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REPORT

on the proposal for a European Parliament and Council regulation concerning the granting of aid for the co-ordination of transport by rail, road and inland waterway
(COM(2000) 5 – C5-0402/2000 – 2000/0023(COD))

Committee on Regional Policy, Transport and Tourism

Rapporteur: Felipe Camisón Asensio

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

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PROCEDURAL PAGE

By letter of 28 July 2000 the Commission submitted to Parliament, pursuant to Article 251(2) and Articles 71, 73 and 89 of the EC Treaty, the proposal for a European Parliament and Council regulation concerning the granting of aid for the co-ordination of transport by rail, road and inland waterway (COM(2000) 5 - 2000/0023 (COD)).

At the sitting of 8 September 2000 the President of Parliament announced that she had referred this proposal to the Committee on Regional Policy, Transport and Tourism as the committee responsible and the Committee on Economic and Monetary Affairs and the Committee on Legal Affairs and the Internal Market for their opinions (C5-0402/2000).

The Committee on Regional Policy, Transport and Tourism appointed Felipe Camisón Asensio rapporteur at its meeting of 12 September 2000.

The committee considered the Commission proposal and draft report at its meetings of 21 November 2000, 24 January 2001 and 20 March 2001.

At the last meeting it adopted the draft legislative resolution by 50 votes to 0, with 5 abstentions.

The following were present for the vote: Konstantinos Hatzidakis, chairman; Emmanouil Mastorakis, Rijk van Dam and Helmuth Markov, vice-chairmen; Felipe Camisón Asensio, rapporteur; Pedro Aparicio Sánchez (for Giovanni Claudio Fava), Sir Robert Atkins, Emmanouil Bakopoulos, Theodoros J.J. Bouwman, Philip Charles Bradbourn, Carmen Cerdeira Morterero, Luigi Cocilovo (for Rolf Berend), Gerard Collins, Thierry Cornillet (for Luigi Cesaro), Danielle Darras, Garrelt Duin, Alain Esclopé, Markus Ferber (for Francis Decourrière), Jean-Claude Fruteau (for John Hume), Mathieu J.H. Grosch, Ewa Hedkvist Petersen, Mary Honeyball, Georg Jarzembowski, Pierre Jonckheer (for Reinhold Messner), Dieter-Lebrecht Koch, Brigitte Langenhagen (for Jacqueline Foster), Giorgio Lisi, Sérgio Marques, Erik Meijer, Rosa Miguélez Ramos, James Nicholson (for Francesco Musotto), Camilo Nogueira Román, Juan Ojeda Sanz, Josu Ortuondo Larrea, Karla M.H. Peijs, Wilhelm Ernst Piecyk, Giovanni Pittella (for Juan de Dios Izquierdo Collado), Samuli Pohjamo, James L.C. Provan (for Reinhard Rack), Alonso José Puerta, Carlos Ripoll i Martínez Bedoya, Isidoro Sánchez García, Marieke Sanders-ten Holte, Gilles Savary, Dana Rosemary Scallon, Agnes Schierhuber (for Margie Sudre), Ingo Schmitt, Brian Simpson, Renate Sommer, Dirk Sterckx, Ulrich Stockmann, Helena Torres Marques (for Joaquim Vairinhos), Ari Vatanen, Mark Francis Watts and Jan Marinus Wiersma (for Demetrio Volcic).

The opinion of the Committee on Economic and Monetary Affairs is attached; on 17 October 2000, the Committee on Legal Affairs and the Internal Market decided not to deliver an opinion.

The report was tabled on 21 March 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a European Parliament and Council regulation concerning the granting of aid for the co-ordination of transport by rail, road and inland waterway (COM(2000) 5 – C5-0402/2000 – 2000/0023(COD))

The proposal is amended as follows:

Text proposed by the Commission ¹

Amendments by Parliament

(Amendment 1)

Recital 2

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

(2) ***After a considerable time, some*** progress has now been made in the liberalisation of the inland transport sectors:

Justification:

Some progress has now been made, but it has been a very difficult process that has taken several years. The text should make it clear how difficult this progress has been to achieve.

(Amendment 2)

Recital 2a (new)

(2a) According to the common transport policy, infrastructure financing structures should not disadvantage safer and more environmentally friendly modes of transport, such as waterways, rail and combined transport, compared with the infrastructure financing of more damaging modes.

Justification

The common transport policy (CTP) aims to achieve a modal shift towards more sustainable modes of transport, such as waterways, rail and combined transport, rather than to benefit more damaging modes, such as road and air transport.

(Amendment 3)

¹ OJ C 365 E, 19.12.2000, p. 179.

Recital 5

(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).

(5) Article 73 *stipulates that an exemption to the general rules on State aids (Article 87(1)) applies where aid measures meet the needs of coordination of transport.* 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).

Justification:

This is a more accurate reflection of Article 73.

(Amendment 4)

Recital 8

(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. 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.

(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. 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 *all* infrastructure managers *and for infrastructure projects* rather than one targeted at specific kinds of projects.

Justification:

Bearing in mind that Article 87(3)(b) of the EC Treaty also refers to projects, their importance should be highlighted. National authorities which manage land transport infrastructure do not fall within the scope of this proposal. This gives rise to discrimination against managers of public and private infrastructure and results, in many Member States, in a competitive advantage for certain modes of transport.

(Amendment 5)

Recital 9

(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.

(9) Public financing of the management, maintenance, **realisation** 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.

Justification:

The term 'provision' of infrastructure is ambiguous, and the term 'realisation' should be added.

(Amendment 6)

Recital 10

(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.

(10) State support granted to an infrastructure manager, public or private but separate from the State, for the management, maintenance, **realisation** or provision of inland transport infrastructure is presumed to be compatible with the common market **if the infrastructure managed by that manager is open to all potential users in accordance with Article 87(1) of the EC Treaty, or** if that manager was chosen **in a way which ensures** that the amount of State support represents the market price to achieve the desired result.

