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**Approval of the content of a draft for a  
COMMUNICATION FROM THE COMMISSION  
Guidelines on State aid for land and multimodal transport**

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**Guidelines on State aid for land and multimodal transport**

**DRAFT**

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## 1. INTRODUCTION

### 1.1 General context

1. The creation of a common transport market has been a long-standing goal of the European Union (EU), promoted by liberalisation. In particular, in the EU, inland waterways transport services have been fully liberalised since the 1990s <sup>(1)</sup> and rail transport services have also been gradually liberalised over recent decades <sup>(2)</sup>.
2. Between 2001 and 2016, the Union co-legislators adopted four legislative packages on rail transport services aiming to gradually open rail transport service markets to competition, both for freight and passenger transport. The rail freight market was opened to competition on 15 March 2003 on the trans-European rail freight network <sup>(3)</sup>, on 1 January 2006 for international freight on the entire network at European level <sup>(4)</sup> and on 1 January 2007 for rail freight cabotage <sup>(5)</sup>. The rail passenger market was opened to competition in 2010 for international transport only <sup>(6)</sup> and then fully in 2019, following the adoption of the ‘fourth railway package’ <sup>(7)</sup> designed to complete the Single European Railway Area established by Directive 2012/34/EU (the ‘Single European Railway Directive’) <sup>(8)</sup>. The fourth railway package brought in several measures including the general right for railway undertakings <sup>(9)</sup> established in one Member State to operate all

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<sup>(1)</sup> Council Regulation (EEC) No 3921/91 of 16 December 1991 laying down the conditions under which non-resident carriers may transport goods or passengers by inland waterway within a Member State (OJ L 373, 31.12.1991, p. 1), applicable since 5 January 1992, builds upon the general principles of equality of treatment and freedom to provide services, whereby non-resident carriers should be allowed to carry out national transport services (‘cabotage’) on inland waterways in the European Union. Council Regulation (EEC) No 3921/91 of 16 December 1991 laying down the conditions under which non-resident carriers may transport goods or passengers by inland waterway within a Member State (OJ L 373, 31.12.1991, p. 1), applicable since 2 August 1996, introduced common rules governing the freedom to provide services for international inland waterways.

<sup>(2)</sup> The first legislative initiative in the early 1990s resulted in the adoption of Council Directive 91/440/EEC of 29 July 1991 on the development of the Community’s railways (OJ L 237, 24.8.1991, p. 25) that Member States had to transpose by 1 January 1993.

<sup>(3)</sup> Article 10(3) of Directive 2001/12/EC of the European Parliament and of the Council of 23 February 2001 amending Council Directive 91/440/EEC on the development of the Community’s railways (OJ L 75, 15.3.2001, p. 1).

<sup>(4)</sup> Article 1(2)(a) of Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC on the development of the Community’s railways (OJ L 164, 30.4.2004, p. 164).

<sup>(5)</sup> See footnote (4).

<sup>(6)</sup> Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 amending Council Directive 91/440/EEC on the development of the Community’s railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure (OJ L 315, 3.12.2007, p. 44) opened the international passenger transport by rail to competition, with effect on 1 January 2010.

<sup>(7)</sup> The Fourth Railway Package is a set of six legislative texts designed to complete the single market for rail services. See [https://ec.europa.eu/transport/modes/rail/packages/2013\\_en](https://ec.europa.eu/transport/modes/rail/packages/2013_en).

<sup>(8)</sup> 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) 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 with effect from 17 June 2015.

<sup>(9)</sup> As defined in Article 3(1)(1) of the Single European Railway Directive, see footnote (8).

types of passenger services in the European Union (with some limitations) <sup>(10)</sup> and the principle of mandatory tendering for public service contracts in rail <sup>(11)</sup>.

3. Opening the rail market requires a level playing field, in particular between private and public undertakings, to lead to effective competition. When rail incumbents are vertically integrated and publicly owned, intra-group refinancing at non-market conditions may distort competition, also because this discourages market entry. Therefore, the legal framework governing financial transactions in public and vertically integrated companies in the rail sector needs to be properly respected and enforced.
4. It is also necessary to ensure fair competitive conditions to promote competition between different modes of transport, factoring in the different level of (positive and negative) externalities of the different transport modes <sup>(12)</sup>. A sustainable transport sector is key to ensuring connectivity across Europe, fostering economic, social and territorial cohesion in line with Articles 170 and 174 of the Treaty on the Functioning of the European Union ('the Treaty') and to achieving the EU's climate goals.
5. In its 2011 White Paper on transport <sup>(13)</sup>, the Commission set a target of 20% reduction in transport emissions between 2008 and 2030 <sup>(14)</sup>, and a reduction of at least 60% between 1990 and 2050. In its Communication of 2016 entitled *A European Strategy for Low-Emission Mobility* <sup>(15)</sup> the Commission proposed measures to accelerate the decarbonisation of European transport. The European Green Deal presented by the Commission in 2019 <sup>(16)</sup> aimed to transform the EU into a fair and prosperous society with a modern, resource-efficient and competitive economy, where there are no net emissions of greenhouse gases by 2050 <sup>(17)</sup>. To that end, the Commission set the target to reduce net greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels <sup>(18)</sup>.
6. In December 2020, following the publication of the Evaluation of the White Paper Roadmap to a Single European Transport Area – Towards a competitive and resource

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<sup>(10)</sup> Directive (EU) 2016/2370 of the European Parliament and of the Council of 14 December 2016 amending Directive 2012/34/EU as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure (OJ L 352, 23.12.2016, p. 1) granted railway undertakings access to national rail networks since 1 January 2019 in time for the working timetable starting on 14 December 2020.

<sup>(11)</sup> Regulation (EU) 2016/2338 of the European Parliament and of the Council of 14 December 2016 amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail (OJ L 354, 23.12.2016, p. 22) introduced the obligation to competitively award public service contracts as of 3 December 2019, with a transition period ending on 24 December 2023.

<sup>(12)</sup> The common transport policy must also pursue the environmental objectives set by the Treaty on the Functioning of the European Union ('the Treaty'). Article 11 of the Treaty provides that 'Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development'.

<sup>(13)</sup> *Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system*, COM(2011) 144 final, 28.3.2011, point 6.

<sup>(14)</sup> Excluding international maritime transport, for which it sought a 40% reduction in emissions between 2005 and 2050.

<sup>(15)</sup> COM(2016) 501 final, 20.7.2016.

<sup>(16)</sup> 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, 11.12.2019.

<sup>(17)</sup> See footnote (16).

<sup>(18)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Stepping up Europe's 2030 climate ambition Investing in a climate-neutral future for the benefit of our people*, COM(2020) 562 final, 17.9.2020.

efficient transport system<sup>(19)</sup>, the Commission presented its Sustainable and Smart Mobility Strategy – ‘SSMS’<sup>(20)</sup>. This strategy set out a roadmap to put European transport on the right track for a sustainable and smart future, based on the findings of the 2011 White Paper on transport. The scenarios underpinning the strategy, which mirror those supporting the 2030 climate target plan, demonstrate that combining the proposed policy measures can deliver a 90% reduction in the transport sector’s emissions by 2050. The ‘Fit for 55’ package of legislative proposals<sup>(21)</sup> is intended to support the achievement of those targets by promoting, among others, cleaner forms of transport and transport fuels to put the EU on track to climate neutrality by 2050<sup>(22)</sup>.

