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Subject: State Aid SA.47429 (2017/N) – Croatia

Incentives for Combined Transport in Croatia

Sir,

1. PROCEDURE

- (1) On 26 January 2017, the Croatian authorities notified to the Commission an aid scheme aimed at supporting intermodal activities, namely reducing the annual charge for public roads; an incentive payment for combined transport companies that switch from road to rail or inland waterways and an incentive payment for railway companies for the charges to access infrastructure, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union ("TFEU").
- (2) On 31 March 2017 and on 22 June 2017 the Commission requested further information from Croatia, which was provided on 3 May 2017 and on 25 July 2017, respectively.

2. DESCRIPTION OF THE MEASURES

2.1. Objective of the aid scheme

- (3) The scheme aims at promoting intermodality by addressing the structural imbalances between different modes of transport by compensating for the lack of internalisation of

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external costs and the costs for infrastructure use. The scheme also aims at protecting the environment by promoting environmentally friendlier transport modes.

- (4) In terms of technical characteristics and operational flexibility, the railway sector and the inland waterway transport suffer from inherent disadvantages compared to road and at the same time they offer considerable external cost savings. The share of rail transport and of inland waterway transport in the overall transport of goods remains low and the majority of goods are transported by road with the resulting negative impacts on the environment as well as other negative externalities such as congestion and accidents, as it can be seen from the tables below which show transport shares in Croatia by types of transport, as well as the volumes of freight and passenger transported.

Table 1. Transport market shares in the Republic of Croatia in the period 2011-2015

	Rail	Inland waterway	Sea	Road
Share %				
2011.	9,67	4,25	24,88	61,20
2012.	10,26	5,49	23,71	60,54
2013.	9,80	5,36	22,76	62,08
2014.	10,16	5,26	19,89	64,69
2015.	9,52	6,36	20,46	63,66

*source of information – the Republic of Croatia National Bureau for Statistics (<http://www.dzs.hr/>)

Table 2. Volumes of freight transported and tonne/km in the Republic of Croatia, period 2011-2015

	Rail		Road		Sea		Inland waterway	
	Goods transported 000 t	Tonne/km mil.	Goods transported 000 t	Tonne/km mil.	Goods transported 000 t	Tonne/km mil.	Goods transported 000 t	Tonne/km mil.
2011	11 794	2 438	74 645	8 926	30 348	155 437	5 184	692
2012	11 088	2 332	65 439	8 649	25 636	125 678	5 934	772
2013	10 661	2 086	67 500	9 133	24 744	127 283	5 823	771
2014	10 389	2 119	66 146	9 381	20 335	107 709	5 377	716
2015	9 939	2 183	66 491	10 439	21 376	122 223	6 642	879

Table 3. Volumes of passengers transported and passenger/km in the Republic of Croatia, period 2011-2015

	Rail		Road		Sea		Inland waterway
	Passengers transported 000	Passenger/km mil.	Passengers transported 000	Passenger/km mil.	Passengers transported 000	Passenger/km mil.	Passengers transported 000
2011	49 983	1486	52 561	3145	12 926	583	0

2012	27 669	1104	52 293	3249	12 474	602	0
2013	24 265	948	54 292	3507	12 770	613	0
2014	21 926	927	54 000	3648	13 029	621	0
2015	21 683	951	52 126	3377	13 082	624	0

*source of information – the Republic of Croatia National Bureau for Statistics
(<http://www.dzs.hr/>)

2.2. Legal basis

- (5) The legal basis of the measures is the Croatian Combined Transport Act (Narodne Novine -Official Gazette of the Republic of Croatia- No 120/2016), and the draft proposal for a Combined Transport of Goods Act submitted with the notified measures to the European Commission (Zakon o kombiniranom prometu (Narodne novine“, 120/2016.) Nacrt prijedloga Zakona o kombiniranom prijevozu tereta odobren od Europske Komisije).

2.3. Duration and budget

- (6) In line with the submissions of the Croatian authorities, the notified scheme covers a period of 5 years, from 01.01.2018 until 31.12.2022.
- (7) Based on their evaluations the Croatian authorities estimate the loss of revenue for the whole period of the duration of the scheme to amount to EUR 674 000 (HRK 5 million).

2.4. Beneficiaries

- (8) The measures applies to all undertakings organising combined transport services in Croatia and all railway companies that use combined transport, as defined in Directive 92/106/EEC as amended.¹

¹ 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, Official Journal L 368, 17.12.1992 P. 0038 – 0042, as amended by Council Directive 2013/22/EU of 13 May 2013 adapting certain directives in the field of transport policy, by reason of the accession of the Republic of Croatia, Official Journal L 158, 10.5.2013, p.356.

