interested parties pull in different directions. Although the compromise is arguably an improvement, concerns remain.

CATHERINE SEVILLE*

IV. TRANSPORT

IN the past 18 months developments which have been most relevant to the transport industry as a whole involve the control of State aids and external relations. In addition, at the end of 1995, the Commission published a Green Paper entitled "Fair and Efficient Pricing in Transport",[1] the aim of which was to initiate a debate on how best to allocate the true costs of transport among those who generate them, in the fairest manner. The argument of the paper is that each form of transport should bear the external costs for which it is responsible. This position has been hotly disputed.

A. Control of State Aids

The Commission has had several opportunities to test its State aid guidelines[2] in respect of a number of State aid packages to airlines. The guidelines state that direct operating aid is *prima facie* prohibited. As an exemption, aid can be authorised only when it is part of a comprehensive and self-contained restructuring programme, and does not imply future direct aid. Furthermore, if an airline has already received a State aid then any additional aid will be allowed only under exceptional circumstances, and subject to conditions. Despite these reservations, the Commission did authorise State aid to Iberia (at the beginning of 1996), to Air France (in the middle of 1996) and to Alitalia (at the end of 1996).

In the case of the maritime sector, the delay in the ratification of the 1994 OECD Agreement,[3] which phases out subsidies to shipyards, has led to an extension (to the end of 1997) of the seventh Council directive[4] on aid to shipbuilding. The Commission has adopted revised guidelines for State aids in this sector. They replace those drawn up in 1989 and also deal with compensation for public service obligations.[5]

Earlier provisions have was been amended to extend the temporary system of granting aid to combined transport (rail, road and inland waterways) to the end of 1997.[6] In July 1996 the Commission proposed a Council regulation concerning the

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1. COM(95)691 final.
2. (1994) O.J. C350/5.
3. Agreement signed between the European Community, Norway, United States of America, Japan and South Korea aimed at controlling and eventually phasing out subsidies. This agreement has been incorporated into Community law by Council Reg.3094/95 (1995) O.J. L332/1.
4. Council Directive 90/684 (1990) O.J. L380/27.
5. Guidelines for the Examination of State Aids to Community Shipping Companies defining the conditions under which aid to shipping may be considered compatible with the common market, IP/97/385 of 6 May 1997.
6. Reg.1107/70 (1970) O.J. L130/1, extended by Reg.543/97 (1997) O.J. L84/6.

https://doi.org/10.1017/S0020589300060942 Published online by Cambridge University Press

granting of Community financial assistance for actions aimed to promote combined transport of goods.[7] The aim is to extend the existing pilot scheme for the development of combined transport (PACT) from 1997 to 2001. The programme was launched in 1992, and has already financed over 65 projects. The programme is part of an integrated transport policy which in the future will include revitalisation of the rail sector and research and development on developing the train of the future and better intermodal links. The proposed regulation supplements both a 1995 regulation[8] setting up Community schemes for supporting infrastructure of Trans European Networks (TENs) and a 1994 decision[9] concerning research, as it gives priority to routes which form part of TENs.

The strategy for rail transport, outlined below, includes bringing rules on State aid for rail in line with those for airlines. A trade-off is being put forward. Governments would be allowed to write off debts accumulated before 1993 as long as rail companies are run on a commercial basis.

B. Negotiations with Non-Community Countries

Negotiations have continued with Switzerland concerning rail and road transport. The European Union is willing to accept the imposition of a Swiss road toll to cover infrastructure costs on road transit through the Alps as long as the toll is comparable with the road tax levied by neighbouring EU countries such as Austria and France. The Swiss, however, would have to give lorries of up to 40 tonnes immediate access to major Swiss economic centres.[10] Negotiations are also taking place with Central and Eastern European countries on joint development of rail and combined transport and transport pricing. The discussions concern both goods haulage and the transport of passengers. In addition the Council has authorised the Commission to open negotiations on access to the air transport market, seeking to integrate the markets in the Central and Eastern European countries with those of the European Community.

