EUROPEAN COMMISSION

Brussels, 12.4.2017
C (2017) 2307 final

Subject: **State Aid SA.46672 (2016/N) – Hungary**

Prolongation of the scheme on excise duty exemptions and refunds for fuel used in railway and inland waterway transportation

Sir,

1. **PROCEDURE**

(1) On 24 October 2016, the Hungarian authorities notified to the Commission the prolongation and amendment of an aid scheme on excise duty exemptions and refunds for fuel used in railway and inland waterway transportation, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union ("TFEU").

(2) The Commission had approved the original scheme on 13 January 2010 from May 2007 to April 2017.[1]

(3) On 28 November 2016 and on 2 February 2017 the Commission requested further information from Hungary, which was provided on 25 January 2017 and on 20 February 2017, respectively.

(4) By letter dated 10 March 2017, the Hungarian authorities provided a language waiver and agreed that the decision will be adopted and notified in English as the authentic language.

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[1] Commission decision of 13 January 2010, SA.23174 (NN29/2008). Hungary - Excise duty exemptions and refunds for energy products used as fuel for railway transportation and navigation on inland waterways, OJ C 36, 13.2.2010, p. 2.,

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2. DESCRIPTION OF THE MEASURE

2.1. Objective of the aid scheme

(5)   The aim of the scheme remains unaltered. The scheme aims at addressing the structural imbalances between road, rail and inland waterway transportation in Hungary, by compensating for the lack of internalisation of external costs. The scheme also aims at protecting the environment by promoting environmentally friendlier transport modes.

(6)   According to the Hungarian authorities, over the last years, freight transport traffic by road (compared to other transport modes) has increased drastically with the result of negative impacts on the environment[2]. The increase in road freight transport is due to a considerably higher speed, better service quality (door-to-door transport), as well as the fact that not all costs are included in the transport price.

(7)   Similarly, the increase in the transportation of passengers by road, especially the least environment-friendly form, i.e. private cars, evidenced by the steadily increasing number of vehicles and the use thereof, has resulted in a considerable negative environmental impact.

(8)   In terms of technical characteristics and operational flexibility, the rail and inland waterway transport has inherent disadvantages compared to road and at the same time they offer considerable external cost savings.

(9)   According to the Hungarian authorities, the lack of the level-playing field for competition between different modes of transport is still a problem in Hungary.

2.2. National legal basis

(10)   The national legal basis for the scheme for the railway sector is in Section 113(1) of Act LXVIII on Excise Tax of 2016, according to which fuel used for rail transportation activities will be excise-exempt.[3]

(11)   The national legal basis for the scheme for inland waterway is Section 112(1)(b) of Act LXVIII of 2016, which provides for an excise duty exemption for the fuel used for inland waterway, and Section 12(g) of Act LXVIII of 2016, which provides for a excise duty refund for the fuel used in inland waterway.

2.3. Amendments to the scheme

(12)   The previous scheme, approved by the Commission in case NN 29/2008, covered both an excise duty exemption for rail transport as well as an excise duty exemption and refunds for inland waterway transport. The current notified scheme is the prolongation of the former scheme, reducing its budget, with its legal basis in Section 112(1) (b)

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[2] Commission decision of 13 January 2010, SA.23174 (NN29/2008). Hungary - Excise duty exemptions and refunds for energy products used as fuel for railway transportation and navigation on inland waterways, OJ C 36, 13.2.2010, p. 2., Paragraphs (4)-(5).

[3] Articles 112 and 113 of the ACT LXVIII will entry into force pursuant to Article 149 (3) on 1 April 2017.

and Section 113 (1) of Act LXVII of 2016 on Excise Tax on the basis of Article 15 (1) (e) and (f) of the Council Directive 2003/96/EC of 27 October 2003.