Justification:

Competition amongst those bidding to manage, maintain or provide infrastructure is sufficient to ensure the relevant market price. Within the European Union, this may take the form of a Europe-wide public tendering procedure, which is, however, called a 'restricted procedure' in Eurospeak. The text of the recital must be amended so that this competitive procedure may also be recognised as ensuring the relevant market price.

One objective criterion should be used for all transport modes, i.e. the criterion laid down in Article 87 of the Treaty of whether the infrastructure is open to all users on a non-discriminatory basis. Different definitions should be avoided in any case, since they might

lead to distortions between sectors. The EU needs a coherent framework for all transport modes in view of the further development of multimodal transport flows in Europe (cf. Amendment 10 concerning Article 6).

(Amendment 7)

Recital 11

(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.

(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 ***under the present circumstances*** to distort competition to an extent contrary to the common interest.

Justification:

The extent to which modes of transport are environmentally friendly can change over time as a result of technological innovation; it is therefore appropriate to insert a statement that this is the case under the present circumstances.

(Amendment 8)

Recital 11a (new)

(11a) A shift towards more environmentally-friendly transport is part of the common transport policy and can therefore be considered as being in the common interest.

Justification:

The common interest is a criterion that is relevant to determining the legality of State aid and

therefore needs to be defined clearly in line with paragraph 63d of the explanatory memorandum in the Commission proposal. Technological innovation may eventually make more environmentally friendly alternatives available within a particular mode of transport. These should not be precluded from receiving State aid. The meaning of the term 'common interest' will change over time. Consequently, the relevant definition should not be included in the body of the Regulation.

(Amendment 9)
Recital 11b (new)

(11b) More environmentally friendly alternatives may eventually become available within a given transport mode as a result of technological innovation. These should not be precluded from receiving State aid. A certain mode of transport may also become more environmentally-friendly than another that is more environmentally-friendly at present. The programme must be sufficiently flexible to encourage technological innovation and new environmentally-friendly inventions must always be eligible for State aid.

Justification:

This amendment seeks to introduce the necessary flexibility into the concept of environmentally-friendly transport and to give innovation the attention it deserves.

(Amendment 10)
Recital 13a (new)

(13a) Putting a sustainable transport system in place implies the introduction of a proactive modal shift policy, displacing road transport towards rail, sea or inland waterway transport.

Justification

Self-explanatory.

(Amendment 11)
Recital 14

(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 operator apply for exclusive rights or financial compensation in accordance with Community legislation and in particular, Council Regulation (EEC) 1191/69.

(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 ***objectively*** that such schemes compensate for specific unpaid costs of competing modes of transport and they should be limited in time. However, ***if*** internalisation of specific unpaid external and infrastructure costs ***has been*** achieved within or across land transport modes, any such State scheme authorised by the Commission ***is to be ended immediately. In order to prevent distortion owing to differing interpretations of such costs, the Commission is to lay down the basic criteria for such schemes.*** With regard to passenger transport this issue can be taken into account when transport operator apply for exclusive rights or financial compensation in accordance with Community legislation and in particular, Council Regulation (EEC) 1191/69.

Justification:

As the specific unpaid incremental costs of competing modes have not yet been precisely defined, the Commission should lay down the basic criteria governing Member States' aid schemes. If each Member State were free to define such costs themselves, this would inevitably lead to differing interpretations and distortion amongst Member States and the various transport modes.

Brings the text into line with Parliament's resolution of 18 January 2001 on transport infrastructure charging (Costa report).

(Amendment 12)
Recital 14a (new)

(14a) With regard to the transport of goods, aid for the operation of combined transport shall be authorised, in accordance with the Treaty, and exempt from any obligation to give prior notification.

Justification

In view of the advantages which this mode of transport is acknowledged to have, aid for the operation of combined transport should be authorised and exempt from any obligation to give prior notification.

(Amendment 13)
Recital 16

(16) ***Aid*** granted under this Regulation is notifiable in accordance with Article 87(3) EC Treaty and Council Regulation (EC) 659/99 laying down detailed rules for the application of Article 93 (*new 88*) of the Treaty, ***except where this Regulation provides otherwise.***

(16) ***Notwithstanding the provisions of Article 6 of this Regulation, aid*** granted under this Regulation is notifiable in accordance with Article 87(3) EC Treaty and Council Regulation (EC) 659/99 laying down detailed rules for the application of Article 93 (*new 88*) of the Treaty.

Justification:

See Proposal for Amendment.

(Amendment 14)
Recital 17

(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.

(17) Aid for the management, maintenance, ***realisation***, provision of infrastructure other than ***user-specific infrastructure*** can be monitored effectively by the Commission on the basis of a periodic general information requirement rather than a specific pre-notification requirement.

Justification:

1. Cf. Amendment 4 by Mr Camisón Asensio.
2. Cf. Amendments concerning Recital 10 and Article 6.

(Amendment 15)
Recital 18

(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.

(18) However, in the case of aid for management, maintenance, ***realisation*** or provision, ***where the infrastructure is reserved for the use of a specific undertaking, provided that the aid ceiling exceeds an amount defined by the European Commission***, there may be a greater impact on competition and therefore the pre-notification requirement should not be removed.

Justification:

Article 87 of the Treaty states, however, that aid is incompatible with the common market only insofar as it affects trade between Member States. A case-by-case approach to individual infrastructure projects by the Commission might lead to lengthy procedures (six months or longer), which will undoubtedly discourage any transport users willing to invest in intermodality. Public tendering for smaller projects (amount defined by the Commission) is not a current procedure. A flexible and pragmatic legal framework is important to maintain

the interest of potential investors in environmentally friendly transport solutions. Given the modest scale of some investments, a de minimis rule defined by the Commission can be considered in order to avoid any unnecessary bureaucracy.

