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ANNEX

ANNEX

to the

COMMUNICATION FROM THE COMMISSION

Approval of the content of a draft for a Commission Regulation declaring certain categories of aid in the rail, inland waterways and multimodal transport sector compatible with the internal market in application of Articles 93, 107 and 108 of the Treaty

ANNEX
**Commission Regulation declaring certain categories of aid in the rail, inland waterways
and multimodal transport sector compatible with the internal market in application of
Articles 93, 107 and 108 of the Treaty**

(Text with EEA relevance)

DRAFT

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 108(4) thereof,

Having regard to Council Regulation (EU) 2022/2586 of 19 December 2022 on the application of Articles 93, 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of aid in the rail, inland waterways and multimodal transport sector¹, in particular Article 1 thereof,

After consulting the Advisory Committee on State aid,

Whereas:

- (1) State funding meeting the criteria of Article 107(1) of the Treaty constitutes State aid and requires notification to the Commission under Article 108(3) of the Treaty. However, according to Article 109 of the Treaty, the Council may determine categories of aid that are exempted from that notification requirement. In accordance with Article 108(4) of the Treaty, the Commission may adopt regulations relating to those categories of State aid.
- (2) Council Regulation (EC) 2022/2586 empowers the Commission to declare that aid for the coordination of transport as referred to in Article 93 of the Treaty may, under certain conditions, be exempted from the notification requirement.
- (3) Aid to rail, inland waterways and multimodal transport is deemed compatible with the Treaty if it meets the needs of transport coordination or if it represents reimbursement for the discharge of certain obligations inherent in the concept of a public service in line with Article 93 of the Treaty.
- (4) To achieve the EU's climate neutrality targets proposed by the Commission in 2019 and set out in the European Green Deal², a fundamental green and digital transformation of transport in the EU is needed. As part of the Commission's 2020 sustainable and smart mobility strategy³, the EU called on Member States to take measures making all

¹ OJ L 338, 30.12.2022, p. 35, ELI: <http://data.europa.eu/eli/reg/2022/2586/oj>.

² Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions 'The European Green Deal' (COM(2019) 640 final).

³ COM(2020) 789 final.

transport modes more sustainable and promote a shift to more sustainable modes of transport.

- (5) Article 11 of the Treaty underlines the Union's commitment to environmental protection and sustainability, emphasising the integration of environmental requirements into the definition and implementation of its policies and activities. The Commission recognises the importance of sustainable practices in transport.
- (6) Based on the Commission's experience in applying Article 93 of the Treaty, certain categories of State aid that meet the needs of transport coordination do not give rise to any significant distortion to competition and trade between Member States provided that they meet certain clear compatibility criteria set out on the basis of the extensive decisional practise.
- (7) This Regulation should apply to State aid measures granted to undertakings in the rail, inland waterways and multimodal transport sectors.
- (8) Aid that fulfils all the conditions laid down in this Regulation, both general and specific to the relevant categories of aid, should be exempted from the notification obligation laid down in Article 108(3) of the Treaty.
- (9) State aid within the meaning of Article 107(1) of the Treaty not covered by this Regulation remains subject to the notification requirement of Article 108(3) of the Treaty. This Regulation is without prejudice to the possibility for Member States to notify aid that has objectives that correspond to objectives covered by this Regulation.
- (10) This Regulation should allow for greater simplification and boost transparency, effective evaluation and checks of compliance with State aid rules at national and EU levels, while preserving the institutional powers of the Commission and Member States. This is in line with the Commission's Communication on EU State Aid Modernisation⁴ and the outcome of the fitness check carried out by the Commission in 2020⁵ highlighting the need to reduce administrative burdens and ensure efficient public spending.
- (11) The general conditions for the application of this Regulation are laid down on the basis of a set of common principles that ensure the aid: (i) serves the purpose of transport coordination; (ii) has a clear incentive effect; (iii) is necessary, appropriate and proportionate; (iv) is granted in full transparency and subject to a control mechanism and regular evaluation; and (v) does not affect competition and trade to an extent that jeopardises the general interests of the EU.
- (12) In order to ensure that the aid is necessary and acts as an incentive to further develop activities or projects, this Regulation should not apply to aid for activities in which the beneficiary would in any case engage even in the absence of the aid. Aid should only be exempted from notification under this Regulation if the work on the aided project or activity starts after the beneficiary has submitted a written application for the aid.

⁴ COM(2012) 209, 8.5.2012.

⁵ Commission staff working document of 30 October 2020 – Fitness Check of the 2012 State aid modernisation package, railways guidelines and short-term export credit insurance (SWD(2020) 257 final).

- (13) As regards any ad hoc investment aid covered by this Regulation granted to a beneficiary that is a large enterprise, the Member State should ensure that, in addition to complying with the conditions relating to incentive effect which apply to beneficiaries who are SMEs, the beneficiary has analysed, as evidenced by its internal documentation, the viability of the aided investment with aid and without aid. In such cases, the Member State should verify that such documentation confirms that the aid will result in a material increase in the scope of the investment supported by the aid, in a material increase in the total amount spent by the beneficiary on such investment, and/or in a material increase in the speed of completion of the investment.
- (14) Automatic aid schemes in the form of tax advantages should continue to be subject to a specific condition concerning the incentive effect, in the light of the fact that the aid resulting from such aid schemes is granted automatically. That specific condition means that those aid schemes should only support projects or activities on which works start after the entry into force of those schemes. However, this condition should not apply in the case of successor aid schemes provided the activity was already covered by the predecessor schemes in the form of tax advantages. For the assessment of the incentive effect of successor aid schemes, the crucial moment is the moment when the tax measure was set out for the first time in the original scheme.
- (15) Operating aid to reduce the external costs of transport meeting the conditions of this Regulation should be considered to have an incentive effect if the aid is passed on to the users and therefore increases the demand for sustainable transport services and a modal shift. Publicity is aimed at increasing the awareness of the measures available to reduce the competitiveness gap between sustainable land transport modes and road-only or other competing more polluting modes of transport, and is hence considered to ensure that the aid is reflected in the price that users are asked to pay. In any event, operating aid to reduce the external costs of transport should not be granted where the more polluting mode of transport is not a viable alternative to the sustainable mode of transport. Whereas for passenger services there is always a more polluting commercially viable alternative to transport by rail or by inland waterways, in the freight sector, competitiveness depends on the distance covered by the transport operations. This does not apply to single wagon load operations, as such type of unimodal rail transport is less profitable than road-only transport irrespective of the distance covered, due to the costs of collecting and aggregating wagons of different customers.
- (16) For the purposes of transparency, equal treatment and effective monitoring, this Regulation should apply only to aid that may be calculated precisely in terms of its gross grant equivalent *ex ante* without the need to carry out a risk assessment ('transparent aid'). For certain aid instruments, such as loans, guarantees, tax measures, risk finance measures and, in particular, repayable advances, this Regulation sets out the conditions under which they can be considered transparent. Capital injections should not be considered to be transparent aid. In the case of small and medium-sized enterprises (SMEs), the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees⁶ indicates levels of annual premium above which a State guarantee would be deemed not to constitute aid.
- (17) With a view to ensuring that aid is proportionate and limited to the amount necessary, this Regulation sets maximum aid amounts in terms of aid intensities in relation to a set of eligible costs. Based on the Commission's experience, the aid intensity is fixed at a

⁶ OJ C 155, 20.6.2008, p. 10.

level that minimises distortions of competition and trade caused by the aided activity while appropriately addressing the market failure or another obstacle to coordination of transport.

- (18) For the calculation of aid intensity, only eligible costs should be included. The identification of eligible costs should be supported by clear, specific and up-to-date documentary evidence. This Regulation does not exempt aid which exceeds the relevant aid intensity. All figures used should be taken before any deduction of tax or other charges. Aid payable in several instalments should be discounted to its value at the moment it is granted. The eligible costs should also be discounted to their value at the moment the aid is granted. The interest rate to be used for discounting purposes and for calculating the amount of aid where aid does not take the form of a direct grant should be the discount rate and the reference rate applicable at the time of the grant, respectively. Those rates are laid down in the Commission Communication on the revision of the method for setting the reference and discount rates⁷.
- (19) The Commission should ensure that authorised aid does not affect competition and trade to an extent that jeopardises the general interests of the EU. Therefore, aid in favour of a beneficiary that is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market should be excluded from the scope of this Regulation.
- (20) Aid to undertakings in difficulty should be excluded from the scope of this Regulation, since such aid should be assessed under the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty⁸.
- (21) This Regulation consolidates the extensive experience acquired by the Commission in the assessment of operating aid designed to reduce the external costs of transport. Such aid should be quantified on the basis of the external costs avoided by adopting a greener transport solution compared to a competing, more polluting mode of transport, such as road-only transport. Aid can take the form of a reduction in the charges railway undertakings pay to use rail network infrastructure compared to the charges road operators pay to use road infrastructure. Operating aid to reduce the external costs of transport should be covered by this Regulation only where distortions to competition and trade are limited and subject to well-defined conditions. This is the case where the external costs avoided are calculated in accordance with the rules and methodology set out in the Commission's Handbook on the external costs of transport⁹ and the aid intensity remains under certain thresholds. This ensures that it is strictly limited to compensation for the external costs associated with using a more sustainable mode of transport.
- (22) Furthermore, operating aid to support railway undertakings or transport organisers when launching new commercial connections should only be covered by this Regulation where distortions of competition and trade are limited and subject to well-defined conditions. This is the case of (i) new commercial rail freight and inland waterways freight connections; and (ii) new commercial rail passenger connections for scheduled

⁷ OJ C 14, 19.1.2008, p. 6.

⁸ OJ C 249, 31.7.2014, p. 1.

⁹ European Commission, Directorate-General for Mobility and Transport, Essen, H., Fiorello, D., El Beyrouthy, K. et al., Handbook on the external costs of transport – Version 2019 – 1.1, Publications Office, 2020, <https://data.europa.eu/doi/10.2832/51388>.

passenger services between transport terminals located either in different Member States ('cross-border rail passenger services') or more than 400 kilometres from each other ('long-distance rail passenger services'). The aid amount is calculated in relation to the operating losses incurred by the beneficiary during the first 5 years of operation of the new commercial connection and the aid intensity remains under a certain threshold.