Moreover, the Council has agreed to allow the Commission to engage in exploratory talks with the United States concerning the establishment of a common aviation area between the European Union and the United States. The aim is to eliminate all restrictions on capacity, pricing and access routes within and between the European Union and the United States. Some member States still have reservations about the financial advantage of a Community agreement as opposed to the current national bilateral "open skies" agreements.

C. Road Transport

The new Community driving licence, in the form of a plastic card, has now been introduced.[11] The new plastic licences are optional. Member States are free to continue to issue their paper licences. However the information included on all

7. COM(96)335 final.
8. Council Reg.2236/95 (1995) O.J. L228/1.
9. Council Decision 94/914 (1994) O.J. L361/56.
10. European legislation allows lorries up to 40 tonnes whilst Swiss law limits them to 28 tonnes.
11. Council Directive 96/47 (1996) O.J. L235/1, amending Council Directive 91/439 (1991) O.J. L237/1.

https://doi.org/10.1017/S0020589300060942 Published online by Cambridge University Press

licences must be the same and the new type of licence must be recognised throughout the Community.

A proposal for a Council directive revising the "Eurovignette" system and the inter-operability of road-pricing systems has been published.[12] This directive will replace an earlier one[13] which was annulled by the European Court of Justice in 1995 because of inter-institutional procedural irregularities. The Commission has taken the opportunity to use the new proposal to introduce provisions allowing adjustments of road transport prices by taking external costs caused by such transport (pollution, congestion, noise, accidents, etc.) more into account.[14] The maximum level of road user levy imposed by the Eurovignette will rise from 1,250 to 2,250 ECUs annually. A supplementary charge of a maximum of 1,500 ECUs per year may be levied by member States for the use of certain roads that cross ecologically vulnerable regions. Furthermore, the member States that practise a system of road tolls (calculated on the number of kilometres covered) should adjust the level of the charges to the real costs of infrastructure and the external costs, but with a maximum limit of 2.5 ECUs per vehicle/kilometre. The countries that have a road toll system, however, will not be permitted to impose supplementary charges on certain parts of their networks.

A new directive[15] concerning safety measures deals with the appointment and vocational qualifications of safety advisers for the transport of dangerous goods by road, rail and inland waterways. A number of other safety proposals are under consideration concerning, *inter alia*, roadworthiness tests for motor vehicles and trailers[16] and type-approval of motor vehicles and their trailers (with regard to the transport of dangerous goods by road).[17]

A number of harmonisation measures have also been adopted, including a directive on maximum weights and dimensions for road vehicles over 3.5 tonnes using roads within the European Community.[18] This measure aims at establishing uniform rules, not only for international transport where this already exists but also for national transport, in order to eliminate all distortion of competition in the progressive liberalisation of cabotage. It allows for a maximum length of 18.85 metres, maximum width of 2.55 metres and a maximum authorised weight of 40 tonnes for six-axle vehicles. A Commission directive has been adopted[19] concerning the permissible sound level and the exhaust system of motor vehicles, and another[20] dealing with the interior fittings of motor vehicles (strength of seats and

12. (1997) O.J. C59/9.
13. Council Directive 93/89 (1993) O.J. L279/32.
14. This principle is the core of the Green Paper on pricing referred to *supra* n.1 and accompanying text. Road transport is the form of transport that today causes the most external costs and these are not yet covered by road-users.
15. Council Directive 96/35 (1996) O.J. L145/10.
16. COM(96)673; (1996) O.J. C193/5.
17. (1997) O.J. C29/17.
18. Council Directive 96/53 (1996) O.J. L235/59.
19. Commission Directive 96/20 (1996) O.J. L92/23 adapting to technical progress Council Directive 70/157 (1970) O.J. L42/16.
20. Commission Directive 96/37 (1996) O.J. L186/28 adapting to technical progress Council Directive 74/408 (1974) O.J. L221/1.

