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**Subject: State aid No SA.36758 (2013/N) - Denmark
Prolongation of environmental aid scheme for the transport of goods by rail
for the period 2014-2017**

Sir,

1. PROCEDURE

1. On 4 June 2013, the Danish authorities notified to the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (TFEU), the prolongation of the environmental aid scheme for the transport of goods by rail for the period 2014-2017.
2. The Danish authorities provided additional information by letter registered on 12 September 2013 as completed on 13 December 2013.
3. In addition by separate letter of 13 December the Danish authorities declared that a Commission decision in the English language would be accepted.

Udenrigsminister Holger K. Nielsen
Asiatisk Plads 2
DK-1448 København K

Commission européenne, B-1049 Bruxelles – Belgique
Europese Commissie, B-1049 Brussel – België
Telefon: 00-32-(0)2-299.11.11.

4. The notified prolongation concerns a State aid scheme previously approved by the Commission on 23 November 2011¹.

2. DESCRIPTION OF THE EXISTING AID SCHEME

2.1. Background

5. Since 1999 an environmental subsidy has been provided by the Danish Government to rail freight transport operators in order to offset the effects of the rail infrastructure charges and promote a shift from road to rail transport, thus reducing the negative external costs related to road transport operations.
6. The environmental subsidy is fixed as the proceeds from the infrastructure charges divided by the total number of net tonne-kilometres transported, adjusted for any surplus or deficit in previous years.
7. The amount of the environmental subsidy for 1999-2012 in relation to the infrastructure charges paid by the freight transport operators for the use of the rail network is represented in the table below:

Period	Infrastructure charges ²	Environmental subsidies ³
1999	27.0	20.7
2000	37.8	35.0
2001	35.2	29.9
2002	32.0	36.5
2003	32.9	29.8
2004	19.9	31.5
2005	20.6	20.6
2006	19.2	17.8
2007	18.8	17.4
2008	19.9	18.9
2009	18.3	16.1
2010	21.8	25.9
2011	26.6	21.2
2012	21.8	17.3

Table 1 – Infrastructure charges v. Environmental subsidies

8. This environmental subsidy was first approved by the Commission on 21 April 1999⁴ for 1999-2001. Subsequently, the subsidy was reassessed and approved by the Commission on 11 December 2002⁵ for 2002-2005, on 21 December 2006⁶ for 2007-2010, and most recently on 23 November 2011⁷ for 2011-2013.

¹ N 552/2010, C 19 of 24.1.2012, p. 1.

² In DKK millions

³ *Idem.*

⁴ N 588/98, OJ C 166 of 12.6.1999, p. 6.

⁵ N 287/2002, OJ C 34 of 13.2.2003, p. 7.

⁶ N 552/2006, C 133 of 15.6.2007, p. 5.

⁷ See footnote 1, *supra*.

9. In its decision of 23 November 2011, the Commission noted that road freight charges were expected to be introduced in Denmark in 2014⁸. These road freight charges would have removed the need for the environmental subsidy.
10. However, in 2012 the Danish Government carried out several studies which led to the conclusion that the cost of implementing and operating such a system of road freight charges in Denmark at this stage would be exorbitant. Consequently, the plans for introducing road freight charges were abandoned in the spring of 2013.
11. Against this background, a broad majority in the Danish Parliament agreed, in its Growth Plan Agreement of 24 April 2013, to prolong the environmental subsidy for rail freight transport for the period 2014-2017.

2.2. Legal basis

12. The legal basis for the subsidy is the Railways Act N° 1249 of 11 November 2010, Act No 1107 of 21 November 2012 on payment for the use of the state railway network and environmental protection for freight transport by rail and Act No 1108 of 23 November 2012 on infrastructure charges, etc. for the State rail network.

2.3. Beneficiaries

13. The number of beneficiaries varies depending on the number of rail freight operators that transport goods on the Danish railway network. For example, in 2012 the following operators received subsidies based on the present scheme: *DB Schenker Rail*, *CFL Cargo*, *Hector Rail*, *TX Logistik* and *Railcare Denmark*. The Danish authorities estimate the number of beneficiaries for 2014-2017 to be less than ten.
14. In any event, the aid will be granted on equal and non-discriminatory terms to all operators of rail freight traffic.