2.4. Beneficiaries

(13) The beneficiaries will remain all rail and inland waterway operators.[45]

(14) The aid will be granted on non-discriminatory terms. The aid does not involve any discretion on the part of the public authorities. These fiscal advantages are granted on a general and, as far as conditions related to the fiscal control are respected, on an automatic basis.

2.5. Form and budget of the aid

(15) The aid is granted in form of excise duty exemptions for fuel used in railway and in the form of excise duty exemptions and refunds for inland waterway.

(16) The estimated expected total loss of revenue for the budget for the whole period of the scheme amounts EUR 168,3 million.[6]

2.6. Duration

(17) The scheme covers a period of 6 years, from 1 May 2017 to 30 April 2023.

2.7. Rules of cumulation

(18) The Hungarian authorities do not allow for cumulation with other EU, State or regional grants, including similar contributions as regards aid granted to inland waterway operators on the basis of external cost savings.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid

(19) In its decision of 13 January 2010, the Commission concluded that the original scheme constitutes State aid within the meaning of Article 107(1) TFEU, as the examined measures (i) confer a financial advantage by guaranteeing a lower than otherwise tax bill; (ii) affect State resources because they result in foregone tax revenue; (iii) are selective in nature because they are confined to certain segments of the transportation

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[4] The tax reimbursement for rail can be claimed by Hungarian railway operators or those from other EU Member States or third countries, no distinction being made between domestic or foreign entities. The tax refund for inland waterway can be claimed by vessels entered either in the Hungarian or foreign ship registry.

[5] Passenger transportation by rail is not covered by the scope of this decision. However, according to the information provided by the Hungarian authorities there is a very small amount of passenger rail service (0,07 %) which is not provided under a PSO by rail transport based on diesel traction. It is provided by MÁV Nosztalgia Kft. as individual nostalgia/vintage train services a few times a year to various destinations. This service is provided for tourism purposes in connection with travel and related programs. The utilization level of these trains is around 80% (total number of passengers/maximum number of available seats).

[6] Which corresponds to approximately HUF 50,5 billion, of which railway transportation's share is HUF 40 billion (EUR 133,3 million approximately) while the inland waterway sector's share is HUF 10,5 billion (EUR 35 million approximately).

services market (rail and inland waterway transport) and (iv) have a potential to distort competition and trade between Member States since they concern markets which have been liberalised.[7] . As this assessment remains relevant for the present decision, the measure qualifies as State aid.

3.2. Compatibility

3.2.1. *Legal basis*

(20) The notified scheme falls within the scope of Article 93 TFEU and has therefore to be assessed on that basis.

(21) Article 93 TFEU states that State aid shall be compatible with the Treaty if it meets the needs of coordination of transport. The concept of aid meeting the needs of coordination of transport refers to the need for public intervention arising notably in the presence of a market failure.

(22) In this regard, the Commission notes that measures of coordination of transport may be needed when certain modes of transport do not bear the costs of the negative externalities which they impose to the society.

(23) As expressed in the Commission's White Paper on Transport Policy, "the fundamental principle of infrastructure charging is that the charge for using infrastructure must cover not only infrastructure costs, but also external costs, that is, costs connected with accidents, air pollution, noise and congestion". This approach has been applied in a number of the Commission's State aid decisions over the last years.[8] It also reflects the fact that, in view of Articles 3, 6, 191 TFEU[9], the environmental objectives of the Treaty have to be pursued inter alia through the Common Transport Policy.

(24) The policy to promote inland waterway transport in Europe is in the NAIADES Action Programme[10]. A European Strategy for Low-Emission Mobility[11] adopted by the Commission on 20 July 2016 re-iterates the necessity of incentivizing a shift towards lower emission transport modes such as inland waterways, short-sea shipping and rail.

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[7] Paragraphs 15 and 16.