- (23) Investment in rail and inland waterways unimodal and multimodal transport facilities and in private sidings across the EU is essential to ensure connectivity and the sustainable functioning of the economy and cohesion among Member States. Such investments support the priorities of the Commission's 2020 sustainable and smart mobility strategy¹⁰ which prioritises the development of multimodal transport facilities. This Regulation covers investment aid for the construction, upgrade and renewal of rail facilities, inland waterways facilities, rail and inland waterways multimodal transport facilities and private sidings. For the sake of clarity, this Regulation also does apply to State aid for those multimodal transport facilities which are located in maritime ports and have rail or inland waterways connections. Based on the Commission's experience in assessing that type of aid, this Regulation aims to reduce the administrative burden caused by the notification of straightforward State aid measures and enable the Commission to focus on the potentially most distortive cases. The conditions for the exemption of investment aid to rail facilities, inland waterways facilities, rail and inland waterways multimodal transport facilities and private sidings from the notification requirement should limit distortions of competition and trade that would undermine a level playing field in the internal market, in particular by ensuring the proportionality of the aid.
- (24) Investment aid for the acquisition of vehicles for rail or inland waterways transport and certain categories of equipment used in transshipment services incidental to sustainable multimodal transport (i.e. Intermodal Loading Units and cranes on board of vessels) should be covered by this Regulation only where distortions of competition and trade are limited. For the acquisition of vehicles for rail or inland waterways transport, that is the case where the aid takes the form of a guarantee to the vehicle's buyer subject to well-defined conditions. For the acquisition of certain types of equipment for sustainable multimodal transport, that is the case for aid schemes covering cranes on board of vessels and Intermodal Loading Units and where the aid intensity remains under well-defined thresholds.
- (25) In line with the Union's transport and digital policies, further efforts are required to enable communication between different transport information systems, coordination of transport networks and cross-border competition and improve transport safety in the EU. This is necessary because of transport networks' different standards and the lack of technical harmonisation, incompatible tools and systems for data collection and sharing and data sovereignty concerns. Furthermore, the Commission has learned from its experience in assessing the measures for interoperability support notified to it under the Guidelines adopted by the Commission in 2008 on State aid for railway undertakings¹¹. This experience shows that acute market failures exist because of coordination failures

¹⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, '*Sustainable and Smart Mobility Strategy – putting European transport on track for the future*', COM(2020) 789 final, 9.12.2020

¹¹ Communication from the Commission, Community Guidelines on State aid for railway undertakings (OJ C 184, 22.7.2008, p. 13).

and of the first-mover disadvantage, where the benefits linked to adopting a specific technology or standard go beyond the commercial interest of transport operators.

- (26) This is the case, for example, with train and traffic control systems such as the European Railway Traffic Management System (ERTMS). The ERTMS is a single European signalling and speed control system that ensures interoperability of the national railway systems, reducing the purchasing and maintenance costs of the signalling systems and increasing the speed of trains, the capacity of infrastructure and the level of safety in rail transport. ERTMS is comprised of the European Train Control System (ETCS), i.e. a cab-signalling system that incorporates automatic train protection, the Railway Mobile Radio (RMR), Automated Train Operation (ATO) and operating rules. In view of the limited negative effects on competition and trade that aid for interoperability has, and considering the experience acquired, such aid should be covered by this Regulation under well-defined conditions and where the vehicle for rail or inland waterways transport concerned remains registered in the relevant national register and/or in a relevant European vehicle register for 5 years after the implementation of the investment.
- (27) To foster the competitiveness of transport by rail and inland waterways it is also necessary to promote the technical adaptation and modernisation of vehicles for rail or inland waterways transport and certain categories of equipment for sustainable multimodal transport. Support for such investments should be subject to conditions that limit distortions of competition and trade that would undermine a level playing field in the internal market. In particular, they should ensure the necessity and proportionality of the aid and include safeguards on the type of aid, the eligible beneficiaries and the eligible costs.
- (28) Aid to undertakings to adapt to future Union standards might result in achieving a high level of harmonisation and standardisation sooner. Aid should not be granted where investments bring undertakings into compliance with Union standards that have already been adopted. However, in cases where the relevant EU standard has already been adopted but is not yet in force, aid can have an incentive effect if it incentivises the investment to be implemented and finalised at least 12 months before the standard enters into force, if the standard does not apply retroactively. In order not to discourage Member States from setting mandatory national standards that are more stringent or ambitious than the corresponding EU standards, aid measures may have an incentive effect irrespective of the presence of such national standards. The same is true of aid granted in the presence of mandatory national standards adopted in the absence of EU standards.
- (29) Due to the higher risk of undue distortions of competition and trade, certain categories of aid should be assessed by the Commission upon notification when they cover high amounts of aid granted per project. Any aid granted above those thresholds should remain subject to the notification requirement of Article 108(3) of the Treaty. The thresholds set out in this Regulation should not be circumvented by artificially splitting up projects into several projects with similar characteristics, objectives or beneficiaries.
- (30) In view of the greater potential impact of large aid schemes on trade and competition, aid schemes with a budget exceeding a certain threshold in any given year or in total based on an absolute value should in principle be subject to State aid evaluation. The evaluation should aim at verifying whether the assumptions and conditions underlying the compatibility of the scheme have been achieved and the effectiveness of the aid

measure in light of its general and specific objectives. It should also indicate the impact of the scheme on competition and trade. In order to ensure equal treatment, State aid evaluation should be carried out on the basis of an evaluation plan approved by the Commission. While such plans should usually be drawn up at the moment of the design of the scheme and approved in time for the scheme to enter into force, this might not be possible in all cases. Therefore, in order not to delay their entry into force, this Regulation should apply to such schemes for an initial maximum period of 6 months. The Commission may decide to extend this period upon approval of the evaluation plan. To that end, the evaluation plan should be notified to the Commission within 20 working days following the entry into force of the scheme. The Commission may also exceptionally decide that an evaluation is not necessary given the specific characteristics of the case.

- (31) The Commission should receive the required information from the Member State to be able to assess the evaluation plan. The Commission should also request additional information without undue delay. This will enable the Member State to provide the missing information so that the Commission can take a decision. Alterations of schemes subject to an evaluation, other than modifications which cannot affect the compatibility of the aid scheme within the scope of this Regulation or cannot significantly affect the content of the approved evaluation plan, should be assessed taking account of the outcome of such an evaluation and should be excluded from the scope of this Regulation. Alterations such as purely formal modifications or administrative modifications, including those carried out within the framework of the EU co-financed measures should not, in principle, be considered to significantly affect the content of the approved evaluation plan.
- (32) To determine whether the notification thresholds and the maximum aid intensities laid down in this Regulation are respected, the total amount of State aid measures for the aided activity or project should be taken into account. This Regulation should specify the circumstances under which different categories of aid might be cumulated. Aid exempted under this Regulation and any other compatible aid exempted under other regulations or approved by the Commission may be cumulated as long as those measures concern different identifiable eligible costs. Where different sources of aid are related to the same – partly or fully overlapping – identifiable eligible costs, cumulation is allowed up to the highest aid intensity or aid amount applicable to that aid under this Regulation. This Regulation also should set out special rules for cumulation of aid measures with and without identifiable eligible costs and for cumulation with *de minimis* aid. *De minimis* aid is often not granted for or attributable to specific identifiable eligible costs. In such cases, it should be possible to freely cumulate *de minimis* aid with State aid exempted under this Regulation. However, where *de minimis* aid is granted for the same identifiable eligible costs as State aid exempted under this Regulation, cumulation is only allowed up to the maximum aid intensity as set out in Chapter II.
- (33) Funding that is centrally managed by the Union's institutions, agencies, joint undertakings and other bodies, which is not directly or indirectly under Member States's control, does not constitute State aid. Where such Union funding is combined with State aid, only the State aid should be considered for determining whether notification thresholds and maximum aid intensities are respected. This is provided that the total amount of public funding granted in relation to the same eligible costs does not exceed the most favourable funding rate laid down in the applicable rules of Union law.

- (34) The transparency of State aid is essential for the correct application of Treaty rules and leads to better compliance, greater accountability, peer reviews and ultimately more effective public spending. To ensure transparency, Member States should set up comprehensive State aid websites, at regional or national levels, setting out summary information about each aid measure exempted under this Regulation. Following the standard practice regarding the publication of information in Directive (EU) 2019/1024 of the European Parliament and of the Council¹², a standard format should be used that allows for the information to be searched, downloaded and easily published on the internet. Links to the State aid websites of all the Member States should be published on the Commission's website. In accordance with Article 2(2) of Regulation (EU) 2022/2586, summary information on each aid measure exempted under this Regulation should be published on the Commission's website.
- (35) State aid enforcement is highly dependent on the cooperation of Member States. Therefore, Member States should take all necessary measures to ensure compliance with this Regulation, including compliance of individual aid granted under block-exempted schemes with all relevant conditions.
- (36) To ensure effective monitoring of aid measures in accordance with Council Regulation (EU)2022/2586, it is appropriate to set out requirements regarding Member States' reporting of aid measures that have been exempted pursuant to this Regulation. Moreover, it is appropriate to lay down rules on the records that Member States should keep on the aid exempted under this Regulation in light of the limitation period set out in Article 16 of Council Regulation (EU) 2015/1589¹³.
- (37) To strengthen the effectiveness of compatibility conditions set out in this Regulation, the Commission should be able to withdraw the benefit of the block exemption for the future in the event of failure to comply with these requirements. The Commission should be able to restrict the withdrawal of the benefit of the block exemption to certain types of aid, certain beneficiaries or aid measures adopted by certain authorities where non-compliance with this Regulation affects only a limited group of measures or certain authorities. Such a targeted withdrawal should provide a proportionate remedy directly linked to the identified non-compliance with this Regulation. Where an aid is not notified and does not fulfil all the conditions to be exempted from notification, it constitutes an unlawful aid, which the Commission will examine in the framework of the relevant procedure as set out in Regulation (EU) 2015/1589 for non-notified aid. In case of failure to meet compatibility conditions set out in Chapters I and II, the withdrawal of the benefit of the block exemption in respect for the future should not affect the fact that the past measures complying with this Regulation were block exempted.
- (38) To eliminate differences that might give rise to distortions of competition and trade and to facilitate coordination between different Union and national initiatives concerning SMEs, as well as for reasons of administrative clarity and legal certainty, the definition

¹² Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (recast) (OJ L 172, 26.6.2019, p. 56).

¹³ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9, ELI: <http://data.europa.eu/eli/reg/2015/1589/2015-09-24>).

of an SME within the meaning of Annex I to this Regulation is based on the definition in Commission Recommendation 2003/361/EC¹⁴.

