

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 12 September 2007

on the aid scheme C 12/06 (ex N 132/05) which the Czech Republic is planning to implement to support combined transport

(notified under document number C(2007) 4134)

(Only the Czech text is authentic)

(Text with EEA relevance)

(2009/182/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

dated on 5 October 2005. A third request of information was sent by letter on 1 December 2005. The reply to this request was sent by the Czech authorities by letter dated on 9 January 2006.

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having called on interested parties to submit their comments pursuant to those provisions ⁽¹⁾,

- (2) By letter dated 4 April 2006, the Commission informed the Czech Republic that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of one specific measure regarding the aid for the purchase of certain types of wagons for the use of combined transport and decided not to raise any objection concerning the rest of the aid measures.

Whereas:

- (3) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽²⁾. The Commission called on interested parties to submit their comments.

1. PROCEDURE

- (1) By letter dated 16 March 2005 the Czech Permanent Representation notified an aid scheme to support combined transport. The aid was registered under N 132/05. By letter dated 19 May 2005 the Commission asked further questions regarding this scheme to which the Czech authorities replied by letter registered by DG TREN on 11 July 2005. A technical meeting between the Czech authorities and the Commission services took place on 14 June 2005. A second request of information was sent by letter dated on 5 September 2005. The reply to this request was sent by the Czech authorities by letter

- (4) The Commission received no comments from interested parties.
- (5) The Czech authorities forwarded to the Commission their comments to the Commission Decision of 4 April 2006 by letter dated 9 May 2006.

- (6) By letter dated 1 February 2007 the Czech authorities informed the Commission on the modifications introduced to the notified aid scheme as regards the purchase of certain types of wagons for the use of combined transport. Additional information was submitted to the Commission on 27 April 2007. By letter of 28 June 2007, the Czech authorities informed the Commission on new modifications introduced in the scheme as regards the purchase of certain types of wagons for the use of combined transport.

2. DESCRIPTION OF THE SCHEME

2.1. Objective

- (7) The aim of the scheme is to develop combined transport in order to achieve a traffic shift from freight road transport to other modes of transport. The scheme is made up of number of sub-programmes:
- (a) sub-programme 1: Aid for the construction, extension and modernisation of existing combined transport terminals;
- (b) sub-programme 2: Aid for the acquisition of combined transport equipment investment grants;
- (c) sub-programme 3: Aid for the start-up phase of new combined transport routes.
- (8) The scheme should mainly increase the use of unaccompanied combined transport by improving its competitiveness.

2.2. Legal basis

- (9) The legal basis will be the Resolution of the Government of the Czech Republic on the framework policy for the development of, and support for combined transport in the 2006-2010 period.

2.3. Beneficiaries

- (10) Beneficiaries will be combined transport operators, railway hauliers and operators of terminals.
- (11) All EU companies having registered offices, agencies, branches or subsidiaries in the Czech Republic will have access to the aid.

2.4. Type of aid

- (12) The aid will take the form of non-reimbursable subsidies.

Sub-programme 2 provides for aid in form of investment grants for the acquisition of combined transport equipment, including purchase of certain types of wagons for combined transport.

- (13) The State aid measures included in sub-programmes 1 and 3 and those within sub-programme 2 with the exclusion of the aid for the purchase of certain types of wagons for the use in combined transport were the object of the Commission Decision adopted on 4 April 2006 whereby the present investigative procedure was opened. In relation to all other measure excepting the purchase of certain types of wagons for the use in combined transport the Commission decided not to raise any objection. Consequently, the present decision only concerns the aid for the purchase of certain types of wagons for use in combined transport.

- (14) The Czech authorities consider in their notification that these special wagons cannot be used for traditional railway services, but exclusively and only for the transport of intermodal transport units. These wagons have a special construction, modified only for the transport of intermodal transport units, which makes it impossible to use these wagons for carrying goods carried by traditional railway cars — for example, the wagons do not have a floor, sidings or end boards, but are equipped with fixing pieces (twistlocks). The subsidy will only be provided for these special railway wagons and the applicant will have to provide their precise specification and use them for a specific new combined transport line. The principal objective of the support is to secure the necessary number of railway wagons for the respective combined transport line, or the railway wagons for the 'new' combined transport systems (e.g. preparation of road trailers), which have not been operated in the Czech Republic so far. The same principle will be used also for the special road vehicles for combined transport, and the support will be also extended to intermodal transport units with the exception of ISO containers.

