

STATE AID AND PUBLIC SERVICE OBLIGATIONS IN LAND TRANSPORT

PROPOSALS FOR REGULATIONS COM(2000)5 AND COM(2000)7

UNICE OPINION

UNICE shares the European Commission's views about the need to update and harmonise the specific rules regarding state aid and the operation of public service obligations in land transport.

This exercise must take account of the European dimension of the transport market and its almost complete opening to competition.

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1. STATE AID

a) Realisation of infrastructure

Regarding the proposal for a regulation COM(2000)5 on state aid granted for coordination of rail, road and inland waterway transport, UNICE strongly supports the intention of extending authorised aid for the start-up phase of realisation of transport infrastructures. This extension must include ports, multimode terminals and handling equipment.

In addition, UNICE appreciates the willingness to extend such aid, without the need for prior notification (article 6), to infrastructures financed in full or in part out of private funds and managed by bodies other than the public authorities, notably in the framework of public-private partnerships (PPP). In this context, it is essential to ensure effective separation between management of rail/road infrastructures and transport services.

UNICE also calls for the scope of the proposal to be widened to include all transport infrastructures. Coverage should not be restricted to rail, road and inland waterway infrastructures but also include maritime ports, airports and pipelines.

b) Aid to transport undertakings and for use of infrastructures

Against this, UNICE very much regrets to note that the proposal for a regulation maintains the possibility of aid for transport undertakings and infrastructure use. This is motivated by a purported need for transport coordination, i.e. a concept linked to a regulated market regime. This is no longer the case today.

On the same point, UNICE deplores the contradiction which consists in, on the one hand, calling for elimination of sectoral exemptions from the ban on state aid based on the transport liberalisation argument and, on the other hand, invoking the incomplete character

of liberalisation, together with the existence of public service requirements, to justify the maintenance of exemptions, under article 73 of the Treaty.

By invoking the incomplete character of market liberalisation and the absence of a harmonised system for coverage of infrastructure costs as arguments for maintaining aid for some transport undertakings, the proposal in fact helps to hold back the liberalisation process.

Article 4 of the draft regulation reflect a line of thought whereby:

- i) rail covers its external costs much better than road transport;
- ii) consequently, aid could be granted to rail to cancel out all or part of the difference between the external costs of the two modes.

UNICE recalls that monetary quantification of external costs still arouses deep controversy for the different modes of transport.

Given this situation, there are no adequate guarantees regarding the possibility of carrying out objective comparative studies on external costs as envisaged in article 4.1.(b) of the draft.

In addition, the idea of comparing only external costs in the road and rail sectors, for instance, poses a major substantive problem insofar as, according to several recent studies, rail does not even cover its internal costs.

Lastly, this focus on the external costs of certain transport activities contrasts with the growing recognition at political level that environmental progress depends in part of dynamic economic growth, in a context of international competitiveness.

It is therefore necessary to give consideration not only to the external costs but also to the benefits of all modes of transport.

In conclusion, an exemption from the ban on aid as proposed in article 4 would open the door wide to:

- distortions of competition;
- choices which are not in line with the objective of sustainable development, i.e. development which is balanced in environmental, economic and social terms.

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2. CONDITIONS FOR AWARD OF PUBLIC SERVICE CONTRACTS

UNICE welcomes the proposal for a regulation COM(2000)7 which would introduce an element of "controlled competition", in the form of tender calls, into procedures for awarding public service contracts covering land passenger transport.

The system adopted in the proposal has already produced positive results in several Member States. Given the present situation, it provides an interim arrangement which reconciles the general interest with good management of public monies.

However, it should not prevent those Member States which so wish from going ahead with greater deregulation and greater opening of the public transport market to competition, as is already the case in at least one Member State. It will be important to carry out an objective

evaluation of the effects of such deregulation, which allows the co-existence of two or more public service providers on the same network or the same route.

UNICE endorses the objectives of the proposal for a regulation, in particular modernisation, greater efficiency and better quality public transport. The latter must be more geared to demand. In that way, it will contribute more effectively – and less expensively – to the fight against congestion.

To that end, all operators established in the European Union should have real and non-discriminatory possibilities for gaining access to the public service market in all Member States, through shared or separate use of all modes of public transport (bus, tram, metro, train, etc.).

Yet, article 7 provides for the possibility of derogations at national level, which contradicts this objective. Some Member States would be tempted to maintain the system of direct award of public service contracts for rail services (§1 – train/tram, light metro) or for integrated service offers (§4 – rail/road), invoking inter alia compliance with safety standards. Such derogations should be deleted, because they would have a discriminatory effect against private carriers which would be excluded from these contracts.

In addition, the requirements set out in article 9 § 1 and 2 which relate to the possibilities for subcontracting and refusing to grant public service contracts which exceed 25% of the market in question limit entrepreneurial freedom without any reason being advanced. This would tend to rule out the most attractive service offers. These clauses should also be deleted.

Furthermore, the procedures for award, financial indemnification of the prescribed obligations and grant of exclusive rights limited to a duration compatible with the conditions for exploiting the rolling stock and infrastructure must be defined in a harmonised and equitable manner. In this regard, a five-year limitation on the duration of concessions appears insufficient. Such a limitation would not make it possible to maintain and renew stock under satisfactory conditions. It could also have negative consequences in terms of transport safety.

Lastly, the proposal for a regulation omits to take account of two major problems inherited from the tradition of monopoly in public transport:

- ✍ first, the risk of cross-subsidies resulting from the participation of public transport undertakings which are still protected and highly subsidised in market niches which are open to competition;
 - ✍ second, the necessary institutional separation between infrastructure management and transport services, which is not referred to anywhere in the proposal.
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