(Amendment 16)
Recital 19a (new)

(19a) By monitoring the aid, whether it be notified or documented retrospectively, the Commission is to ensure that competition amongst transport modes and amongst Member States and regions is not distorted. When carrying out the relevant checks, the Commission is to pay particular attention to the effects of different rates of aid.

Justification:

One of the objectives of the internal market is to make fair competition possible by prohibiting aid altogether. This objective applies in principle to the transport sector, too. If, however, the sector is exempt for specific reasons from such a prohibition on aid, it must be ensured in particular that this does not lead to new distortions of competition.

(Amendment 17)
Article 1

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

This Regulation shall apply to aid, which meets the needs of co-ordination of transport by rail, road, inland waterway ***and short sea shipping, including combined transport operations at sea ports.***

Justification:

In order that the objectives of this regulation are achieved, it is essential to state explicitly that shore-based combined transport transshipment facilities at sea ports come within its scope. Like the other transport modes referred to, short sea shipping also constitutes a land transport mode which must therefore be included within the scope of the regulation.

(Amendment 18)
Article 2, first subparagraph

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.

Transport infrastructure - permanent facilities for the movement or transshipment of passengers and goods and associated safety and navigational assets – **including in vehicles** essential for the management of these facilities.

Such transshipment shall also include connections between land and maritime transport, which, for the purposes of this Regulation, are to be considered an integral part of land transport.

Justification:

Thanks to modern communication techniques information can be made directly available in the locomotive so that it is no longer necessary to transmit it through permanent facilities. On some routes information about whether the stretch ahead is free is no longer transmitted by the signals but electronically onto a screen in the driver's cabin. Since these information systems are more efficient than traditional ones and are being increasingly used, they should be included in the subsidies regulation, including in respect of the part concerning the equipment of rolling stock. The regulation should cover transshipment including maritime transport since the land component is usually an essential part of the process.

(Amendment 19)
Article 2, second subparagraph

infrastructure manager - any public, private or mixed public/private undertaking managing, maintaining or providing transport infrastructure.

infrastructure manager – any **public authority or** public, private or mixed public/private undertaking managing, maintaining or providing transport infrastructure.

Justification

National authorities which manage land transport infrastructure do not fall within the scope of this proposal. This gives rise to discrimination against managers of public and private infrastructure and results, in many Member States, in a competitive advantage for certain modes of transport.

(Amendment 20)
Article 2, fourth subparagraph

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.

specific unpaid external and infrastructure costs - costs not recovered from the user of transport infrastructure through **tariffs which vary in proportion to actual use of the infrastructure**. They may include infrastructure damage, pollution, noise, congestion, health and accident costs.

Justification

The term 'charges' is not very appropriate for the concept of charging in proportion to use. The term 'tariffs' conveys more accurately the idea of the link between the price to be paid and the actual use made of the transport infrastructure.

(Amendment 21)
Article 3(-1) new

-1. State contributions granted for the management, maintenance or provision of infrastructures forming an integral part of a network, open to all potential users according to the relevant legal framework, and managed by companies mandated by State authorities, do not constitute State aid within the meaning of the EC Treaty.

Justification

The amendment proposes that the Regulation should be amended to eliminate the disparity in the funding of infrastructure according to the legal nature of the company involved.

Irrespective of the public or private nature of companies, the public interest character of transport infrastructure should be recognised.

The new paragraph 1 is intended to prevent the railways being disadvantaged compared to road transport and inland waterways. In most Member States roads and inland waterways are managed directly by the State, so that the question of aid does not arise, because no undertaking is placed at an advantage. In the case of the railways, the situation is reversed: in all Member States railway networks are operated by undertakings. In order to prevent

transport by rail being disadvantaged through this form of organisation, State aid to network operators must be generally exempt from the ban on subsidies.

(Amendment 22)
Article 3(1)

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.

1. Aid granted to an infrastructure manager for the maintenance, **realisation and/** 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.

Justification:

Unlike investment aid, management aid always distorts competition between transport undertakings and also raises the spectre of a new subsidies race between the Member States. See also justification to Amendment 7 by the rapporteur.

(Amendment 23)
Article 3(1)(b)

(b) does not give rise to a distortion of competition to an extent contrary of the common interest.

(b) does not give rise to a distortion of competition to an extent - **that must be defined by the Commission** - contrary of the common interest.

Justification:

Article 87 of the Treaty states, however, that aid is incompatible with the common market only insofar as it affects trade between Member States. A case-by-case approach to individual infrastructure projects by the Commission might lead to lengthy procedures (six months or longer), which will undoubtedly discourage any transport users willing to invest in intermodality. Public tendering for smaller projects (amount defined by the Commission) is not a current procedure. A flexible and pragmatic legal framework is important to maintain the interest of potential investors in environmentally friendly transport solutions. Given the modest scale of some investments, a de minimis rule defined by the Commission can be considered in order to avoid any unnecessary bureaucracy.

(Amendment 24)

Article 3(2)

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.

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. ***In any case, all legislative requirements on infrastructure charging regimes based on the cost that is incurred as a direct result of operating the transport service may give rise to aid compatible with the EC Treaty when aid is aimed at compensating an infrastructure manager for the relevant unpaid infrastructure costs.***

Justification:

The Regulation should recognise the need for state aid to compensate the infrastructure manager for any obligation to apply charging systems which do not allow coverage of the total costs of the management, maintenance or provision of transport infrastructure. This need may arise if EU legislation on infrastructure charging requires the implementation of the principle of marginal cost on the basis of policies now being discussed at EU level.

(Amendment 25)

Article 4(1)

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:

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

Justification:

Passenger transport should be eligible for aid, given that aid for undertakings operating public transport passenger services must be possible.

