COMMISSION

COMMISSION DECISION

of 14 December 2004

amending Commission Decision 2002/610/EC 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(2004) 4519)

(Only the French text is authentic)

(Text with EEA relevance)

(2008/714/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,

Whereas:

1. PROCEDURE

1.1. Procedural overview

(1) On 30 January 2002, after a formal investigation procedure, the Commission adopted Decision 2002/610/EC [1] approving, subject to certain conditions set out below, an aid scheme to promote the start-up of new short sea shipping services, hereinafter referred to as the 'final decision'. The 26th recital of the final decision states that France accepts procedural conditions which are in particular binding on projects granting aid to an intra-Community sea shipping service between a French port and a port of another Member State and not on those involving sea shipping services between two French ports.

(2) On 18 November 2004 the French authorities asked the Commission to amend the final decision to take account of the new, more favourable provisions of the Community guidelines on State aid to maritime transport [2], hereinafter referred to as 'the Community guidelines'.

1.2. Title of the measure

(3) The measure to which the final decision refers is entitled: régime d'aides en faveur du lancement de nouvelles lignes de transport maritime à courte distance (Aid scheme for the start-up of new short sea shipping services).

1.3. Objectives of the amendments

(4) The main objective of the proposed amendments is to take into account the new legal framework provided by the Community guidelines as regards aid for the start-up of short sea shipping services and to make the conditions imposed by the final decision compatible with these new Community guidelines on State aid.

(5) Recital 26 of the final decision states that '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 envisaged. 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.'

[1] OJ L 196, 25.7.2002, p. 31.
[2] OJ C 13, 17.1.2004, p. 3.

(6) According to the French authorities, the procedures referred to in particular in paragraph (b) of this recital turn out to take a long time to implement and are therefore prejudicial to the smooth progress of such projects.

2. DETAILED DESCRIPTION OF THE AMENDMENT

(7) The French authorities would like to see the final decision amended so as to reflect Chapter 10 of the Community guidelines on State aid to maritime transport, which is the chapter dealing with aid to short sea shipping services.

3. EVALUATION OF THE PROPOSED AMENDMENTS

3.1. Provisions of the new Community rules

(8) The Commission notes first of all that the previous Community guidelines [1], which were applicable when the final decision was adopted, laid down no particular rule on aid for the start-up of short sea shipping services. Accordingly, it was not illogical for the Commission to lay down in its final decision particular ad hoc rules for approving the specific French scheme designed to support the start-up of short sea shipping services.

(9) The Commission also notes that in the mean time it has adopted new Community guidelines and that the latter now provide a framework for State aid for the start-up of short sea shipping services modelled on the objectives pursued by Regulation (EC) No 1382/2003 of the European Parliament and of the Council of 22 July 2003 on the granting of Community financial assistance to improve the environmental performance of the freight transport system (Marco Polo Programme) [2], which was likewise adopted after the final decision.

(10) Chapter 10 of the new Community guidelines provides that individual aid for short sea shipping services is to be considered compatible with the common market if it fulfils the following conditions:

'— the aid must not exceed three years in duration and its purpose must be to finance a shipping service connecting ports situated in the territory of the Member States,

— the service must be of such a kind as to permit transport (of cargo essentially) by road to be carried out wholly or partly by sea, without diverting maritime transport in a way which is contrary to the common interest,

— the aid must be directed at implementing a detailed project with a pre-established environmental impact, concerning a new route or the upgrading of services on an existing one, associating several shipowners if necessary, with no more than one project financed per line and with no renewal, extension or repetition of the project in question,

— the purpose of the aid must be to cover, either up to 30 % [3] of the operational costs of the service in question, or to finance the purchase of trans-shipment equipment to supply the planned service, up to a level of 10 % in such investment,

— the aid to implement a project must be granted on the basis of transparent criteria applied in a non-discriminatory way to shipowners established in the Community. The aid should normally be granted for a project selected by the authorities of the Member State through a tender procedure in compliance with applicable Community rules,

— the service which is the subject of the project must be of a kind which can be commercially viable after the period in which it is eligible for public funding,

— such aid must not be combined with public service compensation (obligations or contracts).'