7. The EU’s goal to reach climate neutrality by 2050 cannot be achieved without a fundamental green and digital transformation of all modes of the European transport sector.
8. The transport sector accounts for roughly a quarter of all greenhouse gas emissions produced by human activity in the EU and is one of the main causes of air pollution. Transport also creates other negative externalities (such as noise pollution, accidents and congestion) that are insufficiently factored into the costs of the transport users e.g., particularly for road and air transport. Therefore, decisive action is needed to shift more traffic to more sustainable forms of transport and to optimise the performance of multimodal logistic chains<sup>(23)</sup>. The greening of the transport sector is supported by several regulatory initiatives, most notably initiatives aiming to create a comprehensive Trans-European Transport Network<sup>(24)</sup>, to facilitate inland waterways transport<sup>(25)</sup> and to revise the Combined Transport Directive<sup>(26)</sup>. To meet those greening targets, major investments are needed. Competition policy, especially State aid rules, have an important role to play in enabling the EU to fulfil its Green Deal policy objectives when the market alone has insufficient means or incentives to meet those objectives (see point 13) because they guide Member States’ actions to address the relevant market failures, while ensuring that public financial support does not unduly affect the functioning of the internal market.
9. Ensuring that traffic of goods and passengers can flow uninterrupted between national networks and transport modes (‘interoperability’), is an overarching objective of the EU’s transport policy, which contributes to the achievement of major EU objectives<sup>(27)</sup>. Transport has become global in scale, both in terms of the networks used by passengers

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<sup>(19)</sup> SWD (2020) 0410 final, 10.12.2020.

<sup>(20)</sup> 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.

<sup>(21)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, ‘Fit for 55’: delivering the EU’s 2030 Climate Target on the way to climate neutrality, COM(2021) 550 final, 14.7.2021.

<sup>(22)</sup> Section 2.2.2. of the Communication referred to in footnote (21).

<sup>(23)</sup> See footnote (20).

<sup>(24)</sup> The trans-European transport network policy (the ‘TEN-T policy’) is based on Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1). This regulation is currently being revised in order to make the network safer, more sustainable, faster and more convenient for its users.

<sup>(25)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *NAIADES III: Boosting future-proof European inland waterway transport*, (COM(2021) 324 final, 24.6.2021).

<sup>(26)</sup> Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States (OJ L 368, 17.12.1992, p. 38).

<sup>(27)</sup> These include the proper functioning of the internal market, strengthening economic, social and territorial cohesion, and the competitiveness and safety of European transport networks.

and goods, which are increasingly cross-border, and in terms of the modes of transport involved, as journeys increasingly combine multiple transport solutions. And yet, linking up transport networks and modes throughout the European Union is still hampered by regulatory and technical barriers. Major interoperability investments are needed to complete the Single European Transport Area and to enable EU citizens and businesses to draw full benefits from an interlinked transport area. Substantial investments are also required for the deployment of digital infrastructures, notably uninterrupted coverage with 5G connectivity infrastructure along major transport corridors in Europe, supporting a wide range of services and higher levels of automation across different mobility applications <sup>(28)</sup>. This is an important objective of the SSMS for a successful digital transformation of the European Union by 2030.

## 1.2 Objective of these Guidelines

10. To prevent State aid from distorting or threatening to distort competition in the internal market and affecting trade between Member States, Article 107(1) of the Treaty lays down the principle that State aid is prohibited. By way of exception, in the land transport sector <sup>(29)</sup>, Article 93 of the Treaty provides that aid for the coordination of land transport and for the discharge of certain obligations inherent in the concept of a public service is compatible with the Treaties.
11. The Court of Justice has ruled that Article 93 of the Treaty acknowledges that aid to transport is compatible with the Treaty only in well-defined cases which do not jeopardise the general interests of the EU <sup>(30)</sup>.
12. As regards aid for the coordination of land transport, the Commission considers that the concept of ‘coordination of transport’ used in Article 93 of the Treaty has a significance which goes beyond the simple fact of facilitating the development of an economic activity. It implies an intervention by public authorities which is aimed at guiding the development of the transport sector in the common interest.
13. Various market failures may justify the intervention of the public authorities in the land transport sector. Firstly, the transport sector entails major negative externalities, for example congestion or pollution. These externalities are difficult to take into account in the pricing systems for access to transport infrastructure. As a result, there may be price disparities between the different modes of transport, which could be corrected by public support for those modes of transport which give rise to the lowest external costs. Secondly, the transport sector may experience coordination difficulties in the economic sense of the term, for example in the adoption of a common interoperability standard for rail, or in the connections between different transport networks. Thirdly, the transport sector also suffers from first-mover disadvantages which prevent the development of

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<sup>(28)</sup> As indicated in the 2016 5G Action Plan (COM(2021)118) and the Digital Decade Policy Programme 2030, which sets the basis for the establishment of a multi-country project for a Pan-European deployment of 5G corridors (Decision (EU) 2022/2481 of the European Parliament and the Council of 14 December 2022 establishing the Digital Decade Policy Programme 2030). The Gigabit Infrastructure Act (Regulation (EU) 2024/1309 of the European Parliament and of the Council of 29 April 2024 on measures to reduce the cost of deploying gigabit electronic communications networks, amending Regulation (EU) 2015/2120 and repealing Directive 2014/61/EU (OJ L, 2024/1309, 8.5.2024) applies to reasonable requests for access to physical infrastructure made to deploy elements of Very High Capacity Networks.

<sup>(29)</sup> Under Article 100 of the Treaty, Title VI “Transport” of the Treaty applies in principle only to transport by rail, road and inland waterway. These three types of transport are generally referred to as “land transport”, in contrast to transport by sea and by air.

<sup>(30)</sup> Judgment of the Court of 12 October 1978, *Commission v Belgium*, 156/77, EU:C:1978:180, paragraph 10.

those modes of transport that have the lowest amount of external costs but do not attract sufficient investments because investing in those transport modes is not sufficiently profitable. Lastly, certain operators in the transport sector may experience difficulties in accessing financing due to their position on the market which makes them lack sufficient information.

14. As regards aid for the discharge of certain obligations inherent in the concept of a public service, Regulation (EC) No 1370/2007<sup>(31)</sup> lays down the conditions under which public passenger transport services by rail and other track-based modes of transport (tram, metro) and by road (bus) (and by inland waterways in case Member States decide to apply Regulation (EC) No 1370/2007 to those services<sup>(32)</sup>) can be organised and financed since 2 December 2009<sup>(33)</sup>. As regards freight transport, Regulation (EC) No 1370/2007 provided for a transitional period of 3 years as of 3 December 2009 under which Regulation (EEC) No 1191/69<sup>(34)</sup> remained applicable to freight transport services. Therefore, the compatibility of aid paid since 3 December 2012 for the provision of rail, road and inland waterways freight transport services was assessed by the Commission directly under Article 93 of the Treaty<sup>(35)</sup> so far.
15. Under Article 93 of the Treaty it is possible for Member States in certain cases to impose specific obligations to ensure the provision of adequate transport services. The Commission's policies referred to in point 5 have stressed the need to ensure the provision of adequate decarbonated transport services. As the state of supply in the transport sector and of the needs of the Union show that there can be a shortage of commercially viable services in the rail freight transport sector, the Commission acknowledges that rail freight transport services may be in the interest of society as a whole<sup>(36)</sup>, it being understood that the Member State concerned must in any event establish that they have special characteristics compared to those of commercial freight services if such services exist in the market<sup>(37)</sup>. The Commission observes that rail freight transport services cannot always be operated on a commercial basis and, in exceptional circumstances, may require public financial support in the form of public service compensation. It is for Member States to identify the connectivity needs of their transport users and the support that may be required, if any. However, before considering putting in place public service obligations for rail freight transport, Member States should make all efforts to put in place favourable regulatory and economic framework conditions for rail freight transport services for which there is a demand, to be provided on a commercial basis. The adequacy

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<sup>(31)</sup> 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) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1).