(Amendment 26)

Article 4(1)(b)

(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,*

(b) it is demonstrated *that such aid facilitates the transfer of large quantities of goods to modes of transport with a lower level of external costs. Schemes for granting aid to undertakings, for a limited period, shall be operated through a contractual agreement with the transport undertakings, setting objectives for increased traffic flows and complying with the conditions on transparency and non-discrimination set out in Article 4(c) and (d). Schemes shall apply until the entry into force of Community legislation on the definition or estimation of any external and infrastructure costs.*

Justification

It would seem difficult to apply the mechanism proposed by the Commission in the absence of Community legislation on the estimation or definition of any costs (external and infrastructure) capable of measuring, quantifying and covering costs of this kind. Therefore, it is proposed that a temporary mechanism should be used for granting aid for the purpose of goods transport, designed to facilitate the modal shift to modes of transport with a lower level of external costs. This will apply until the Community legislation mentioned above enters into force, i.e. until such a time as it is possible to measure the external and infrastructure costs in a uniform way throughout the various Member States.

(Amendment 27) Article 4(1)(d)

(d) the aid does not give rise to a distortion of competition to an extent contrary to the common interest.

(d) the aid does not give rise to a distortion of competition *between modes, regions and Member States* to an extent contrary to the common interest.

Justification:

Maximum equality of competition between modes and between regions and states is a point which should be taken into account in all aid schemes in the interest of fair organisation of the internal market. It is the task of the Commission in particular, in assessing aid schemes, to

ensure that aid granted does not lead to a distortion of competition between regions and Member States.

(Amendment 28)
Article 4(2a) (new)

2a. A scheme of limited duration which grants aid to transport undertakings for the purpose of the transport of goods, shall be compatible with the EC Treaty to the extent that it is demonstrated that such aid facilitates a transfer of freight volumes towards transport modes causing a low degree of external costs. The scheme shall be implemented through a contractual agreement with the transport undertaking establishing growth targets in traffic flows and shall comply with the transparency and non-discrimination conditions under Article 4 c) and d). Such a scheme will cease to be applicable when it is demonstrated that a comparable reduction of external effects has been achieved. This scheme is subject to the same notification obligation as that provided for in paragraph 1(a) of this Article.

Justification:

The scheme proposed in the regulation under Article 4(1) - compensation for the use of infrastructure based on unpaid external costs of other modes - is not sufficient to give a strong incentive to achieve a modal split compatible with sustainable mobility. Therefore, other aid schemes should also be introduced, such as support to transport operations in modes having a low level of external costs, to the extent that this has demonstrable effects on modal split. The scheme would be intended as a form of 'freight service contract', where the funding of transport operations should correspond to the external costs saved by achieving certain growth targets in transport volumes.

(Amendment 29)
Article 4a (new)

Article 4a
Member States may take measures which involve the granting of aid pursuant to

Article 73 of the Treaty in the following cases:

- (a) for the purpose of the coordination of transport, for example to promote sustainable mobility;*
- (b) where the purpose of the aid is to promote research and development into transport systems and to make technology more economically viable for the Community in general, to the exclusion of the commercial exploitation of such systems;*

Justification:

The Commission has recalled that most types of aid to land transport are still possible through horizontal aid measures applicable to all business sectors. However, in view of the increased need for co-ordination of transport on account of environmental and energy policies, it is appropriate for all forms of aid to land transport to be related to the general objective of favouring the development of environmentally friendly transport modes. Therefore the new regulation should reiterate the provisions of the current Regulation 1107/70 in force which are relevant to this end (research and development) so that aid to land transport is placed within the framework of Article 73 of the Treaty.

(Amendment 30)
Article 5(1)

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.

1. Where an **infrastructure manager** 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.

Justification:

To guarantee legal certainty the definition of infrastructure manager should be used, as defined in Article 2. This could avoid situations where public authorities or public undertakings are unable to reallocate aid for other purposes.

(Amendment 31)

Article 6(1), introduction and (a)

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,

1. Aid, granted for the management, maintenance, ***realisation*** or provision of inland transport infrastructure shall not be required to be notified in accordance with Article 88(3) of the EC Treaty where ***the access to the infrastructure is open on non-discriminatory terms to any person or undertaking wishing to use it in accordance to the operative European legislation.***

Justification:

One objective criterion should be used for all transport modes, i.e. the criterion laid down in art. 87 of the treaty: whether the infrastructure is open to all users on a non-discriminatory basis. Different definitions should be in any case avoided, since they might lead to distortions between sectors. The EU needs a coherent framework for all transport modes in view of the further development of multimodal transport flows in Europe. One exception should be accepted: the present regulation should take on account the degree of liberalisation and the access rights in the railway sector.

(Amendment 32)
Article 6(1a) (new)

1a. Terminals meeting the requirements of paragraph 1, letters a and b, and which are recommended in a European or national plan for the development of terminals integrated in networks, do not need to be notified pursuant to Article 88(3) EC Treaty.

Justification:

The Commission calls for a general obligation to notify terminals since they have a particular impact on competition. The aim is to prevent terminals being given aid which does not contribute to a modal shift but only helps compete with existing locations. However, this objective can be achieved - with a significant reduction in bureaucracy - if only aid to terminals not included in European (TEN) or national plans is notified, since it can be assumed that such plans already avoid support for non-viable locations.

(Amendment 33)
Article 6(2)

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

2. Unimodal railway terminals and stations are considered to form an integral part of the railway network ***although the manager of the terminals and stations need not be identical with the manager of the network. Regional railways and subnetworks shall be deemed to be networks within the meaning of this Regulation.***

Justification:

Clarification that the principle of non-notification also applies to instances where the terminals and stations are operated by a manager other than the network manager. Any attempt to promote competition on the railways must avoid a situation where aid for systems operated by non-state undertakings have to be notified - in contrast to systems of ex-monopolies - because they may not be deemed to be networks pursuant to Article 6(1)(a). Hence the clarification that such subnetworks or systems operated by non-state undertakings are also deemed to be networks.

(Amendment 34)
Article 6(2a) (new)

2a. Aid which is granted for the management, maintenance or provision of inland transport infrastructure does not need to be notified pursuant to Article 88(3) EC Treaty if it does not exceed € 100 000 over a three-year period.

