by road only.

This proposal does not cover aid to compensate public service obligations concerning passenger transport governed by Article 9(1) of Regulation (EC) No 1370/2007. That provision exempts from the prior notification requirement public service compensation for the operation of public passenger transport services or for complying with tariff obligations established through general rules and paid in accordance with Regulation (EC) No 1370/2007.

Problem that the initiative aims to tackle

There is a need for specific rules allowing for procedural simplification in relation to aid for rail, inland waterway and multimodal transport.

Under the division of competences between the Council and the Commission set out in Articles 108(4) and 109 TFEU, it is for the Council to determine the categories of aid that may be exempted from State aid notification, and for the Commission to adopt the regulations laying down detailed rules relating to such exemption.

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[10] Intermodal transport means a movement of goods (in one and the same loading unit or a vehicle) by successive modes of transport without handling of the goods themselves when changing modes. It is hence a type of multimodal transport (https://stats.oecd.org/glossary/detail.asp?ID=4303).

[11] 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 351, 3.12.2007, p. 1).

By way of block exemption regulations, the Commission exempts from the notification obligation laid down in Article 108(3) TFEU the aid measures identified by the Council, thereby allowing Member States to directly implement them without prior approval by the Commission.

Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 TFEU to certain categories of horizontal State aid (the "2015 Enabling Regulation")[12] identifies a certain number of categories of aid that may be exempted by the Commission from the notification obligation laid down in Article 108(3) TFEU. However, the 2015 Enabling Regulation covers only State aid measures declared compatible with the internal market under Article 107(2) or 107(3) TFEU, but leaves uncovered the aid measures whose compatibility is assessed under Article 93 TFEU.

Therefore, the Commission considers that such a gap should be filled in the interest of procedural simplification for Member States that set up State aid measures for rail, inland waterway and multimodal transport.

Since State aid for rail, inland waterway and multimodal transport falls under Article 93 TFEU, which constitutes a *lex specialis* relative to Article 107(2) and (3) TFEU, a specific enabling Council regulation for rail, inland waterway and multimodal transport seems fully justified ("Transport Enabling Regulation"). In fact, Article 93 TFEU belongs to Title VI, of Part 3 of the TFEU, which concerns transport, and provides that State aid shall be 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. Accordingly, compatibility of State aid with the internal market pursuant to Article 93 TFEU depends on verifying whether the aid pursues those objectives. The Commission's block exemption regulation would lay down the relevant criteria to that end.

The present proposal aims to align State aid rules applicable to rail, inland waterway and multimodal transport with the Commission's Sustainable and Smart Mobility Strategy. Pursuant to the Transport Enabling Regulation, the Commission will be able to adopt block exemption regulations for aid under Article 93 TFEU involving a limited risk of competition and trade distortions. This proposal enables the Commission to adopt block exemption regulations in areas where it has acquired sufficient experience to define clear compatibility criteria, whilst ensuring that the effect on competition and trade between Member States is limited.

The Transport Enabling Regulation will not have any direct impact itself but will constitute a legal basis for the adoption of possible block exemption regulations. The Commission will assess different policy options for any such block exemption regulations and their impacts in the context of an Impact Assessment, on the basis of the Transport Enabling Regulation.

- **Consistency with existing policy provisions in the policy area and with other Union policies**

This proposal contributes to the overall objectives of the Union, in particular the objective of enforcement and simplification of State aid rules, on the one hand, and the implementation of the European Green Deal, on the other hand.

[12] OJ L 248, 24.9.2015, p. 1.

As regards the interest of enforcement of State aid rules, as indicated by the Commission in its Communication on State aid Modernisation of 8 May 2012[13], State aid enforcement should focus on cases with the biggest impact on the internal market. This implies, on the one hand, stronger scrutiny of large and potentially distortive aid, and, on the other hand, a simplified analysis of cases with only limited effect on trade and competition. The latter can be achieved by block-exempting those categories of aid from the notification requirement.