2.4. Form of the aid

15. The aid is granted in the form of a general subsidy for the transport of goods by rail to and from Danish railway stations and for goods carried on combined transport through Denmark. As regards transit traffic through Denmark⁹ the subsidy is paid only where the transport would not have been undertaken by ship or ferry.
16. According to the Danish authorities, separating the diesel part of the transport from the electrified part would not make sense, since the two systems often collaborate. Only a marginal share of the rail freight is transported outside electrified sections within Denmark. The Danish authorities estimate that only 6% of freight trains use diesel traction.

⁸ In addition to time-based charge for heavy-goods vehicles for the use of motorways as required by Directive 1999/62/EC (last modified by Directive 2011/76/EU), Denmark intended to introduce road charges also on a number of other roads, thus extending the network covered by user charges more than twice.

⁹ As to domestic transport, no rail freight takes place that could realistically have taken place by sea between two Danish ports. Domestic shipping transports special products only, particularly fuel, cement and steel, areas in which shipping, in any circumstances, is in a strong competitive situation. There is, however, some competition between rail freight via Denmark and direct ferry transport between Sweden and Germany, which is significant for goods traffic in transit via Denmark.

17. The aid will be paid as a uniform subsidy per tonne-kilometre, since traffic flows provide a representative expression of the environmental benefits accruing from transport by rail and can, at the same time, be administered on an objective basis.
18. To avoid abuse or undesirable effects from the grant of the subsidy, the transport distance in kilometres for a given transport operation is calculated as the shortest distance by rail between the point of departure and the place of destination. For international traffic, the subsidy is paid to and from the border station; for intermodal transit freight, it is paid for the distance between the two border stations, respectively at the Swedish and the German borders.
19. Over the past five years, the subsidy has averaged EUR 0.002 per tonne-kilometre. According to the information submitted by the Danish authorities, the rate of the environmental subsidy for the 2014-2017 will be up to EUR 0.0021 per tonne-kilometre.
20. No distinction is drawn between various types of goods or their volume in relation to weight.

3. MODIFICATIONS TO THE EXISTING SCHEME

21. The modifications to the scheme concern only its budget and its duration. The conditions for granting the aid, in particular those applicable to beneficiaries, aid intensity, eligible costs and eligibility have not been modified.

3.1. Budget

22. The environmental subsidy is financed from the proceeds of the infrastructure charges paid by freight trains to use the rail network. The indicative¹⁰ budget for the environmental subsidy for rail freight for 2014-2017 is the following:

2014	2015	2016	2017	Total
<i>DKK 23.8</i> ¹¹	<i>DKK 24.5</i>	<i>DKK 25.3</i>	<i>DKK 26.1</i>	<i>DKK 99.7</i>
(€3.19) ¹²	(€3.28)	(€3.39)	(€3.50)	(€13.36)

Table 2 – Budget of the prolonged scheme

23. For 2014–2017, this subsidy amounts on average to DKK 25 million (EUR 3.35 million) per year.
24. The gradual rise between 2015 and 2017 is due to the fact that a new system of infrastructure charges will be phased in during this period. Instead of paying per train kilometre tonne-kilometre as before, rail operators will pay according to wear and tear on the rail network, using the gross weight of the trains as a reference. Consequently, the charge will be gradually increased during the period 2015-2020.

¹⁰ As it could be adjusted in case of variation of traffic flows

¹¹ In DKK millions at conversion rate of 1 EUR for 7.45941 DKK.

¹² In brackets: the corresponding amount in EUR.

25. This restructuring of infrastructure charges was implemented following requirements from the Commission that infrastructure charges must be dependent on costs following directly from the rail services.¹³
26. This restructuring of infrastructure charges was adopted given that the latter must be dependent on costs following directly from the rail services. The new charging scheme shall thus ensure compliance with Article 30.3 of Directive 2012/34/EU requiring that the charges for the minimum access package and for access to infrastructure connecting service facilities are set at the cost that is directly incurred as a result of operating the train service.
27. Without a corresponding increase in the environmental subsidy under the new infrastructure charge system, the imbalanced competition situation compared to freight transport by road would be further exacerbated.

