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**Subject: State Aid SA. 48485 – Austria  
Prolongation of a programme supporting the development of  
connecting railways and transfer terminals in intermodal transport  
2018 – 2022**

Sir,

## 1. PROCEDURE

- (1) On 22 June 2017, the Austrian authorities notified to the Commission, in accordance with Article 108 (3) of the Treaty on the Functioning of the European Union (TFEU), their intention to prolong an aid scheme aiming to encourage the modal shift of freight from road to rail and water. The notification was registered under case number SA. 48485. The scheme in question was approved by the Commission on 19 September 2012<sup>1</sup> as a programme combining two previous aid schemes: the Intermodal Transfer Guidelines ("Richtlinie zur Unterstützung von Umschlagsanlagen im intermodalen Verkehr"), approved by the Commission on 13 September 2006 (N 196/2006)<sup>2</sup>, and the Guidelines on the construction of private railway connections ("Richtlinie zum Ausbau privater Gleisanschlüsse"),

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<sup>1</sup> Commission decision of 19.09.2012, SA.34985 – Austria – Programme for supporting the development of connecting railways and transfer terminals 2013 – 2018, ex N 196/2006: "Intermodal Transfer Guidelines" and N 707/2006: "Guidelines on the development of private connecting railways", OJ C 34, 15.02.2013, p.19.

<sup>2</sup> OJ C 280, 18.11.2006, p. 3.

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first approved by the Commission on 13 March 1996 with subsequent prolongations approved by the Commission on 19 June 2002 and 29 January 2007 (N 707/2006)<sup>3</sup>.

- (2) The Commission requested additional information on 28 July 2017 which the Austrian authorities provided on 27 August 2017.

## **2. DESCRIPTION OF THE MEASURE**

### **2.1. Objective**

- (3) The measure provides for the prolongation of a scheme to support the modal shift of freight from road to rail and water by means of granting aid for transshipment facilities for combined transport and private railway connections.
- (4) Under the scheme, aid is granted for investments for the construction and the extension of infrastructure for combinations of land-/water-bound modes of transport, in which cargo is handled either containerised or as piece/bulk freight. Furthermore, aid is granted for investments for the construction, extension and optimization of private infrastructure for connecting railways. The project must be located in Austria.
- (5) Investments for the optimization of infrastructure (so-called "maintenance investments" under the scheme) are investments which, in their overall characteristics, go beyond the restoration of the subsidized infrastructure but bring about improvements in the operational handling, durability, or usability of the existing structures. It is therefore necessary for applicants to demonstrate a "functional gain" or an "optimization of the installation" by the planned measures to be eligible for the aid.
- (6) Transshipment systems refer to installations which link at least two freight transport modes in an efficient manner. Connecting railways are defined as railways which directly or indirectly connect the traffic of one or more companies with main or secondary tracks in a way that enables a transition of rail vehicles.

### **2.2. National legal basis**

- (7) The measures are based on:
  - (a) The programme of the Federal Ministry of Transport, Innovation and Technology (BMVIT) for supporting the development of connecting railways and intermodal transfer terminals ("Programm für die Unterstützung des Ausbaues von Anschlussbahnen sowie von Umschlagsanlagen des Intermodalen Verkehrs");
  - (b) The Federal Railway Act BGBl. Nr.60/1957, as amended by BGBl. I Nr. 137/2015.

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<sup>3</sup> OJ C 137, 21.06.2007, p. 4.

### **2.3. Duration and budget**

- (8) The present programme is a prolongation of a scheme authorised by the Commission on 19 September 2012 which expires on 31 December 2017. The prolongation is foreseen from 1 January 2018 to 31 December 2022.
- (9) The overall budget amounts to EUR 50 million, with an annual budget of EUR 10 million.

### **2.4. Beneficiaries and conditions for granting the aid**

- (10) As in the predecessor scheme, the aid will be accessible to any private EU entity providing freight transport services and having at least one operational establishment registered in Austria. The measure is aimed at industrial and commercial companies transferring cargo. Railway undertakings may not benefit from the scheme.
- (11) The eligibility conditions and the obligations of the beneficiaries correspond to those of the previous scheme. In particular, aid shall only be granted where the realisation of the project would not be possible without funding from government sources and the overall financing of the project must be assured. Furthermore the applicant must be in sound financial condition and must submit a declaration ensuring a non-discriminatory operation of the infrastructure.
- (12) The beneficiary is obliged to use the infrastructure to provide transport services whose duration and scope are outlined in the programme and specified by a contractual agreement. In the event of non-performance, the competent authorities shall request a reimbursement of the aid or an adequate proportion thereof.
- (13) The evaluation criteria for the project selection correspond to those of the predecessor scheme. Under the scheme, priority shall be given to connecting railway projects of small and medium enterprises and the applicant's contribution to modal shift is taken into account.
- (14) The scheme applies to all business sectors. Up to 100 beneficiaries are expected in the funding period.