- (39) State aid policy should be revised on the basis of the Commission's experience in this area periodically. The period of application of this Regulation should therefore be limited. It is appropriate to lay down transitional provisions, including the rules applicable to exempted aid schemes at the end of the period of application of this Regulation. Such rules should give Member States time to adapt to any future regime,

HAS ADOPTED THIS REGULATION:

Chapter I – Common provisions

Article 1

Scope

1. This Regulation shall apply to the following categories of aid:
 - (a) operating aid schemes to reduce the external costs of transport;
 - (b) operating aid schemes to launch new commercial connections;
 - (c) investment aid schemes for the construction, upgrade and renewal of rail and inland waterways multimodal transport facilities, rail facilities or inland waterways facilities and both ad hoc investment aid and investment aid schemes for the construction, upgrade and renewal of rail and inland waterways multimodal freight terminals;
 - (d) investment aid schemes for the construction, upgrade and renewal of private sidings;
 - (e) investment aid schemes for the acquisition of vehicles for rail or inland waterways transport;
 - (f) investment aid schemes for the acquisition of intermodal loading units (ILUs) and cranes on board of vessels;
 - (g) investment aid schemes for interoperability;
 - (h) investment aid schemes for the adaptation and modernisation of vehicles for rail or inland waterways transport and of equipment for sustainable multimodal transport.
2. This Regulation shall not apply to any for the following aid categories:

¹⁴ Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36, ELI: <http://data.europa.eu/eli/reco/2003/361/oj>).

- (a) aid schemes that do not explicitly exclude the payment of individual aid in favour of an undertaking that is subject to an outstanding recovery order following a previous Commission decision declaring an aid granted by the same Member State illegal and incompatible with the internal market;
- (b) ad hoc aid in favour of an undertaking that is subject to an outstanding recovery order following a previous Commission decision declaring an aid granted by the same Member State illegal and incompatible with the internal market;
- (c) aid contingent on the use of domestic goods over imported goods;
- (d) aid to undertakings in difficulty;
- (e) State aid measures that entail by themselves, the conditions attached to them or their financing method a non-severable violation of Union law, in particular:
 - (i) aid measures where the grant of aid is subject to the obligation on the beneficiary to have its headquarters in the relevant Member State or to be predominantly established in that Member State. However, the requirement to have an establishment or branch in the aid granting Member State at the moment of payment of the aid is allowed;
 - (ii) aid where the grant of aid is subject to the obligation on the beneficiary to use nationally produced goods or national services;
- (f) State aid for the operation of public passenger transport services by rail and other track-based modes and by road that is covered by Regulation (EC) No 1370/2007¹⁵;
- (g) State aid for the operation of public passenger transport services by inland waterways where Member States have decided to apply Regulation (EC) No 1370/2007 of the European Parliament and of the Council¹⁶ to those services;
- (h) State aid to port infrastructure that is assessed by the Commission directly under Article 107(3), point (c), of the Treaty if it is not covered by the Commission Regulation (EU) No 651/2014¹⁷, or, if the port infrastructure is necessary for the provision of an SGEI and, is subject to the rules set out in the Commission Decision 2012/21/EU¹⁸ and the Communication from the Commission on a European Union framework for State aid in the form of public service compensation;

¹⁵ Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) No 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1, ELI: <http://data.europa.eu/eli/reg/2007/1370/2017-12-24>).

¹⁶ See Article 1(2) of Regulation (EC) No 1370/2007.

¹⁷ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1, ELI: <http://data.europa.eu/eli/reg/2014/651/2023-07-01>).

¹⁸ Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 7, 11/01/2012, p. 3, ELI: [http://data.europa.eu/eli/dec/2012/21\(1\)/oj](http://data.europa.eu/eli/dec/2012/21(1)/oj)).

- (i) aid schemes referred to in Chapter II if they fall within the scope of Article 20, from 6 months after their entry into force. However, the Commission may decide that this Regulation shall continue to apply to an aid scheme for longer than 6 months after having assessed the relevant evaluation plan notified by the Member State to the Commission. When submitting the evaluation plans, Member States shall also submit all the information required for the Commission to carry out an assessment of the evaluation plans and to take a decision;
- (j) any alterations of schemes referred to in point (i) other than modifications that do not affect the compatibility of the aid scheme under this Regulation or do not significantly affect the content of the approved evaluation plan.

Article 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

- (a) ‘access infrastructure’ means any type of infrastructure necessary to ensure access and entry from land or sea and river by users to a rail or inland waterways multimodal transport facility or unimodal rail or inland waterways facility, such as roads, rail tracks, channels and locks;
- (b) ‘ad hoc aid’ means aid not granted on the basis of an aid scheme;
- (c) ‘aid intensity’ means the gross aid amount expressed as a percentage of the eligible costs, before any deduction of tax or other charges;
- (d) ‘aid scheme’ means any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid that is not linked to a specific project may be granted to one or several undertakings for an indefinite period of time and/or for an indefinite amount;
- (e) ‘dedicated infrastructure’ means an infrastructure that is built for *ex ante* identifiable undertaking(s) and tailored to their needs;
- (f) ‘equipment for sustainable multimodal transport’ means equipment used in transshipment services incidental to sustainable multimodal transport, such as cranable semitrailers, excluding mobile terminal equipment;
- (g) ‘European vehicle register’ means a register pursuant to Article 47(5) of Directive (EU) 2016/797 of the European Parliament and of the Council¹⁹ and

¹⁹ Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (recast) (OJ L 138, 26.5.2016, p. 44).

Article Article 19 of Directive (EU) 2016/1629 of the European Parliament and of the Council²⁰;

- (h) ‘evaluation plan’ means a document containing at least the following elements: the objectives of the aid scheme to be evaluated, the evaluation questions, the result indicators, the envisaged methodology to conduct the evaluation, the data collection requirements, the proposed timing of the evaluation (including the date of submission of the interim and the final evaluation reports), the description of the independent body conducting the evaluation or the criteria that will be used for its selection and the modalities for ensuring the publicity of the evaluation;
- (i) ‘external costs of transport’ means costs generated by transport users and not borne by them but by the society as whole, notably related to greenhouse emissions, air pollution, injuries and fatalities, noise and congestion;
- (j) ‘individual aid’ means (i) ad hoc aid; and (ii) awards of aid to individual beneficiaries on the basis of an aid scheme;
- (k) ‘inland waterways facility’ means any service facility (for example, a terminal or a maintenance or storage facility) and its access infrastructure (including the physical or digital equipment necessary for its functioning) that is located within the Union and used to carry out inland waterways transport, excluding facilities or equipment that are necessary for pursuing non-transport activities;
- (l) ‘inland waterways vessel’ means a vessel for passenger or freight transport intended solely or mainly for navigation on inland waterways or in waters within or closely adjacent to sheltered waters;
- (m) ‘intermodal loading unit’ (ILU) means a container, swap body or semi-trailer/goods road motor vehicle or vehicle combination used for intermodal transport;
- (n) ‘intermodal transport’ means the movement of goods (in one and the same loading unit or vehicle) by successive modes of transport without handling of the goods themselves when changing modes;
- (o) ‘interoperability’ means uninterrupted traffic flows of goods or passengers, in particular between Member States or modes of transport;
- (p) ‘multimodal transport’ means carriage of goods or passengers by at least two different modes of transport;
- (q) ‘mobile terminal equipment’ means equipment used for the loading, unloading and transshipment of goods and intermodal loading units, and for moving cargo within a terminal area;
- (r) ‘national register’ means a register kept by a Member State pursuant to Article 47 of Directive (EU) 2016/797 of the European Parliament and of the Council

²⁰ Directive (EU) 2016/1629 of the European Parliament and of the Council of 14 September 2016 laying down technical requirements for inland waterways vessels, amending Directive 2009/100/EC and repealing Directive 2006/87/EC (OJ L 252, 16.9.2016, p. 118, ELI: <http://data.europa.eu/eli/dir/2016/1629/oj>).

or Article 17 of Directive (EU) 2016/1629 of the European Parliament and of the Council;

- (s) ‘new commercial inland waterways freight connection’ means a commercial connection that concerns new scheduled inland waterways freight operations between at least two terminals that have not been connected by scheduled freight services for at least 5 years prior to the start of operations on the given connection;
- (t) ‘new commercial rail freight connection’ means a commercial connection that concerns new scheduled rail freight operations between at least two terminals that have not been connected by scheduled freight services for at least 5 years prior to the start of operations on the given connection;
- (u) ‘new commercial rail passenger connection’ means a commercial connection that concerns new scheduled rail passenger operations between at least two terminals that have not been connected by scheduled passenger services for at least 5 years prior to the start of operations on the given connection;
- (v) ‘new entrant’ means a railway undertaking within the meaning of Article 3(1) of Directive 2012/34/EU of the European Parliament and of the Council²¹ that fulfils both of the following conditions:
 - (i) it received a licence pursuant to Article 17(3) of Directive 2012/34/EU for the relevant market segment less than 20 years before the aid is granted;
 - (ii) it is not linked within the meaning of Article 3(3) of Annex I to this Regulation, to a railway undertaking that received a licence within the meaning of Article 3(14) of Directive 2012/34/EU prior to 1 January 2010;
- (w) ‘non-transport activities’ means commercial services to transport undertakings or other users of facilities not related to rail, inland waterways or sustainable multimodal transport, including ancillary services to passengers, freight forwarders or other service providers, such as renting out of offices, shops, and hotels;
- (x) ‘operating profit’ means the difference between the discounted revenues and the discounted operating costs over the economic lifetime of the investment where this difference is positive. The operating costs include costs such as personnel costs, materials, contracted services, communication, energy, maintenance, rent, administration but exclude depreciation charges and the costs of financing if these have been covered by investment aid. Discounting revenues and operating costs using an appropriate discount rate allows for a reasonable profit to be made;
- (y) ‘private siding’ means a privately owned and operated piece of rail infrastructure (including rail tracks and any other installations or equipment necessary to make it functional), connecting to the public rail network loading facilities that do not

²¹ Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ L 343, 14 December 2012, p. 32, ELI: <http://data.europa.eu/eli/dir/2012/34/2019-01-01>) consolidating and repealing with effect from 17 June 2015 Directive 91/440/EEC, as amended by Directive 2001/12/EC and Directive 2004/51/EC, and Directive 2007/58/EC.

qualify as service facilities under Annex II to Directive 2012/34/EU, as well as any dedicated infrastructure serving a the privately owned and operated piece of rail infrastructure;