3.2. Duration

28. As explained in recital 10 above, the Danish Government intends to extend the scheme for an additional period of four years (2014-2017).

4. ASSESSMENT OF THE MEASURE

4.1. Existence of aid within the meaning of Article 107(1) TFEU

29. The notification concerns a prolongation of an aid scheme which has been authorized by the Commission. The proposed modifications to the existing scheme do not alter the Commission's assessment that the scheme, as well as its modification, constitute State aid within the meaning of Article 107(1) TFEU.¹⁴

4.2. Lawfulness of the aid

30. Since the new measure has not been put into effect before formal approval by the Commission, the Commission records that Denmark has fulfilled its stand-still obligation in accordance with Article 108(3) TFEU.

4.3. Compatibility of the aid

4.3.1. Legal basis

31. Article 93 TFEU, which allows for aid that meets the needs of coordination of transport, remains the applicable legal basis for assessing the compatibility of the measure with the internal market.

¹³ See Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, later replaced by Directive 2012/34/EU establishing a single European railway area.

¹⁴ See Section 4 "Assessment of the measure/aid" of the initial Commission decision, aforementioned *supra*. See also recitals 24-31 of the Commission decision, related to the first prolongation of the scheme, referenced under footnote 4, *supra*. See equally recital 19 of the Commission decision, related to the second prolongation of the scheme, referenced under footnote 5, *supra*. See as well recital 15 of the previous Commission decision, aforementioned *supra*.

32. In this context, Regulation (EC) n° 1370/2007 provides in its Article 9 (2): "*Member States may continue to grant aid for the transport sector pursuant to Article [93 TFEU] which meets transport coordination needs [...], other than those covered by this Regulation, and in particular:*
- a) *Until the entry into force of common rules on the allocation of infrastructure costs, where aid is granted to undertakings which have to bear expenditure relating to the infrastructure used by them, while other undertakings are not subject to a like burden. In determining the amount of aid thus granted, account shall be taken of the infrastructure costs which competing modes of transport do not have to bear...*"
33. In this context, Article 34 of Directive (EU) n° 2012/34/EU¹⁵ states that Member States may put in place a time-limited compensation scheme for the use of railway infrastructure for the demonstrably unpaid environmental, accident and infrastructure costs of competing transport modes in so far as these costs exceed the equivalent costs of rail. Where a railway undertaking receiving compensation enjoys an exclusive right, the compensation shall be accompanied by comparable benefits to users. The methodology used and calculations performed shall be publicly available. It shall in particular be possible to demonstrate the specific uncharged costs of the competing transport infrastructure that are avoided and to ensure that the scheme is granted on non-discriminatory terms to undertakings.
34. The application of Article 93 TFEU to aid measures benefitting railway undertakings has been clarified in the Community guidelines on State aid for railway undertakings¹⁶ (*the Railway Guidelines*).
35. For the assessment of the environmental subsidy scheme for the period 2011-2013, the Commission referred to that provision of the Treaty and followed a detailed assessment based on the compatibility criteria laid down in Section 6.3 of the Railway Guidelines. For the assessment of the notified prolongation, the Commission refers to its previous examination¹⁷ as well as to the following sections analysing the compatibility of the notified measure in light of these criteria.

4.3.2. Eligible costs: existence of external costs savings

36. Rail freight transport has much lower external costs than road freight transport, especially in terms of accident and environmental pollution costs. Rail transport also has considerable spare capacity and can therefore play a role in providing alternative means of transport for congested parts of the road network.
37. As regards aid for reducing external costs, point 103 of the Railway Guidelines states that the eligible costs are the part of the external costs which rail transport makes it possible to avoid when compared to competing transport modes.
38. According to point 105 of the Guidelines, the Member State has to provide a transparent, reasoned and quantified comparative cost analysis between rail transport and the alternative options based on other modes of transport for aid for reducing external costs. The methodology used and calculations performed must be made publicly available.

¹⁵ OJ L 343, 14.12.2012, p. 32.

¹⁶ OJ C 184, 22.7.2008, p.13.

