

**Communication from the Commission providing guidance on State aid complementary to Community funding for the launching of the motorways of the sea**

(Text with EEA relevance)

(2008/C 317/08)

**INTRODUCTION**

1. The White Paper 'European transport policy for 2010: time to decide' of 2001 <sup>(1)</sup> introduced the concept of 'motorways of the sea' as high quality transport services based on short sea shipping. Motorways of the sea are composed of infrastructure, facilities and services spanning at least two Member States. The motorways of the sea aim to shift significant shares of freight transport from road to sea. Their successful implementation will help achieving two main objectives of the European transport policy, that is, reduction of congestion on the roads and a reduced environmental impact of freight transport. The mid-term review of the White Paper <sup>(2)</sup> points to the increasing problem of road congestion, costing the Community about 1 % of GDP, and to the threat of greenhouse gasses emissions from transport with respect to Kyoto targets and reconfirms the importance of the motorways of the sea.

**COMPLEMENTARY STATE AID FOR MARCO POLO II 'MOTORWAYS OF THE SEA' PROJECTS**

2. Chapter 10 of the Community Guidelines on State aid to maritime transport <sup>(3)</sup> allow, under certain conditions, for start-up aid to new or improved short sea shipping services with a maximum duration of three years and a maximum intensity of 30 % of operational cost and 10 % of investments costs.
3. The second 'Marco Polo' programme (further referred to as Marco Polo II) established by Regulation (EC) No 1692/2006 of the European Parliament and of the Council of 24 October 2006 establishing the second 'Marco Polo' programme for the granting of Community financial assistance to improve the environmental performance of the freight transport system (Marco Polo II) and repealing Regulation (EC) No 1382/2003 <sup>(4)</sup> is one of the two Community funding instruments directly and explicitly supporting the motorways of the sea, as one out of the five actions that are supported for avoiding traffic or shifting traffic away from road. Marco Polo II provides support mainly to the services part of the motorways of the sea. That support is attributed through yearly calls for proposals directed to the industry players. The allocated financial support is constrained by the grants available under the Marco Polo programme. Funding to the motorways of the sea can also be provided through the Regional Policy.
4. Under Article 5(1)(b) of Regulation (EC) No 1692/2006, in the framework of Marco Polo II programme 'Motorways of the Sea Actions' are, under certain conditions, eligible to Community financial assistance with a maximum intensity of 35 % of the total cost for establishing and operating the transport service and a maximum duration of 60 months, as fixed by Annex I, points 1(a) and 2(a) of column B.
5. Article 7 of Regulation (EC) No 1692/2006 reads: *Community financial assistance for the actions covered by the Programme shall not prevent those actions from being granted State aid at national, regional or local level, insofar as such aid is compatible with the State-aid arrangements laid down in the Treaty and within the cumulative limits established for each type of action set out in Annex I.*
6. According to Article 7 of Regulation (EC) No 1692/2006, therefore, Member States' authorities may complement Community financing by allocating their own financial resources to projects selected according to the criteria and procedures laid down in that Regulation, within the ceilings set out in the Regulation. The objective of Article 7 of Regulation (EC) No 1692/2006 is to make it possible for undertakings interested in a project to count on a predetermined amount of public funding irrespective

<sup>(1)</sup> COM(2001) 370.

<sup>(2)</sup> COM(2006) 314 final: Communication from the Commission to the Council and the European Parliament 'Keep Europe moving — Sustainable mobility for our continent — Mid-term review of the European Commission's 2001 Transport White Paper'.

<sup>(3)</sup> Commission Communication C(2004) 43 (OJ C 13, 17.1.2004, p. 3).

<sup>(4)</sup> OJ L 328, 24.11.2006, p. 1.

of its origin. As a matter of fact, it may be the case that the Community financial resources allocated by the Regulation (EC) No 1692/2006 are not sufficient to provide all the selected projects with the maximum possible support. Actually, if a large number of valid projects are presented in a given year, some projects may be granted limited amounts of Community funding. While the fact of having a large number of selected projects would be a sign of success for Marco Polo II, this success would be jeopardised if the involved undertakings were to withdraw their submission or were discouraged from future submissions because of the lack of public funding, necessary for the start-up of the relevant services. Moreover, fixing a pre-determined amount of public funding that can be relied on is essential for potential bidders.

7. Against this background, the Commission has noticed that amongst stakeholders and Member States' authorities there are doubts about the possibility for the latter to grant complementary State aid to Marco Polo II projects going beyond what is allowed for short sea shipping under Chapter 10 of the Community Guidelines on State aid to maritime transport. Actually, the eligibility conditions for schemes under the Guidelines on State aid to maritime transport are slightly different from those of Marco Polo II. The Guidelines provide for a maximum intensity of 30 % of operational costs (35 % of the total expenditure in Marco Polo II) and a maximum duration of three years (in comparison to five years under Marco Polo II). Such differences have probably confused potential bidders for motorways of the sea actions.
8. For the above reasons, the Commission considers that maximum duration and intensity of State aid and Community funding for projects which have been selected under the Regulation should be the same. Therefore, on the basis of Article 87(3)(c) of the Treaty, in the absence of Community funding, or to the extent not covered by Community funding, the Commission will authorise State aid to the start-up of Marco Polo II 'Motorways of the Sea' projects with a maximum intensity of 35 % of operational costs and a maximum duration of five years <sup>(1)</sup>. The same will apply to projects selected under Marco Polo II but for which funding is finally provided through the European Regional Development Fund (ERDF) <sup>(2)</sup> or the Cohesion Fund <sup>(3)</sup>.
9. Start-up aid to operational costs may not exceed the above-mentioned duration and intensity, irrespective of the source of funding. Aid can not be cumulated with public service compensation. The Commission also recalls that the same eligible costs cannot benefit from two Community financial instruments.
10. Member States will have to notify to the Commission State aid that they intend to grant on the basis of the present communication to projects selected under Regulation (EC) No 1692/2006.