<sup>(32)</sup> Article 1(2) of Regulation (EC) No 1370/2007, see footnote (31).

<sup>(33)</sup> The conditions include defining public service obligations, the scope of public service contracts, the procedure for awarding such contracts and calculating the compensation paid to public transport operators. If the provisions of Regulation (EC) No 1370/2007 are complied with, the compensation is deemed compatible with the internal market and exempt from the requirement of prior notification to the Commission under Article 108(3) of the Treaty.

<sup>(34)</sup> Council Regulation (EEC) No 1191/69 of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (OJ, English Special Edition, 1969(I), p. 276), as amended by Council Regulation (EEC) No 1893/91 of 20 June 1991 (OJ L 169, 26 June 1969, p. 1).

<sup>(35)</sup> See Commission Decision of 24 November 2023 in case SA.32953, Italy, *State aid measures in favour of Trenitalia SpA* (not yet published in the OJ).

<sup>(36)</sup> See Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (OJ C 8, 11.1.2012, p. 4), point 50.

<sup>(37)</sup> See Commission interpretative guidelines concerning Regulation (EC) No 1370/2007 on public passenger transport services by rail and by road (OJ C 92, 29.3.2014, p. 1), point 2.1.3.

of transport services must be assessed against the state of supply and demand in the transport sector and the needs of the community. At the same time, financial compensation for those obligations should be subject to conditions that minimise distortions of the internal market. Therefore, clarity is needed on the conditions under which public service compensation is to be regarded as compatible with the internal market under Article 93 of the Treaty.

16. The Railway Guidelines adopted by the Commission in 2008 on State aid for railway undertakings <sup>(38)</sup> (the ‘2008 Railway Guidelines’) codified the Commission’s practice on the application of Article 93 of the Treaty to railway undertakings. The 2008 Railway Guidelines also included incentives to increase the share of rail transport. The 2008 Railway Guidelines aimed at accompanying the liberalisation of the rail sector and completing the single European rail market with full interoperability. The 2008 Railway Guidelines do not have an expiry date, but the Fitness Check carried out by the Commission in 2020 <sup>(39)</sup> concluded that the 2008 Guidelines needed to be revised to reflect the Commission’s decisional practice developed in relation to State aid assessed directly under Article 93 of the Treaty, market developments and the policy objectives pursued by the European Green Deal.
17. By issuing these Guidelines, the Commission: (i) replaces the 2008 Railway Guidelines, (ii) codifies its decisional practice in applying State aid to the coordination of transport under Article 93 of the Treaty (not only to rail transport but also to inland waterways and multimodal transport), (iii) provide guidance on the State aid rules applicable to rail freight public transport services, (iv) reiterate the rules applicable to vertically integrated railway undertakings, and (v) clarify the reporting obligations for Member States.
18. The aim of this revision is to help achieve the transition to climate neutrality pursued by the European Green Deal, while ensuring a level playing field in the railway, inland waterways and multimodal transport sectors. These Guidelines and the newly adopted Commission Regulation declaring certain categories of aid compatible with the internal market under Articles 93, 107 and 108 of the Treaty (referred to as the Transport Block Exemption Regulation – ‘TBER’) <sup>(40)</sup> are designed to stimulate sustainable forms of transport by guiding Member State’s action towards the potentially less distortive types of aid in the land transport sector.

### 1.2.1 The railway sector

19. The railway sector is of strategic importance to the EU. Rail transport carries around 1.6 billion tonnes of freight and 9 billion passengers each year in the EU and is an important contributor to the EU’s land transport mix <sup>(41)</sup>, providing clean transport and a high level

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<sup>(38)</sup> Communication from the Commission – *Community guidelines on State aid for railway undertakings* (OJ C 184, 22.7.2008, p. 13).

<sup>(39)</sup> 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.

<sup>(40)</sup> [Reference to be inserted once adopted]

<sup>(41)</sup> In 2019, before the outbreak of the COVID-19 pandemic, EU passenger traffic volumes reached 414 billion passenger-kilometres out of a total of some 6 trillion passenger-kilometres of land transport. To prevent the spread of the COVID-19 pandemic, countries took restrictive measures in March 2020 which had a significant impact on rail passenger transport. Despite a steady recovery in traffic volumes, compared with 2019, in 2021 the number of rail passengers in Member States was still 37% less than in 2019. In 2018, EU freight traffic volumes reached 400 billion tonne-kilometres out of a total 2.5 trillion of land transport. The COVID-19 restrictions also had a significant impact on rail freight transport, albeit at a lower level than for rail passenger transport. In 2021, EU traffic volumes almost reached the level in the 2018 peak, at 399 billion tonne-kilometres (Source: [Eurostat](#)).

of efficiency in terms of number of passengers transported per vehicle-trip. Given its value as the most sustainable and environmentally friendly motorised transport mode, rail transport is crucial to achieve the objectives of the European Green Deal. Yet, as confirmed by a study commissioned by the Commission in view of the revision of the 2008 Railway Guidelines <sup>(42)</sup>, the railway sector still suffers from several drawbacks which make the market unable to achieve the EU's Green Deal objectives. Not only would the current number and capacity of railway facilities not be able to support the sought-after increase in traffic, but the railway network throughout the EU is still largely inadequate due to missing connections between transport terminals and to a lack of coordination between rail transport systems of different Member States. Furthermore, a significant portion of the EU rolling stock fleet is approaching the end of its useful life, and its renewal cannot be taken for granted given that smaller railway undertakings may not be able to sustain the necessary financial investment without public support.

20. As highlighted by the Fitness Check carried out by the Commission in 2020 <sup>(43)</sup>, several aspects of the 2008 Railway Guidelines have become obsolete and are *de facto* no longer applied. For instance, the conditions on cancelling historic debt directly linked to the activity of rail transport became obsolete <sup>(44)</sup>, as did the specific conditions for restructuring freight branches of railway undertakings, which were applicable only until 1 January 2010 <sup>(45)</sup>, and the section on abolishing unlimited State guarantees <sup>(46)</sup>. These Guidelines no longer include those elements.
21. Similarly, the compatibility criteria for aid to purchase and renew rolling stock set out in the 2008 Railway Guidelines <sup>(47)</sup> cross-referred to other State aid guidelines that expired or have been replaced in the meantime <sup>(48)</sup>. These Guidelines scrap those conditions and set out new conditions governing aid for the acquisition of rolling stock to facilitate the market entry and/or expansion of new players (see Section 4.2.2.3). In devising the new conditions, the Commission has taken into account that the rolling stock fleet is generally close to or already beyond its expected useful life <sup>(49)</sup>, that the lack of technical standardisation across Member States prevents rolling stock to be exchanged across Member States <sup>(50)</sup>, and that small and medium-sized railway undertakings ('SMEs') and

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<sup>(42)</sup> Impact assessment support study for the review of the Community guidelines on State aid for railway undertakings [E.CA Economics et al. (2022)].

<sup>(43)</sup> See footnote (39).

<sup>(44)</sup> Chapter 4 of the 2008 Railway Guidelines, see footnote (38). Point 56 of the 2008 Railway Guidelines concerns aid that serves to offset clearly determined and individualised debts incurred prior to 15 March 2001 or the later date of accession of the Member State concerned to the European Union.

<sup>(45)</sup> Chapter 5 of the 2008 Railway Guidelines, see footnote (38).

<sup>(46)</sup> Chapter 7 of the 2008 Railway Guidelines, see footnote (38). Under point 4.1 of the 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), in principle, unlimited guarantees are incompatible with the Treaty. That applies to all economic sectors including the transport sector.