2.5. Intensity, budget and duration

- (15) The aid intensity is 30 % of the eligible costs.
- (16) The expected budget for the period 2006-2010 is CZK 1 580 million (EUR 55 702 450) for the overall programme.

2.6. Procedure

- (17) The procedure to grant the aid, the project assessment, the cumulation and the control measures are exactly the same as those authorised by the Commission in its decision of 4 April 2006.

3. REASONS TO OPEN THE FORMAL INVESTIGATION PROCEDURE: DOUBTS OF THE COMMISSION AS REGARDS THE COMPATIBILITY WITH THE TREATY OF THE AIDS TO SPECIAL WAGONS FOR COMBINED TRANSPORT

- (18) As regards the specific part of the aid concerning the special wagons for combined transport, the Commission had doubts whether it could be declared compatible with the EC Treaty.
- (19) In light of the Commission policy encouraging combined transport, the measure in question could be considered compatible on the basis of Article 87(3)(c) of the EC Treaty if, in particular it were ensured that the wagons, the purchase of which is supported by the aid, can only be used for combined transport operations. At the stage of opening procedures, the Commission did not have sufficient information available in order to definitively establish that these wagons can only and exclusively be used in the framework of a combined transport service.
- (20) Alternatively, aid granted for the acquisition of rolling stock not exclusively dedicated to combined transport could be declared compatible if the beneficiaries of the aid were only small or medium-size enterprises (SMEs). Article 4(5) of Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to small and medium-sized enterprises⁽³⁾ allows for aid investments in railway wagons for SMEs. In particular, the aid intensity fixed by Article 4(2) is 15 % for small and 7,5 % for medium-sized enterprises. In order to apply these provisions, the Commission requested the confirmation that the intended measure would only benefit small and medium-size enterprises and within these thresholds.

4. COMMENTS FROM THE CZECH REPUBLIC

A. Comments to the decision on opening of the formal investigation procedure

- (21) In their letter of 9 May 2006, the authorities of the Czech Republic submitted the following comments.

- (22) The proposed aid covers the purchase of special railway wagons intended for use only in combined transport, which cannot be used for other rail-transport purposes on account of their special design.
- (23) According to the UIC international letter marking system, these are wagons in the S category, or possibly the L category. Category 'S' means a flat, bogie wagon of a specific construction, while category 'L' means a flat, two-axle wagon of a specific construction. Wagons in these categories are of a special design (specific construction), adapted exclusively for the carriage of intermodal transport units, which makes it impossible to use these wagons for carrying goods in the same way as other railway wagons. The load area of wagons in these categories comprises a frame-type structure with fixing pins or other special components or devices which are essential for attaching or handling intermodal transport units. They do not therefore have a full floor, side walls or stanchions or an end walls, and so it is not possible to attach to them any type of load other than intermodal transport units. There are around 100 types of wagons in these categories in Europe.
- (24) The purpose of the aid for the purchase of the wagons in question is to help secure the special railway wagons for the new combined transport routes, or railway wagons for 'new' combined transport systems, which have not been operated in the Czech Republic at all to date (e.g. transport of road semi-trailers) or have been operated on a small scale (e.g. transport of swap bodies).
- (25) The special railway wagons, the acquisition of which would be funded from public resources, could be used only in the context of a new combined transport route and on the conditions laid down in advance in the government resolution referred to in recital 9. The grant may amount to a maximum of 30 % of the overall acquisition costs. The evaluation committee will assess the number of wagons acquired, the amount of the grant, the fulfilment of the conditions of the programme and the quality of the business plan.
- (26) At regular three-monthly intervals over a prescribed period, the beneficiary will transmit to the Ministry of Transport, *inter alia*, information on the operation of a new route and the utilisation of the railway wagons acquired by means of the grant. In addition, monitoring by the Ministry of Transport will focus on accounting and inventory records and random physical checks on the wagons concerned.