[8] For the most recent and relevant decision-making practise – see, e.g., Commission decision of 24 November 2016, SA.44627 (2016/N), Italy - *'Ferrobonus' - incentive for rail transport,* not yet published; Commission decision of 29 April 2016, SA.41033 (2016/N), Italy - *Integrated transport scheme in the Province of Trento,* OJ C 220, 17.06.2016, p. 2; Commission decision of 26 May 2015, SA.40404 (2014/N), France and SA.39606 (2015/N), Italy - *Régime d'aide au service transitoire d'autoroute ferroviaire alpine,* OJ 66 of 19.2.2016, p. 2; Commission decision of 13 June 2014, SA.38152 (2014/N), Italy - *Aid in favour of rail freight transport in Emilia Romagna region,* OJ C 282 of 22.8.2014, p. 23; Commission decision of 6 January 2014, SA.36758 (2013/N), Denmark - *Prolongation of environmental aid scheme for the transport of goods by rail for the period 2014-2017,* OJ C 280 of 22.8.2014, p. 10; Commission decision of 16 December 2011, SA.32603 (2011/N), Italy - *Subsidy scheme "Ferrobonus" for combined transport,* OJ C 88 of 24.3.2012, p. 1; Commission decision of 5 July 2005, SA. 17724 (N 249/04), Belgium - *Régime d'aide pour le transport combiné,* OJ C 280 of 12.11.2005, p. 9.

[9] Till 30 November 2009 – Articles 2, 6 and 174 EC Treaty.

[10] https://ec.europa.eu/transport/modes/inland/promotion_en.

[11] COM(2016) 501 final.

(25)   As to rail transport, this mode of transport generates lower negative externalities than road transport in terms of accident and pollution costs, noise, climate costs or congestion costs also in Hungary, according to Table 1. In general this transport mode also has considerable spare capacity and can therefore play a role in shifting traffic away from the congested parts of the road networks.

(26)   Inland navigation transport is energy efficient and contributes to the goals of the low-carbon economy, set out in the EU's Transport Policy White Paper[12]. Furthermore, low noise and accident levels also make it convenient for freight transport in the densely populated areas they transit in and service. It should be noted that air pollution emission limits for inland waterway vessels have been recently significantly tightened with the adoption in 2016 of the Non-Road Mobile Machinery Regulation[13]. The Regulation, which applies as of 1 January 2017, involves the adoption of the so called Stage V standards for new engines in inland navigation vessels, which have to be reached by 2019-2020[14], following the introduction of so-called EURO VI norms in road freight sector.

(27)   As regards the railway transport sector, rules for the interpretation of Article 93 TFEU have been set out in Section 6 of the Community Guidelines[15] (hereafter "Guidelines") on State aid for railway undertakings.

(28)   As regards the inland waterway sector, as it was done in the previous decision-making practice of the Commission,[16] the compatibility assessment of the present measure will be carried out in the light of the provisions of the Railway Guidelines as regards aid for reducing external costs (notably points 103, 105, 107, 109, 110, 111) which will be applied by analogy.

3.2.2.   Existence of external costs savings

(29)   According to point 103 of the Guidelines, as regards aid for reducing external costs, the eligible costs are the part of the external costs which cleaner transport modes make it possible to avoid compared to road transport mode.

(30)   Point 104 of the Guidelines states that "Member States may put in place a time-limited compensation scheme for the use of railway infrastructure for the demonstrability unpaid environmental, accident and infrastructure costs of competing transport modes in so far as these costs do not exceed the equivalent costs of rail".

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[12] COM/2011/0144 final

[13] Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, amending Regulations (EU) No 1024/2012 and (EU) No 167/2013, and amending and repealing Directive 97/68/EC (the "NRMM Regulation").

[14] The Stage V limits, are applicable to propulsion and auxiliary engines above 19 kW, including engines of all types of ignition.

[15] Communication from the Commission Community guidelines on State aid for railway undertakings (2008/C 184/07), OJ C 184, 22.7.2008, p. 13.