### **2.5. Form of the aid, eligible costs and aid intensity**

- (15) The aid will be paid as a direct grant. It may be paid as a lump-sum or in instalments which correspond to the specific needs of the project, if the supported investment extends over a longer period. The aid will be allocated by the BMVIT, with the SCHIG mbH ("Schieneninfrastruktur- Dienstleistungsgesellschaft mbH") as the processing agency.
- (16) The following measures will be supported under the scheme:
  - (a) With regard to intermodal transshipment facilities the eligible costs and the aid intensity are the same as in point 1.1., recitals 17 and 18 of the decision of 19 September 2012.

- (b) With regard to the construction and the extension of connecting railways, the eligible costs and the aid intensity are the same as in point 1.2., recitals 26 to 30 of the decision of 19 September 2012.
- (c) The eligible costs for the optimization of connecting railways ("maintenance investments") encompass:
  - 20% of civil engineering (rail and area drainage) costs;
  - 10% of earthworks costs;
  - 35% of rail link and track systems (construction work) costs;
  - 10% of road link and transshipment areas (e.g. increasing the load-bearing capacity of the road structure for the use of heavy transshipment equipment) costs;
  - 25% of building construction (roofed processing areas) costs;
  - 25% of transshipment equipment (replacement investments for outdated transshipment equipment) costs;
  - 20% of equipment costs for overhead contact lines;
  - 25% of equipment costs for increasing safety at rail crossings;
  - Planning costs can be included up to 5 % of total eligible costs.
- (d) The maximum amount of aid per project is EUR 2.5 million for creating new connecting railways, EUR 2.0 million for extending and EUR 300 000 for optimizing existing connecting railways, and EUR 2.5 million for creating and extending transshipment facilities. The maximum aid intensity is 50 % of the eligible investment costs. The scheme sets a de minimis limit of EUR 10 000 per project.

## **2.6. Cumulation and control**

- (17) The Austrian authorities have confirmed that the maximum limits set out in the programme will be respected. In case of cumulation, the maximum aid intensity may not exceed 50 % of the eligible investment costs. To ensure this, the different public authorities will exchange information on a regular basis.
- (18) During the term of the programme, the supported projects will be monitored on an ongoing basis by the competent authorities. A final evaluation of the programme will be made at the end of the period.

## **2.7. Evaluation**

- (19) A report by the SCHIG mbH as the processing agency dating from December 2016 analysed the effects of the aid scheme from 2012 until 2016.
- (20) According to the evaluation, 2.2 million additional tons of freight have been shifted onto rail-based modes of transport since the beginning of the scheme. The

report therefore suggests that the scheme has, as intended, contributed to the modal shift from road to rail and inland waterway transport.

- (21) The study notes that the applications for new installations have been decreasing, while there is an increased demand for the support of optimization projects. As the transport of goods will continue to grow in the coming years, the report therefore deems it necessary to continue the programme and in addition proposes to subsidise "maintenance investments" as defined in recital 5 above, to prevent a shift back to road.

## **2.8. Modifications introduced to the predecessor scheme**

- (22) The modifications notified by the Austrian authorities concern:
- (a) The prolongation of the scheme for the period 1 January 2018 to 31 December 2022;
  - (b) A reduction of the overall budget from EUR 114 million to EUR 50 million, i.e. EUR 10 million per year;
  - (c) The reduction of the de minimis limit from EUR 15.000 to EUR 10.000 while maintaining the current percentages and maximum aid per project;
  - (d) The introduction of a separate investment category for the optimization of connecting railways ("maintenance investments"), previously largely included in the investments for the extension of infrastructure, together with a reduction of the aid intensity for such measures;
  - (e) Changes in the administrative process, e.g. the creation of the possibility to apply for aid on an ongoing basis throughout the year;
  - (f) Editorial changes and amendments in the wording due to changes in national legislation.