<sup>(47)</sup> Chapter 3 of the 2008 Railway Guidelines, see footnote (38).

<sup>(48)</sup> Namely, the *Community guidelines on State aid for rescuing and restructuring firms in difficulty* (OJ C 244, 1.10.2004, p. 2), the *Community guidelines on State aid for environmental protection* (OJ C 82, 1.4.2008, p. 1), *Guidelines on national regional aid for 2007-2013* (OJ C 54, 4.3.2006, p. 13), Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ L 10, 13.1.2001, p. 33); and Regulation (EEC) No 1191/69 (mentioned at footnote (34)), that are all no longer in force.

<sup>(49)</sup> Even though there are differences across Member States, at the current rate of renewal (as observed in the past 10 years), the size of the rolling stock fleet in the EU, in particular passenger trains, will decrease over the next 10 years.

<sup>(50)</sup> The lack of technical standardisation is the result of differences in the rail infrastructure across different Member States in terms of signalling systems, electrification and voltage systems and gauge (which in certain Member States, e.g., Spain, Portugal, Ireland, Finland, is different than the standard gauge of 1435 mm prevailing in the EU).

new entrants have difficulties in renewing or increasing their fleets due to the high investment costs of acquiring rolling stock and to difficulties in accessing finance <sup>(51)</sup>.

22. As regards aid for the coordination of transport, these Guidelines bring in the novelties described in points 23 to 26.
23. In contrast to the 2008 Railway Guidelines, these Guidelines apply not only to railway undertakings but also to other rail operators <sup>(52)</sup>. They also apply to undertakings operating on the demand-side of the rail transport sector, i.e. transport organisers (e.g. logistics companies, freight forwarders, multimodal transport operators), to the extent they choose to use rail instead of road.
24. As regards operating aid, the compatibility criteria laid down in the 2008 Railway Guidelines for aid for rail infrastructure use and aid for reducing external costs <sup>(53)</sup> had to be updated. The experience developed by the Commission in the assessment of aid under the 2008 Railway Guidelines has shown that those rules needed to be simplified and streamlined to resolve the specific market failure they were designed to address. While these Guidelines do not include a section on aid for infrastructure use, which was included under point 98(a) of the 2008 Railway Guidelines, Member States can use aid to reduce the external costs of transport, based on the external costs methodology, to continue to cover the costs linked to the use of infrastructure (see Section 4.2.1.1). In addition, to further facilitate the development of new commercial rail connections, these Guidelines cover also operating aid to launch new commercial rail freight connections and new commercial rail passenger connections concerning cross-border rail passenger services or long-distance rail passenger services (see Section 4.2.1.2).
25. Based on the experience gained under the 2008 Railway Guidelines on interoperability aid and given the different types of benefits underlying investment in traffic management systems <sup>(54)</sup>, these Guidelines differentiate between interoperability aid (Section 4.2.2.4) and aid for the technical adaptation and modernisation of rolling stock (Section 4.2.2.5). In fact, interoperability investments (such as investments needed for the cross-border harmonisation of traffic management systems) are subject to a higher degree of market failures, in particular coordination failures and first-mover disadvantages for market operators <sup>(55)</sup>. The Commission will assess aid aiming at promoting digitalisation to facilitate traffic management, uninterrupted traffic flows and/or the safety of train operations under the sections of these Guidelines concerning interoperability aid (Section 4.2.2.4) and aid for technical adaptation and modernisation (Section 4.2.2.5).

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<sup>(51)</sup> Access to second-hand rolling stock cannot be considered a real alternative to the purchase or leasing of new rolling stock due to the scarce development of second-hand markets for rolling stock.

<sup>(52)</sup> The term ‘rail operator’ includes not only ‘railway undertakings’ within the meaning of the Single European Railway Directive, see footnote (8), (i.e., any private or public undertaking whose main business is to provide rail transport services for goods and/or passengers with a requirement that the undertaking should ensure traction), but also other railway companies providing rail transport services but no traction services (i.e. where they need to rent locomotives to operate).

<sup>(53)</sup> Chapter 6 of the 2008 Railway Guidelines, see footnote (38).

<sup>(54)</sup> The strong European dimension of rail transport makes rail transport very sensitive to lack of interoperability and coordination between national rail networks that can affect its competitiveness. This is particularly the case of rail freight transport, around half of which is cross-border. Rail passenger traffic has been so far mostly domestic, with only less than 10% crossing borders in 2021 (source: [Eurostat](#)), however it has great cross-border potential particularly when it comes to cross-border night transport.

<sup>(55)</sup> Impact assessment support study for the review of the Community guidelines on State aid for railway undertakings, see footnote (42), Sections 4.7 and 5.5.

26. In contrast to the 2008 Railway Guidelines, which did not cover aid to rail transport facilities <sup>(56)</sup>, these Guidelines provide detailed compatibility rules on investment aid for the construction, upgrade and renewal of facilities for rail transport (Sections 4.2.2.1 and 4.2.2.2). Those rules take stock of the decisional practice developed by the Commission to assess the compatibility of State aid in the land transport sector under Article 93 of the Treaty.
27. These Guidelines include a specific chapter on compatibility of aid to reimburse operators for the discharge of certain obligations inherent in providing a public service in the rail freight transport sector (Chapter 5).
28. Lastly, these Guidelines include a specific chapter reiterating the rules applicable to financial flows in vertically integrated railway undertakings (Chapter 6).

### 1.2.2 *The inland waterways sector*

29. The EU's inland waterways network spans over 25 Member States and comprises some 41 000 kilometres of inland waterways. Every year, they serve to transport around 150 billion tonne-kilometres of cargo carried by about 15 000 cargo vessels, with some 3 000 day-trip passenger vessels and 430 cruise vessels (vessels with a capacity of over 12 passengers) in operation <sup>(57)</sup>. There is significant potential to increase the modal share of inland waterways transport, which would reduce greenhouse gas emissions. To that end, however, inland waterways transport must be able to compete on a level playing field with other transport modes.
30. The 2008 Railway Guidelines did not apply to the inland waterways sector. Over recent years, the Commission has authorised State aid to promote the coordination of transport in the inland waterways sector directly under Article 93 of the Treaty. These Guidelines codify the decisional practice in that regard and set out clear criteria governing the compatibility of aid to support inland waterways operations. In line with the approach followed for the railway sector, these Guidelines apply to operators active both on the supply-side (i.e. aid to inland waterways operators) and on the demand-side (i.e. transport organisers such as logistics companies, freight forwarders, multimodal transport operators, to the extent they choose to switch from road to inland waterways).
31. These Guidelines set out compatibility conditions for operating aid and investment aid in the inland waterways transport sector. As regards operating aid, the rules governing aid to reduce the external cost of transport for rail transport and to launch new commercial connections also apply to inland waterways transport (see Section 4.2.1.1 and Section 4.2.1.2). As regards investment aid, these Guidelines cover both aid for the construction, upgrade and renewal of facilities in the inland waterways sector (see Section 4.2.2.1) and aid for the acquisition of inland waterways vessels to facilitate access to finance to invest in the fleet (see Section 4.2.2.3). With regard to the upgrade of inland waterways vessels, in line with the approach taken in the railway sector, these Guidelines distinguish between aid for interoperability investments (Section 4.2.2.4) and aid for the technical adaptation and modernisation of vessels (Section 4.2.2.5). The Commission will assess under those two sections of the Guidelines aid aiming at promoting digitalisation to facilitate traffic management, uninterrupted traffic flows and/or the safety of inland waterways operations.