Justification:

In general European aid legislation applies the 'de minimis rule', which says that aid need not be notified if it does not exceed € 100 000 over a three-year period. This rule has not been applied to transport aid hitherto. However, it should be introduced in order to avoid any bureaucracy with small amounts of aid.

(Amendment 35)
Article 6(2b) (new)

2b. Aid granted for terminals for combined transport which belong to the TERFN, or are located at a one of its ends, shall not be required to be notified in accordance with Article 88(3) of the EC Treaty

Justification:

Pre-notification requirements for aid for terminals for combined transport which belong to the Trans-European Rail Freight Network (TERFN) and which satisfy the conditions mentioned by Article 3 of the proposed Regulation should be dropped.

(Amendment 36)
Article 10(1)

1. Aid measures, which by virtue of Article 5 of Regulation 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.

1. Aid measures, which by virtue of Article 5 of Regulation 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 **24** months after the entry into force of this regulation.

Justification:

The exemption period of 12 months could be extended to 24 months. The transitional period is very short for a regulation which has been in force for 30 years.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a European Parliament and Council regulation concerning the granting of aid for the co-ordination of transport by rail, road and inland waterway (COM(2000) 5 – C5-0402/2000 – 2000/0023(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2000) 5¹),
 - having regard to Article 251(2) and Articles 71, 73 and 89 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0402/2000),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Regional Policy, Transport and Tourism and the opinion of the Committee on Economic and Monetary Affairs (A5-0096/2001),
1. Approves the Commission proposal as amended;
 2. Asks to be consulted again should the Commission intend to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 365 E, 19.12.2000, p. 179.

EXPLANATORY STATEMENT

I. Introduction

It is almost thirty years since the Council adopted Regulation (EEC) No 1107/70 on the granting of aids for transport by rail, road and inland waterway. At the time of its adoption, undertakings were to a large extent administered by the Member States themselves. Since then, the transport sectors have undergone a major liberalisation process, at various speeds and to differing extents. In addition, various guidelines and other instruments relating to Articles 87 and 88 of the EC Treaty have been published. Although Council Regulation (EEC) No 1107/70 has been amended to cater for these developments, the amendments have been introduced in a piecemeal fashion. Consequently, general simplification and consolidation is needed of the regulation that will govern the granting of aid for the coordination of transport (by rail, road and inland waterways) so as to bring it into line with the current situation. The Commission believes that the best way of achieving such clarity and simplicity is to replace the existing regulation with an entirely new one. The present regulation proposes a comprehensive exception for aid for the development or operation of transport infrastructure which benefits infrastructure managers. In addition, in the freight sector, it proposes an exception for aid granted to users of transport infrastructure which compensates them for the unpaid costs of competing modes.

II. Legal basis of the regulation

Article 87(1) of the EC Treaty stipulates that aid granted by a Member State in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or products is incompatible with the common market insofar as it affects trade between Member States. It should also be stressed that a specific approach is needed in the transport sector to ensure services which serve the purposes of town and country planning and which meet social and environmental concerns. Article 73 of the Treaty provides for a state aid exemption meeting these concerns. Under the terms of this article, the coordination of transport and compensation for the provision of public services are deemed to be worthy of aid. In addition to Article 73 of the EC Treaty, the legal basis of the proposal for a regulation also includes Article 71, since it is an instrument implementing the common transport policy, and Article 89, since it exempts certain measures from the notification requirements laid down in Article 88(3) of the Treaty.

III. The Commission proposal

A. Scope (Article 1)

The proposed regulation implements the part of Article 73 of the EC Treaty referring to the coordination of transport activities concerning rail, road and inland waterways. Maritime transport facilities are thus not covered by the regulation. Transhipment between land transport modes is covered by the regulation, but not transhipment involving maritime transport, even in combination with land transport modes.

B. The general infrastructure exception (Article 3)

Under Article 3 of the present Regulation, aid granted to an infrastructure manager for the management, maintenance or provision of inland transport infrastructure will be exempt provided that:

1. it is necessary to enable the realisation of the project or activity concerned, and
2. it does not give rise to a distortion of competition to an extent contrary to the common interest.

Accordingly, a general infrastructure exception is included when it can be shown that investment aid in general is necessary for the realisation of a project. The aid must be the ultimate incentive and it must be shown that market forces would not have achieved the project without such aid or would have done so in a different way. In addition, retroactive aid is strictly forbidden as it would be completely at odds with this concept.

With regard to distortion of competition contrary to the common interest, the Commission believes that the quickest way to prove the common interest is for the project to comply with the objectives of the common transport policy.

C. State aid to compensate for unpaid transport costs (Article 4)

In addition to infrastructure aid, the Commission is proposing an exemption that would in practice allow aid for the transport of goods by rail and inland waterways and combined transport to compensate for the unpaid costs of road transport (Article 4). However, six general conditions are set for the granting of the aid:

- (a) First, the aid must form part of a scheme that treats all undertakings within the same mode of transport on an equal footing.
- (b) The aid must relate solely to goods transport. The Commission believes that passenger transport is covered by the provisions of Council Regulation (EEC) No 1191/69 and is therefore subject to the limitations imposed by that regulation.

Four specific conditions are also set:

- (1) The scheme should last no more than three years.
- (2) The Member State granting the aid must provide a reasoned and quantified comparative cost analysis, including valuation of relevant external costs of competing modes, in order to show that such public support genuinely constitutes compensation for specific unpaid external costs.
- (3) The scheme must provide for aid to be granted on non-discriminatory terms between transport undertakings within the same transport mode.
- (4) Even if the scheme fulfils the above conditions, the Commission must be provided with sufficient evidence that the state aid does not give rise to a distortion of competition contrary to the common interest. The Commission believes that this system will encourage a

switch to transport by rail, inland waterways or combined transport that will be environment-friendly.