- (9) Any combined transport operator may take advantage of the subsidies irrespective of their country of registration or office location, as long as they are registered or established in Croatia and have a license in the transport provision activity.
- (10) The aid will be granted on non-discriminatory terms. The aid does not involve any discretion on the part of the public authorities.

2.5. Rules of cumulation

- (11) The Croatian authorities do not allow for cumulation with other EU, State or regional grants, including similar contributions.

3. ASSESSMENT

3.1. Existence of aid

- (12) Pursuant to Article 107 (1) TFEU, *"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 production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market"*.
- (13) The criteria laid down in Article 107(1) TFEU are cumulative. Therefore, in order to determine whether the notified measures constitute State aid within the meaning of Article 107(1) TFEU all of the following conditions need to be fulfilled. The financial support must:
 - be granted by the State or through State resources,
 - favour certain undertakings or the production of certain goods,
 - distort or threaten to distort competition, and
 - affect trade between Member States.
- (14) The notified scheme is comprised of three measures: *(i)* a reduction of the annual charge for public roads; *(ii)* an incentive payment for combined transport companies that switch from road to rail or inland waterways (aid for the reduction of external costs) and *(iii)* an incentive payment for railway companies for the charges to access infrastructure (aid for the compensation of infrastructure charges).
- (15) The first measure regarding the reduction of the annual charge for public roads in the form of tax rebates is laid down in Article 4, paragraphs (1) and (2) of the rules of procedure (ordinance) that transpose Directive 92/106/EEC (see Article 6.1 thereof).²

² This reads as follows:

Article 4 - Incentive payments for combined transport of goods – road leg:

"Owners or users of motor vehicles or trailers registered in the Republic of Croatia and used, in the 12 months since their last roadworthiness test, for combined transport of goods during the initial and/or final leg to or from a combined transport rail terminal or a trans-shipment rail station, shall have the annual charge for the use of public roads, which is payable on registering a motor vehicle or a trailer, and which is laid down by a separate regulation, reduced by up to 50 %.

- (16) According to the General Court,³ if Member States transpose a provision of Union law containing a clear and precise obligation into national law, they are implementing EU law and measures taken to that end are not imputable to them.
- (17) A measure is not imputable to a Member State if the Member State is under an obligation to implement it under Union law without any discretion. In that case, the measure stems from an act of the Union legislature and is not imputable to the State.⁴
- (18) In the present case, Article 6(1) of the Directive 92/106/EEC itself foresees the following: "*Member States shall take the measures necessary to ensure that the taxes listed in paragraph 3 which are applicable to road vehicles (lorries, tractors, trailers or semi-trailers) when routed in combined transport are reduced or reimbursed either by a standard amount, or in proportion to the journeys that such vehicles undertake by rail [...]. The reductions of reimbursements referred to in the first paragraph shall be granted by the State in which the vehicles are registered, on the basis of the rail journeys effected within that State.*" That is, Member States have the obligation to provide incentives for using public roads by ensuring that the incentives are also applicable to road vehicle when routed in combined transport. The refund of the annual charge for using public roads is included in Article 6 (3) of Directive 92/106/EEC and it is therefore considered that the measure at stake is not imputable to the State.
- (19) The measure does not fall within the criteria laid down in Article 107(1) TFEU and it will therefore not be dealt with further in the present decision.
- (20) As to measures (ii) and (iii) regarding the incentive payments for combined transport for compensation of external costs and for rail infrastructure use, those two measures:
- (a) involve State resources given that the subsidies are granted from the budget of the central government;
 - (b) confer an economic advantage as they relieve the direct beneficiaries of a part of the operational costs which they would normally have to bear and enable them to transport their goods at a reduced price;
 - (c) are selective in nature because they are confined to certain segments of the transportation services market, and
 - (d) are liable to distort competition and affect trade between Member States since they concern rail freight markets which have been liberalised.
- (21) Therefore, the notified measures (ii) and (iii) constitute State aid within the meaning of Article 107(1) TFEU.

The reduction of the annual charge for the use of public roads shall be calculated according to the following formula: $P = X/100 \times 0.5 \times N$ where all the values of $X > 100$ shall be rounded down to $X=100$. P: amount of reduction of the annual charge for the use of public roads (in HRK) ; X: number of initial and/or final leg journeys in a transport operation ; N: annual charge for the use of public roads payable (in HRK)."

3 Case T-351/02 Deutsche Bahn v Commission, ECLI:EU:T:2006:104, para. 102.

4 Case Puffer, C-460/07, ECLI:EU:C:2009:254, paragraph 70.

3.2. Lawfulness of the aid

- (22) The Commission notes that the notified scheme has not been implemented so far. Therefore Croatia is in compliance with the obligation laid down in Article 108(3) TFEU.