(11) In particular, the Commission notes that the new Community guidelines make no distinction as to whether the shipping service assisted plies between two ports of two different Member States or of the same Member State. The Commission considers that there is no longer any objective reason for maintaining the distinction between the two types of situations, as explained in recital 26 of the final decision.

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

[2] OJ L 196, 2.8.2003, p. 1. This Regulation establishes the Marco Polo Programme which enables the Commission to grant a financial contribution from the Community to projects for the start-up of short sea shipping services to shift part of freight transport from road to maritime transport. Specifically, Article 9 of the said Regulation provides that 'Community financial assistance for the actions defined by the Programme shall not exclude those actions being granted State aid at national, regional or local level, insofar as such aid is compatible with the State-aid arrangements laid down in the Treaty and within the limits established for each type of action in Article 5(2), Article 6(4) and Article 7(3) respectively.'

[3] For Community financing or eligibility under various aid schemes, the 30 % ceiling applies to the combined total of the aid and financial assistance. It should be noted that the intensity of the aid is the same as for modal shift actions within the framework of the Marco Polo programme: see Article 5(2) of Regulation (EC) No 1382/2003.

(12) Moreover, the Commission considers that the Community guidelines do not prevent a Member State from implementing a scheme providing aid to short sea shipping services if the individual aid granted under this scheme meets the abovementioned conditions.

3.2. **Consequences of applying the final decision without amendment**

(13) The option of not changing the final decision would, on the one hand, enable France to grant individual aid to services between French ports under conditions more favourable than those provided in the new Community guidelines and, on the other hand, penalise France in setting up projects for services between a French port and a port of another Member State through formal procedures as envisaged in recital 26 of the final decision. Not only do these formal procedures lack any raison d'être in the light of the new Community guidelines but they also place France in a position of inequality in relation to other States which on the basis of the new Community guidelines wish to establish aid schemes or grant individual aid on an ad hoc basis to short sea shipping services with their neighbours.

(14) In accordance with Article 88(1) of the Treaty, the Commission must also keep existing schemes under constant review. To this end, it must verify that the rules governing State aid apply uniformly to all existing schemes in the Member States. In particular, the Commission must propose to the latter any appropriate measures required by the progressive development or by the functioning of the common market when more restrictive Community rules enter into force. Otherwise, the Commission would not be able to maintain, pursuant to one of its earlier conditional final decisions, a constraint on a scheme of one Member State while the other Member States implementing similar schemes would not be subject to such a constraint.

3.3. **Advantage of the change**

(15) The option of changing the final decision would make it possible to anticipate the application of the new Community guidelines to the scheme existing in France for the start-up of short sea shipping services before the deadline laid down by the Commission in the new Community guidelines, namely 30 June 2005, so that Member States can, through appropriate measures, bring all their existing schemes into line with the new Community guidelines.

4. **CONCLUSION**

(16) In conclusion the Commission considers that Decision 2002/610/EC should be amended. The proposed amendment will enable France to bring its scheme into line with the provisions laid down in the new Community guidelines in respect of sea shipping services between a French port and a port of another Member State and will also enable projects granting aid to sea shipping services between two French ports to be made subject to the conditions laid down in the new Community guidelines. More generally, this amendment will mean that France will be implementing its scheme under conditions identical to those prevailing in all the other Member States in pursuance of the said guidelines,

HAS ADOPTED THIS DECISION:

Article 1

The following third subparagraph shall be added to Article 1 of Decision 2002/610/EC:

'France shall make the granting of individual aid within the framework of this scheme subject to compliance with Chapter 10 of the Community guidelines on State aid to maritime transport (*).

(*) OJ C 13, 17.1.2004, p. 3.'

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 14 December 2004.

For the Commission
Jacques BARROT
Vice-President