D. Other provisions

The Commission also requires the funds granted to the undertakings to be kept in separate accounts. In calculating the permissible amount of aid to be granted, account will be taken of any other aid granted for the same purpose from any other State resources (Article 5).

The specific conditions also include an exemption from the notification requirement laid down in Article 88(3) of the EC Treaty for aid granted for the management, maintenance or provision of infrastructure, with the exception of terminals for combined transport, inland waterways or road operations, which must be notified in all cases (Article 6).

Finally, Member States will be required to provide more general ex post periodic information, even in cases where no prior notification requirement is laid down. This will enable the Commission to ascertain whether the aid granted is in compliance with the regulation (Article 7).

IV. Remarks

Parliament should approve the Commission proposal to replace the existing Regulation (EEC) No 1107/70 by a completely new one. In this way the Commission will take into account the changes that have occurred in the transport sector and, in particular, the amendment of the specific regulatory framework, helping to ensure both the clarity and simplicity of Community legislation, in line with the specific wishes expressed by the European Parliament.

Having provided a general overview, your rapporteur would like to put forward a number of remarks that could help to improve the Commission text.

- In Article 3 (1), reference is made to aid granted to an infrastructure manager for the management, maintenance or provision of infrastructure. The term 'provision' of infrastructure is ambiguous and, of course, incomplete and your rapporteur therefore considers it more appropriate to replace it with the expression 'realisation and/or provision' of infrastructure.
- It is inappropriate to impose a deadline of three years on schemes for granting aid for the use of infrastructure (Article 4 (1) (a)). The Commission itself acknowledges that the aim is not to prevent a scheme from operating for more than three years, but rather to require a pre-notification so that it can be reassessed in the light of the experience gained. Instead of a time limit, a further notification requirement could be introduced at the end of the four years period, so that the system can be assessed on the basis of the experience gained. Furthermore, imposing a time limit on a project without leaving scope for renewal represents an uneconomic approach, as it would terminate a project that could last for a longer period.
- The regulation should recognise the need for state aid to compensate the infrastructure manager for any obligation to apply charging systems which do not allow coverage of

the total costs of the management, maintenance or provision of transport infrastructure. This need may arise if EU legislation on infrastructure charging requires the implementation of the principle of marginal cost on the basis of policies now discussed at EU level.

- Article 4(1)(b) stipulates that the Member State concerned must provide a comparative cost analysis showing that the aid is limited to compensation for specific unpaid external costs and costs arising from the use of a competing transport infrastructure. The Commission includes in its definition of external costs elements such as pollution, noise, congestion, health and accident costs (Article 2). However, there is no legislation at European level governing this matter. In its Green Paper 'Towards fair and efficient pricing in transport policy' (COM(1995) 691 final), the Commission undertook only a trial assessment, which prompted different responses. It is therefore clear that relevant legislation is needed as soon as possible to regulate this matter.
- The scheme proposed in the regulation under Article 4.1 - compensation for the use of infrastructure based on unpaid external costs of other modes - is not sufficient to give a strong incentive to reach a modal split compatible with sustainable mobility. Therefore other aid schemes should also be introduced, such as support to transport operations in modes having a low level of external costs, to the extent that this has demonstrable effects on modal split. The scheme would be intended as a form of "freight service contract" where the funding of transport operations should correspond to the external costs saved by achieving certain growth targets in transport volumes.
- The Commission has recalled that most types of aid to land transport are still possible through horizontal aid measures applicable to all business sectors. However, in view of the increased need for co-ordination of transport on account of environmental and energy policies, it is appropriate for all forms of aid to land transport to be related to the general objective of favouring the development of environmentally friendly transport modes. Therefore the new regulation should reiterate the provisions of the current regulation 1107/70 in force which are relevant to this end (research and development) so that aid to land transport is placed within the framework of Article 73 of the Treaty.
- In addition the rapporteur considers that the regulation should cover transshipment including maritime transport, since the land component is usually an essential part of the process. Your rapporteur wishes to stress the undeniable fact that state aid granted to an infrastructure manager other than the state for the management, maintenance and provision and/or realisation of inland transport infrastructure should be considered compatible with the common market, provided that the manager has been selected by means of a public and non-discriminatory tender procedure, since this will guarantee that the amount of state aid does not exceed the market cost for the management.
- In addition, the exemption period of 12 months provided for in Article 10 (1) for aid measures pursuant to Regulation (EEC) No 1107/70 could be extended to 24 months. The transitional period is very short for a regulation which has been in force for 30 years.

7 March 2001

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Regional Policy, Transport and Tourism

on the proposal for a European Parliament and Council regulation concerning the granting of aid for the co-ordination of transport by rail, road and inland waterway
(COM(2000) 5 – C5-0402/2000 – 2000/0023(COD))

Draftsman: Hans Blokland

PROCEDURE

The Committee on Economic and Monetary Affairs appointed Hans Blokland draftsman at its meeting of 2 October 2000.

It considered the draft opinion at its meetings of 28 November 2000, 24 January 2001 and 27 February 2001.

At the latter meeting it adopted the following amendments by 31 votes to 4, with 1 abstention.

The following were present for the vote: Christa Randzio-Plath, chair; William Abitbol, José Manuel García-Margallo y Marfil and Philippe A.R. Herzog, vice-chairmen; Hans Blokland, draftsman; Richard A. Balfe, Luis Berenguer Fuster, Pervenche Berès, Hans Udo Bullmann, Benedetto Della Vedova, Jonathan Evans, Carles-Alfred Gasòliba i Böhm, Robert Goebbels, Lisbeth Grönfeldt Bergman, Ian Stewart Hudghton (for Pierre Jonckheer), Christopher Huhne, Liam Hyland, Giorgos Katiforis, Piia-Noora Kauppi, Christoph Werner Konrad, Wilfried Kuckelkorn (for Simon Francis Murphy), Jean Lambert (for Gorka Knörr Borràs pursuant to Rule 153(2)), Astrid Lulling, Jules Maaten (for Karin Riis-Jørgensen), Thomas Mann (for Othmar Karas), Mario Mantovani (for Amalia Sartori pursuant to Rule 153(2)), Karla M.H. Peijs (for Marianne L.P. Thyssen), Fernando Pérez Royo, Alexander Radwan, Bernhard Rapkay, Olle Schmidt, Peter William Skinner, Helena Torres Marques, Bruno Trentin, Theresa Villiers and Karl von Wogau..