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<sup>(56)</sup> Chapter 2 of the 2008 Railway Guidelines (see footnote 38) covered only the effects of public financing of infrastructure on railway undertakings.

<sup>(57)</sup> See footnote (25).

32. The European inland waterways sector has a relatively old fleet and overall the sector seems to have difficulties to increase its share of traffic compared to other transport modes. Between 2014 and 2020, the number of inland waterways transport operators active both in goods and in passenger transport decreased, and the available loading capacity has also fallen continuously since 2011. In devising these new rules, the Commission has taken account of these issues and of the fact that the inland waterways sector consists mostly of SMEs, family businesses and smaller ports, which makes it difficult for them to engage in expensive investments in order to reach the goals of the European Green Deal<sup>(58)</sup>. Most operators in the inland waterways sector are SMEs, which are often unable to renew or increase their fleet due to difficulties in accessing market financing. Therefore, under these Guidelines, SMEs are the only possible beneficiaries of aid for the acquisition of inland waterways vessels. This allows to channel that type of aid where it is most needed to foster the development of the inland waterways sector.

### 1.2.3 *The multimodal transport sector*

33. Multimodal transport, i.e. the carriage of goods or passengers by at least two different modes of transport, is key to enabling the higher uptake of rail and inland waterways transport, as alone they rarely provide door-to-door transport solutions. Sustainable multimodal transport, providing last-mile, door-to-door connections, combines better environmental performance and energy efficiency of non-road transport with the accessibility and flexibility of road transport. It is therefore instrumental to achieving the goals of the SSMS and the European Green Deal.
34. Although the volume of multimodal freight transport has increased substantially over the last 30 years, road still dominates freight transport in the EU. Multimodal freight transport is often not competitive with road-only transport due to performance gaps in terms of availability, reliability, punctuality and speed at different stages in the chain (i.e. in the services provided by rail and waterborne transport, transshipment terminals and road transport for the ‘last mile’) and the fact that the negative externalities of road transport are insufficiently factored in.
35. When multimodal freight transport consists only of the movement of goods in one and the same loading unit or vehicle by successive modes of transport (without handling the goods themselves when changing modes), it is known as ‘intermodal transport’<sup>(59)</sup>. ‘Combined transport’ is a sub-category of intermodal transport, expressly regulated at EU level by the Combined Transport Directive<sup>(60)</sup>. The Combined Transport Directive is the only EU legal instrument that currently directly supports intermodal transport and incentivises the shift from road freight to lower emission transport modes (inland waterways, maritime transport and rail). The Combined Transport Directive was adopted in 1975<sup>(61)</sup> and amended several times to apply to a wider set of operations. On [date – to be included once adopted] the European Parliament and Council adopted a Directive

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<sup>(58)</sup> European Parliament, *Towards future-proof inland waterway transport in Europe* (P9\_TA(2021)0367), [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0367\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0367_EN.html)

<sup>(59)</sup> The fact that the intermodal unit and/or vehicle remains the same when changing modes reduces cargo handling, with consequent lower risk of damages or losses of the goods.

<sup>(60)</sup> See footnote (26).

<sup>(61)</sup> Council Directive 75/130/EEC of 17 February 1975 on the establishment of common rules for certain types of combined road/rail carriage of goods between Member States (OJ L 48, 22.2.1975, p.31).

of the European Parliament and of the Council amending the Combined Transport Directive following a proposal presented by the Commission on 7 November 2023 <sup>(62)</sup>.

36. The objective of the Combined Transport Directive is to improve the environmental performance of transport by setting more favourable regulatory and economic conditions for more environmentally friendly freight operations, as identified in that Directive. The ultimate goal is to reduce the cost to the final user – i.e. the transport organiser – to make combined transport competitive with road-only transport. For the sake of clarity, financial support granted by Member States to combined transport operations complying with the conditions of the Combined Transport Directive could constitute State aid. Any State aid granted by Member States in line with the Combined Transport Directive should also meet the applicable compatibility conditions set out either in the TBER, in these Guidelines for sustainable multimodal transport, or in any other relevant instrument of State aid law (see Chapter 3).
37. These Guidelines set out the compatibility conditions for operating aid and investment aid in the multimodal transport sector in order to boost sustainable multimodal transport. Under these Guidelines, multimodal transport is considered ‘sustainable’ if at least one of the methods of transport used is rail or inland waterways, or road if it is combined with short-sea shipping. For the sake of clarity, under these Guidelines, aid can be granted for short-sea shipping only if it is combined with land transport (i.e. either with rail, inland waterways or road).
38. For operating aid, the rules on aid to reduce the external cost of transport that apply to rail transport also apply to sustainable multimodal transport (Section 4.2.1.1). In contrast to the 2008 Railway Guidelines, which did not concern the launch of new commercial connections, these Guidelines set out specific conditions for granting this type of aid by codifying the decisional practice developed by the Commission (Section 4.2.1.2).
39. For investment aid, these Guidelines cover aid to multimodal transport facilities and aid to upgrade equipment for sustainable multimodal transport. Aid to those multimodal transport facilities is limited to aid to invest in rail and inland waterways multimodal transport facilities (Section 4.2.2.1). For the sake of clarity, these Guidelines also apply to State aid for those multimodal transport facilities which are located in maritime ports and have rail or inland waterways connections. For the upgrade of equipment for sustainable multimodal transport, in line with the approach taken in the railway and inland waterways sectors, these Guidelines distinguish between aid for interoperability investments (Section 4.2.2.4) and aid for the technical adaptation and modernisation of equipment for sustainable multimodal transport (Section 4.2.2.5). For the sake of clarity, these Guidelines do not cover aid for the acquisition of equipment for sustainable multimodal transport. Such aid falls under the TBER if it concerns intermodal loading units (‘ILUs’) and/or cranes on board of vessels and is granted by Member States in the form of aid schemes under very specific conditions. Beyond those cases, the Commission considers that aid for the acquisition of equipment for sustainable multimodal transport (e.g. cranable semitrailers) can be authorised only exceptionally, and therefore will assess it directly under Article 93 of the Treaty.

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<sup>(62)</sup> Proposal for a Directive of the European Parliament and of the Council amending Council Directive 92/106/EEC as regards a support framework for intermodal transport of goods and Regulation (EU) 2020/1056 of the European Parliament and of the Council as regards calculation of external costs savings and generation of aggregated data, COM/2023/702 final, 7.11.2023.

## 2. SCOPE AND DEFINITIONS

### 2.1 Scope

40. These Guidelines apply to State aid measures <sup>(63)</sup> granted to undertakings in the rail, inland waterways and sustainable multimodal transport sectors <sup>(64)</sup>, insofar as the aid measures fall within the scope of Chapter 4 or Chapter 5 of these Guidelines.
41. These Guidelines lay down the criteria for compatibility under Article 93 of the Treaty of the following aid:
- a) aid in the rail, inland waterways and multimodal transport sectors that meets the needs of coordination of transport (Chapter 4);
  - b) aid in the rail freight transport sector to reimburse undertakings for meeting certain obligations inherent in the concept of a public service (Chapter 5).
42. As regards aid for the coordination of transport in the rail, inland waterways and multimodal transport sectors, these Guidelines also apply to undertakings carrying passengers and/or freight in inland waterways and multimodal transport sectors and to undertakings operating on the demand-side of the land transport sector, i.e. transport organisers <sup>(65)</sup>, which are the ones making the choice between methods of transport. Experience has shown that railway undertakings are only some of several key players that contribute to the modal shift to sustainable land transport. Moreover, the Commission has established decisional practice in applying the principles of the 2008 Railway Guidelines to aid measures whose direct beneficiaries are logistics undertakings that use rail transport services rather than railway undertakings <sup>(66)</sup>. This is because the principles set out in those Guidelines were also well suited to examining the compatibility of aid for which railway undertakings are only indirect beneficiaries.

