II

*(Acts whose publication is not obligatory)*

# COMMISSION

## COMMISSION DECISION

**of 30 January 2002**

**on the aid scheme which France is planning to implement for the start-up of new short sea shipping services**

*(notified under document number C(2002) 372)*

**(Only the French text is authentic)**

**(Text with EEA relevance)**

(2002/610/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the abovementioned articles and having regard to their comments,

Whereas:

### I. PROCEDURE

(1) By letter dated 13 October 2000, the French authorities notified the Commission of a planned aid scheme to facilitate the start-up of new short sea shipping services.

(2) By letter dated 22 December 2000, the Commission informed France of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the operating aid to cover the costs of running new services. By the same letter, the Commission informed France that it had decided to raise no objections to the financing of preliminary feasibility studies.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [1]. The Commission invited interested parties to submit their comments on the measure.

(4) The Commission received comments from interested parties. It forwarded them to France, which was given an opportunity to react, and received comments from France by letter dated 3 August 2001.

### II. DETAILED DESCRIPTION OF THE AID

(5) The objective of the scheme which the Commission decided to review is to alleviate the financial difficulties inherent in starting up new short sea shipping services.

(6) The aid is to be paid for a maximum of three years and is to be limited to 30 % of the eligible expenditure, with a ceiling in absolute figures of EUR 1 million in the first year, two-thirds of the amount granted in the second year and one third of this amount in the third year.

(7) Aid may be granted only to projects involving several players in the transport chain and shippers. The projects funded must concern the creation of a new service either (a) between French ports or (b) between a French port and a port in another Member State.

[1] OJ C 37, 3.2.2001, p. 16.

(8) The eligible costs correspond to the expenditure eligible under Council Regulation (EC) No 2196/98 of 1 October 1998 concerning the granting of Community financial assistance for actions of an innovative nature to promote combined transport ([1]), that is to say:

(a) the cost of hiring, leasing or amortisation of combinations of vehicles (lorries, trailers, semi-trailers, swap bodies or containers of 20 feet or more);

(b) the cost of hiring, leasing or amortisation of rolling stock (including locomotives) and inland waterway and seagoing vessels subject, in the case of inland waterway vessels, to compliance with the specific rules on structural improvements to inland waterway transport;

(c) investment expenditure or the cost of hiring, leasing or amortisation of installations permitting transhipment between railways, inland waterways, shipping routes and roads;

(d) the cost of using rail, inland waterway and maritime infrastructures, with the exception of harbour dues and transhipment costs;

(e) expenditure relating to the commercial operation of techniques, technologies or equipment previously tested and approved, in particular transport information technology;

(f) the cost of measures related to staff training and the dissemination of project results, as well as expenses for information and communication action to make new transport services known.

Expenditure and/or costs under (a), (b), (c) and (e) are eligible provided the beneficiaries undertake to keep the equipment on the route concerned.

**Grounds for initiating the procedure**

(9) In its decision initiating the procedure, the Commission expressed reservations as to whether the implementing arrangements guarantee that the operating aid is both necessary and strictly proportionate to the set objective. The Commission expressed doubts about the following points in particular:

(a) the planned aid measures must contribute to reducing the share of road traffic by integrating short sea shipping in the intermodal chain of door-to-door transport services. By contrast, they must not result in diversion of traffic flows between neighbouring ports, or between transport modes which also have a positive role to play in the framework of a sustainable mobility policy, such as the railways or inland waterway transport;

(b) in order to ensure the financial transparency of the aid scheme, to facilitate monitoring and to avoid the risk of cross-subsidies, the Commission decision initiating the procedure stressed that the legal entity receiving the aid must have a separate accounting system so that the financial flows for funding the projects selected can be clearly identified;

(c) the Commission also stressed that the criteria which the French authorities intended to apply in order to select the projects to be funded had not been specified sufficiently clearly. In this connection, the Commission considered that only projects which would be viable in the long term and likely to make a real contribution to the development of short sea shipping should be selected to receive operating aid. The arrangements must also guarantee that there would be no discrimination on grounds of nationality between any operators in the transport chain and shippers;

(d) the Commission also stated that, as the aim of the aid is exclusively to facilitate the start-up of short sea shipping services which will be commercially viable in the long term, it considered that, in principle, such aid should not be granted in addition to financial compensation for public service obligations imposed on the same services.