As regards the interest in simplification of State aid rules, it is necessary to have a consistent approach in the procedures applicable to aid in the form of compensation for the discharge of public service obligations in both passengers and freight market segments. Article 9(1) of Regulation No 1370/2007 already provides for the exemption from prior notification of public service compensation in line with State aid rules for public passenger transport services. However, a similar block exemption for public service compensation does not presently exist for freight transport. Therefore, aid for reimbursing the discharge of certain obligations inherent in the concept of a public service with regard to freight transport by rail, inland waterway or intermodal transport, as referred to in Article 93 TFEU, should be brought under the scope of a Transport Enabling Regulation.

As regards its contribution to the European Green Deal, this proposal will facilitate the promotion of a green, efficient and interconnected multimodal transport system, which is a necessary step towards the Union's goal of climate neutrality by 2050. In that respect, there is a clear link between this proposal and the planned revision of the Railway Guidelines, as they are both meant to facilitate the public financing of modal shift of traffic from road to rail, inland waterway and more sustainable multimodal transport solutions, and ultimately support the green and digital transformation of European transport, while ensuring that distortions of competition remain limited. The proposed Transport Enabling Regulation would exempt from the notification obligation measures falling under Article 93 TFEU for which it is possible to define clear compatibility conditions.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis of this proposal is Article 109 TFEU, which allows the Council to make any appropriate regulations, in particular to determine the conditions in which Article 108(3) TFEU applies, and the categories of aid that may be exempted from that procedure.

The Council's competence to take any appropriate regulation to determine the categories of aid that can be block-exempted, as set out in Article 109 TFEU[14], relates to all State aid measures, including in relation to rail, inland waterway and multimodal transport, covered by Article 93 TFEU.

• Subsidiarity and proportionality

The proposal falls under the exclusive competence of the Union. Pursuant to Article 3 TFEU ('The Union shall have exclusive competence in the following areas: [...] (b) the establishing of the competition rules necessary for the functioning of the internal market'). The subsidiarity principle therefore does not apply.

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13 COM(2012) 209 final.

14 'The Council, on a proposal from the Commission and after consulting the European Parliament, may make any appropriate regulations for the application of Articles 107 and 108 and may in particular determine the conditions in which Article 108(3) shall apply and the categories of aid exempted from this procedure'.

The proposal does not go beyond what is necessary to achieve its objective, which is to enable the Commission to block-exempt aid for the coordination of transport and aid for the reimbursement for the discharge of certain obligations inherent in the concept of a public service, provided that certain conditions are fulfilled. Therefore, the proposal complies with the proportionality principle.• Choice of the instrument

The proposed instrument is that of a Council regulation.

Under Article 109 TFEU, a regulation is the only legal instrument available to the Council to determine the conditions in which Article 108(3) TFEU applies, and the categories of aid exempted from that procedure.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Ex-post evaluations/fitness checks of existing legislation

The conclusion of the *fitness check* of the Railway Guidelines is that those guidelines need a full-fledged review to align them with the market and regulatory developments as well as with the new overarching priorities set out in the Green Deal Agenda. Among others, the *fitness check* pointed to the appropriateness of a block exemption in particular for several types of aid for the coordination of transport that have been approved by the Commission over the last decade by way of decisions not to raise objections[15], without a formal investigation procedure having been carried out. More specifically, the evaluation of Section 6.3 of the Railway Guidelines, concerning aid for the coordination of transport, showed that all cases resulted in decisions not to raise objections, generally within limited time from the notification[16].

The *fitness check* of the Railway Guidelines was built on a comprehensive review of the Commission's State aid decisions approved under the Railway Guidelines and/or Article 93 TFEU, feedback received from Member States and stakeholders in the open public consultation. The need for a Transport Enabling Regulation is even more pressing in the light of the European Green Deal and the increased importance of a modal shift to more sustainable transport modes, such as rail, inland waterway and multimodal transport, in order to meet the emissions reduction target by 2050.