https://doi.org/10.1017/S0020589300060942 Published online by Cambridge University Press

of their anchorages). In addition, the Commission has submitted proposals for a Council directive aimed at reducing emissions from light commercial vehicles from the year 2000[21] and for a Council directive imposing a road tax on heavy commercial vehicles for the use of certain infrastructures.[22]

D. Rail Transport

A radical review of the role, structure and operating methods of rail transport is under way. The Commission has directed its energies to the breaking-up of monopolies which control infrastructure and services and to removing barriers to Community-wide rail networks. In July 1996 a White Paper entitled "A Strategy for Revitalising the Community's Railways" was published.[23] It is a strategy document which analyses a number of problems affecting the railways and suggests a number of ways of revitalising them. It sets out a three-year action programme to be undertaken by the Commission. The paper seeks open access to Europe's rail networks, restructuring of State rail companies (with a clearer separation between the State and rail service providers and an agreement on the precise definition of a railway's public service obligations) and to boos rail freight (establishing corridors or "freight freeways")[24] across Europe, to show railways can match the speed and reliability of road hauliers. The strategy outlined in the paper is controversial and has stimulated much debate.

Other relevant measures adopted last year include a directive[25] on the interoperability of the trans-European high-speed rail system and another[26] on the approximation of the laws of the member States on transport of dangerous goods by rail.

E. Inland Waterways

In 1996 the Council adopted a "waterway package" of legislative measures. These measures seek to reduce structural over-capacity and lead to a gradual liberalisation of the inland waterway market. The package comprises three measures: a directive on organising the market, which seeks to abolish compulsory minimum tariff systems and the so-called "rota" system by 1 January 2000;[27] a regulation (which amends an earlier one) on aid granted to certain infrastructures of inland navigation;[28] and another regulation (also amending an earlier one) on structural improvements to inland waterway transport.[29]

21. *Agence Europe*, 24 Feb. 1997.
22. (1997) O.J. C59/6.
23. COM(96)421 final. One month earlier the advisory group for rail transport submitted to Commissioner Kinnock its final report entitled "The Future of Rail Transport in Europe", which provided a substantial contribution to the White Paper.
24. One of the first six routes to be considered will run from the ports of Rotterdam, Antwerp and Hamburg through Germany and Austria to Milan.
25. Council Directive 96/48 (1996) O.J. L235/6.
26. Council Directive 96/49 (1996) O.J. L235/25.
27. Council Directive 96/75 (1996) O.J. L304/12.
28. Council Reg.2255/96 (1996) O.J. L304/3, amending Council Reg.1107/70 (1970) O.J. L130/1.
29. Council Reg.2254/96 (1996) O.J. L304/1, amending Council Reg.1101/89 (1989) O.J. L116/25.

https://doi.org/10.1017/S0020589300060942 Published online by Cambridge University Press

The Commission has also adopted a regulation[30] on the common rules applicable to the transport of goods and passengers by inland waterways between member States with a view to establishing freedom to provide such transport services.

F. Maritime Transport

At the end of 1995 the Council adopted a regulation on safety measures for roll-on, roll-off passenger ferries.[31] The Council also adopted a resolution[32] on the basis of the Commission's communication on short-distance maritime transport.[33] In March 1996 two Commission communications were published: a strategic document entitled "Towards a New Maritime Strategy"[34] and another seeking to contribute to the competitiveness of maritime industries, entitled "Shaping Europe's Maritime Future".[35] In the strategy document the Commission formally withdrew the proposal for a Community maritime register (EUROS) which had been proposed in 1989. The new maritime strategy is centred on four areas: safety, access to international markets, education and vocational training, and State aid.