3.3. Compatibility of the aid

3.3.1. Legal basis

- (23) The notified measures fall within the scope of Article 93 TFEU and have therefore to be assessed on that basis.
- (24) 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 market failure. 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 on society.
- (25) As expressed in the Commission's White Paper on Transport Policy⁵, the fundamental charging principle for infrastructure use is that charges must cover not only infrastructure costs, but also external costs, namely costs connected to accidents, air pollution, noise and congestion. This approach has been applied in a number of the Commission State aid decisions over the years.⁶
- (26) It also reflects the fact that, in view of Articles 3, 6, 191 TFEU⁷, the environmental objectives of the Treaty have to be pursued inter alia through the Common Transport Policy.
- (27) The policy to promote inland waterway transport in Europe is in the NAIADES Action Programme⁸. A European Strategy for Low-Emission Mobility⁹ 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.

5 Roadmap to a Single European Transport Area—Towards a competitive and resource efficient transport system, COM(2011)144 of 28.03.11.

6 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, OJ C 83 of 17.3.2017, p.3; 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 280 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.

7 Till 30 November 2009 – Articles 2, 6 and 174 EC Treaty.

8 https://ec.europa.eu/transport/modes/inland/promotion_en.

9 COM(2016) 501 final.

- (28) 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. 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.
- (29) 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 Paper¹⁰. 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 Regulation¹¹. 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 2019-2020¹², following the introduction of so-called EURO VI norms in road freight sector.
- (30) As regards the railway transport sector, rules for the interpretation of Article 93 TFEU have been set out in Section 6 of the Community Guidelines¹³ (hereafter "Guidelines") on State aid for railway undertakings.
- (31) As regards the inland waterway sector, as it was done in the previous decision-making practice of the Commission,¹⁴ 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.
- (32) According to point 98 of the Railway guidelines, aid for the needs of transport coordination can take several forms including:
- aid for infrastructure use, that is, aid to railway undertakings to compensate them for infrastructure charges that do not have to be paid by other undertakings providing transport services by other modes of transport; and
 - aid for reducing external costs that is designed to encourage a modal shift to rail because it generates lower external costs than other modes such as road transport.
- (33) Given the context of the notified scheme, the Commission finds it appropriate to assess separately: (i) the compensation for the reduction of external charges by applying the rules for aid for reducing external costs as specified under Section 6.3. of

10 Roadmap to a Single European Transport Area—Towards a competitive and resource efficient transport system, COM(2011)144 of 28.03.11.

11 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").

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

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

14 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.

the Guidelines and (ii) the compensation for the additional infrastructure charges by applying the rules for aid for rail infrastructure use, specified also under section 6.3. of the Guidelines.

3.3.2. *Existence of additional costs for the use of railway infrastructure*

- (34) According to point 102 of the Railway Guidelines the eligible costs as regards aid for infrastructure use are the additional costs for infrastructure use paid by rail transport but not by a more polluting competing transport mode.
- (35) With regard to infrastructure costs in the notified scheme, the Croatian authorities take the additional costs for infrastructure use for the carriage of goods which include only the minimum access package as per the calculation in Chapter 6.3 (Tariffs) of the infrastructure manager's Network Statement and which will be disbursed at the rate of HRK 2 per train-km, the additional cost per unit of traffic for infrastructure use as compared to road transport.
- (36) The infrastructure fees that are payable can therefore be regarded as additional costs paid by rail transport users for the use of railway infrastructure but not by a more polluting competing transport mode and these additional costs can be regarded as eligible costs within the meaning of the Railway Guidelines.

3.3.3. *Existence of external costs savings*

- (37) According to point 103 of the Railway Guidelines, the eligible costs as regards aid for reducing external costs are the part of the external costs which rail or inland waterway transport makes it possible to avoid compared to competing transport modes.
- (38) Point 104 of the Railway Guidelines 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".
- (39) It is acknowledged that both rail and inland waterway transport have much lower external costs in terms of accident costs, noise and air pollution, when compared to road transport, as it can be seen in Tables 4 and 5 below 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.
- (40) In 2012 the Joint Research Centre of the Commission has produced a calculation of external costs for different transport modes in Croatia based on the methodology presented in a Handbook on estimation of external cost in the transport sector published by the Commission¹⁵ and on the data from the REMOVE model¹⁶.

15 http://ec.europa.eu/transport/themes/sustainable/studies/sustainable_en

16 REMOVE 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.remove.org/>.

Table 4. Marginal average external costs of accidents, noise, air pollution and climate change for Croatia for 2010 in € per 1000 tkm.