• Stakeholder consultations

This proposal does not require any stakeholder consultation.

The proposed Transport Enabling Regulation will per se not have any direct impact on stakeholders, because it will merely provide a legal basis for the Commission to adopt block exemption regulations. In the light of the technical nature of this proposal, which is merely preparing the ground for future block exemption regulations, no public consultation will be carried out. However, on 1 October 2021 the Commission published a roadmap concerning

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15 See Article 4(3) of 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).

16 See the Commission Staff Working Document – Fitness Check of the 2012 State aid modernisation package, railways guidelines and short-term export credit insurance {SEC(2020) 372 final} - {SWD(2020) 258 final}, part 3/4, p. 139 and fn. 211, available at https://ec.europa.eu/info/sites/default/files/fitness_check_-_annexes_part3_en.pdf.

specifically the initiative to develop the present proposal. Stakeholders had four weeks to provide feedback on the roadmap[17].

A public consultation will be conducted for the revision of the Railway Guidelines, which includes the project to simplify the rules on State aid for coordination of transport by way of a block exemption regulation. A specific public consultation will also be carried out for the future Commission's block exemption regulations.

- **Impact assessment**

There is no need to support this proposal by an impact assessment. This proposal aims at the adoption by the Council of a Transport Enabling Regulation, which will allow the Commission to adopt block exemption regulations for aid for rail, inland waterway and multimodal transport involving a limited risk of trade and competition distortions. This proposal does not entail any immediate block exemption of the aid categories covered by the envisaged Transport Enabling Regulation, rather it enables the Commission to adopt block exemption regulations at a subsequent stage.

The contents of the future Commission block exemption regulations will be underpinned by an impact assessment.

- **Regulatory fitness and simplification**

This proposal aims, among other things, to simplify existing rules on State aid for coordination of transport and on State aid representing reimbursement for the discharge of public service obligations in the rail, inland waterway and multimodal transport sectors, and reduce the number of State aid notifications and the related regulatory costs.

The proposed Transport Enabling Regulation enables the Commission to adopt block exemption regulations for aid for rail, inland waterway and multimodal transport. The adoption of such block exemption regulations will bring benefits to the Union as a whole. First, it will foster a fundamental green and digital transformation of European transport in line with the policy objectives set out in the European Green Deal. Second, it will noticeably reduce the administrative burden and cost for investments in low-emission transport modes and for the consolidation/expansion of existing transport modes and solutions less polluting than road transport. Third, it will simplify the clearance of aid for the discharge of certain obligations inherent in the concept of a public service and support cleaner transport modes and solutions in areas and segments, where transport would otherwise occur by road only.

- **Fundamental rights**

This proposal has no consequences for the protection of fundamental rights.

[17] See https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13153-Greener-land-transport-simplified-state-aid-rules-New-Land-Transport-Enabling-Regulation-_en.

4. BUDGETARY IMPLICATIONS

THE PROPOSAL HAS NO NEGATIVE IMPLICATIONS FOR THE UNION BUDGET.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The proposed Transport Enabling Regulation will be binding in its entirety and directly applicable in all Member States upon its entry into force.

Pursuant to Article 6 of the proposed Transport Enabling Regulation, the Commission will submit every five years a report to the European Parliament and to the Council on the application of the Transport Enabling Regulation. Moreover, a draft report will be submitted in advance for consideration to the Advisory Committee on State aid referred to in Article 5 of the proposed Transport Enabling Regulation. Pursuant to Article 5(1) of the proposed Transport Enabling Regulation, that committee will also be consulted by the Commission when it intends to adopt a block exemption regulation and before adopting any such regulation.