- (z) ‘rail and/or inland waterways multimodal freight terminal’ means a structure equipped for transshipment between at least two transport modes (one of which is rail or inland waterways) or between two different rail systems, such as terminals in inland or maritime ports, along inland waterways or in airports) and multimodal logistics platforms;
- (aa) ‘rail and/or inland waterways multimodal transport facility’ means a service facility and its access infrastructure (including the physical or digital equipment necessary for its functioning) located within the EU and needed to provide rail or inland waterways transport in combination with other modes of transport, excluding facilities or equipment needed for non-transport activities. This definition includes rail and inland waterways multimodal freight terminals;
- (bb) ‘rail facility’ means any service facility (for example, rail freight terminals or a maintenance or storage facility) and its access infrastructure (including the physical or digital equipment necessary for its functioning) that is located within the Union, mentioned in Annex II to Directive 2012/34/EU excluding facilities or equipment that are needed to carry out non-transport activities;
- (cc) ‘railway undertaking’ means any public or private undertaking referred to in Article 3(1)(1) of Directive 2012/34/EU;
- (dd) ‘RIS platform’ means an electronic single-point-of-access platform sourced by national river information services information and providing Fairway-, River Information Services-, Traffic- and Transport Information Services, including route- and transport planning, for RIS users and serving for electronic reporting according to the ‘once-only’ principle
- (ee) ‘rolling stock’ means any of the following:
 - (i) locomotives and passenger rolling stock, including thermal or electric traction units, self-propelling thermal or electric passenger trains, and passenger coaches;
 - (ii) freight wagons, including low-deck vehicles designed for the entire network and vehicles designed to carry lorries; ;
- (ff) ‘short-sea shipping’ means the movement of cargo and passengers by sea between ports situated in geographical Europe or between those ports and ports situated in non-European countries having a coastline on the enclosed seas bordering Europe²²;
- (gg) ‘small and medium-sized enterprise’ or ‘SME’ means an undertaking that fulfils the conditions laid down in Annex I to this Regulation;

²² Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions – ‘The Development of Short Sea Shipping in Europe: A dynamic alternative in a sustainable transport chain - Second two-yearly progress report’, COM (1999) 317 final, 29.6.1999.

- (hh) ‘start of works’ means the earlier of either the start of construction works relating to the investment or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible. Buying land and preparatory works, such as obtaining permits and conducting feasibility studies, are not considered start of works. For takeovers, ‘start of works’ means the moment of acquiring the assets directly linked to the acquired establishment;
- (ii) ‘sustainable multimodal transport’ means carriage of goods or passengers by at least two different modes of transport where at least one of the used transport modes is rail or inland waterways, or road if the latter is combined with short-sea shipping;
- (jj) ‘telematics applications for freight services’ means applications such information systems (real-time monitoring of freight and trains), marshalling and allocation systems, reservation, payment and invoicing systems, management of connections with other modes of transport and production of electronic accompanying documents;
- (kk) ‘transport operator’ means any undertaking carrying passengers and/or freight in the rail, inland waterways and/or multimodal transport sectors;
- (ll) ‘transport organiser’ means any undertaking organising the transport of goods and thus making the choice between modes of transport (such as logistics companies, freight forwarders, multimodal transport operators);
- (mm) ‘undertaking in difficulty’ means an undertaking fulfilling the criteria laid down in Article 2, point (18), of Commission Regulation (EU) No 651/2014;
- (nn) ‘vehicle for rail or inland waterways transport’ means
 - (i) an inland waterways vessel; or
 - (ii) a rolling stock.

Article 3

Conditions for exemption

Aid schemes, individual aid granted under aid schemes and ad hoc aid shall be deemed compatible with the internal market within the meaning of Article 93 of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty provided that such aid fulfils all the conditions laid down in Chapter I and the specific conditions for the relevant category of aid laid down in Chapter II.

Article 4

Notification thresholds

This Regulation shall not apply where the following thresholds expressed in terms of maximum amounts of aid are exceeded:

- (a) for individual operating aid to launch new commercial connections granted under a scheme: EUR 15 million per connection;
- (b) for individual investment aid granted under a scheme for the construction, upgrade and renewal of rail facilities, inland waterways facilities and rail and inland waterways multimodal transport facilities: EUR 20 million per project;
- (c) for ad hoc investment aid for the construction, upgrade and renewal of rail and inland waterways multimodal freight terminals: EUR 10 million per project;
- (d) for individual investment aid granted under a scheme for private sidings: EUR 2 million per project.

Article 5

Transparency of aid

1. This Regulation shall apply only to transparent aid.
2. Aid shall be considered to be transparent if it is possible to calculate precisely the gross grant equivalent of the aid *ex ante* without any need to carry out a risk assessment.
3. For the purpose of this Regulation, the following forms of aid shall be considered to be transparent aid:
 - (a) aid comprised in grants and interest rate subsidies;
 - (b) aid comprised in loans where the gross grant equivalent has been calculated on the basis of the reference rate prevailing at the time of the grant;
 - (c) aid in the form of tax advantages and levies where the measure provides for a cap ensuring that the applicable threshold is not exceeded;
 - (d) aid comprised in guarantees if one of the following conditions is met:
 - (i) the gross grant equivalent has been calculated on the basis of safe-harbour premiums laid down in a Commission notice on the application of Articles 87 and 88 of the Treaty to State aid in the form of guarantees²³;
 - (ii) before the implementation of the measure, the methodology to calculate the gross grant equivalent of the guarantee has been accepted on the basis of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, following notification of that methodology to the Commission under any binding act adopted by the Commission in the State aid area applicable at the time, and the approved methodology explicitly addresses the type of guarantee and the type of underlying transaction at stake in the context of the application of this Regulation;

²³ Commission notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees. OJ C 155, 20.6.2008, p. 10.

- (iii) the aid is granted for the acquisition of vehicles for rail or in land waterways transport in the form of guarantees in compliance with the conditions laid down in Article 14 of this Regulation.

Article 6

Incentive effect

1. This Regulation shall apply only to aid that has an incentive effect.
2. Aid shall be considered to have an incentive effect if the beneficiary has submitted a written application for the aid to the Member State concerned before work on the project or activity starts. The application for the aid shall contain at least the following information:
 - (a) undertaking's name and size;
 - (b) description of the project or activity, including its start and end dates;
 - (c) location of the project or activity;
 - (d) list of project or activity costs;
 - (e) type of aid (grant, loan, guarantee, repayable advance, equity injection or other) and amount of public funding needed for the project or activity.
3. Ad hoc aid granted to large enterprises shall be considered to have an incentive effect if, in addition to ensuring that the conditions laid down in paragraph 2 are fulfilled, the Member State has verified, before granting the aid concerned, that documentation prepared by the beneficiary sets out that the aid will result in one or more of the following:
 - (a) there is a material increase in the scope of the project or activity due to the aid;
 - (b) a material increase in the total amount spent by the beneficiary on the project or activity due to the aid;
 - (c) a material increase in the speed of completion of the project or activity concerned.
4. By way of derogation from paragraphs 2 and 3, measures in the form of tax advantages shall be deemed to have an incentive effect if the following cumulative conditions are fulfilled:
 - (a) the measure establishes a right to aid in accordance with objective criteria and without further exercise of discretion by the Member State;
 - (b) the measure has been adopted and is in force before work on the aided project or activity has started, except in the case of successor aid schemes provided that the activity was already covered by the predecessor schemes in the form of tax advantages.

5. By way of derogation from paragraphs 2, 3 and 4, aid to reduce the external costs of transport shall be deemed to have an incentive effect where the conditions laid down in Article 10 are fulfilled.

Article 7

Aid intensity and eligible costs

1. For the purposes of calculating aid intensity and eligible costs, all figures used shall be taken before any deduction of tax or other charges. However, value added tax charged on eligible costs or expenses that is refundable under the applicable national tax law shall not be taken into account for calculating aid intensity and eligible costs. The eligible costs shall be supported by documentary evidence which shall be clear, specific and contemporary. The amounts of eligible costs may be calculated in accordance with simplified cost options, provided that an operation is at least partly financed through a Union fund that allows the use of simplified cost options and that the category of costs is eligible according to the relevant provisions of this Regulation. In such cases, the simplified cost options provided in the relevant rules governing the Union fund shall apply.
2. In addition, for projects implemented in line with recovery and resilience plans as approved by the Council under Regulation (EU) 2021/241 of the European Parliament and of the Council²⁴, the amounts of eligible costs may also be calculated in accordance with simplified cost options, provided that the simplified cost options set out in Regulation (EU) No 1303/2013 of the European Parliament and of the Council²⁵ or Regulation (EU) 2021/1060 of the European Parliament and of the Council²⁶ are used.
3. Where aid is granted in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid.
4. Aid payable in the future, including aid payable in several instalments, shall be discounted to its value at the moment it is granted. The eligible costs shall be discounted to their value at the moment the aid is granted. The interest rate to be used for discounting purposes shall be the discount rate applicable at the moment the aid is granted.

²⁴ Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57, 18.2.2021, p. 17, ELI: <http://data.europa.eu/eli/reg/2021/241/2023-03-01>).

²⁵ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320, ELI: <http://data.europa.eu/eli/reg/2013/1303/2023-03-01>).

²⁶ Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159, ELI: <http://data.europa.eu/eli/reg/2021/1060/2023-03-01>).

Article 8

Cumulation

1. When determining whether the notification thresholds are in compliance with the notification thresholds set out in Article 4 and the maximum aid intensities in Chapter II, the total amount of State aid for the aided activity or project or undertaking (depending on the type of aid) shall be taken into account.
2. Where Union funding centrally managed by the institutions, agencies, joint undertakings or other bodies of the Union that is not directly or indirectly under the control of the Member State is combined with State aid, only the State aid shall be considered to determine whether notification thresholds and maximum aid intensities or maximum aid amounts are respected, provided that the total amount of public funding granted in relation to the same eligible costs does not exceed the most favourable funding rate laid down in Union law.
3. Aid with identifiable eligible costs exempted by this Regulation may be cumulated with:
 - (a) any other State aid provided that those measures concern different identifiable eligible costs;
 - (b) any other State aid, in relation to the same eligible costs, partly or fully overlapping, provided that such cumulation does not result in exceeding the highest aid intensity or aid amount applicable to this aid under this Regulation;
 - (c) any *de minimis* aid in respect of the same eligible costs provided that such cumulation does not result in exceeding the highest aid intensity or aid amount applicable to this aid under this Regulation.

Article 9

Publication and information

1. The Member State concerned shall ensure the publication on a comprehensive State aid website at national or regional level of:
 - (a) the summary information referred to in Article 19 in the standardised format laid down in Annex III to this Regulation or a link providing access to it;
 - (b) the full text of each aid measure as referred to in Article 19 or a link providing access to the full text;
 - (c) the information referred to in Annex IV to this Regulation on each individual aid award exceeding EUR 100 000.
2. For aid schemes in the form of tax advantages, the conditions set out in paragraph 1 shall be considered to be fulfilled if Member States publish the required information on individual aid amounts in the following ranges in EUR million:
0.1- 0.5;

0.5-1;

1 to 2;

2 to 5;

5 to 10;

10 to 15;

15 and more.