#### COMPLEMENTARY STATE AID FOR TEN-T 'MOTORWAYS OF THE SEA' PROJECTS

11. Article 12a of Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network <sup>(4)</sup> provides for the setting up of 'Motorways of the Sea' concentrating flows of freight on sea-based logistical routes in such a way as to improve existing maritime links or to establish new viable regular and frequent maritime links for the transport of goods between Member States so as to reduce road congestion and/or to improve access to peripheral and islands regions and State. The trans-European network of motorways of the sea must consist of facilities and infrastructure concerning at least two ports in two different Member States.
12. The Community guidelines for the development of the trans-European transport network concern Community support for the development of infrastructure, including in the case of the motorways of the sea. However, second indent of Article 12a(5) of Decision No 1692/96/EC, includes a possibility of

<sup>(1)</sup> It should be noticed that the clause contained in Annex I(2)(b) of the Marco Polo II Regulation (about the limits to funding based on freight actually shifted from road) applies to Community funding, but not to complementary State aid addressed in the present communication.

<sup>(2)</sup> Regulation (EC) No 1080/2006 of 5 July 2006 (OJ L 210, 31.7.2006, p. 1).

<sup>(3)</sup> Regulation (EC) No 1084/2006 of 11 July 2006 (OJ L 210, 31.7.2006, p. 79).

<sup>(4)</sup> OJ L 228, 9.9.1996, p. 1.

granting Community support for start-up aid to a project, without prejudice to Articles 87 and 88 of the Treaty. This support may be granted to the extent it is *deemed necessary for the financial viability of the project*. In fact, the case may arise that the proposing consortium of ports and operators incurs start-up losses within the launching period of the motorways of the sea services.

13. Start-up support under the Community guidelines for the development of the trans-European transport network is limited to 'duly justified capital costs', to be understood as investment support. This may include the depreciation of ships allocated to the service <sup>(1)</sup>. Under the Community guidelines for the development of the trans-European transport network, start-up support is limited to two years with a maximum intensity of 30 %.
14. In the framework of TEN-T projects, financial resources may be provided by Member States to the extent that Community funding is not available. In the case of start-up aid to shipping services, however, the second indent of Article 12a(5) of Decision No 1692/96/EC makes a reference to the provisions on State aid of the Treaty. Therefore, Member States may provide complementary aid to the extent that Community funding is not available, but they have to respect the rules on State aid while doing so. Since in the matter of aid to short sea shipping, guidance on the application of State aid rules has been provided by Chapter 10 of the Guidelines on State aid to maritime transport, the latter applies to complementary State aid. The Community Guidelines on State aid to maritime transport, however, allow for aid to investment with a maximum intensity of 10 % during three years. As a result, if a motorway of the sea project is selected as a TEN-T project, but it is not granted the maximum Community support to investment, i.e. 30 % during two years, it may happen that public support will not achieve the maximum possible amount, if national State aid may not go beyond the 10 % over three years authorised by the Community Guidelines on State aid to maritime transport. Furthermore, the difference in the maximum duration of the two schemes (two years under Decision No 1692/96/EC and three years under the Community Guidelines on State aid to maritime transport) is capable of generating uncertainty and confusion. For the sake of clarity and in order to allow for a pre-determined public support to undertakings taking part in a motorway of the sea TEN-T project, the maximum intensity and duration of complementary State aid to be provided by Member States should be the same as the maximum intensity and duration of Community funding.
15. For the above reasons, on the basis of Article 87(3)(c) of the Treaty, in the absence of Community funding for start-up aid or for the part not covered by Community funding, the Commission will authorise State aid to investment with a maximum intensity of 30 % and a maximum duration of two years to projects corresponding to Article 12a of Decision 1692/96/EC and selected in accordance with the procedure laid down in Regulation (EC) No 680/2007 of the European Parliament and of the Council of 20 June 2007 laying down general rules for the granting of Community financial aid in the field of the trans-European transport and energy networks <sup>(2)</sup>. The same will apply where the Member States decide to fund the project through the European regional development Fund or the Cohesion Fund.
16. Start-up aid to investment may not exceed the duration and intensity referred to in this point, irrespective of the source of funding. It can not be cumulated with public service compensation. Also for this case, the Commission recalls that the same eligible costs cannot benefit from two Community financial instruments.
17. Member States will have to notify to the Commission State aid that they intend to grant on the basis of the present communication to projects selected under Regulation (EC) No 680/2007.

#### APPLICATION

18. The Commission will apply the guidance provided for in this communication from the day following that of its publication in the Official Journal.

---

<sup>(1)</sup> Vademecum of 28 February 2005 issued in conjunction with the call for proposals for the TEN-T 2005; paragraph 4.3 (Start-up aid related to capital costs).

<sup>(2)</sup> OJ L 162, 22.6.2007, p. 1.