III. **COMMENTS FROM INTERESTED PARTIES**

(10) Following publication of the decision to initiate the procedure, several interested parties (shipping operators and port authorities) submitted their comments to the Commission. In essence, they shared the Commission's doubts and stressed the need to avoid the danger that, instead of leading to a reduction in the share of road traffic and a corresponding increase in the share carried by sea, the opening of new short sea shipping services could divert traffic away from the existing shipping services run by other operators from other ports and to the new services receiving the aid. Some interested parties expressed concern that the aid must be kept to a reasonable level, particularly when the national aid was combined with Community support for pilot actions for combined transport (PACT). The importance of establishing a clear, transparent procedure at national level for selecting the projects to receive aid was also stressed to take account, in particular, of the impact of the aid on the relevant market.

([1]) OJ L 277, 14.10.1998, p. 1.

## IV. COMMENTS FROM FRANCE

(11) The French authorities stressed their intention to implement the scheme in a transparent, non-discriminatory manner, taking care not to support projects which could distort competition against other alternative modes to road transport. By contrast, they were against making the start-up of a new service conditional on prior agreement by the public authorities concerned and the operators already on the market. As regards the level of aid, the French authorities accepted that in cases where the operating aid is combined with other Community aid schemes, the ceiling of 30 % of eligible expenditure will apply to the combined total of national plus Community aid.

## V. ASSESSMENT OF THE AID

(12) The measures in question constitute aid covered by Article 87(1) of the Treaty. They are funded from State resources and benefit individual undertakings by cutting the costs which they would normally have to bear. Since the undertakings are operators on the market in short sea shipping, which is an international economic activity open to competition from other operators in the Community, it can be assumed that this case meets the criterion of affecting trade between Member States.

(13) Paragraphs 2 and 3 of Article 87 allow certain exemptions from the prohibition in paragraph 1 of the same Article. The Commission considers that none of the exemptions listed in paragraph 2 applies to the aid scheme in question. Since its objective is to facilitate the development of short sea shipping, the Commission considers that its compatibility with the common market must be assessed in the light of the exemption allowed by paragraph 3(c).

(14) The Community guidelines on State aid to maritime transport [1] specify which aid programmes may be set up to support the Community's maritime interests. In particular, point 2.2 states that, besides the objectives of safeguarding Community employment, preserving maritime know-how in the Community and improving safety, further objectives of the common transport policy may also be taken into account, such as the construction of a Community framework for sustainable mobility and, as part of this, the promotion of short sea shipping and the development of its full potential.

(15) In its communication on the development of short sea shipping [2], the Commission stressed the contribution which this mode of transport could make towards promoting sustainable, safe mobility, strengthening cohesion within the Union and increasing the efficiency of transport, taking an intermodal approach. It also recognised that short sea shipping must be promoted at all levels, whether Community, national or regional.

(16) The Commission has supported a large number of projects on short sea shipping both under the fourth framework programme for research and development activities or PACT and also under the MEDA accompanying financial and technical measures or from the European Regional Development Fund (ERDF). However, the main obstacle to development of this mode of transport is the high cost of starting up new services.

(17) The aid scheme proposed fits into this context. The objective is, with the aid of a national programme, to supplement the Community aid from PACT in order to finance additional projects, some of which would not be eligible for Community support because only national operators are taking part.

(18) However, in order to qualify for exemption under Article 87(3)(c), these measures must be strictly proportional to the objective set and must have no negative effect on trading conditions to an extent which is not compatible with the common interest. The Commission also notes that these measures constitute operating aid which, in principle, is incompatible with the Treaty [3]. Such aid can be authorised only in exceptional cases, in accordance with the Community guidelines on State aid for environmental protection [4], the guidelines on regional aid [5] and the Community guidelines for State aid in the agriculture sector [6].

(19) In the case in point, if the Commission finds that the objective of the aid proposed fits in with its policy to promote short sea shipping it must nevertheless make sure that the arrangements will lead to no distortion of competition which is incompatible with the common interest.

(20) In the light of the grounds for initiating the procedure and of the comments from interested parties, the Commission has found as follows.

[1] OJ C 205, 5.7.1997, p. 5.

[2] COM(1999) 317 final.

[3] See, in particular, the decisions to initiate the procedure provided for by Article 93(2) of the Treaty in cases C 2/97 (OJ C 93, 22.3.1997) and C 21/98 (OJ C 227, 28.8.1999).

[4] OJ C 72, 10.3.1994, p. 3.

[5] OJ C 74, 10.3.1998, p. 9.

[6] OJ C 28, 1.2.2000, p. 2.