3. The information referred to in paragraph 1, point (c), shall be organised and accessible in a standardised manner as described in Annex III and shall provide effective search and download functions. It shall be published within 6 months from the date the aid was granted or, for aid in the form of tax advantage, within 1 year from the date the tax declaration is due. It shall be available for at least 10 years from the date on which the aid was granted.
4. The full text of the aid scheme or the ad hoc aid referred to in paragraph 1 shall include, in particular, an explicit reference to this Regulation by citing its title and publication reference in the *Official Journal of the European Union* and to the specific provisions of Chapter II concerned by that aid scheme, or where applicable, to the national law which ensures that the relevant provisions of this Regulation are complied with. The aid scheme or the ad hoc aid shall be accompanied by its implementing provisions and its amendments.
5. The Commission shall publish on its website:
 - (a) the links to the State aid websites referred to in paragraph 1;
 - (b) the summary information referred to in Article 19.

Chapter II – Specific provisions for different categories of aid

SECTION 1 – OPERATING AID

Sub-section A – Operating aid to reduce the external costs of transport

Article 10

Aid to reduce the external costs of transport

1. Operating aid schemes to reduce the external costs of transport shall be compatible with the internal market within the meaning of Article 93 of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. Rail, inland waterways and/or sustainable multimodal passenger and freight transport operations may be eligible for support. The aid shall be provided to transport operators and/or transport organisers choosing sustainable land transport solutions.
3. The eligible costs are the part of the external costs of transport that unimodal or multimodal use of rail, inland waterways transport and/or short-sea shipping transport used in the context of sustainable multimodal transport allows to avoid compared to more polluting competing transport modes. The avoided external costs shall be calculated in accordance with the rules and methodology set out in the Commission's Handbook on the external costs of transport, as amended or replaced²⁷. Member States can use the external costs methodology to cover any operating cost, including operating costs related to the use of infrastructure.
4. The aid intensity shall not exceed [50]% of the eligible costs.
5. The aid intensity may be increased by [5-10] percentage points for aid granted to combined transport operations as defined in Article 1 of Directive 92/106/EEC²⁸.
6. For aid granted to transport operations in the freight sector, the distance covered by the transport mode supported by the aid shall not exceed:
 - (a) in multimodal transport cases:
 - (i) 800 kilometres for rail transport;
 - (ii) 375 kilometres for inland waterways transport;
 - (iii) 750 kilometres for short-sea shipping transport; and
 - (b) in unimodal transport cases:
 - (i) 350 kilometres for rail transport (with the exception of single wagonload operations);
 - (ii) 375 kilometres for inland waterways transport.
7. To ensure that aid is granted only for sustainable land transport services actually provided, the aid shall be granted on the basis of actual units of transport service provided, such as passenger-km for passenger transport services, tonne-km or vehicle-km for freight transport services or, more generally, the unit of production of the transport service, and not on a lump-sum basis.
8. The aid granted to a railway undertaking and inland waterways and short-sea shipping operators shall have the effect of maintaining or increasing the modal shift. To this effect, railway undertakings and inland waterways and short-sea shipping operators shall make publicly available at least the following information on the aid received: granting authority, date of granting of the aid, aid amounts received, period and operations covered by the aid.

²⁷ European Commission, Directorate-General for Mobility and Transport, Essen, H., Fiorello, D., El Beyrouly, K. et al., Handbook on the external costs of transport – Version 2019 – 1.1, Publications Office, 2020, <https://data.europa.eu/doi/10.2832/51388>.

²⁸ OJ L 368, 17.12.1992, p. 38 [after the adoption of the amendment of Directive 92/106/EEC (2023/0396 (COD)) to be replaced with “being compliant with Article 1c(2) of Directive 92/106/EEC”]

Sub-section B – Operating aid to launch new commercial connections

Article 11

Aid to launch new commercial connections

1. Aid schemes to launch new commercial rail freight and inland waterways freight connections and new commercial rail passenger connections shall be compatible with the internal market within the meaning of Article 93 of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The aid is provided:
 - (a) to railway undertakings and/or transport organisers gathering demand and organising scheduled freight operations between transport terminals to launch new commercial rail freight and inland waterways freight connections; and/or
 - (b) to railway undertakings organising scheduled passenger services between transport terminals located either in different Member States ('cross-border rail passenger services') or more than 400 kilometres from one another ('long-distance rail passenger services').
3. The aid may take the form of grants paid out on a periodical basis for periods not exceeding one year.
4. The eligible costs shall be the operating losses incurred in respect of the connection concerned, for a maximum of 5 years from the date when the beneficiary starts operating the new commercial connection. Without prejudice to the preceding sentence, operating costs related to and preceding the launch of the new connection may be taken into account and reflected in the quantification of the eligible costs related to the first year of operation of the new commercial connection.
5. For the purposes of this Article, operating losses means a negative difference between the revenues and the operating costs incurred in respect of the connection concerned, as well as the operating costs of the works related to and preceding the launch of the new commercial connection. The aid intensity shall not exceed 80% of the eligible costs in the first year, 70% of the eligible costs in the second year, 60% of the eligible costs in the third year, 50% of the eligible costs in the fourth year and 40% of the eligible costs in the fifth year.
6. The costs allocated to the new commercial connection may cover all the direct operating costs incurred in operating the new commercial connection and an appropriate contribution to operating costs common to both the new commercial connection and other activities. The revenue to be taken into consideration shall include the entire revenue earned from the new commercial connection.
7. Where the aid is paid out upfront, the eligible costs shall be estimated *ex ante* on the basis of reasonable projections, and they shall be discounted to their value at the

moment of granting. Member States shall put in place a monitoring and claw-back mechanism to ensure that the aid does not exceed the allowed aid intensity.

SECTION 2 – INVESTMENT AID

Sub-section A – Investment aid for unimodal and multimodal rail and inland waterways transport facilities and private sidings

Article 12

Aid for the construction, upgrade and renewal of unimodal and multimodal rail and inland waterways transport facilities

1. Aid for the construction, upgrade or renewal (including the replacement) of rail facilities, inland waterways facilities and rail and inland waterways multimodal transport facilities shall be compatible with the internal market within the meaning of Article 93 of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The aid shall be granted to any undertaking that constructs, upgrades and/or renews rail facilities, inland waterways facilities and rail and inland waterways multimodal transport facilities on the basis of schemes, except for aid for the construction, upgrade and renewal of rail and inland waterways multimodal freight terminals, which can also be granted as ad hoc aid. Ad hoc aid can only be granted where the potential demand for capacity, at least in the medium term, exceeds the current combined capacity of the aided facility and of other existing or already planned facilities that could reasonably serve as alternatives to the aided facility.
3. The eligible costs shall be the investment costs in tangible (fixed and movable) and intangible assets directly related to the construction, upgrade or renewal of the relevant facility. The investment may include surface arrangements (such as for storage), fixed equipment (such as warehouses and terminal buildings) and mobile terminal equipment (such as reach stackers) located in the facility for the provision of transport-related services. Feasibility and topological studies as well as planning and installation costs shall also be eligible.
4. Costs related to non-transport activities shall not be eligible.
5. The aid amount shall not exceed the lower of the following thresholds:
 - (a) the difference between the eligible costs and the sum of the operating profit of the investment over its economic lifetime and the discounted terminal value of that investment (residual value at the end of the economic lifetime of the investment). The operating profit shall also include the incremental operating net profits generated by non-transport activities connected to the transport activities to be carried out in the facility concerned (such as the rental of commercial spaces situated in the facility). The operating profit and terminal value shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or *ex post* through a claw-back mechanism;

- (b) 50 % of the eligible costs.
- 6. For aid not exceeding EUR 3 million per project, the maximum aid amount may be set at up to 50 % of eligible costs as an alternative to applying the method referred to in paragraph 5.
- 7. Access to the aided facility shall be open, transparent and non-discriminatory to all interested users in line with sectoral legislation, including Directive 2012/34/EU.
- 8. Any concession or other entrustment to a third party to construct, upgrade, operate or rent the aided facility shall be assigned on a competitive, transparent, non-discriminatory and unconditional basis.
- 9. When the owner, operator and any projected end user of the aided transport facility are part of the same enterprise or are linked enterprises within the meaning of Annex I to this Regulation, the operation of the facility shall be awarded based on an open, competitive, transparent and non-discriminatory procedure²⁹.

Article 13

Aid for the construction, upgrade and renewal of private sidings

- 1. Aid schemes for the construction, upgrade and renewal (including the replacement) of private sidings shall be compatible with the internal market within the meaning of Article 93 of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty provided that the conditions laid down in this Article and in Chapter I are fulfilled.
- 2. Aid shall be granted to any undertaking that constructs, upgrades and renews private sidings.
- 3. The eligible costs shall be the investment costs in tangible (fixed and movable) and intangible assets directly related to the construction, upgrade and renewal of the private siding. The investment costs may include feasibility and topological studies and planning and installation costs. Loading/unloading platforms and equipment used for loading/unloading trains on the site of the dedicated user(s) shall not be included in the eligible costs.
- 4. The aid amount shall not exceed the lower of the following thresholds:
 - (a) The difference between the eligible costs and the sum of the operating profit of the investment over its economic lifetime and the discounted terminal value of that investment (residual value at the end of the economic lifetime of the investment). The operating profit and terminal value shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or *ex post* through a claw-back mechanism;
 - (b) 50 % of the eligible costs.

²⁹ The linked enterprises in question are allowed to participate in the procedure.

5. For aid not exceeding EUR 500 000 per project, the maximum aid amount may be set at up to 50 % of eligible costs as an alternative to applying the method referred to in paragraph 4.