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<sup>(63)</sup> Article 107(1) of the Treaty defines State aid as ‘any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods [...], in so far as it affects trade between Member States’. State interventions that do not meet one of the conditions laid down in Article 107(1) of the Treaty do not constitute State aid. Consequently, they are not subject to the compatibility assessment laid down in these Guidelines. In particular, EU funding that is centrally managed by the institutions, agencies, joint undertakings or other EU bodies and that is not directly or indirectly under the control of Member States does not constitute State aid. This applies for instance to funding provided by the EU under Regulation (EU) 2021/1153 of the European Parliament and of the Council of 7 July 2021 establishing the Connecting Europe Facility and repealing Regulations (EU) No 1316/2013 and (EU) No 283/2014 (OJ L 249, 14.7.2021, p. 38).

<sup>(64)</sup> For the sake of clarity, sustainable multimodal transport services combining one land transport leg with a short-sea shipping leg are also covered in full by these Guidelines and assessed under Article 93 of the Treaty.

<sup>(65)</sup> E.g. logistics companies, freight forwarders, multimodal transport operators.

<sup>(66)</sup> E.g. Commission Decision of 24 October 2022, in case SA.100463, Netherlands, *Aid scheme to promote the modal shift from road to rail and inland waterways*, recital 49 (OJ C 461, 2.12.2022, p. 1); Commission Decision of 15 May 2020, in case SA.53615, Italy, *Interventions in favour of the city of Genoa*, recital 55 (OJ C 206, 19.6.2020, p. 1); Commission Decision of 20 December 2018 in case SA.50115, Italy, *Intermodal rail transport of iron slabs in the FVG region*, recital 58 (OJ C 90, 8.3.2019, p. 2); Commission Decision of 6 December 2017 in case SA.48858, Italy, *Aid scheme supporting combined transport in the Province of Bolzano*, recital 53 (OJ C 158, 4.5.2018, p. 6); Commission Decision of 25 July 2017 in case SA.46806, Italy, *Aid to combined transport in the Province of Trento*, recital 46 (OJ C 442, 22.12.2017, p. 2); Commission Decision of 29 April 2016 in case SA.41033, Italy, *Integrated transport scheme in the Province of Trento*, recital 44 (OJ C 220, 17.6.2016, p. 2); Commission Decision of 13 June 2014 in case SA.38152, Italy, *Aid in favour of rail freight transport in Emilia Romagna region*, recital 27 (OJ C 282, 22.8.2014, p. 23); Commission Decision of 16 December 2011, in case SA.32603, Italy, *Subsidy scheme ‘Ferrobonus’ for combined transport*, recital 26 (OJ C 88, 24.3.2012, p. 1).

43. The following types of aid that meets the needs of coordination of transport, as detailed in Sections 4.2.1 and 4.2.2, fall under these Guidelines: (i) aid to reduce the external cost of transport; (ii) aid to launch new commercial connections; (iii) aid for the construction, upgrade and renewal of unimodal and multimodal rail and inland waterways transport facilities; (iv) aid for the construction, upgrade and/or renewal of private sidings; (v) aid for the acquisition of vehicles for rail or inland waterways transport; (vi) interoperability aid; and (vii) aid for technical adaptation and modernisation.
44. As mentioned in point 39, these Guidelines do not cover investment aid for the acquisition of equipment for sustainable multimodal transport. Such aid falls under the TBER if it concerns ILUs' and/or cranes on board of vessels and is granted by Member States in the form of aid schemes under very specific conditions. Beyond those cases, the Commission considers that aid for the acquisition of equipment for sustainable multimodal transport can be authorised only exceptionally, and will assess it directly under the Treaty.
45. These Guidelines do not cover State aid to port infrastructure <sup>(67)</sup>. The Commission will continue to assess State aid to port infrastructure directly under Article 107(3), point (c), of the Treaty, if it is not block-exempted under Commission Regulation (EU) No 651/2014 <sup>(68)</sup>, or, if the port infrastructure is necessary for the provision of a service of general economic interest ('SGEI'), and is not block-exempted under Commission Decision 2012/21/EU <sup>(69)</sup>, under the rules set out in the Commission's Communication on the European Union framework for State aid in the form of public service compensation ('SGEI Framework') <sup>(70)</sup>, under Article 106(2) of the Treaty. For the avoidance of doubt, as mentioned in point 39 and clarified in point 123, these Guidelines also cover investment aid for those multimodal transport facilities which are located in maritime ports and have rail or inland waterways connections.
46. State aid for climate, environmental protection and energy is subject to the rules set out in the 2022 Commission's *Guidelines on State aid for climate, environmental protection and energy* <sup>(71)</sup>. Therefore, as regards rail, inland waterways and multimodal transport, the Commission will continue to assess the compatibility of investment aid in clean vehicles and clean mobile terminal equipment, under the 2022 Commission's *Guidelines on State aid for climate, environmental protection and energy* <sup>(72)</sup>. In the same vein, investment aid for the noise reduction of rail transport is not covered by these Guidelines, but it is covered by the 2022 Commission's *Guidelines on State aid for climate, environmental protection and energy* <sup>(73)</sup> (with specific rules on aid for the prevention or reduction of pollution other than from greenhouse gases).

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<sup>(67)</sup> As defined in 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).

<sup>(68)</sup> See footnote (67).

<sup>(69)</sup> 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, 11.1.2012, p. 3).

<sup>(70)</sup> Communication from the Commission, *European Union framework for State aid in the form of public service compensation*, (2011) (OJ C 8, 11.1.2012, p. 15).

<sup>(71)</sup> Communication from the Commission, *Guidelines on State aid for climate, environmental protection and energy 2022*, (OJ C 80, 18.2.2022, p. 1).

<sup>(72)</sup> See footnote (71).

<sup>(73)</sup> See footnote (71).

47. As regards aid in the rail sector that represents reimbursement for the discharge of certain obligations inherent in the concept of a public service, Regulation (EC) No 1370/2007<sup>(74)</sup> creates a specific legal framework for public passenger transport services by rail and by road (and by inland waterways in case Member States decide to apply Regulation (EC) No 1370/2007 to those services<sup>(75)</sup>). Therefore, for public transport services, these Guidelines cover only public service compensation for the provision of rail freight transport services. The Commission will continue to assess public service compensation paid for the provision of inland waterways freight transport services (and of inland waterways passenger transport services if not subject to Regulation (EC) No 1370/2007) directly under Article 93 of the Treaty.
48. These Guidelines clarify the conditions for the assessment under Article 93 of the Treaty of aid in the rail freight transport sector to reimburse undertakings for the discharge of certain obligations inherent in providing a public service<sup>(76)</sup>. The conditions reflect established principles set out by the Commission in its SGEI Framework<sup>(77)</sup>, which, unlike the Communication on the application of the EU's State aid rules to compensation granted for the provision of SGEIs (the 'SGEI Communication')<sup>(78)</sup>, is not directly applicable to rail freight transport services as it expressly excludes land transport from its scope. These Guidelines also provide specific clarifications required due to the specific needs of the land transport sector.
49. These Guidelines (Chapter 6) also reiterate the principles applicable to financial flows within vertically integrated railway undertakings.
50. The conditions set out in these Guidelines apply to aid schemes and to individual aid, whether based on an aid scheme or granted ad hoc, unless otherwise specified.
51. These Guidelines apply to undertakings of any size, unless otherwise specified.
52. Undertakings in difficulty, as defined in the Commission *Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty*<sup>(79)</sup>, cannot receive aid under these Guidelines because aid to an undertaking in difficulty is in principle not an appropriate means to meet the needs of transport coordination or to ensure that a public service is provided. The Commission *Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty* set out the criteria for the compatibility of rescue and restructuring aid granted under Article 107(3), point (c), of the Treaty to all undertakings that qualify as undertakings in difficulty, including undertakings in the land transport sector, in the absence of specific Commission guidance for undertakings in difficulty in that sector<sup>(80)</sup>.

