



European Commission

State aid in the area of Transport





I – Context

II - Procedure

II - State aid rules in the area of transport

IV- Public Service Obligations

V – State aid to maritime and aviation



I – Context





The three “State aid articles” of the EC Treaty

Art 87:
**Principle of
prohibition
with
exceptions**

Art 88:
Procedures

Art 89:
**Application
and
exemption
rules**



Principle of prohibition of State aid - Art 87(1)

Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.





Definition of State aid (1)

The 4 criteria:

- 1- State resources
- 2- Confers an advantage to an undertaking
- 3- Distortion of competition
- 4 - Affect trade between Member States



State resources

- Public or private bodies designated or established by the State and controlled by it.
- Resources under public control (regional and local authorities, public undertakings)
- Imputable to the State
(Stardust, C 482/99, PreussenElektra, C 379/98)





Advantage to an undertaking

- Selectivity and gratuitous benefit compared to competitors
- Any entity (public or private) carrying out an economic activity
- Offering goods or services on a market
- Independent of legal status and financing mode
- Profit orientation irrelevant

(C-82/01P, *Aéroport de Paris*)



Distortion of competition

- Gratuitous advantage as compared to competitors for free or without adequate counterpart
- Affect the competitive situation on any given market
- General measures



Affect trade between Member States

- Involved in an economic sector open to intra-Community trade
- Open and liberalised market
 - Community legislation
 - National legislation
 - Practical market opening
(C-280/00, *Altmark*)





What aid is compatible?

1 - Aid where the Commission has no discretion **(Art 87.2 or Art 73)**

- a) aid of a social character
- b) aid to make good natural disasters or exceptional occurrences
- c) aid related to the division of Germany



What aid is compatible?

2 – Potentially compatible aid (art 87.3)

- (a) aid to promote economic development of areas where the standard of living is abnormally low/serious underemployment;
- (b) aid to promote projects of common European interest or to remedy serious economic disturbance;
- (c) aid to facilitate development of certain economic activities or of certain economic areas, where such aid go against the common interest;
- (d) aid to promote culture and heritage conservation;
- (e) such other categories as specified by the Council





II-The rules of procedure





Legal basis: Article 89

- Council Regulation 659/1999 of 22 March 1999 -
procedural regulation
- Commission Regulation 794/2004 of 21 April 2004 -
Notification regulation



Exemption regulations

The council may exempt certain categories of aid

Legal basis: Art 89

- Empowerment Regulation: Council Regulation 994/98
4 Regulations put in place by Commission to date
 - Training aid: Commission Regulation 68/2001
 - *de minimis*: Commission Regulation 69/2001
 - SME aid: Commission Regulation 70/2001
 - Employment aid: Commission Regulation 2004/2002
- Council Regulation 1191/69 for PSO compensation
- Council Regulation 1107/70 for certain aid to co-ordinate transport



All horizontal texts applicable to state aid apply also to state aid in the field of transport - except for the *De minimis* exemption Regulation

– this may change in the near future but there will be no aid possible for mobile assets





III- The applicable State aid rules in the area of transport





Liberalisation of transport markets

Road

Freight: Intra-Community: from 1993

Cabotage: from mid- 1998

Public Passenger transport: From 1995 on basis of national law (C-280/00, *Altmark* ruling)

Inland Waterways

From 1999

Railways

1st Packet: (separate accounts): from 1/1/1993

2nd Packet: freight 2003 and passengers 2008





Maritime

- **1st packet: liberalisation of intra-Community and international traffic between 1990 & 1993**
- **2nd packet: liberalisation of cabotage traffic between 1993 & 1999**

Aviation

- **3rd packet: from 1/1/1993**
- **Cabotage from 1/4/1997**





The two legal bases in transport

Art 73

The following aid is compatible with the Treaty:

-that which deals with the need to co-ordinate transport (Rg. 1107/70) or that which corresponds to compensation for certain obligations inherent in the concept of public service (Reg. 1191/69)

Art 87.3.c

May be considered compatible with the common market: aid destined to develop certain activities when they do not affect trade to an extent contrary to the common interest





IV – Public Service Obligations





No aid, if *Altmark*

Court of Justice

- **Altmark** 24/7/03: compensation for additional costs + 4 conditions = not aid

The 4 conditions of the Altmark judgement

- 1) The PSO's have to be defined
- 2) The calculation method has to be established
- 3) Compensation has to be limited to costs borne
- 4) Public tender or benchmarking with an average company





Compatibility

- Based on Regulation 1191/69/EC

Two scenarios to be distinguished:

- Public Service Obligation imposed
- Public Service Contract

- Based on Regulation 1107/70/EC

Art. 3(2) sets out conditions



Regulation 1191/69/EC

This Regulation:

- Defines a PSO= *an obligation which, if the operator was motivated only by its own interest would not undertake or would not undertake in the same way or under the same conditions* (section I, Article 2)
- Distinguishes between public service obligation imposed upon an operator by the State (section II to IV) and public service contracts (section V)





Compensation for an imposed PSO

European Commission

Compensation for an imposed PSO:

Chapter IV of Regulation 1191/69

Additional costs of carrying out the PSO will be reimbursed (Art.10 (1) & (2) & Art.11)





Compensation for an imposed PSO

European Commission

- General provisions:

Art. 12: Costs resulting from the maintenance of obligations shall be calculated on the basis of efficient management of the undertaking and the provision of transport services of an adequate quality.