## **3. ASSESSMENT OF THE NOTIFIED PROLONGATION**

### **3.1. Existence of aid within the meaning of Article 107(1) TFEU**

- (23) The Commission notes that the modifications to the predecessor scheme mainly concern the prolongation in time, the new budget and the introduction of aid for the optimization of infrastructure as a separate investment category. The Commission further notes that the latter was to a large extent already included in the category of investments for the extension of infrastructure under the predecessor scheme approved by the Commission on 19 September 2012 (and the guidelines on the construction of private railway connections, approved by the Commission on 29 January 2007 (N 707/2006)). The other elements have remained mainly unchanged compared to the scheme assessed by the Commission in its decision of 19 September 2012.
- (24) For the reasons set out in recital 42 of the decision of 19 September 2012, recitals 46 to 50 of the decision of 13 September 2006 and recital 22 of the decision of 29 January 2007, which remain valid, the Commission therefore considers that the notified scheme constitutes State aid in the sense of Article 107(1) TFEU.

### 3.2. Compatibility of the aid

- (25) The present measures aim at promoting a modal shift from road transport to rail and inland waterway transport, which is a recognised objective of coordination of transport.<sup>4</sup> The EU has for some time pursued a policy of achieving a balanced intermodal transport system, and the fostering of the competitiveness of combined transport vis-à-vis road is essential to this policy<sup>5</sup>. This policy has not changed and also concerns the optimization of connecting railway systems.
- (26) The Commission therefore considers that the scheme at hand can be assessed directly on the basis of Article 93 TFEU which, since the entry into force of Regulation (EC) 1370/2007<sup>6</sup>, has become directly applicable as the legal basis for establishing the compatibility of aid for the coordination of transport, if not covered by the regulation.
- (27) The concept of "coordination of transport" used in that provision has a significance which goes beyond the simple fact of facilitating the development of an economic activity. It implies an intervention by public authorities which is aimed at guiding the development of the transport sector in the common interest, like the present scheme<sup>7</sup>.
- (28) According to a constant decisional practice<sup>8</sup>, aid for the coordination of transport will be deemed compatible with the internal market under Article 93 TFEU if the following conditions are met:
- The aid must contribute to a well-defined object of common interest;
  - The aid must be necessary and provide an incentive effect;
  - The aid must be proportionate;
  - Access to the aid in question must be open to all users on a non-discriminatory basis;

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<sup>4</sup> See Commission decision of 09.11.2011, SA.32632 (2011/N) - ETGE, OJ C 82, 21.03.2012, p. 2; Commission decision of 15.06.2011, SA.3224, - Netherlands, Development of the Alblasserdam Container Transferium, OJ C 215, 21.07.2011, p. 22.

<sup>5</sup> White Paper-Roadmap to a Single European Transport Area-Towards a competitive and resource efficient transport system, COM (2011) 144 of 28.03.2011; Communication from the Commission on the promotion of inland waterway transport "NAIADES": An integrated European action programme for inland waterway transport, COM (2006) 6 of 17.01.2006.

<sup>6</sup> Regulation (EC) 1370/2007 of the European Parliament and the Council of 23.10.2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) 1191/69 and 1107/70, OJ L 315, 03.12.2007, p. 1.

<sup>7</sup> See also the judgement of the Court of Justice of 12.10.1978, Case 156/77, Commission v Belgium, ECR 1978, p. 1881, paragraph 10.

<sup>8</sup> Commission decision of 21.12.2016, SA.46720 – Germany – Guidelines on the construction, extension and reactivation of private railway sidings, OJ C 20, 20.01.2017, p. 14; Commission decision of 13.01.2009, N 415/2008 – Austria – Special Guidelines for the Programme of Aid for Innovative Combined Transport, OJ C 53, 06.03.2009, p.2; Commission decision of 15.06.2011, SA.32224, - Netherlands, Development of the Alblasserdam Container Transferium, OJ C 215, 21.07.2011, p. 22.

- The aid must not lead to distortions of competition contrary to the common interest.
- (29) In its decision of 19 September 2012, the Commission concluded, on the same basis, that the initial scheme was compatible with the internal market. The modifications introduced in relation to the scheme do not affect this evaluation. The reasoning set out in recitals 43 to 62 of the decision of 19 September 2012 remains valid and applies equally to the modifications mentioned in point 2.8. above.
- (30) Consequently, the Commission considers that for the reasons set out in the decision of 19 September 2012, the above conditions are met and the aid measure is compatible with the internal market based on Article 93 TFEU.

#### **4. DECISION**

- (31) The Commission has come to the conclusion that the aid granted on the basis of the notified aid scheme is compatible with the internal market and has accordingly decided not to raise objections to the notified measure.
- (32) The Commission reminds the Austrian authorities that, in accordance with Article 108(3) TFEU, all plans to refinance, alter or change this aid scheme have to be notified to the Commission.
- (33) 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: <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

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Vice-President