

## **STATE AID ACTION PLAN**

### **Less and better targeted aid: a roadmap for state aid reform 2005-2009 consultation document**

#### **Comments Vlaamse Vervoermaatschappij VVM De Lijn Update 12th September 2005**

##### (1) General comments

The intention to simplify state aid procedures can only be acclaimed.

We endorse the commissioner's efforts to create more transparency in the enforcement of state aid rules.

Increased involvement of member states and national judges in state aid affairs seems highly problematic to us. It is difficult to imagine how national state aid supervisory bodies could ever function independently, knowing that they will often be in a delicate position where they would be obliged to condemn the actions of their own governments who mandated them. National courts today are not properly equipped and do not dispose of sufficient expertise and specialised judges in the field of state aid rules.

A comprehensive review of state aid regulatory and legislative texts is undoubtedly needed.

We urge the commission to speed up this review process.

The intention to broaden the actual range of existing "block exemptions" to include the **services of general economic interest** is undisputably a big step forward.

We eagerly await the "decision and guidelines on the Services of General Economic Interest and transparency directive" due to be published according to the indicative roadmap 2005-2009 in the course of 2005 or 2006.

##### (2) Detailed comments on specific articles

Chapter I A modernised state aid policy in the context of the Lisbon strategy for growth and jobs

I;1 Rationale for state aid policy : why does the EU need a state aid policy ?

Article 10:

What is the relation of "objectives of common interest" to the "public service obligations" ?? Since the Altmark judgment, a clear distinction has been made between justifiable "financial compensation" for public service obligations imposed by the competent authorities, on the one hand, and "subsidies/ state aid" on the other hand.

While in the first case, financial compensation is proportionate to the extent of the public service obligations, and provided the 4 Altmark criteria are fulfilled, there is no overcompensation, there is clearly no need for such financial compensation to be notified beforehand.

The terminology "state aid", on the contrary, should only be used in the case of manifest overcompensation, where the amounts of money paid in compensation are disproportionate and exaggerated.

It is also unclear to what degree the “objectives of common interest” have to be specified in detail to be recognisable as principles of general interest, legitimately pursued by the authorities.

#### Article 12

While this article reminds us that specific rules govern some sectors like the TRANSPORT SECTOR, the principles of the state aid action plan should apparently apply to ALL SECTORS.

It is not clear if sectoral regulations can in some cases introduce exceptions to the general principles of the state aid action plan.

#### Article 20

The commission proposes to carry out analyses of specific sectors and the identification of “market failures” on the basis of objective criteria (externalities, public goods, imperfect information, market power, coordination problems)

Could these analyses in some cases “override” a political decision taken by the competent authorities to identify a certain activity as a “service of general (economic) interest”

What if the commission in its analysis of market failures arrives at the conclusion that public financing is not the proper solution for maintaining a high quality service in a certain activity sector.?

Can the “analysis of market failures” in some cases interfere with the decision by national authorities to consider a given activity as a “service of general (economic) interest” which is best performed by an in-house operator owned and controlled by the government?

What will be the eventual role of member states in identifying market failures in certain sectors.??

#### Chapter II 4

High quality services of General Economic Interest

#### Article 33

It should be highlighted that DISTORTION OF COMPETITION can be engendered by 2 different types of inadequate financing of public service missions.

The state aid action plan exclusively focuses on situations where operators receive MORE money than they actually need for the fulfilment of their public service missions.

It is rightly stated that overcompensation and disproportionate subsidising can indeed lead to undue distortions of competition.

But competition is equally distorted by UNDERCOMPENSATION, where the competent authority refuses to pay a sufficient amount of financial compensation for financially burdensome public service missions

Undertakings, whatever their nature, entrusted with a public service mission which is only partially compensated by the authority, find themselves at a disadvantage in comparison to their competitors.

Undercompensation is the mirror-image of overcompensation and severely hampers the provision of high quality services of general interest.

Better prioritisation through simplification and consolidation

Article 35

On top of the envisaged new block exemption for SGEI, a block exemption for the public transport sector should equally be envisaged, knowing that a sectoral regulation on public service requirements in public transport soon to be tabled by the commission. (July 2005 ?)

II 8

Setting up modern transport infrastructures

There is a need for legal clarity as to the applicability of state aid rules in the public-private partnerships.

Final remark: Linkage to new sectoral regulation COM(2005)319

On the 20<sup>th</sup> July 2005, the Commission published its proposal for a regulation on passenger transport services by rail and on the road COM(2005)319.

Article 10 of this proposal for a regulation abolishes the existing regulation 1191/69.

Since 1991, the application of 1191/69 has been broadened to encompass regional and local public transport services.

Since regulation 1191/69 has always been understood as the “translation” of the “lex specialis” article 73 of the Treaty, it did not impose any legal obligation on competent authorities to pre-notify financial compensation for public service obligations, as long as authorities and operators could demonstrate that the rules for calculating such compensation, as laid down in 1191/69 were fully respected.

Since article (10) of the new proposal COM(2005)319 annihilates the existing legal framework 1191/69 without introducing a specific exemption of the notification requirement, one has to conclude that competent authorities entirely conforming to the transparency rules laid down in the annex of COM(2005)319 would still be under an obligation of PRE notification, which would be disproportionately burdensome for authorities and PT operators alike.

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