[16] See e.g. Commission decision in State aid case NN29/2008 – Hungary – Excise duty exemptions and refunds for energy products used as fuel for railway transportation and navigation on inland waterways; OJ C36 of 13.02.2010.

(31)   Point 105 of the Guidelines requires a transparent, reasoned and quantified comparative cost analysis between the supported transport mode and the alternative options.

(32)   It is acknowledged that both rail and inland waterway transport have much lower external costs in terms of accident costs and air pollution, when compared to road transport. Both transport modes also have considerable spare capacity and can therefore play a role in diverting traffic away from the congested parts of the road networks.

(33)   In 2012 the Joint Research Centre of the Commission has produced a calculation of external costs for different transport modes in Hungarian Republic based on the methodology presented in a Handbook on estimation of external cost in the transport sector published by the Commission[17] and on the data from the TREMOVE model[18].

Table 1. Marginal average external costs for freight transport, €/ 1000 tkm, 10 June 2012, Joint research Centre

Cost element	Road	Rail total	Rail electric	Rail diesel	Inland waterway
Accident	4.8	1.0	0.91	1.44	0.0
Noise	1.7	1.1	0.96	1.53	0.0
Pollutants	13.7	5.4	3.57	13.09	9.5
Climate Costs	7.3	1.8	1.58	2.57	1.8
Congestion	17.5	0.5	0.52	0.52	Negligible
Total	**45.1**	**9.8**	**7.54**	**19.16**	**11.3**
External cost savings by shifting 1000 tkm from road	35.3		37.56	25.94	33.8

(34)   The data above clearly show that use of diesel rail[19] or inland waterways generate much less external costs than the use of road transport for freight transportation.

(35)   Moreover, transport research[20] shows that, when adding up the external costs from traffic noise, accidents, climate gas and air pollution, a clear advantage of inland shipping becomes obvious in respect of other transport modes, in particular road

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[17] http://ec.europa.eu/transport/themes/sustainable/studies/sustainable_en

[18] 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/.

[19] The relevant calculations were done only for the diesel traction part of the Hungarian railway sector taking into account that the examined State aid measure concerns only diesel trains (the measure consists in fuel tax reductions).

[20] Cf EU Platina 2 project: http://naiades.info/news-and-events/markets/platina-2-the-project/

transport, for bulk freight as well as for containers. For example, the external costs of inland shipping are on the average by 83% lower than those of road transport. The spread of external costs, with minimum and maximum values, confirms this clear advantage .of inland shipping. The stricter standards introduced by the NRMM Directive for inland navigation diesel engines will strengthen the comparative advantage of inland navigation in terms of air emissions.

(36)   Even though the Commission does not have as complete and representative data for passenger transportation on inland waterways in Hungary, it considers that the situation is not substantially different compared to freight transportation. In the context of high occupancy rates registered for passenger transportation using inland waterways in Hungary (70-90%), it is clear that shifting passenger transport to inland waterway transport has a considerable positive influence in terms of external costs avoided. For the purpose of the overall assessment of the aid scheme, the Commission will thus rely on the data on external costs in freight transportation.

(37)   In line with points 103 to 105 of the Railway Guidelines the Commission therefore concludes that the eligible costs of the scheme correspond to the part of the external costs which rail transport and inland waterway transport make possible to avoid compared with road transport.

3.2.3.   *Necessity and proportionality of the aid measure*

(38)   According to points 107 (b) and 109 of the Guidelines there is a presumption of necessity, proportionality and absence of overcompensation of the aid for reducing external costs when the intensity of the aid stays below the following values: 30 % of the total cost of the cleaner transport mode, up to 50 % of the eligible costs.

3.2.3.1.   *Aid not exceeding 50% of the eligible costs: comparison of aid per tonne-km with external cost savings per tonne-km*

Railway

(39)   On the basis of a current excise duty in Hungary of HUF 120,35 approximately EUR 0.38€ per 1 litre[21] of fuel and an average fuel consumption in railway transportation in Hungary of 11,905 litres per 1000 tonne-km[22], the aid per 1000 tonne-km amounts to approximately 4.5€.