¹⁷ Laid down in recitals 16-18 of the previous Commission decision, aforementioned *supra*

39. The Joint Research Centre of the Commission has produced a calculation of external costs for different freight transport modes in Denmark based on the methodology presented in the Handbook on estimation of external cost in the transport sector published by the Commission¹⁸ and on data from the TREMOVE model.¹⁹ Based on the calculations prepared by the Commission's Joint Research Centre (which are, in turn, based on the national data submitted for transport policy assessment model TREMOVE and the PRIMES energy system model), the latest version²⁰ of the marginal average external costs of transport by mode for Denmark are as follows:

<i>Marginal average external costs of transport by mode in €/ 1000 t.km²¹</i>				
<i>Cost element</i>	Road	Rail	<i>Electrified Rail</i>	<i>Diesel Rail</i>
Accident	4.5	0.17	0.16	0.25
Noise	3.2	2.12	2.00	3.04
Pollutants	5.9	1.53	0.53	8.90
Climate costs	4.1	1.52	1.45	2.07
Congestion ²²	1.9	0.32	0.32	0.32
Total	19.5	5.67	4.46	14.57
Cost difference compared to road:		13.82²³	15.04	4.93

Table 3 –Freight transportation (in € per 1000 t.km), Denmark, year 2012

40. For the sake of a better accuracy, the Commission has decided to refer to the calculation of the external costs specific to freight transport in Denmark, instead of using the general data for the European Union as a whole (EU27). Without prejudice to further updates, this calculation can be considered as a valid basis for the assessment of the notified prolongation.
41. The data clearly illustrates that rail freight transport generates far less external costs than road transport.
42. As required by point 104 of the Guidelines, the Commission will follow the development of the rules governing the allocation of infrastructure costs and external costs and will propose appropriate measures, if necessary.
43. On the basis of the above, the Commission concludes that the eligible costs of the scheme can be the part of the external costs which rail transport make possible to avoid compared to road transport, in line with points 103 to 105 of the Guidelines.

¹⁸ See http://ec.europa.eu/transport/themes/sustainable/doc/2008_costs_handbook.pdf

¹⁹ TREMOVE is an EU-wide transport model used as a policy assessment model, designed to study the effects of different transport and environment policies on the transport sector. The model estimates for technical and non-technical measures and policies such as road pricing, public transport pricing, emission standards, subsidies for cleaner cars etc., the transport demand, modal shifts, vehicle stock renewal and scrappage decisions as well as the emissions of greenhouse gases, air pollutants and the welfare level. For more details see <http://www.tremove.org/>.

²⁰ Of 10 June 2012

²¹ T.km or tonne-kilometre; i.e. performing one kilometre of transport with one tonne (1000 kg).

²² Not including intra-NUTS3 traffic

²³ The external cost calculation for the rail sector as a whole was made using the share of electric traction that was accepted by the Commission within the TRACCS project (see <http://www.traccs.emisia.com/>) – 88% as the Danish authorities did not support 94% estimate with precise statistical figures. At the same time the Commission recognizes that, in practice, the volume of traffic on electrified rail as measured in tonne-kilometres might be above 88%. This is because TRACCS figure refers to train-kilometres while train loads on the main electrified line which connects Sweden to Germany (through Denmark) are normally higher than on the rest of the network.

