Application of Articles 93, 107 and 108 of the TFEU to certain categories of State aid in the rail, inland waterway and multimodal transport sector

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PURPOSE: to adopt a transport enabling regulation allowing the Commission to adopt block exemption regulations for aid to rail, inland waterway and multimodal transport involving a limited risk of competition and trade distortions.

PROPOSED ACT: Council Regulation.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting the European Parliament but without being obliged to follow its opinion.

BACKGROUND: Council Regulation (EU) 2015/1588 (the 2015 Enabling Regulation) empowers the Commission to declare, by way of regulations, that certain specific categories of aid are compatible with the internal market and are exempt from the notification requirement of Article 108(3) of the Treaty.

While the 2015 Enabling Regulation covers certain categories of aid to undertakings

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.

The rail, inland waterway and multimodal transport sectors have become increasingly relevant at Union level, in the context of the European Green Deal, and the Commission’s Sustainable and Smart Mobility Strategy. 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. This calls for State aid rules that allow those investments where such public support is necessary while preserving and enhancing competition in rail, inland waterway and multimodal transport.

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

The Commission has applied Article 93, Article 107(1) and Article 108 of the Treaty in numerous decisions concerning certain categories of State aid to undertakings active in the rail, inland waterway and intermodal transport sectors and has developed guidelines for the purpose of assessing certain categories of State aid that are deemed to meet the needs of transport coordination. In the Commission’s experience, such aid does not give rise to any significant distortion to competition, provided that it is granted based on open, transparent and non-discriminatory procedures and clear compatibility conditions can be defined on the basis of the experience acquired.

CONTENT: the proposed transport enabling regulation for transport would allow the Commission to **adopt block exemption regulations** for aid to rail and inland waterway transport and to multimodal transport.

The proposed enabling regulation identifies two categories of aid exempted from the notification requirement of 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**. These categories reflect the scope of Article 93 TFEU.

In addition, the proposed 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;

- 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, it should allow the Commission to exclude certain sectors from the scope of the block exemption regulations;

- contains provisions on 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 to be drawn up every five years.

The relevant articles of the proposed transport enabling Regulation take account of the provisions of the 2015 Enabling Regulation.