Sub-section B – Investment aid for the acquisition of vehicles for rail or inland waterways transport and of equipment for sustainable multimodal transport

Article 14

Aid for the acquisition of vehicles for rail or inland waterways transport

1. Investment aid schemes supporting the acquisition of vehicles for rail or inland waterways transport shall be compatible with the internal market within the meaning of Article 93 of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The eligible costs shall be all investment costs linked to the acquisition of new or used vehicles for rail or inland waterways transport. Such costs may include, in particular, the price of the vehicle and delivery costs. Costs of design studies, consulting or engineering may be eligible provided that they are linked to and part of the investments referred to in this Article.
3. The aid shall be provided to:
 - (a) new entrants in the rail sector;
 - (b) railway undertakings, inland waterways transport operators or leasing operators in the rail and inland waterways sectors – where they qualify as SMEs.
4. The aid shall take the form of a guarantee to the buyer of the vehicle for rail or inland waterways transport. Guarantees may be provided directly to final beneficiaries or to credit institutions and other financial institutions as financial intermediaries (as long as the beneficiary retains free choice of the financial intermediary). The financial intermediary must be able to demonstrate that it operates a mechanism that ensures that the advantages are passed on to the largest extent possible to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, or lower interest rates than without such public guarantees.
5. The guarantee shall be provided on new individual loans for the acquisition of vehicles for rail or inland waterways transport. The nominal amount of the underlying loan shall not exceed the eligible costs. The guarantee coverage shall not exceed 80 % of the underlying loan. Public guarantees shall be provided against a fee of at least 50 basis points if the granting Member State's sovereign credit rating is equal to AAA-A.
6. The duration of the guarantee shall be limited to a maximum of 15 years.
7. Aid for the acquisition of vehicles for rail or inland waterways transport may be cumulated with interoperability aid and/or aid for technical adaptation and modernisation if the net extra costs for interoperability, as defined in Article 16(6)

and/or modernisation and technical adaptation investments, as defined in Article 17(6), are excluded from the eligible costs set out in paragraph 2.

Article 15

Aid for the acquisition of intermodal loading units and cranes on board of vessels

1. Investment aid schemes for the acquisition of new or used intermodal loading units and/or cranes on board of vessels shall be compatible with the internal market within the meaning of Article 93 of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The aid shall be granted to any undertaking that invests in the acquisition of intermodal loading units and cranes on board of vessels.
3. The eligible costs shall amount to:
 - (a) for intermodal loading units (ILUs): the cost difference between transport units exclusively used for road transport and ILUs that can be transhipped for the purposes of sustainable multimodal transport;
 - (b) for cranes on board vessels: the full acquisition price.
4. The eligible costs may include feasibility studies and planning and installation costs.
5. The aid amount shall not exceed an aid intensity of 30 % of the eligible costs in the situation set out in paragraph 3, point (a) and 20 % of the eligible costs in the situation set out in paragraph 3, point (b).

Sub-section C – Investment aid for interoperability and technical adaptation and modernisation

Article 16

Aid for interoperability

1. Investment aid schemes supporting investment in tangible and intangible assets contributing to uninterrupted traffic flows between Member States or transport modes shall be compatible with the internal market within the meaning of Article 93 of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The aid shall be granted to any undertaking that performs investments in the roll-out of the interoperability technologies referred to in paragraph 3.
3. The eligible investment projects shall be the following:

- (a) The European Train Control System (ETCS), the Future Railway Mobile Communication System (FRMCS) and Automated Train Operation (ATO) as part of the European Railway Traffic Management System (ERTMS) as described in Union secondary legislation³⁰;
- (b) digital automatic coupling (DAC)³¹;
- (c) adaptation of rolling stock to different electrical systems;
- (d) adaptation of rolling stock to different track gauges;
- (e) adaptation of inland waterways vessels to serve seaports;
- (f) adaptation of inland waterways vessels to changing navigability conditions, including low water conditions;
- (g) automation of rolling stock and inland waterways vessels;
- (h) adaptation of vehicles to transport ILUs;
- (i) key technologies needed to implement river information services, such as the RIS Platform, Inland Electronic Chart Display and Information System, notices to skippers, Inland Automatic Identification System and Electronic Reporting International;
- (j) freight telematics applications and other freight software insofar as they contribute to uninterrupted traffic flows, in particular intermodal identification, tracking and traceability systems, and intermodal data exchange platforms. Investments into applications for passenger services such as systems which provide passengers with information before and during the journey, passenger reservation and payment systems, luggage management and management of connections between passenger trains and with other modes of passenger transport are not eligible for support.

4. The eligible costs shall be all costs necessary for the implementation of the eligible investments. Such costs may include, in particular, costs necessary for the purchase and installation of the relevant technology, project management costs, and delivery costs. Maintenance costs are not eligible for support. Costs related to studies, testing and approval, and pilot and prototype installations shall be eligible for support. The assets financed with interoperability aid may be new or used. As regards interoperability investments related to the ERTMS, costs related to the integration of European Global Navigation Satellite System (EGNSS) functions within the ERTMS should be eligible for support. Costs related to GSM-R shall not be eligible for support.

³⁰ Commission Implementing Regulation (EU) 2023/1695 of 10 August 2023 on the technical specification for interoperability relating to the control-command and signalling subsystems of the rail system in the European Union and repealing Regulation (EU) 2016/919 (OJ L 222, 8.9.2023, p. 380).

³¹ DAC is an interoperable component to automatically couple and decouple the rolling stock in a freight train both physically (e.g. mechanical connection and air line for braking) and digitally (e.g. electrical power and data connection). DAC is an enabler to create a modern and digital European railway freight transport. It will not only increase efficiency thanks to automation processes, but it will also ensure sufficient energy supply for telematics applications, as well as safe data communication throughout the entire train. [Reference to the relevant EU secondary legislation to be inserted once adopted]

5. The aid intensity shall not exceed:
 - (a) 80 % of the eligible costs for investment projects falling under paragraph 3, points (a) and (b),
 - (b) 50 % of the eligible costs for investment projects falling under paragraph 3, points (c) to (j).
6. As regards interoperability investments in vehicles for rail or inland waterways transport or in an intermodal loading unit or crane on board of vessels whose acquisition is planned, the eligible costs must be limited to the net extra costs for interoperability, provided that such costs are not already covered by any other form of aid, in particular aid under Articles 14 and 15. The net extra costs for interoperability are calculated as the difference between, on the one hand, the total cost of purchasing the vehicle for rail or inland waterways transport or the intermodal loading unit or the crane on board of vessels whose acquisition is planned and that is equipped with such investments, and, on the other hand, the total cost of purchasing the same vehicle or intermodal loading unit or crane on board of vessels or a similar one without interoperability investments in the counterfactual scenario.
7. For at least 5 years after the grant of the aid, contractual arrangements for the transfer or use against payment (such as lease) of assets financed with interoperability aid shall include a clause specifying that the investment ensuring the interoperability of the asset concerned was funded with State aid. It shall also specify the corresponding obligations laid down in paragraph 9 and indicate the aid amount.
8. The investment shall be implemented and finalised at least 1 year before the date the supported investment becomes mandatory at EU level.
9. The vehicles for rail or inland waterways transport benefiting from the supported investment shall remain registered in the relevant national register of any Member State or in a relevant European register for at least 5 years after the implementation of the investment.

Article 17

Aid for the technical adaptation and modernisation of vehicles for rail or inland waterways transport and equipment for sustainable multimodal transport

1. Investment aid schemes supporting investments in tangible and intangible assets contributing to the technical adaptation and modernisation of vehicles for rail or inland waterways transport and of equipment for sustainable multimodal transport shall be compatible with the internal market within the meaning of Article 93 of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The aid shall be granted to any undertaking that performs investments for the technical adaptation and modernisation of vehicles for rail or inland waterways transport and of equipment for sustainable multimodal transport, referred to in paragraph 3.
3. The eligible investments shall be the following:

- (a) retrofitting and/or refurbishment of rolling stock;
 - (b) retrofitting and/or refurbishment of inland waterways vessels, for example, to improve hydrodynamics and efficiency;
 - (c) retrofitting and/or refurbishing of equipment for sustainable multimodal transport;
 - (d) technical adaptation of vessels to new types of freight;
 - (e) freight telematics applications and other freight software not falling under Article 16, such as systems providing information exclusively within one transport mode or digital reservation and payment systems that do not contribute to uninterrupted traffic flows. Investments into applications for passenger services such as systems which provide passengers with information before and during the journey, passenger reservation and payment systems, luggage management and management of connections between passenger trains and with other modes of passenger transport are not eligible for support;
 - (f) logistics systems, such as load optimisation software;
 - (g) traffic forecast software (Estimated Time of Departure/Estimated Time of Arrival) and route optimisation software.
4. The eligible costs shall be all costs necessary for the implementation of the eligible investments. Such costs may include, in particular, costs necessary for the purchase and installation of the relevant technology, costs related to upgrades of an existing installed technology, project management costs and delivery costs. Costs related to studies, testing and approval, and pilot and prototype installations shall be eligible for aid.
 5. The aid intensity shall not exceed 20% of the eligible costs.
 6. As regards investments in vehicles for rail or inland waterways transport whose acquisition is planned, the eligible costs must be limited to the net extra costs for technical adaptation and modernisation, provided that such costs are not already covered by any other form of aid, in particular aid under Articles 14 and 15. The net extra costs for technical adaptation and modernisation are calculated as the difference between, on the one hand, the total cost of purchasing the vehicle for rail or inland waterways transport whose acquisition is planned and that is equipped with such investments, and, on the other hand, the total cost of purchasing the same vehicle or a similar one that requires technical adaptation and modernisation in the counterfactual scenario.
 7. For at least 5 years after the grant of the aid, contractual arrangements for the transfer or use against payment (such as lease) of assets financed with aid for the technical adaptation and modernisation of vehicles and equipment for sustainable multimodal transport shall include a clause stating that the adaptation or modernisation of the asset concerned was funded with State aid and specifying the aid amount.
 8. The investment shall be implemented and finalised at least 1 year before the date the supported investment becomes mandatory at EU level.

Chapter III - Monitoring

Article 18

Withdrawal of the benefit of the block exemption

Where a Member State grants aid that is allegedly exempted from the notification requirement under this Regulation without fulfilling the conditions set out in Chapters I to II, the Commission may, after having provided the Member State concerned with the possibility to make its views known, adopt a decision stating that all or some of the future aid measures adopted by the Member State concerned, which would otherwise fulfil the requirements of this Regulation, shall be notified to the Commission in accordance with Article 108(3) of the Treaty. The measures to be notified may be limited to the measures granting certain types of aid or in favour of certain beneficiaries or aid measures adopted by certain authorities of the Member State concerned.

Article 19

Reporting

Member States shall send to the Commission:

- (a) through the Commission's electronic notification system, the summary information about each aid measure exempted under this Regulation in the standardised format laid down in Annex III to this Regulation, together with a link providing access to the full text of the aid measure, including its amendments, within 20 working days following its entry into force;
- (b) an annual report, as referred to in Commission Regulation (EC) No 794/2004³², in electronic form on the application of this Regulation, containing the information indicated in Commission Regulation (EC) No 794/2004 in respect of each whole year or each part of the year during which this Regulation applies.