(27) Converting these wagons is difficult from a technical point of view and very costly. Conversion would, moreover, involve changing the marking of the wagons, which of course requires the approval of the Railway Administration Authority, a Czech State body. Wagon conversions would also show up in the wagon inventory records, which will be the subject of checks by the Ministry of Transport.

(28) The Czech Republic believes that support for the purchase of S or L series railway wagons is compatible with the Treaty establishing the European Community, because the very design of these wagons makes it impossible for them to be used in ordinary rail transport and converting these wagons would be difficult from a technical point of view and would be very costly. Monitoring the use of financial resources will be based, first, on the information which the beneficiary is obliged to transmit to the Ministry of Transport, *inter alia*, concerning the operation of a new route and the utilisation of the railway wagons acquired by means of the grant and, second, on the verification of the beneficiary's accounting and inventory records, including random physical checks on these wagons.

B. Modification of the aid scheme

(29) In their letter of 1 February 2007 the Czech authorities notified the Commission of a modification of the aid scheme as regards the intensity of the aid for the purchase of certain types of wagons for the use of combined transport in order to adapt them to the requirements of Regulation (EC) No 70/2001. However, by letter of 28 June 2007, the Czech authorities informed the Commission on new modifications introduced in the scheme as regards the purchase of certain types of wagons for combined transport in order to maintain the provisions of the original notification.

5. ASSESSMENT OF THE MEASURE

(30) According to Article 87(1) of the EC 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 provision of certain goods shall be incompatible with the common market, in so far as it affects trade between Member States, save as otherwise provided for in the Treaty.

(31) As regards the condition of use of State resources, the measure envisaged establishes that the selected beneficiaries will receive a State contribution. The State is

responsible for the provision of such financial contributions. The Commission concludes that the measure implies the use of State resources.

(32) As regards the condition of selective economic advantage, the aid measure applies only to railway companies who operate combined transport within the Czech Republic. It therefore favours certain undertakings or the provision of certain goods.

(33) As regards the condition of distortion of competition and trade between Member States being affected, when aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid ⁽⁴⁾.

(34) Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States ⁽⁵⁾ has liberalised the combined transport operations referred to in its Article 1 from all quota systems and systems of authorisation since 1 July 1993. Since then, undertakings are progressively becoming active in several Member States, and intra-community trade has started to develop. Competition between economic entities active in combined transport of goods is thus developing beyond the boundaries of the different Member States. The geographical position of the Czech Republic makes the development of competition between operators of combined transport within and outside this Member State relatively stronger than in other parts of the Community. The intended measure will support combined transport operators which develop activity within the Czech Republic, in competition with other operators who develop their activity in the neighbouring Member States. As such, it is liable to distort competition and affects trade between Member States.

(35) In view of those facts, the Commission finds that the notified aid scheme involves aid within the meaning of Article 87(1) of the EC Treaty and is hence, in principle, prohibited by virtue of that Article, unless it may be deemed compatible with the common market by virtue of any of the exemptions provided for in the Treaty or secondary legislation.

6. APPRAISAL OF THE COMPATIBILITY OF THE AID MEASURE

(36) In the absence of a more specific provision, the notified scheme can only be assessed upon the basis of Article 87(3)(c) of the Treaty.

- (37) Article 87(3)(c) states that aid to facilitate the development of certain economic activities or of certain economic areas may be considered to be compatible with the common market where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