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<sup>(74)</sup> See footnote (31).

<sup>(75)</sup> See Article 1(2) of Regulation (EC) No 1370/2007, see footnote (31).

<sup>(76)</sup> For the sake of clarity, the Commission will continue to assess the compatibility of aid in the inland waterways freight transport sector to reimburse undertakings for the discharge of certain obligations inherent in providing a public service directly under Article 93 of the Treaty.

<sup>(77)</sup> See footnote (70).

<sup>(78)</sup> See footnote (36).

<sup>(79)</sup> Communication from the Commission, *Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty*, (OJ C 249, 31.7.2014, p. 1).

<sup>(80)</sup> The 2008 Railway Guidelines (see footnote (38)) provided for derogations from the rules applicable to undertakings in difficulty in the rail freight sector, which expired on 31 December 2009. Since then, the Commission *Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty*, see footnote (79), apply in full to the entire rail sector.

53. When assessing aid in favour of an undertaking that is subject to an outstanding recovery order following a previous Commission decision declaring aid illegal and incompatible with the internal market, the Commission will take into account the amount of aid still to be recovered <sup>(81)</sup>.

## 2.2 Definitions

54. For the purposes of these Guidelines, the following definitions 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 calculated per beneficiary and expressed as a percentage of the eligible costs. All figures used must be taken 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 in the act in a general and abstract manner and any act on the basis of which aid which 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) ‘combined transport’ means the type of intermodal transport that meets the conditions set for combined transport in the Combined Transport Directive <sup>(82)</sup>;
  - f) ‘dedicated infrastructure’ means infrastructure that is built for *ex ante* identifiable undertaking(s) and tailored to their needs;
  - g) ‘equipment for sustainable multimodal transport’ means equipment used in transshipment services incidental to sustainable multimodal transport, such as cranable semitrailers, excluding mobile terminal equipment;
  - h) ‘European vehicle register’ means a register pursuant to Article 47(5) of 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) <sup>(83)</sup> and Article 19 of Directive (EU) 2016/1629 of the European Parliament and of the Council of 14 September 2016 laying down technical requirements for inland waterways vessels <sup>(84)</sup>;
  - i) ‘evaluation plan’ means a document covering one or more aid schemes 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

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<sup>(81)</sup> See judgment of 15 May 1997, *TWD v Commission*, C-355/95 P, EU:C:1997:241, paragraphs 25 to 27.

<sup>(82)</sup> See footnote (26).

<sup>(83)</sup> 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)

<sup>(84)</sup> Directive (EU) 2016/1629 of the European Parliament and of the Council of 14 September 2016 laying down technical requirements for inland waterway vessels, amending Directive 2009/100/EC and repealing Directive 2006/87/EC (OJ L 252, 16.9.2016, p. 118).

evaluation including the date for submitting the interim and the final evaluation reports, the description of the independent body conducting the evaluation or the criteria used for selection and the modalities for ensuring the publicity of the evaluation;

- j) ‘external costs of transport’ means costs generated by transport users and not borne by them but by the society as a whole, notably related to greenhouse emissions, air pollution, injuries and fatalities, noise and congestion;
- k) ‘individual aid’ means ad hoc aid and awards of aid to individual beneficiaries on the basis of an aid scheme;
- l) ‘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 EU and used to carry out inland waterways transport, excluding facilities or equipment which are necessary for pursuing non-transport activities;
- m) ‘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;
- 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) ‘intermodal loading unit (ILU)’ means a container, swap body or semitrailer/goods road motor vehicle or vehicle combination used for intermodal transport;
- p) ‘interoperability’ means uninterrupted traffic flows of goods or passengers, in particular between Member States or modes of transport;
- q) ‘land transport’ means rail, inland waterways and road transport <sup>(85)</sup>;
- r) ‘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;
- s) ‘multimodal transport’ means the carriage of goods or passengers by at least two different modes of transport;
- t) ‘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 <sup>(86)</sup> or pursuant to Article 17 of Directive (EU) 2016/1629 of the European Parliament and of the Council <sup>(87)</sup>;
- u) ‘new commercial inland waterways freight connection’ means a commercial connection that concerns new scheduled inland waterways freight operations

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<sup>(85)</sup> Under Article 100 of the Treaty, Title VI ‘Transport’ of the Treaty applies in principle only to transport by rail, road and inland waterway. Those three types of transport are generally referred to as ‘land transport’, in opposition to transport by sea and by air.

<sup>(86)</sup> See footnote (83).

<sup>(87)</sup> See footnote (84).

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;

- v) ‘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;
- w) ‘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;
- x) ‘new entrant’ in the rail sector means a railway undertaking within the meaning of Article 3(1) of the Single European Railway Directive <sup>(88)</sup>, which fulfils both of the following conditions:
  - (i) it received a licence pursuant to Article 17(3) of the Single European Railway Directive 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 the TBER to a railway undertaking that received a licence within the meaning of Article 3(14) of the Single European Railway Directive prior to 1 January 2010;
- y) ‘non-transport activities’ means commercial services to transport undertakings or other users of facilities not related to unimodal or multimodal rail and inland waterways transport, including ancillary services to passengers, freight forwarders or other service providers, such as renting out of offices, shops, and hotels;
- z) ‘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 qualify as service facilities under Annex II to the Single European Railway Directive <sup>(89)</sup>, as well as any dedicated infrastructure serving a privately owned and operated piece of rail infrastructure;
- aa) ‘rail and/or inland waterways multimodal freight terminal’ means a structure equipped for transshipment between two different rail systems or between at least two transport modes (one of which is rail or inland waterways), such as terminals in inland or maritime ports, along inland waterways, in airports and multimodal logistics platforms;
- bb) ‘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 Union and needed to provide rail and/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;

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<sup>(88)</sup> See footnote (8).

<sup>(89)</sup> See footnote (8).

- cc) ‘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) located within the EU mentioned in Annex II to the Single European Railway Directive <sup>(90)</sup>, excluding facilities or equipment needed to carry out non-transport activities;
- dd) ‘railway undertaking’ means any public or private undertaking referred to in Article 3(1)(1) of the Single European Railway Directive <sup>(91)</sup>;
- 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 Europe <sup>(92)</sup>;
- gg) ‘small and medium-sized enterprise’ (‘SME’) means an undertaking that fulfils the conditions laid down in Annex I to the TBER;
- 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 land transport’ means the carriage of goods or passengers by rail, inland waterways or sustainable multimodal transport where an alternative for the same transport exists that would cause higher external costs;
- jj) ‘sustainable multimodal transport’ means the 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;
- kk) ‘telematics applications’ means any of the following applications:
- (i) applications for passenger services, such as systems which provide passengers with information before and during the journey, reservation and payment systems, luggage management and management of connections between trains and with other modes of transport;

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<sup>(90)</sup> See footnote (8).

<sup>(91)</sup> See footnote (8).

<sup>(92)</sup> 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.