4.3.3. Necessity and proportionality of the aid and absence of overcompensation

4.3.3.1. Aid not exceeding 30% of the total cost of the cleaner transport mode and 50% of the eligible costs

44. According to point 107 of the Guidelines, the Commission considers there to be a presumption of necessity and proportionality of the aid when the aid intensity complies with the two conditions laid down in point (b) thereof. If this is the case it is also presumed that there is no overcompensation pursuant to point 109 of the Guidelines.
45. The first condition contained in paragraph 107(b) is that *aid shall not cover more than 30% of the total cost of rail transport*. According to data provided by the Danish authorities under the previous prolongation, the subsidy, which amount remains largely unchanged, amounted to circa 8% of the total cost of rail transport. Moreover, the Danish authorities have clearly indicated that the amount of the subsidy for the 2014-2017 period will remain below 30% of the overall costs of rail transport. The first condition is therefore satisfied.
46. The second condition contained in paragraph 107(b) is that *aid shall not exceed 50% of the eligible costs*, i.e. the part of the external costs which rail transport makes it possible to avoid compared with competing transport modes.
47. As explained above, the amount of environmental subsidies largely correlates with the amount of infrastructure charges collected (the objective of the subsidy scheme is to fundamentally offset the effect of railway infrastructure charges, while keeping the positive effect of the railway charges *inter alia* in terms of congestion management).²⁴ Over the past five years, the environmental subsidy has averaged EUR 2 per 1000 tonnes-kilometre. Furthermore, the Danish authorities indicate that the environmental subsidy under the prolonged scheme will be up to EUR 2.1 per 1000 tonnes-kilometre. According to the data in table 3 above, the environmental subsidy will not be more than 15 % of the eligible costs (EUR 2.1 per 1000 tonnes-kilometre out of EUR 13.82 per tonne-kilometre) for the global rail freight.
48. In light of the above, the Commission concludes that the conditions contained in paragraph 107(b) of the Guidelines are complied with.

4.3.4. Other conditions

49. According to point 110 of the Guidelines, in principle, the *aid has to be reflected in the price demanded from the shipper*.
50. The above principle is transposed in § 5 of the Administrative order on infrastructure charges and environmental aid.²⁵ This shows that, in the absence of environmental subsidies, rail transport tariffs would have to be higher to ensure cost coverage of railway undertakings. Therefore, the Commission can conclude that the environmental subsidies are reflected in the price demanded from the shippers.

²⁴ Environmental subsidies received by a specific company do not necessarily equal to the amounts paid by the same company in infrastructure charges.

²⁵ "Bekendtgørelse om baneafgifter og om miljøtilskud til godstransport på jernbane" (See <https://www.retsinformation.dk/Forms/R0710.aspx?id=134755>)

51. According to point 111 of the Guidelines, in case of aid for the reduction of external costs, there must be realistic prospects of keeping the traffic transferred to rail so that aid leads to a sustainable transfer of traffic. In this respect, the Commission notes that environmental subsidies for rail freight have helped to increase the share of railway transport in inland transportation services²⁶. This trend is expected to continue.
52. The Commission therefore considers that all the conditions related to the necessity and proportionality of the aid are met.

4.3.5. Non-discrimination, the aid scheme is transparent and time-limited

53. The Commission notes that, as in the previously authorized scheme, aid will be granted on non-discriminatory terms to all undertakings carrying out rail freight transport in Denmark.
54. The scheme is considered transparent, as the conditions for its granting are stipulated in publicly available legal acts (Danish Order on the Railway Undertakings Act and the Danish Order on infrastructure charges and environmental subsidies for the transport of goods by rail).
55. Finally, the duration of the scheme is limited in time, i.e. until end of 2017 and, does not exceed the period of 5 years laid down by point 97 of the Railway Guidelines. This would allow the Commission to re-examine the scheme in the light of the results obtained and, if necessary, authorise its renewal.

4.3.6. No effect on competition and trade contrary to the common interest

56. As regards competition between different modes of transport, the measure is limited to reducing imbalances between rail transport and road transport.
57. To exclude the possibility of distortion of competition with maritime transport, transit rail freight services are covered by the subsidy scheme only if the operator can prove a shift in the transport of goods from road to rail. The available statistical data do not suggest that there were adverse developments in maritime traffic of neighbouring countries due to rail transit subsidies in Denmark²⁷.
58. Therefore, the Commission concludes that the aid scheme in question does not give rise to undue distortion of competition to an extent contrary to the common interest according to point 96 of the Guidelines.

4.3.7. Conclusions on the compatibility

59. In light of the foregoing considerations, the Commission concludes that the prolongation of the existing aid scheme is in line with Article 93 TFEU and therefore compatible with the internal market.

²⁶ see e.g. http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Freight_transport_statistics

²⁷ See e.g. http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_in_European_main_ports_broken_down_by_reporting_country_2012Q4.png&filetimestamp=20131011111726

5. DECISION

The Commission has accordingly decided:

- to consider the notified prolongation of the existing aid scheme to be compatible with the Treaty on the Functioning of the European Union.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

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Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
B-1049 Brussels
Fax No: +0032 (0) 2 2961242

Yours faithfully,
For the Commission

Neelie KROES
Vice-President