6.1. Objective of common interest

- (38) The Community has for some time pursued a policy of achieving a balanced intermodal transport system and the fostering of the competitiveness of combined transport vis-à-vis road is part and parcel of this policy. The aim of EC combined transport policy is to achieve a modal shift from road to other modes of transport.
- (39) Community instruments such as Directive 92/106/EEC aim explicitly at fostering the development of combined transport, as confirmed in the fourth recital of that Directive. The White Paper on Transport Policy ⁽⁶⁾ encourages the use of rail and other environmentally friendly modes of transport in order to become competitive alternatives to road haulage.
- (40) Intermodal policy is an initiative to take the pressure off the road freight sector, and is in line with the conclusions of the European Council of Gothenburg of June 2001 which has declared that measures helping modal shift from road transport to more environmentally friendly modes are at the heart of the policy for sustainable transport ⁽⁷⁾.
- (41) Furthermore, today, Europe's industry maintains or increases the competitiveness of its Europe-based production largely by advanced logistics, optimising production and distribution, and creating value in the process. These sophisticated supply chains are increasingly vulnerable to the decreasing reliability and increasing costs of road freight. Intermodal logistics will thus have to become a prime occupation for Europe's production industry, in order to maintain productive assets and processes in Europe.

6.2. Necessity and proportionality of the aid

- (42) Intermodal transport is a complex transport option, involving various actors with various business models, in a fragmented and small-scale environment, often still separated by modal cultures and along national lines. The Commission recognises that it is in the first place the task of market operators to improve intermodal transport within markets, whose access is free and where the rules

of free competition and supply and demand prevail. However, in order to fully unleash the potential of intermodal transport, the willingness to take risks inherent in switching from road to the alternative modes, needs to be stimulated.

- (43) Many transport companies are operating today in markets in full restructuring. Their margins are low, planning is difficult, and the future uncertain. Therefore, practical and market-oriented support programmes need to be devised to help the intermodal sector take risks and respond to the challenge of achieving a sustained and large modal shift, in line with the targets set in the Commission White Paper of 2001.
- (44) The proposed aid is intended for the purchase of special railway wagons intended for use only in combined transport, which cannot be used for other rail-transport purposes on account of their special design.
- (45) The Commission considers that the explanations provided by the Czech authorities in their letter dated 9 May 2006, referred to in recitals 20 to 27 of this Decision, clearly indicate that the special wagons are exclusively dedicated to combined transport operations due to their special design (specific construction), adapted exclusively for the carriage of intermodal transport units, which makes it difficult to use these wagons for carrying goods in the same way as other railway wagons.
- (46) The Commission in its practice has considered State aid for the acquisition of equipment designed exclusively for combined transport ⁽⁸⁾, in particular wagons of such specific conditions ⁽⁹⁾, compatible with Treaty rules. In addition, the Commission considers that ⁽¹⁰⁾ to modernise or renew rolling stock in the field of rail transport is necessary in order to avoid further fall in rail transport's market share compared with other, less sustainable and more environmentally damaging, transport modes.

6.3. No affectation of trading conditions to an extent contrary to the common interest

- (47) The Commission considers that in the line with established practice ⁽¹¹⁾, the limitation of the planned aid's intensity to 30 % will ensure that trading conditions are not affected contrary to the common interest.

6.4. Conclusion: compatibility pursuant to Article 87(3)(c) of the EC Treaty

- (48) The Commission therefore concludes that the aid for the purchase of certain types of wagons to be used in combined transport at issue in the present case can be considered compatible with the EC Treaty in accordance with Article 87(3)(c) of the Treaty in as much as they will not distort trade in a manner contrary to the common interest,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which the Czech Republic is planning to implement as regards the purchase of certain types of wagons

for the use of combined transport is compatible with the common market pursuant to Article 87(3)(c) of the EC Treaty.

Implementation of the aid is accordingly authorised.

Article 2

This Decision is addressed to the Czech Republic.

Done at Brussels, 12 September 2007.

For the Commission

Jacques BARROT
Vice-President

⁽¹⁾ OJ C 150, 28.6.2006, p. 35.

⁽²⁾ See footnote 1.

⁽³⁾ OJ L 10, 13.1.2001, p. 33.

⁽⁴⁾ See, in particular, Case 730/79 *Philip Morris v Commission* [1980] ECR 2671, paragraph 11; Case C-53/00 *Ferring* [2001] ECR I-9067, paragraph 21; and Case C-372/97 *Italy v Commission*, [2004] ECR I-3679, paragraph 44.