(21) The French authorities have given an undertaking to support only projects which have been demonstrated — by a preliminary feasibility study in particular — to make an effective contribution to reducing the share of road traffic without diverting traffic away from other, more environmentally friendly modes of transport, such as the railways or inland waterways. Accordingly, priority will be given to selecting combined transport projects. In addition, the French authorities have made it clear that 'new' short sea shipping services means any service with a point of departure and point of destination differing from the existing services on the market in question. The Commission considers that these commitments, combined with the introduction of a transparent project selection procedure (see recital 23), avoid the danger that the objective set for the aid scheme proposed could lead to diversion of traffic incompatible with the common interest.

(22) In order to qualify for this aid, a separate legal entity will have to be formed between the partners involved in the service proposed. In practice, this separate legal entity will imply setting up a separate accounting system from those of the partners. The Commission considers that establishment of a separate entity set up solely for the purpose of qualifying for the measures in question will ensure the financial transparency of the aid scheme. According to the information submitted by the French authorities, separate accounts would have to be kept for any other economic activities conducted by the entity.

(23) The French authorities have also stated that the start-up aid for new short sea shipping services may not be combined with compensation for public service obligations granted for the same service. By contrast, the aid may be combined with Community support, particularly from the PACT programme or its successor, the future Marco Polo programme. However, in this case the French authorities have stated that the ceiling of 30 % of eligible expenditure will apply to the combined total of national plus Community aid. The Commission considers that application of the ceiling of 30 % of eligible expenditure in the event of combination of national and Community aid helps to limit the impact of the aid on competition in the sector.

(24) In the course of the review procedure, the French authorities gave details of the project selection procedure. They stated that the submission must contain the relevant details listed in Article 6(2) of Regulation (EC) No 2196/98, particularly:

— the identification of the project, of the applicants and of the beneficiary,

— the amount of financial assistance requested,

— the objectives of and reason for the project, customer potential, prices and service performance, expected receipts and return,

— the itemised costs by heading,

— the need for assistance and information on other sources of financing,

— the expected impact in terms of creating direct or indirect employment,

— the benefits to the environment and safety, compared with the existing situation.

(25) The French authorities also stated that applications for aid will include a feasibility study accompanied by a business plan demonstrating the viability of the project. The file will be submitted for endorsement to a selection panel under the auspices of the Ministry for Transport and made up, alongside representatives of the Ministry, of one representative of the Intermodal and Combined Transport Bureau (which represents France in the PACT programme) plus one representative from the Ministry for Financial Affairs. The panel may also hear qualified experts acting in an advisory capacity.

(26) To ensure transparency and equal treatment of operators during the project selection procedure, the French authorities have given an undertaking to observe the following procedures:

(a) a call for expressions of interest will be published periodically (for example, at the beginning of each year) in the form of a notice in the *Official Journal of the European Communities* giving details of the arrangements for the aid scheme, the procedure to be followed and the selection criteria;

(b) In the case of projects between a port in France and a port in another Member State, a declaration of intent will be published in the *Official Journal of the European Communities* giving details of the objective of the project and of the aid ceiling proposed. This will invite interested parties to express their interest within 15 working days. If any interested party opposes the aid scheme, stating the reasons, the scheme will have to be notified to the Commission for prior authorisation.

(27) The Commission considers that the combined effect of the project selection procedure described in recital 24, which the French authorities have given an undertaking to put into place, and of the need for prior authorisation from the Commission in the event of opposition from any party affected by the launch of a new international service guarantees transparency and non-discrimination on grounds of nationality between operators in the transport chain.

(28) The Commission also notes that the aid is planned for a maximum of three years and is degressive. This duration corresponds to the maximum period for Community financing under the PACT programme. The Commission considers that the limited duration of the aid scheme, combined with the fact that it is degressive and the twofold ceiling, both in absolute figures and as a percentage of eligible expenditure, will limit the impact of the measures on competition in the sector.

## VI. **CONCLUSION**

(29) In the light of the foregoing, the Commission concludes that the doubts as to the compatibility of the operating aid which France is planning to implement for the start-up of new short sea shipping services have been removed,

HAS ADOPTED THIS DECISION:

*Article 1*

The State aid which France is planning to implement for the start-up of new short sea shipping services is compatible with the common market within the meaning of Article 87(3)(c) of the Treaty.

Implementation of the aid is accordingly authorised.

*Article 2*

This Decision is addressed to the French Republic.

Done at Brussels, 30 January 2002.

*For the Commission*
Loyola DE PALACIO
*Vice-President*