- **Detailed explanation of the specific provisions of the proposal**

Article 1(1) of the proposed Transport Enabling Regulation identifies two categories of aid exempted from notification under Article 108(3) TFEU: (i) aid for the coordination of transport; and (ii) aid for the reimbursement for the discharge of certain obligations inherent in the concept of a public service. Those categories reflect the scope of Article 93 TFEU. However, the scope of the proposed Transport Enabling Regulation does not include public service compensation for the operation of public passenger transport services or for complying with tariff obligations established through general rules, covered by Regulation (EC) No 1370/2007.

Article 1(2) of the proposed Transport Enabling Regulation indicates the elements that the Commission will specify in its subsequent regulations to block-exempt from notification under Article 108(3) TFEU the above categories of aid. Those categories are the same as those identified in the 2015 Enabling Regulation.

Article 1(3) of the proposed Transport Enabling Regulation indicates the type of conditions that, in its subsequent block exemption regulations, the Commission may specify in order to ensure the compatibility with the internal market of aid covered by the present proposal. In particular, Article 1(3)(b) allows the Commission to exclude certain sectors from the scope of the block exemption regulations. That provision takes into account that this proposal enables the Commission to adopt block exemption regulations as it acquires sufficient experience to define clear compatibility criteria, whilst ensuring that the effect on competition and trade between Member States is limited.

As regards transparency and monitoring, the period of validity and the amendment of regulations, the hearing of interested parties, the Advisory Committee on State aid and its consultation, and the evaluation report, Articles 2 to 6 of the proposed Transport Enabling Regulation reflect the provisions of the 2015 Enabling Regulation.

2022/0209 (NLE)

Proposal for a

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

(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 Parliament[18],

Whereas:

(1) Council Regulation (EU) 2015/1588[19] empowers the Commission to declare by means of regulations that certain specified categories of aid are compatible with the internal market and are exempted from the notification requirement of Article 108(3) of the Treaty. While Regulation (EU) 2015/1588 covers certain categories of aid to undertakings operating in different sectors, such as aid in favour of environmental protection, it does not cover, among others, aid to support transport by rail and inland waterway, including multimodal transport[20]. The rail, inland waterway and multimodal transport sectors have become increasingly relevant at Union level, in the context of the European Green Deal[21], and the Commission's Sustainable and Smart Mobility Strategy [22].

(2) Pursuant to Article 93 of the Treaty, aid in relation to rail, inland waterway and multimodal transport, meeting the needs of coordination of transport or representing

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18 OJ C , , p. .

19 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). Council Regulation (EU) 2015/1588 repealed Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid (OJ L 142, 14.5.1998, p.1).

20 'Multimodal transport' means the carriage of passengers or freight, or both, using two or more modes of transport, as defined in 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. 1–128).

21 Communication from the Commission to the European Parliament, the Council. The European Economic and Social Committee and the Committee of the Regions — The European Green Deal, COM(2019) 640 final.

22 Communication from the Commission to the European Parliament, the Council. The European Economic and Social Committee and the Committee of the Regions — Sustainable and Smart Mobility Strategy – putting European transport on track for the future, COM/2020/789 final, SWD(2020) 331 final.

reimbursement for the discharge of certain obligations inherent in the concept of a public service, is to be compatible with the Treaties.

(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[23]. 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 clear compatibility conditions can be defined 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 exempted from the notification requirements of Article 108(3) of the Treaty.

(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 Council, including where Member States decide to apply that Regulation to public passenger transport by inland waterways and national sea waters, in accordance with Article 1(2) of that Regulation[24]. Public service compensation concerning public passenger transport should therefore be excluded from the scope of this Regulation.

(6) When adopting regulations exempting certain categories of aid from the notification requirements set out in Article 108(3) of the Treaty ('block exemption regulations'), the Commission should specify the purpose of the aid, the categories of beneficiaries and thresholds limiting the exempted aid, the conditions governing the cumulation of aid and the conditions of monitoring, and 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, Member States should be required to provide summaries of information concerning aid implemented by them, which is covered by a block exemption regulation. In order to ensure the transparency of the measures adopted by the Member States 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 the Member States. For that purpose and in order to ensure the largest possible degree of transparency and adequate control, the Commission should ensure that Member States record and store

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[23] Communication from the Commission - Community guidelines on State aid for railway undertakings (OJ C184, 22.7.2008, p. 13).