Article 20

Evaluation

1. Aid schemes referred to in Article 1(2), points (i) and (j), shall be subject to an *ex post* evaluation if they have a State aid budget or accounted expenditures over EUR 150 million in any given year or EUR 750 million over their total duration. The total duration is the combined duration of the scheme and any predecessor scheme covering a similar objective and geographical area starting from XXX. Given the objectives of the evaluation and to avoid putting a disproportionate burden on Member States, *ex*

³² Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 140, 30.4.2004, p. 1, ELI: <http://data.europa.eu/eli/reg/2004/794/2016-12-22>).

post evaluations shall only be required for aid schemes of which the total duration exceeds 3 years starting from XXX.

2. The *ex post* evaluation requirement may be waived for aid schemes that are an immediate successor of a scheme covering a similar objective and geographical area that has been subject to an evaluation. This is contingent on a final evaluation report having been produced in compliance with the evaluation plan approved by the Commission and that had not produced any negative findings. Where the final evaluation report of a scheme is not in compliance with the approved evaluation plan, that scheme shall be suspended with immediate effect. Any successor of such a suspended scheme, covering a similar objective and geographical area, shall not enjoy the benefit of the block exemption.
3. The aim of the evaluation shall be to verify whether the assumptions and conditions underlying the compatibility of the scheme have been achieved, in particular the necessity and the effectiveness of the aid measure in the light of its general and specific objectives. The evaluation shall also assess the impact of the scheme on competition and trade.
4. For aid schemes subject to the evaluation requirement pursuant to paragraph 1, Member States shall notify a draft evaluation plan as follows:
 - (a) within 20 working days from the scheme's entry into force if the State aid budget of the scheme exceeds EUR 150 million in any given year or EUR 750 million over its total duration;
 - (b) within 30 working days following a significant change that increases the budget of the scheme to over EUR 150 million in any given year or EUR 750 million over the total duration of the scheme;
 - (c) within 30 working days following the recording in official accounts of expenditure under the scheme in excess of EUR 150 million in any year.
5. The draft evaluation plan shall be in accordance with the common methodology for State aid evaluation adopted by the Commission. Member States shall publish the evaluation plan approved by the Commission.
6. The *ex post* evaluation shall be carried out by an expert independent from the aid granting authority on the basis of the evaluation plan. Each evaluation shall include at least one interim and one final evaluation report. Member States shall publish both reports.
7. The final evaluation report shall be submitted to the Commission at the latest 9 months before the expiry of the exempted scheme. That period may be reduced for schemes triggering the evaluation requirement in their last 2 years of implementation. The precise scope of and arrangements for each evaluation shall be set out in the decision approving the evaluation plan. The notification of any subsequent aid measure with a similar objective shall describe how the results of the evaluation have been taken into account.

Article 21

Monitoring

1. In order to enable the Commission to monitor the aid exempted from notification under this Regulation, Member States shall maintain detailed records with the information and supporting documentation needed to determine that all the conditions laid down in this Regulation are fulfilled. Such records shall be kept for 10 years from the date on which the ad hoc aid was granted or the last individual aid was granted under the scheme.
2. In the case of schemes under which fiscal aid is granted automatically, such as those based on tax declarations of the beneficiaries, and where there is no *ex ante* verification that all compatibility conditions are met for each beneficiary, Member States shall regularly verify, at least *ex post* and on a sample basis, that all compatibility conditions are met, and draw the necessary conclusions. Member States shall maintain detailed records of the verifications for at least 10 years from the date of the checks.
3. The Commission may request from each Member State all the information and supporting documentation that the Commission considers necessary to monitor the application of this Regulation, including the information mentioned in paragraphs 1 and 2. The Member State concerned shall provide the Commission with the requested information and supporting documents within 20 working days from receipt of the request or a within a longer time limit that in accordance with the request.

Chapter IV – Final provisions

Article 22

Transitional provisions

1. This Regulation shall apply to individual aid granted before the respective provisions of this Regulation have entered into force where the aid fulfils all the conditions laid down in this Regulation, with the exception of Article 9.
2. Any aid not exempted from the notification requirement of Article 108(3) of the Treaty pursuant to this Regulation shall be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.
3. At the end of the period of validity of this Regulation, any aid scheme exempted under this Regulation shall remain exempted during an adjustment period of six 6 months.

Article 23

1. This Regulation shall enter into force on XXX.

2. It shall apply until XXX.

Done at Brussels,

For the Commission

The President
Ursula von der Leyen

ANNEX I

SME Definition

Article 1

Enterprise

An enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity.

Article 2

Staff headcount and financial thresholds determining enterprise categories

1. The category of micro, small and medium-sized enterprises ('SMEs') is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.
2. Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.
3. Within the SME category, a micro-enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

Article 3

Types of enterprise taken into consideration in calculating staff numbers and financial amounts

1. An 'autonomous enterprise' is any enterprise which is not classified as a partner enterprise within the meaning of paragraph 2 or as a linked enterprise within the meaning of paragraph 3.
2. 'Partner enterprises' are all enterprises which are not classified as linked enterprises within the meaning of paragraph 3 and between which there is the following relationship: an enterprise (upstream enterprise) holds, either solely or jointly with one or more linked enterprises within the meaning of paragraph 3, 25 % or more of the capital or voting rights of another enterprise (downstream enterprise).

However, an enterprise may be ranked as autonomous, and thus as not having any partner enterprises, even if the 25 % threshold is reached or exceeded by the following investors, provided that those investors are not linked, within the meaning of paragraph 3, either individually or jointly to the enterprise in question:

- a) public investment corporations, venture capital companies, individuals or groups of individuals with a regular venture capital investment activity who invest equity capital in

unquoted businesses (business angels), provided the total investment of those business angels in the same enterprise is less than EUR 1 250 000;

- b) universities or non-profit research centres;
- c) institutional investors, including regional development funds;
- d) autonomous local authorities with an annual budget of less than EUR 10 million and less than 5 000 inhabitants.

3. 'Linked enterprises' are enterprises which have any of the following relationships with each other:

- a) an enterprise has a majority of the shareholders' or members' voting rights in another enterprise;
- b) an enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;
- c) an enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;
- d) an enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise.

There is a presumption that no dominant influence exists if the investors listed in the second subparagraph of paragraph 2 are not involving themselves directly or indirectly in the management of the enterprise in question, without prejudice to their rights as shareholders.

Enterprises having any of the relationships described in the first subparagraph through one or more other enterprises, or any one of the investors mentioned in paragraph 2, are also considered to be linked.

Enterprises which have one or other of such relationships through a natural person or group of natural persons acting jointly are also considered linked enterprises if they engage in their activity or in part of their activity in the same relevant market or in adjacent markets.

An 'adjacent market' is considered to be the market for a product or service situated directly upstream or downstream of the relevant market.

4. Except in the cases set out in paragraph 2, second subparagraph, an enterprise cannot be considered an SME if 25 % or more of the capital or voting rights are directly or indirectly controlled, jointly or individually, by one or more public bodies.

5. Enterprises may make a declaration of status as an autonomous enterprise, partner enterprise or linked enterprise, including the data regarding the thresholds set out in Article 2. The declaration may be made even if the capital is spread in such a way that it is not possible to determine exactly by whom it is held, in which case the enterprise may declare in good faith that it can legitimately presume that it is not owned as to 25 % or more by one enterprise or jointly by enterprises linked to one another. Such declarations are made without prejudice to the checks and investigations provided for by national or Union rules.

Article 4

Data used for the staff headcount and the financial amounts and reference period

1. The data to apply to the headcount of staff and the financial amounts are those relating to the latest approved accounting period and calculated on an annual basis. They are taken into account from the date of closure of the accounts. The amount selected for the turnover is calculated excluding value added tax (VAT) and other indirect taxes.
2. Where, at the date of closure of the accounts, an enterprise finds that, on an annual basis, it has exceeded or fallen below the headcount or financial thresholds stated in Article 2, this will not result in the loss or acquisition of the status of medium-sized, small or micro-enterprise unless those thresholds are exceeded over two consecutive accounting periods.
3. In the case of newly established enterprises whose accounts have not yet been approved, the data to apply is to be derived from a bona fide estimate made in the course of the financial year.

Article 5

Staff headcount

1. The headcount corresponds to the number of annual work units (AWU), i.e. the number of persons who worked full-time within the enterprise in question or on its behalf during the entire reference year under consideration. The work of persons who have not worked the full year, the work of those who have worked part-time, regardless of duration, and the work of seasonal workers are counted as fractions of AWU. The staff consists of:
 - a) employees;
 - b) persons working for the enterprise being subordinated to it and deemed to be employees under national law;
 - c) owner-managers;
 - d) partners engaging in a regular activity in the enterprise and benefiting from financial advantages from the enterprise.
2. Apprentices or students engaged in vocational training with an apprenticeship or vocational training contract are not included as staff. The duration of maternity or parental leaves is not counted.

Article 6

Establishing the data of an enterprise

1. In the case of an autonomous enterprise, the data, including the number of staff, are determined exclusively on the basis of the accounts of that enterprise.
2. The data, including the headcount, of an enterprise having partner enterprises or linked enterprises are determined on the basis of the accounts and other data of the enterprise or, where

they exist, the consolidated accounts of the enterprise, or the consolidated accounts in which the enterprise is included through consolidation.

To the data referred to in the first subparagraph are added the data of any partner enterprise of the enterprise in question situated immediately upstream or downstream from it. Aggregation is proportional to the percentage interest in the capital or voting rights (whichever is greater). In the case of cross-holdings, the greater percentage applies.

To the data referred to in the first and second subparagraph are added 100 % of the data of any enterprise, which is linked directly or indirectly to the enterprise in question, where the data were not already included through consolidation in the accounts.

3. For the application of paragraph 2, the data of the partner enterprises of the enterprise in question are derived from their accounts and their other data, consolidated if they exist. To these are added 100 % of the data of enterprises which are linked to these partner enterprises, unless their accounts data are already included through consolidation.

For the application of the same paragraph 2, the data of the enterprises which are linked to the enterprise in question are to be derived from their accounts and their other data, consolidated if they exist. To these are added, pro rata, the data of any possible partner enterprise of that linked enterprise, situated immediately upstream or downstream from it, unless it has already been included in the consolidated accounts with a percentage at least proportional to the percentage identified under the second subparagraph of paragraph 2.

4. Where in the consolidated accounts no staff data appear for a given enterprise, staff figures are calculated by aggregating proportionally the data from its partner enterprises and by adding the data from the enterprises to which the enterprise in question is linked.