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Regional Policy, Transport and Tourism, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission

Amendments by Parliament

(Amendment 1)

Recital 2

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

(2) *After a considerable time, some* progress has now been made in the liberalisation of the inland transport sectors:

Justification:

Some progress has now been made, but it has been a very difficult process that has taken several years. The text should make it clear how difficult this progress has been to achieve.

(Amendment 2)

Recital 3

(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 co-ordination 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.

(3) However the process of liberalisation in all inland transport sectors is not complete, and moreover harmonised charging mechanisms to compensate for the *external effects and specific infrastructure costs* of transport modes have not yet been established. In those circumstances there is liable to exist State aid which meets the needs of co-ordination 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.

Justification:

External effects is the usual term and is not ambiguous unlike the term unpaid costs. It is clear from the text of Article 4(1)(b) that what is meant it is external effects and specific infrastructure costs.

(Amendment 3)

Recital 5

(5) Article 73 provides an exemption from

(5) Article 73 *stipulates that an exemption*

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).

to the general rules on State aids (Article 87(1)) applies where aid measures meet the needs of coordination of transport.

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)..

Justification:

This is a more accurate reflection of Article 73.

(Amendment 4)
Recital 8

(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. 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.

(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. 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 ***and for infrastructure projects*** rather than one targeted at specific kinds of projects.

Justification:

Bearing in mind that Article 87(3)(b) of the EC Treaty also refers to projects, their importance should be highlighted.

(Amendment 5)
Recital 10

(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

(10) State support granted to ***an infrastructure manager operating at local and regional level, public or private***, 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.

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.

Justification:

This amendment seeks to put greater emphasis on the role of regional and local authorities in the management, maintenance and provision of land transport infrastructure, in accordance with the principle of subsidiarity.

(Amendment 6)

Recital 11

(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.

(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 ***under the present circumstances*** to distort competition to an extent contrary to the common interest.

Justification:

The extent to which modes of transport are environmentally friendly can change over time as a result of technological innovation; it is therefore appropriate to insert a statement that this is the case under the present circumstances.

(Amendment 7)

Recital 11a (new)

Whereas a shift towards more environmentally-friendly transport is part

of the Common Transport Policy and can therefore be considered as being in the common interest.

Justification:

The common interest is a criterion that is relevant to determining the legality of State aid and therefore needs to be defined clearly in line with paragraph 63d of the explanatory statement in the Commission proposal. Technological innovation may eventually make more environmentally friendly alternatives available within a particular mode of transport. These should not be precluded from receiving State aid.

The meaning of the term 'common interest' will change over time. Consequently, the relevant definition should not be included in the body of the Regulation.

(Amendment 8)
Recital 11a (new)

Whereas more environmentally friendly alternatives may eventually become available within a given transport mode as a result of technological innovation. These should not be precluded from receiving State aid. A certain mode of transport may also become more environmentally-friendly than another that is more environmentally-friendly at present. The programme must be sufficiently flexible to encourage technological innovation and new environmentally-friendly inventions must always be eligible for State aid.

Justification:

This amendment seeks to introduce the necessary flexibility into the concept of environmentally-friendly transport and to give innovation the attention it deserves.

(Amendment 9)
Recital 11b (new)

Whereas greater clarity is required with regard to the substance of the criteria to be applied to determine whether or not there is a question of compensation for external effects and specific infrastructure costs.

Justification:

The level of State aid granted will be linked to schemes providing compensation for external effects and specific infrastructure costs. To ensure transparency and neutrality in terms of competition, it is therefore necessary to have more information about the criteria for compensation for external effects and specific infrastructure costs.

(Amendment 10)
Recital 13

(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.

(13) The Community has for some time advocated a policy of achieving a sustainable transport system, which permits and encourages measures to compensate for **external effects and specific infrastructure costs** of other competing transport modes, such as infrastructure damage, pollution, noise, congestion, health and accident costs.

Justification:

External effects is the usual term and is not ambiguous, unlike the term unpaid costs. It is clear from the context that the words 'and specific infrastructure costs' should be inserted in the text.

(Amendment 11)
Recital 16

(16) Aid granted under this Regulation is notifiable in accordance with Article 87(3) EC Treaty and Council Regulation (EC) 659/99 laying down detailed rules for the application of Article 93 (*new 88*) of the Treaty, **except where this Regulation provides otherwise.**

(16) **Notwithstanding the provisions of Article 6 of this Regulation,** aid granted under this Regulation is notifiable in accordance with Article 87(3) EC Treaty and Council Regulation (EC) 659/99 laying down detailed rules for the application of Article 93 (*new 88*) of the Treaty.

Justification:

See Proposal for Amendment

(Amendment 12)
Article 2

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

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
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.

the management of these facilities.
infrastructure manager - any public, private or mixed public/private undertaking managing, maintaining or providing transport infrastructure
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 infrastructure costs" - infrastructure costs that are not recovered from users of transport infrastructure through specific charges. They may include costs in connection with damage to infrastructure and accidents.

"Common interest" – a real shift in traffic flows to more environmentally-friendly modes of transport, to be determined on the basis of the overall external effects caused.

"External effects"- effects that are caused by the transport or transport mode without being taken into account in the price of the transport, like social and environmental costs that are not taken into account directly in the fees paid by users, but which arise directly from the use of such infrastructure. They include soil, air and water pollution, CO2 emissions, noise, traffic congestion and health and accident costs.