There has also been much activity in applying the EC competition rules to the maritime sector. The Commission has granted an individual exemption under Article 85(3) of the EC Treaty to the North Sea Liner Conference's consortium agreement.[36] This agreement did not fall within the scope of the block exemption regulation for consortia[37] since the agreements did not concern exclusively the transport of goods by containers. The exemption was granted for six years (for maritime activities) and for three years (for inland activities). In October 1996 the Commission fined five cross-Channel ferry companies for operating a cartel in imposing a currency surcharge on cross-Channel freight shipments.[38]

G. Air Transport

By the end of 1997 the internal aviation market created by the third package of legislative measures will be complete. The final stage in the third package came into effect on 1 April 1997. From that date, under the terms of the Market Access Regulation,[39] cabotage will be allowed throughout the European Economic Area (EEA). Carriers from EEA countries holding EC operating licences granted by their national authorities will be able to operate entirely self-contained domestic services within the territory of other member States. In October 1996 the Commission published a communication on the impact of the third package of air transport liberalisation measures,[40] assessing progress so far and outlining further action.

30. Commission Reg.1356/96 (1996) O.J. L175/7.
31. Council Reg.3051/95 (1995) O.J. L320/14 on the safety management of passenger ferries (roll-on/roll-off).
32. (1996) O.J. C99/1.
33. COM(95)317 final.
34. COM(96)81 final.
35. COM(96)84 final.
36. IP/97/12 of 15 Jan. 1997.
37. Commission Reg.870/95 (1995) O.J. L89/7.
38. Commission Decision 97/84 (1997) O.J. L26/23.
39. Council Reg.2408/92 (1992) O.J. L240/8.
40. COM(96)514 final.

https://doi.org/10.1017/S0020589300060942 Published online by Cambridge University Press

In addition, a directive has been issued on access to the ground handling market at Community airports.[41] The main objective of this measure is to ensure that airlines are provided with a genuine choice of suppliers so that they are able to obtain ground handling services that meet their needs at a reasonable price. Full liberalisation at all Community airports will come into being as from 1 January 1998 in respect of the land-side (i.e. in the terminal) self-handling (i.e. services carried out by the airlines themselves). As to the air-side self-handling (on the runway) there will be a partial liberalisation. At least two airlines must have the right to furnish these services themselves at airports whose annual traffic is not less than 1 million passengers or 25,000 tonnes of freight. For handling for third parties the above full and partial liberalisation will take place as from 1 January 1999 for every airport with at least 3 million passengers or 75,000 tonnes of freight.

Concerning safety measures, in February 1997 the Commission adopted a proposal for a directive[42] aimed at tightening safety checks carried out in the Community's airports on aircraft belonging to non-Community operators. This measure is aimed at guaranteeing a high level of safety to all passengers using a Community airport. Furthermore, the Council has discussed a Commission proposal to set up a European Aviation Safety Authority to oversee the development of more systematic methods of assessing airworthiness, mainly to bring the aircraft of substandard operators in non-Community countries up to scratch.

The White Paper on air traffic management, entitled "Freeing Europe's Airspace",[43] calls for a single, coherent and uniform system to be set in place throughout Europe. It would also as far as possible cover military flights. It is suggested that Eurocontrol is well suited to take this regulatory role and that the Community should seek membership of Eurocontrol.

The Council has now adopted a common position on the amended proposal for a regulation on air carrier liability in case of accidents,[44] So it is likely shortly to be adopted in this form. The measure will improve compensation for passengers involved in air accidents by waiving the current limits established by the Warsaw system. It regulates the limits of the air carrier's liability in the event of death, wounding or other bodily injury suffered by a passenger in a national or international flight. *Inter alia*, there would be absolute liability of up to 100,000 ECUs even if the Community air carrier has taken all necessary measures to avoid the damage or if it was impossible for such carrier to take such measures. In addition, the regulation would provide for a lump sum payment of up to 50,000 ECUs within ten days of the accident.

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41. Council Directive 96/67 (1996) O.J. L272/36.
42. COM(97)55 final.
43. COM(96)57 final.
44. COM(96)663; (1997) O.J. C29/10 (amended proposal).

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https://doi.org/10.1017/S0020589300060942 Published online by Cambridge University Press