Annex II

Measures covered by the TBER and measures to be notified under the Land and Multimodal Transport Guidelines ('LMT Guidelines')

Primary Objective	TBER		LMT Guidelines	
	Measure	Intensity allowed	Measure	Intensity allowed
Operating aid to reduce external costs of transport	Aid schemes	<p><i>50% eligible costs</i></p> <p><i>[60]% eligible costs for aid granted to combined transport operations</i></p>	<p>Ad hoc aid</p> <p>Aid schemes with intensities higher than those authorised under the TBER</p> <p>Aid schemes not using the Commission's Handbook</p>	<p><i>75% eligible costs</i></p>
Operating aid to launch new commercial connections	<p>Aid schemes</p> <p>Individual aid amount awarded under a scheme per project < EUR 15 million</p>	<p><i>80% eligible costs for the first year of operation, 70% for the second year, 60% for the third year, 50% for the fourth year, and 40% for the fifth year</i></p>	<p>Ad hoc aid</p> <p>Individual aid amount awarded under a scheme per project ≥ EUR 15 million</p>	<p><i>80% eligible costs for the first year of operation, 70% for the second year, 60% for the third year, 50% for the fourth year, and 40% for the fifth year</i></p>
Investment aid for the construction, upgrade and renewal of unimodal or multimodal rail or inland waterways transport facilities	<p>Aid schemes</p> <p>Individual aid amount awarded under a scheme per project < EUR 20 million</p> <p>Ad hoc aid to sustainable multimodal freight terminals < EUR 10 million</p>	<p><i>50% eligible costs if aid < EUR 3 million per project</i></p> <p><i>50% eligible costs but within the limit of the difference between eligible costs and operating profit of the investment over its lifetime and terminal value if aid ≥ EUR 3 million per project</i></p>	<p>Ad hoc aid</p> <p>Ad hoc aid to sustainable multimodal freight terminals ≥ EUR 10 million</p> <p>Individual aid amount awarded under a scheme per project ≥ EUR 20 million</p> <p>Aid schemes with intensities higher than those authorised under the TBER</p>	<p><i>Funding gap limited to 100% of the eligible costs</i></p> <p><i>No threshold if ad hoc aid awarded by means of competitive bidding process</i></p>

Investment aid for the construction, upgrade and renewal of private sidings	Aid schemes Individual aid amount awarded under a scheme per project < EUR 2 million	<i>50% eligible costs if aid < EUR 500 000 per project</i> <i>50% eligible costs but within the limit of the difference between eligible costs and operating profit of the investment over its lifetime and terminal value if aid ≥ EUR 500 000 per project</i>	Ad hoc aid Individual aid amount awarded under a scheme per project ≥ EUR 2 million Aid schemes with intensities above those authorised under the TBER	<i>Funding gap limited to 100% of the eligible costs</i>
Investment aid for the acquisition of vehicles for rail or inland waterways transport	Aid schemes	<i>Nominal amount of the underlying loan ≤ eligible costs. Guarantee coverage ≤ 80% of the underlying loan</i>	Ad hoc aid Aid schemes with intensities above those authorised under the TBER	<i>Nominal amount of the underlying loan ≤ eligible costs. Guarantee coverage ≤ 90% of the underlying loan</i>
Investment aid for the acquisition of ILUs and cranes on board of vessels	Aid schemes	<i>30% eligible costs (for ILUs)</i> <i>20% eligible costs (for cranes on board of vessels)</i>	N/A	
Investment aid for interoperability	Aid schemes	<i>50% eligible costs</i> <i>80% eligible costs (for ERTMS and DAC)</i>	Ad hoc aid Aid schemes with intensities above those authorised under the TBER or for investments not included in the list covered by the TBER	<i>50% eligible costs</i> <i>80% eligible costs (for ERTMS and DAC)</i> <i>Funding gap limited to 100% of the eligible costs</i>
Investment aid for technical adaptation and modernisation of vehicles and equipment for	Aid schemes	<i>20% eligible costs</i>	Ad hoc aid Aid schemes with intensities above those authorised under the TBER	<i>20% eligible costs</i> <i>Funding gap limited to 100%</i>

sustainable multimodal transport			or for investments not included in the list covered by the TBER	<i>of the eligible costs</i>
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Annex III

INFORMATION REGARDING STATE AID EXEMPT UNDER THE CONDITIONS OF THIS REGULATION

PART I - to be provided through the established Commission electronic notification system as laid down in Article 19

Aid reference	<i>(to be completed by the Commission)</i>	
Member State	.....
Member State reference number	.....
Region	Name of the Region(s) (NUTS ⁽¹⁾)	Regional aid status ⁽²⁾

Granting authority	Name	.....
	Postal address	.....
	Web address	.....
Title of the aid measure	.....
National legal basis (Reference to the relevant national official publication)	.....
Web link to the full text of the aid measure	.....
Type of measure	<input type="checkbox"/> Scheme	Name of the beneficiary and the group ⁽³⁾ it belongs to
	<input type="checkbox"/> <i>Ad hoc</i> aid	
Amendment of an existing aid scheme or <i>ad hoc</i> aid		Commission aid reference
	<input type="checkbox"/> Prolongation	.....
	<input type="checkbox"/> Modification	.....
Duration ⁽⁴⁾	<input type="checkbox"/> Scheme	dd/mm/yyyy to dd/mm/yyyy
Date of granting ⁽⁵⁾	<input type="checkbox"/> <i>Ad hoc</i> aid	dd/mm/yyyy
Economic sector(s) concerned	<input type="checkbox"/> All economic sectors eligible to receive aid	
	<input type="checkbox"/> Limited to certain sectors: Please specify at NACE group level ⁽⁶⁾

Type of beneficiary	<input type="checkbox"/> SME		
	<input type="checkbox"/> Large undertakings		
Budget	Total annual amount of the budget planned under the scheme ⁽⁷⁾	National currency (full amounts)	
	Overall amount of the <i>ad hoc</i> aid awarded to the undertaking ⁽⁸⁾	National currency (full amounts)	
	<input type="checkbox"/> For guarantees ⁽⁹⁾	National currency (full amounts)	
Aid instrument	<input type="checkbox"/> Grant/Interest rate subsidy		
	<input type="checkbox"/> Loan/Repayable advances		
	<input type="checkbox"/> Guarantee (where appropriate with a reference to the Commission decision ⁽¹⁰⁾)		
	<input type="checkbox"/> Tax advantage or tax exemption		
	<input type="checkbox"/> Provision of risk finance		
	<input type="checkbox"/> Other (please specify) Indicate to which broad category below it would fit best in terms of its effect/function: <input type="checkbox"/> Grant <input type="checkbox"/> Loan <input type="checkbox"/> Guarantee <input type="checkbox"/> Tax advantage <input type="checkbox"/> Provision of risk finance		
<input type="checkbox"/> If co-financed by EU fund(s)	Name of EU fund(s):	Amount of funding (as per EU fund)	National currency (full amounts)
<p>⁽¹⁾ NUTS — Nomenclature of Territorial Units for Statistics. Typically, the region is specified at level 2. ⁽²⁾ Article 107(3)(a) TFEU (status 'A'), Article 107(3)(c) TFEU (status 'C'), unassisted areas i.e. areas not eligible for regional aid (status 'N'). ⁽³⁾ An undertaking for the purposes of rules on competition laid down in the Treaty and for the purposes of this Regulation is any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. The Court of Justice has ruled that entities which are controlled (on a legal or on a de facto basis) by the same entity should be considered as one undertaking. ⁽⁴⁾ Period during which the granting authority can commit itself to grant the aid. ⁽⁵⁾ Determined in line with Article 2, point 27 of the Regulation. ⁽⁶⁾ NACE Rev. 2 - Statistical classification of Economic Activities in the European Community. Typically, the sector shall be specified at group level. ⁽⁷⁾ In case of an aid scheme: Indicate the annual overall amount of the budget planned under the scheme or the estimated tax loss per year for all aid instruments contained in the scheme. ⁽⁸⁾ In case of an <i>ad hoc</i> aid award: Indicate the overall aid amount/tax loss. ⁽⁹⁾ For guarantees, indicate the (maximum) amount of loans guaranteed. ⁽¹⁰⁾ Where appropriate, reference to the Commission decision approving the methodology to calculate the gross grant equivalent, in line with article 5(2)(c) of the Regulation.</p>			

PART II - to be provided through the established Commission electronic notification system as laid down in Article 19

Please indicate under which provision of the TBER the aid measure is implemented.

Primary Objective	Maximum aid intensity in % of eligible costs	Total budget
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Operating aid scheme to reduce external costs (Article 10)	... %	... national currency (per scheme per year)
Operating aid scheme to launch new commercial connections (Article 11)	... %	... national currency
Investment aid scheme to facilities (Article 12)	... %	... national currency
Ad hoc investment aid to sustainable multimodal freight terminals (Article 12)	... %	... national currency (per project)
Investment aid scheme to private sidings (Article 13)	... %	... national currency
Investment aid scheme for the acquisition of vehicles for rail and inland waterways transport (Article 14)	... %	... national currency
Investment aid scheme for the acquisition of ILUs and cranes on board of vessels (Article 15)	... %	... national currency
Investment aid scheme for interoperability (Article 16)	... %	... national currency
Investment aid scheme for technical adaptation and modernisation (Article 17)	... %	... national currency

Annex IV

Provisions for the publication of information as laid down in Article 9

Member States shall organise their comprehensive State aid websites, on which the information laid down in Article 7 is to be published, in such a way as to allow easy access to the information. Information shall be published in a spreadsheet data format, which allows data to be searched, extracted and easily published on the internet, for instance in CSV or XML format. Access to the website shall be allowed to any interested party without restrictions. No prior user registration shall be required to access the website.

The following information on individual awards as laid down in Article 9 (1)(c) shall be published:

- a) Name of the beneficiary
- b) Beneficiary's identifier
- c) Type of enterprise (SME/large) at the time of granting
- d) Region in which the beneficiary is located, at NUTS level II³³
- e) Sector of activity at NACE group level³⁴
- f) Aid element, expressed as full amount in national currency³⁵
- g) Aid instrument³⁶ (Grant/Interest rate subsidy, Loan/Repayable advances/Reimbursable grant, Guarantee, Tax advantage or tax exemption, Risk finance, Other (please specify))
- h) Date of granting
- i) Objective of the aid
- j) Granting authority
- k) Reference of the aid measure³⁷.

³³ NUTS — Nomenclature of Territorial Units for Statistics. Typically, the region is specified at level 2.

³⁴ Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1)

³⁵ For operating aid, the annual amount of aid per beneficiary. For investment aid, the amount of the investment. For measures under Article 12 the gross grant equivalent.

³⁶ If the aid is granted through multiple aid instruments, the aid amount shall be provided by instrument.

³⁷ As provided by the Commission under the electronic procedure referred to in Article 11 of this Regulation.