Justification:

Throughout the text of the regulation there are references to 'external costs' and 'specific infrastructure costs', the two terms should therefore be defined separately. External effects and specific infrastructure costs are different in nature and, for the sake of clarity, should be defined separately. "External effects" is the usual term and is not ambiguous, unlike the term unpaid costs.

(Amendment 13)
Article 3(2)

2. Assessment under this Article shall take into account the requirements of any

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.

Community legislation on infrastructure charging that may be in force at the time of the grant of the aid concerned. ***In so far as these provisions allow different rules on fees, the aid granted pursuant to this Article should be based on the rules that result in the lowest infrastructure charges.***

Justification:

The infrastructure package adopted by the European Parliament at the end of January 2001 allows a degree of discretion as to the costs on which infrastructure charging should be based. In order to have a uniform basis for the possible level of State aids, aid to infrastructure operators should be set at the lowest rate determined by cost accounting. Generally speaking, this will be on a marginal cost rather than a full cost basis, for example.

(Amendment 14)
Article 4(1)

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:

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

Justification:

Passenger transport should be eligible for aid given that aid for undertakings operating public transport passenger services must be possible.

(Amendment 15)
Article 4(1)(a)

(a) the scheme has a maximum duration of ***three*** years,

(a) the scheme has an ***initial*** duration of ***five*** years, ***an extension is possible if notification is given in time for the scheme to be re-assessed,***

Justification:

Extending the period for which aid may be granted will give the transport undertakings concerned greater legal certainty and certainty in terms of planning. It should also be possible to extend aid schemes provided the conditions are properly assessed. This is consistent with the explanations given by the Commission in paragraph 63 of its explanatory statement.

(Amendment 16)

Article 4(1)(b)

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,

b) it can be proved that traffic can be shifted to transport modes with lower external costs; the basis for granting such aid is a contractual agreement with the transport undertaking setting specific growth targets for the shift in traffic.

Justification:

In the context of shifting traffic onto more environmentally friendly transport modes, the Member States must have the option of creating a competitive advantage for environmentally sound transportation, over and above compensation for external costs, in order to create a market-based incentive for the use of the transport modes concerned.

(Amendment 17)

Article 4(2, 3 and 4)

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.

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

3. The renewal of a scheme for granting aids to transport undertakings described in this article shall be notified to the Commission in accordance with Article 88(3) of the Treaty.

4. Aids granted to transport undertakings for services of combined transport are in accordance with the Treaty and exempted from pre-notification requirements.

Justification:

Compensating for (unpaid) external costs caused should encourage the use of the most environmentally friendly modes of transport to achieve the objectives of the Kyoto agreement and of the future White Paper on the Common Transport Policy. Recent studies have shown that it is possible to evaluate external costs for each mode with an objective methodology. To improve the efficiency of the scheme, it is also proposed to define more precisely external costs.

In addition to the amendments to the text of the proposal, the following linguistic corrections are proposed to the Dutch text.

(Amendment 18)

Does not apply to English version

Justification

In order to render the term 'distortion of competition' in Dutch, it is preferable to use the term 'concurrentieverstoring' rather than 'concurrentievervalsing' as the former refers specifically to distortion and the latter more generally to unfair competition.

'Concurrentievervalsing' is, by definition, so damaging to the common interest that it is to be prevented at all times.

'Algemeen belang' (general interest) has been replaced with the term 'gemeenschappelijk belang' (common interest) which is one of the terms defined. It should be used throughout the document to prevent confusion and differences in interpretation.

(Amendment 19)

Does not apply to English version

Justification

Linguistic correction.

The English version of the original text reads 'unpaid additional costs'. From the context and from Article 4(1)(b), it is clear that what is meant is external effects and specific infrastructure costs.

(Amendment 20)

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-*

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

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.

in accordance with community law,

b) the capacity of the infrastructure is not wholly or partly reserved for the use of one or more transport undertakings.

Access rights and framework agreements defined in Council Directive 91/440/EEC and the forthcoming amended Directive 95/19/EEC shall not be considered as reservation in the same extent than in this very Regulation.

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

3. Aid granted for terminals for combined transport, which belong to the TERFN or are located at a one of its end, shall not be required to be notified in accordance with Article 88(3) EC Treaty

Justification:

Article 6 of the current proposal generates a discrimination between Member States according to their type of infrastructure management and regardless of the EU legislation in force. In order to avoid discrimination between Member States, it is proposed to guarantee that all Member States which respect Community law are subject to the same scheme of aids. Moreover, the Council Directives replacing Council Directive 95/19 EEC already allow for railway undertakings to sign a framework contract with the infrastructure manager under very specific conditions. Application of the provisions of these framework should not restrict the notification exemptions guaranteed by Article 6. Pre-notification requirements for aid for terminals for combined transport which belong to the Trans-European Rail Freight Network (TERFN) and which satisfy the conditions mentioned by Article 3 of the proposed Regulation should be dropped.

(Amendment 21)
Article 6(2) (new)

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

2. Unimodal railway terminals and stations are considered to form an integral part of the railway network. ***Regional railway lines and subnetworks shall be regarded as networks within the meaning of this Directive.***

Justification:

Where the aim is to promote competition on the railways, it is important to prevent a situation in which aid granted to monopoly operators does not have to be notified but aid granted to non-State rail operators does because the latter may not be regarded as operating a network within the meaning of Article 63(1)(a). This amendment clarifies the position by stipulating that subnetworks or lines of this kind are to be regarded as networks within the meaning of the Article.

(Amendment 22)

Article 6, paragraph 3 (new)

3. Aid granted for the operation, maintenance or provision of sections of a land transport infrastructure need not be notified pursuant to Article 88(3) of the EC Treaty if the amount does not exceed € 100 000 over three years.

Justification:

Although the general De-Minimis Regulation explicitly excludes the transport sector, a corresponding De-Minimis Regulation makes sense in this instance to avoid unnecessary bureaucratic procedures in dealing with small amounts of aid.