Art. 17(2): exemption from the notification requirement for compensation payments under chapter IV.





Public Service Contract

European Commission

Article 14 defines the public service contract:

1. 'A public service contract' shall mean a contract concluded between the competent authorities of a Member State and a transport undertaking in order to provide the public with adequate transport services.

A public service contract may cover notably:

- transport services satisfying fixed standards of continuity, regularity, capacity and quality,
- additional transport services,
- transport services at specified rates and subject to specified conditions, in particular for certain categories of passenger or on certain routes,
- adjustments of services to actual requirements.





Public Service Contracts

Notification of public service contracts?

This question has not been addressed by Regulation 1191/69/EC.

Accordingly: If the contract fulfils the Altmark criteria, there is no need for a notification.

Otherwise: Notification necessary, as the exemption of Article 17(2) refers only to compensation for imposed PSOs.





Regulation 1191/69/EC

General considerations:

Regulation 1191/69 was the first to define and establish rules for PSO in land transport. It was modified in 1991 in order to introduce the public service contract.

The Commission has presented a proposal to modify this Regulation. The Council has reached a common position early June 2006





Regulation 1107/70/EC

European Commission

Article 3(2): Member States shall neither take coordination measures nor impose obligations inherent in the concept of a public service which involve the granting of aids pursuant to Article 77 of the Treaty except in the following cases or circumstances:

As regards reimbursement for the discharge of obligations inherent in the concept of a public service:

until the entry into force of relevant Community rules, where payments are made to rail, road or inland waterway transport undertakings as compensation for public service obligations imposed on them by the State or public authorities and covering either:

- tariff obligations not falling within the definition given in Article 2 (5) of Regulation (EEC) No 1191/69; or
- transport undertakings or activities to which that Regulation does not apply.





Combined Transport

- Since 1997 the legal basis is article 87(3)(c)
- Conditions for authorising the aid:
 - Intensity limited to the strict necessary
 - Only equipment to be used specifically in combined transport operation is eligible
 - Aid granted to an infrastructure manager provided:
 - The aid is necessary to enable the realisation of the project
 - It is proportional (30% of eligible costs)
 - The access is open to all potential users on a non-discriminatory basis
 - Does not give rise to distortion of competition to an extent contrary to the common interest





V – State aid to maritime and aviation transport





Maritime Guidelines 1997 & 2004

The idea is to prevent flagging out and retain a Community fleet

Reductions in taxes

- Symbolic tax on ship-owning companies: *Tonnage Tax*
- Reduction in or exemptions from social charges
- Reductions in or exemptions from seafarer's income tax

In addition, Community rules:

Allow for certain other types of operating aid

- permit crew relief – up to 50% of costs
- permit start-up aid for short sea shipping



Aviation Guidelines 1994

The General Rule: no aid allowed...

Except in the following circumstances:

- Rescue and restructuring of State owned chronically indebted companies –under certain circumstances

One time – last time

- Aid for PSOs
- Aid of a social character
- Aid for local companies in ultra-peripheral regions



Aviation Guidelines 2005

General context

Liberalisation measures leading to significant change on the market

- Increased competitive environment
- Airports run as economic entities
- Emergence of low-cost carriers
- Emergence of secondary/regional airports
- Point-to point services vs; hub-and-spoke





Aviation Guidelines 2005

Objectives

- Update/clarification of 1994 Guidelines
- Respect of EU State aid rules
- Legal certainty and equality of treatment
- Alleviate air traffic congestion at major hubs
- Optimise use of infrastructure
- Increase mobility and connectivity

Scope

- Financing of airports
- Start-up aid





Aviation Guidelines 2005

Financing of airports

- Construction of airport infrastructure
Investment aid (cf. Elba airport, German airports)
- Operation of airport infrastructure
Operating aid / Public services (Altmark)
- Airport services
Operating aid (public policy remit/commercial activities)
- Other commercial activities not directly linked to aviation



Aviation Guidelines 2005

Start-up aid = Operating aid

Normally prohibited except for exceptional and duly justified cases under strict conditions

- Air carriers holding a valid operating license issued by a Member State
- Intra-Community routes
- New routes or new schedules
- 3 years start-up period (5 years for ultra-peripheral and poorer regions)
- 30% over 3 years - more for ultra-peripheral and poorer regions -max 50%
- Limited to additional start-up costs (marketing, installation etc)
- Linked to passenger development
- Airports up to 5 million passengers (5-10 million pax airports must show need)
- Viability - business plan (and impact assessment)
- Publicity



European Commission

Thank you for your attention