(40)   This represents 17% of the external avoided costs (which amount to 25,94 € per 1000 tonne-km in case of diesel rail freight transport according to Table 1 above) and is therefore clearly less than 50% aid intensity in compliance with the presumption threshold laid down in point 107(b) of the Guidelines.

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[21] The Commission has used for the calculation the highest possible amount of excise duty.

[22] Tremove Data. However the Hungarian authorities have provided more appropriate average consumption data based on the data reported by railway companies (approximately 3,2 litres per 1000 km) the Commission used to its calculation the Tremove data as in its prior decision. Such a big difference can be only the result of the different calculation methods, the effectivity of the rail freight transport did not improve in such a huge extent in the last 7 years. As the calculation of the Commission based on the less favourable data results in an acceptable ratio of aid the use of the more favourable data provided by the Hungarian authorities would result even in better aid ratio.

(41)   The Hungarian authorities confirmed that the notified aid will not be cumulated with any other form of aid.

Inland waterway

(42)   Inland navigation in Hungary is disadvantaged in respect of road transport, which in market terms can offer much better transport prices as a consequence of lower operating costs that do not take into account external costs. Inland navigation through the Danube has ample capacity to absorb heavy road traffic exchanges that lead to congestions and negative externalities in the TEN-T Rhine-Danube Core Network Corridor[23].

(43)   On the basis of a current excise duty in Hungary of 0. 38€ per 1 litre of fuel and an average fuel consumption of 7.99 litres per 1000 tonne-km on inland waterways in Hungary[24], the aid per 1000 tonne-km amounts to 3€.

(44)   This represents 9% of the external avoided costs (which amount to 33,8€ per 1000 tonne-km according to Table 1 above) and is therefore clearly less than 50%.[25]

(45)   While there are no precise data available for the corresponding proportion in passenger transportation, it is not conceivable that the subsidy per passenger-kilometre could be higher than the corresponding external cost avoided by using inland waterway transport instead of road transport.

(46)   The Commission further notes that the scheme has a cap, as well as a mechanism for claw back in the event that the ceiling of 50% is exceeded, both for railway and inland waterway.

3.2.3.2.   Aid not exceeding 30% of the cost of a cleaner transport mode

Rail

(47)   According to data provided by the Hungarian authorities, the aid in the form of excise duty advantages will be far below 30% of the overall cost of rail transport given that the total fuel-related cost in the rail transport based on diesel traction is below 20% of the overall costs[26] (the excise duty related cost would be just a fraction thereof).

Inland waterway

(48)   According to the Hungarian authorities, the share of fuel costs in inland waterway transport is higher than in railway transport[27] but it is clearly inconceivable that the

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[23]https://ec.europa.eu/transport/sites/transport/files/themes/infrastructure/news/doc/2015-05-28-coordinator-work-plans/wp_rhine-d_final.pdf

[24] Tremove Data.

[25] The Hungarian authorities have provided concerning the inland waterway transport only less favourable data. According to them the external cost savings by shifting 1000 tkm from road would be only 14,1€ but it does not alter the conclusion drowned by the Commission as calculating with that data the result would be 21 % which is also below the 50 % threshold.

[26] According to the information provided by the Hungarian authorities the fuel-related costs of rail transport based on diesel traction exceed 11.62 % of the total cost of the transport in 2014 and 9.3 % in 2015.

[27] A concrete percentage depends a lot on the type of ship, development in fuel prices and other factors.

excise duty would reach 30% of the overall cost of transportation using inland waterways.[28]

(49) The Commission further notes that the scheme has a cap, as well as a mechanism for claw back in the event that the ceiling of 30% is exceeded, both for railway and inland waterway.