[24] 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 351, 3.12.2007, p. 1).

information about the application of the block exemption regulations adopted by the Commission. The Commission should also ensure that Member States provide it with a report, at least on an annual basis, on the application of such block exemption regulations. Those reports should be accessible to all Member States.

(9) Before adopting block exemption regulations pursuant to this Regulation, the Commission should enable all interested parties to submit their comments in order to gather feedback which is as comprehensive and as representative as possible. For that purpose it should publish a draft of such block exemption regulations.

(10) The Advisory Committee on State aid, established by Article 7 of Regulation (EU) 2015/1588, should be consulted at the same time as the publication of a draft regulation. However, in the interest of transparency, the draft regulation should be published on the website of the Commission at the same time as the Commission consults the Advisory Committee for the first 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 be exempted from notification. To that end, it should submit an evaluation report to the European Parliament and the Council every five years,

HAS ADOPTED THIS REGULATION:

Article 1

Block exemptions

1. The Commission may, by means of regulations adopted in accordance with the procedure laid down in Article 5, declare 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:

   (c) the purpose of the aid;

   (d) the categories of beneficiaries;

   (e) thresholds expressed either in terms of aid intensities in relation to a set of eligible costs or in terms of maximum aid amounts, or, for certain types of aid where it may be difficult to identify the aid intensity or amount of aid precisely, in particular financial engineering instruments or risk capital investments or those of a similar nature, in terms of the maximum level of State support in or related to that measure, without prejudice to the qualification of the measures concerned in the light of Article 107(1) of the Treaty;

   (f) the conditions governing the cumulation of aid;

(g) the transparency and monitoring conditions in compliance with Article 2.

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

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

(i) exclude certain sectors from their scope;

(j) attach further conditions for the compatibility of aid exempted under such regulations.

Article 2

Transparency and monitoring

4. Regulations adopted pursuant to Article 1(1) shall include detailed rules to ensure transparency and monitoring of aid covered by those regulations.

5. Where Members States implement aid schemes or individual aid exempted from notification pursuant to regulations referred to in Article 1(1), they shall forward to the Commission, with a view to publication, summaries of the information regarding such aid.

6. Member States 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 States shall forward to it any information that the Commission considers necessary to assess whether aid granted under that regulation complies with all its conditions.

7. At least once a year, Member States shall supply 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, preferably in computerised form. The Commission shall make those reports accessible to all the 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

8. Regulations adopted pursuant to Article 1(1) shall specify their period of validity. The regulations shall provide for a transitional period in case their period of validity is not extended when they expire.

9. Where regulations adopted pursuant to Article 1(1) are 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 parties

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 the Commission. That time limit shall

be at least one month, except where the Commission deems it appropriate to set a shorter deadline.

Article 5

Consultation of the Advisory Committee on State aid

10. The Commission shall consult the Advisory Committee on State aid (the 'Committee'):

    (k) at the same time as draft regulations are published pursuant to Article 4; and

    (l) before adopting any regulation pursuant to Article 1(1).

11. Consultation of the Committee shall take place at a meeting called by the Commission 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, where justified for reasons of urgency or for the extension of the date of application of a regulation.

12. The 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 may lay down according to the urgency of the matter, where necessary by taking a vote.

13. The opinion of the Committee shall be recorded in the minutes. In addition, each Member State shall have the right to ask to have its position recorded in the minutes. The Committee may recommend the publication of the opinion in the *Official Journal of the European Union*.

14. The Commission shall take into account the opinion delivered by the Committee. It 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 a report to the European Parliament and to the Council on the application of this Regulation. It shall submit a draft report for consideration by the Committee referred to in Article 5.

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 Brussels,

For the Council
The President