⁽⁵⁾ OJ L 368, 17.12.1992, p. 38.

⁽⁶⁾ White Paper; European transport policy for 2010: time to decide, COM(2001) 370.

⁽⁷⁾ Accessible at the following web link: http://ec.europa.eu/governance/impact/docs/key_docs/goteborg_concl_en.pdf (point 29).

⁽⁸⁾ Decision of 22 December 2006, Case N 575/06 — *Italy* (OJ C 139, 23.6.2007, p. 11); Decision of 6 April 2006, Case N 132/05 — *Czech Republic* (OJ C 150, 28.6.2006, p. 35); Decision of 8 September 2004, Case N 140/04 — *Austria* (OJ C 126, 25.5.2005, p. 10); Decision of 19 February 2002, Case N 566/02 — *Belgium* (OJ C 248, 16.10.2003, p. 3); Decision of 11 November 2003, Case N 134/01 — *Italy* (OJ C 311, 20.12.2003, p. 18); Decision of 24 July 2002, Case N 833/01 — *Italy* (OJ C 242, 8.10.2002, p. 8); Decision of 22 October 1997, Case N 79/97 — *The Netherlands* (OJ C 377, 12.12.1997, p. 3); Decision of 4 May 1999, Case N 21/98 — *Italy* (OJ L 227, 28.8.1999, p. 12); Decision of 21 December 2000, Case N 508/99 — *Italy* (OJ C 71, 3.3.2001, p. 21); and Decision of 8 July 1999, Case N 121/99 — *Austria* (OJ C 245, 28.8.1999, p. 2).

⁽⁹⁾ Decision of 27 February 2002, Case C 644/01 — *Austria* (OJ C 88, 12.4.2002, p. 16). See also Decision of 12 September 2007, Case N 76/07 — *Austria* (not yet published in the *Official Journal of the European Union*).

⁽¹⁰⁾ Decision of 20 December 2006, Case C 46/04 (ex NN 65/04) — *France*, recitals 176 and 177 (OJ L 112, 30.4.2007, p. 41).

⁽¹¹⁾ See Commission Decision of 22 December 2006, Case N 575/06 — *Italy* — Region of Friuli-Venezia Giulia — prolongation of the existing authorised aid scheme N 134/01 — *Italy* — Region of Friuli-Venezia Giulia — Draft Law No 06/1-A — Aid for the establishment of infrastructure and services in the goods transport sector, for the restructuring of road haulage and the development of combined transport (not yet published); Commission Decision of 13 September 2006, Case N 196/06 — *Austria* — Guidelines on aid for transshipment systems in intermodal transport (OJ C 280, 18.11.2006); Decision of 6 April 2006, State aid N 132/05 — *Czech Republic* (OJ C 150, 28.6.2006, p. 35); Commission Decision of 25 January 2006, Case N 247/04 — *Belgium* — Aide au transport combiné de Région wallonne (OJ C 136, 3.6.2005, p. 43); Commission Decision of 25 January 2006, Case N 160/05 — *Poland* — Aid scheme for development of intermodal systems (OJ C 272, 9.11.2006, p. 10); Commission Decision of 16 March 2005, Case N 238/04 — *Germany* — Aid scheme for funding of new combined transport traffic (OJ C 136, 3.6.2005, p. 43); Commission Decision of 19 February 2002, Case N 566/02 — *Belgium* — Decision of the Flemish Government on aid for combined transport in the context of economic expansion legislation (OJ C 248, 16.10.2003); Commission Decision of 9 December 1998, Case N 598/98 — *The Netherlands* (OJ C 29, 4.2.1999, p. 13); Commission Decision of 8 July 1999, Case N 121/99 — *Austria* (OJ C 245, 28.8.1999, p. 2); Commission Decision of 4 May 1999, Case N 508/99 — *Italy* — Region of Bozen-Alto Adige — Law 4/97 (OJ C 71, 3.3.2001, p. 21); Commission Decision of 15 November 2000, Case N 755/99 — *Italy* — Region of Bozen-Alto Adige — Law No 8/98 (OJ C 71, 3.3.2001, p. 19).