3.2.4. Other conditions

(50) As the measure is an excise duty exemption falling under Article 15(1)(e) of Directive 2003/96/EC, its impact on the price of transport can be presumed (see point 110 including its footnote 1 of the Guidelines and the decision-making practice of the Commission).

(51) According to point 111 of the Guidelines, in case of aid for reducing external costs, there must be realistic prospects of keeping the traffic transferred to rail and inland waterway transport so that aid leads to a sustainable transfer of traffic.

(52) In this respect, the data submitted by the Hungarian authorities in Table 2 shows that the measure at hand helps to keep the volume of transportation in rail and inland waterway transport at least at a relatively steady level.

Table 2. Domestic freight transport performance from 2007 to 2015 (HCSO)

Year	Tkm in millions	Of which:			
		rail	road	waterway	pipeline
2007	15629	1289	13173	6	1159
2008	15495	1374	13010	6	1105
2009	14448	1268	12129	4	1046
2010	13667	1341	11285	4	1037
2011	12844	1169	10547	4	1123
2012	12411	1423	9190	3	1796
2013	12504	1606	9228	3	1667
2014	13559	2049	9637	14	1859
2015	13868	1784	10366	11	1707

(53) It can therefore be considered that the conditions related to the necessity and proportionality of the aid are met.

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[28] In any case, the maximal amount of the support which can be claimed in the context of the excise duty is HUF 120 350 per thousand litres which exceeds only 31.8 %, of the gross price of diesel, which is HUF 378 613,31 per thousand litres. Therefore it is inconceivable the ratio of aid would exceed the threshold of 30 % of the total cost. Even when the share of fuel related costs in the total cost is higher than in railway transport the fuel costs is just one component of the total cost, there are another additional factors increasing the amount of the total cost. The Commission can therefore reasonably assume that the maximal aid amount does not exceed significantly the 30 % threshold.

3.2.5. *The aid scheme is granted on non-discriminatory terms, the aid scheme is transparent and limited in time*

(54) The Hungarian authorities have demonstrated that transport operators registered in other EU Member States are subject to the same treatment as the operators registered in Hungary. Therefore the aid is granted on non-discriminatory terms.

(55) The scheme is transparent as the conditions for benefiting from excise duty reductions/exemptions are clearly stipulated in the Act LXVIII of 2016 on Excise Tax.

(56) As explained above, the aid scheme is time limited – it will continue to apply till 30.04.2023. This is in line with the time limitation imposed by point 97 including its footnote 3 of the Guidelines and the decision-making practice of the Commission concerning a timeframe of maximum 10 years for measures which fall within the scope of Article 15(1)(e) of Council Directive 2003/96/EC.[29] The duration of the current measure would even not use this maximal limit. Possible prolongation of the scheme beyond 30 April 2023 is subject to re-notification obligation.

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

(57) Point 96 of the Guidelines stipulates that 'distortion of competition which is inherent in aid must not jeopardise the general interests of the [Union]. By way of illustration, aid likely to shift traffic flows from short sea shipping to rail would fail to meet these criteria'.

(58) The notified aid scheme is clearly designed to reduce imbalances between railway transport and inland waterway transport on the one hand and road transport on the other hand. There is no less polluting transport mode than rail and inland waterway in Hungary.

(59) The Commission concludes that the aid scheme in question does not give rise to a distortion of competition to an extent contrary to the common interest according to point 96 of the Guidelines and the decision-making practice of the Commission.

3.2.7. *Transparency*

(60) The Hungarian authorities confirmed that they will provide, on the national websites dedicated to state aid, the appropriate information on the State aid. [30]

4. CONCLUSION

(61) The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the Treaties as it meets the needs of coordination of transport pursuant to Article 93 of the Treaty on the Functioning of the European Union.

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[29] OJ 31, L 283, 31.10.2003,p. 51

[30] Website available at tvi.kormany.hu.

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Yours faithfully
For the Commission

Margrethe Vestager
Member of the Commission

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