	Road	Rail	Inland waterway
Accidents	6.3	0.4	0
Noise	0.9	0.4	0
Air pollution	7.4	1.5	4.4
Climate Costs	2.3	0.3	0.6

- (41) The Croatian authorities have also provided some data on the number of accidents, which clearly shows that such number is higher for road than for rail or inland waterway:

Table 5. Number of accidents and fatalities in transport in the Republic of Croatia in the period 2011- 2015

	Road		Rail		Sea		Inland waterway	
	Fatalities	Accidents with casualties	Fatalities	Accidents with casualties	Fatalities	Accidents with casualties	Fatalities	Accidents with casualties
2011.	418	13 228	15	39	0	0	0	0
2012.	393	11 773	14	42	0	0	0	0
2013.	368	11 225	18	33	0	0	0	0
2014.	308	10 607	19	33	0	0	0	0
2015.	348	11 038	15	27	0	0	0	0

- (42) The data above clearly show that use of rail or inland waterways generate much less external costs than the use of road transport for freight transportation.
- (43) Moreover, transport research¹⁷ 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 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 Regulation for inland navigation diesel engines will strengthen the comparative advantage of inland navigation in terms of air emissions.
- (44) 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.

17 Cf EU Platina 2 project: <http://naiades.info/news-and-events/markets/platina-2-the-project/>

3.3.4. *Necessity and proportionality of the aid measures*

- (45) According to points 107 (a) and 109 of the Railway Guidelines, there is a presumption of necessity, proportionality and absence of overcompensation of the **aid for rail infrastructure use** when the intensity of the aid stays below the following values: up to 100% of the eligible costs and up to 30 % of the total cost of rail transport.
- (46) As regards the first of these values, the aid for rail infrastructure use is strictly limited to the cost differential between rail and road. As to the second of these values, the proportion of aid in the infrastructure charge, which forms part of the total cost of rail transport, is less than 15 % for all routes, it is clear that the proportion of aid incorporated into the total cost of rail transport must be even lower, thereby complying with both conditions set out in point 107(a) of the Community guidelines on State aid for railway undertakings.¹⁸
- (47) According to points 107 (b) and 109 of the Railway 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: 50 % of the eligible costs and up to 30 % of the total cost of the cleaner transport mode.
- (48) The aid will be given to 5 routes, ranging from 7.64% of external costs to 29.82% in the least favourable route.¹⁹ Taking the least favourable route receiving aid, the total calculated saving of shifting hypothetical freight (20 ITU, each of 10 t) from road to rail transport is EUR 1 341.47. The aid envisaged for that route is 20 x EUR 20 (HRK 150) = EUR 400, which means that aid accounts for approximately 29.82 % of the eligible costs, thus complying with the requirement set out in point 107(b) of the Railway Guidelines (up to 50 % of the eligible costs).
- (49) The Commission notes also that for the same least favourable route, rail transport costs are approximately EUR 1 334.00, 30 % of which is accounted for by the aid of EUR 400 (HRK 3 000.00), thus complying with the requirement set out in point 107(b) of the Community guidelines on State aid for railway undertakings (up to 30 % of the total cost of rail transport).
- (50) The Commission further notes that Croatia will closely monitor the application of the scheme and foresees a cap, as well as a mechanism for claw back in the event that the ceiling above is exceeded.

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

- (51) The notified measures do not set out any restrictive conditions based on the nationality of the undertaking. The aid is therefore granted on non-discriminatory terms.

18 The percentage of aid for the 5 routes at stake, ranges between 12.66% and 14.75% of the infrastructure charge.

19 The five routes concerned are: Rijeka-Tovarnik; Rijeka-Koprivnica; Rijeka-Zagreb; Savski Marof-Tovarnik and Zagreb-Koprivnica.

- (52) The notified schemes are transparent as the conditions for benefiting from them are clearly stipulated in the relevant legal acts. Finally, the aid scheme is limited in time and their duration is in line with the time limits laid down in point 97 of the Railway Guidelines.

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

- (53) Point 96 of the Railway 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".
- (54) The notified scheme is designed to reduce imbalances between railway and inland waterway on one hand and road transport modes on the other. There is no less polluting transport mode than rail and inland waterway in Croatia. Concerning potential negative effects on alternative transport modes, the Commission is of the opinion that they would be very limited for reasons principally related to the very low share of other transport modes in the Croatian transportation market.
- (55) To assess the potential negative impact that the notified scheme could have the Commission takes into account the data on distribution of traffic volumes in Croatia among transport modes. Table 1 above, shows a net preponderance of the road sector over rail and inland waterways.
- (56) Consequently, the Commission concludes that the present aid scheme does not give rise to a distortion of competition to an extent contrary to the common interest according to point 96 of the Guidelines.

3.3.7. Transparency

- (57) The Croatian authorities confirmed that they will provide through the respective national websites²⁰, all the appropriate information on the State aid measures presented.

4. CONCLUSION

- (58) 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.

²⁰ Website of the Ministry responsible for transport: <http://www.mppi.hr/default.aspx?id=780>.

- (59) 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 languages on the Internet site:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>

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

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Yours faithfully,

For the Commission

Margrethe Vestager

Member of the Commission