COUNCIL OF
THE EUROPEAN UNION

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INFORMATION NOTE

From:	Danish delegation
To:	Council
Subject:	The impact of state aid rules on large-scale infrastructure projects in Europe - *Information from the Danish delegation*

Delegations will find annexed an information note from the Danish delegation on the above-mentioned subject, which will be dealt with under "Any other business" at the meeting of the Council (Transport, Telecommunications and Energy) on 5 December 2013.

ANNEX

Information from the Danish delegation

The impact of state aid rules on large-scale infrastructure projects in Europe

Large-scale European infrastructure projects contribute to significant growth and jobs but are challenging to finance entirely within a state budget. This has been recognized by the Commission with the introduction of new financial instruments such as project bonds in the TEN-T programme.

Member States have resorted to user payment in order to finance large projects. This is also the case for the European priority project the Øresund fixed link between Denmark and Sweden where user-charges make it possible to service the state guaranteed loans that financed the construction of the fixed link.

Recently, a state aid complaint in relation to the financial model of the fixed link between Denmark and Sweden has been lodged with the Commission and we are seriously concerned about its consequences. This raises the more general and principal issue of whether state-owned companies that construct and operate the fixed links engage in economic activity and are – as a consequence – recipients of state aid.

We do not consider the construction of large-scale infrastructure projects to be an exercise of economic activity. On the contrary, we consider such an activity to be a public service in just the same way as bridges, roads and railways that are financed within the state budget. Transport infrastructure, which is open to all potential users on equal terms, is a public service regardless of whether it is financed by users or through taxes. Thus, the financing of public infrastructure should not be subject to state aid regulation.

If the Commission draws the conclusion that the states' obligations towards future infrastructure projects should be reduced this would have consequences for large-scale infrastructure projects like the Fehmarn Belt fixed link, which has been recognized as a priority project on the TEN-T corridors eliminating the bottle-neck between Denmark and Germany. Here it is envisaged to re-use the financial model of the successful fixed link across Denmark and Sweden. The consequences for such projects could be severe and could ultimately challenge the ability to finance future infrastructure projects in the whole of Europe.

As a consequence of upholding the interpretation based on the 'Leipzig-Halle' case, all existing and future infrastructure projects that make use of similar financial models would fall within the scope of the state-aid rules to the detriment of the development of European transport infrastructure.