- (ii) applications for freight services, such as 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;
- ll) ‘transport operator’ means any undertaking carrying passengers and/or freight in the rail, inland waterways and/or multimodal transport sectors;
- mm) ‘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);
- nn) ‘vehicle for rail or inland waterways transport’ means an inland waterways vessel or rolling stock.

### **2.3 Structure of the Guidelines**

- 55. Chapter 3 clarifies which measures in the land transport sector do not have to be notified to the Commission before their implementation.
- 56. Chapter 4 sets out the measures covered by these Guidelines under Article 93 of the Treaty. Section 4.1 sets out the compatibility conditions that apply generally to aid that meets the needs of transport coordination. Section 4.2 sets out specific compatibility conditions that apply to different types of aid measures that meet the needs of transport coordination. Chapter 5 clarifies the compatibility conditions that apply to aid measures to reimburse for the discharge of certain obligations inherent in the concept of a public service. Chapter 6 recalls the principles applicable to the financial flows within vertically integrated railway undertakings.
- 57. Chapter 7 sets out the conditions under which the Commission will require *ex post* evaluation of schemes notified under Article 93 of the Treaty.
- 58. Chapter 8 outlines the reporting and monitoring obligations of Member States granting aid under Article 93 of the Treaty.
- 59. Chapters 9 and 10 cover the duration of these Guidelines and the timeline for their revision.

### **3. MEASURES NOT SUBJECT TO NOTIFICATION**

- 60. When a State intervention meets the criteria to qualify as State aid within the meaning of Article 107(1) of the Treaty <sup>(93)</sup>, in principle Member States must notify it to the Commission pursuant to Article 108(3) of the Treaty.

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<sup>(93)</sup> As regards the notion of State aid, the Commission refers to its Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, C/2016/2946 (OJ C 262, 19.7.2016, p. 1). As indicated in point 211 of that notice, an effect on trade between Member States or a distortion of competition is normally excluded as regards the construction of infrastructure in cases where at the same time (i) an infrastructure typically faces no direct competition, (ii) private financing is insignificant in the sector and Member State concerned and (iii) the infrastructure is not designed to selectively favour a specific undertaking or sector but provides benefits for society at large.

61. State aid in the land transport sector is not subject to the notification requirement pursuant to Article 108(3) of the Treaty if it fulfils the conditions laid down in a block exemption regulation adopted by the Commission, either pursuant to Article 1 of Council Regulation (EU) 2022/2586 <sup>(94)</sup> or pursuant to Article 1 of Council Regulation (EU) 2015/1588 <sup>(95)</sup>.
62. In this regard, the TBER covers certain categories of State aid meeting the needs of transport coordination in the land transport sector. Such aid measures, if granted in compliance with the applicable compatibility conditions set out in the TBER, do not give rise to any significant distortion to competition and trade, and therefore are deemed compatible with the internal market under Article 93 of the Treaty and are not subject to the notification requirement.
63. In addition, Commission Regulation (EU) No 651/2014 <sup>(96)</sup> contains provisions that could exempt aid in the land transport sector from the notification requirement. For instance, aid for inland ports may be block-exempted under Article 56c of that Regulation. As long as this aid is not primarily designed to meet the needs of transport coordination but to facilitate the development of certain economic activities or certain economic areas, and it is granted in compliance with the applicable compatibility conditions set out in Regulation (EU) No 651/2014 <sup>(97)</sup>, such aid measures are deemed compatible with the internal market under Article 107(3), point (c), of the Treaty because they do not give rise to any significant distortion to competition and trade.
64. Commission Regulation (EU) No 2023/2831 <sup>(98)</sup> also applies to land transport. Similarly, compensation granted to undertakings providing SGEI in the land transport sector is covered by Commission Regulation (EU) No 2023/2832 <sup>(99)</sup>. Measures fulfilling the criteria of those Regulations are deemed to have no impact on competition and trade in the internal market. Those *de minimis* measures are not subject to a notification requirement as they are deemed not to meet all the criteria of Article 107(1) of the Treaty.

#### **4. AID THAT MEETS THE NEEDS OF TRANSPORT COORDINATION**

##### **4.1 General compatibility conditions**

65. This section presents the general compatibility conditions applicable to the categories of aid detailed in Section 4.2. When assessing whether aid measures in the rail, inland waterways and sustainable multimodal transport sectors meet the needs of transport coordination under Article 93 of the Treaty, the Commission will analyse compliance with the principles outlined in this section (points from 66 to 86). The conditions laid down in Section 4.2 for each specific aid category provide clarifications to some of the

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<sup>(94)</sup> 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 State aid in the rail, inland waterway and multimodal transport sector (OJ L 338, 30.12.2022, p. 35).

<sup>(95)</sup> Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid (OJ L 248, 24.9.2015, p. 1).

<sup>(96)</sup> See footnote (67).

<sup>(97)</sup> See footnote (67).

<sup>(98)</sup> Commission Regulation (EU) No 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L, 2023/2831, 15.12.2023, p. 1).

<sup>(99)</sup> Commission Regulation (EU) No 2023/2832 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (OJ L, 2023/2832, 15.12.2023, p. 1).

general compatibility conditions presented in this section, in particular in Section 4.1.1 (Key compatibility conditions).

#### 4.1.1 Key compatibility conditions

##### *Contribution to the needs of transport coordination*

66. The aid must contribute to the development of the land transport sector towards sustainable land transport and/or to the completion of an integrated EU market where the uninterrupted traffic flows of goods and passengers between national networks and transport modes is ensured, thereby meeting the needs of transport coordination.

##### *Necessity of the aid*

67. The aid must be necessary to meet the objective of transport coordination identified by the specific measure in line with point 66. This is for instance the case when the aid is targeted to a specific market failure (i.e. a situation where it can bring about a material development of the land transport sector that the market alone cannot deliver, e.g. towards sustainable land transport and/or towards the completion of an integrated EU's market where the uninterrupted traffic flows of goods and passengers between national networks and transport modes is ensured). Market failures undermining the shift to sustainable forms of land transport may occur for instance where there are (i) price disparities between different forms of transport due to negative externalities which are not taken into account, (ii) difficulties faced by market operators in accessing market financing due to information asymmetries, (iii) coordination failures between market actors, or, more in general, (iv) investments that entail positive externalities but are not sufficiently profitable for the potential beneficiary.

##### *Appropriateness of the aid*

68. The aid must be appropriate to meet the identified objective of transport coordination. In principle, aid is not considered appropriate if the same result can be achieved by a less distortive policy instrument (such as market-based or regulatory instruments) or by a less distortive form of aid instrument (such as guarantees or repayable advances), than by providing non-repayable instruments, such as direct grants.

##### *Incentive effect of the aid*

69. The aid must induce the beneficiary to change its behaviour or engage in additional economic activity, which it would not carry out without the aid or which it would carry out to a lesser or different extent. Proving an incentive effect entails the identification of the factual scenario and the likely counterfactual scenario in the absence of aid <sup>(100)</sup>.
70. In addition, with specific regard to investment aid, the aid does not have an incentive effect if the start of works on the project takes place prior to a written aid application by

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<sup>(100)</sup> That scenario must be credible, genuine and related to decision-making factors prevalent at the time of the decision by the aid beneficiary regarding the project. Member States can draw on official board documents, risk assessments, financial reports, internal business plans, expert opinions and other studies related to the project under assessment. Documents containing information on demand forecasts, costs forecasts, financial forecasts, documents submitted to an investment committee and that elaborate on investment/operation scenarios, or documents provided to the financial institutions could help Member States demonstrate the incentive effect. Those documents need to be contemporary to the decision-making process concerning the project or the activity.

the beneficiary to the relevant public authorities <sup>(101)</sup>. When the beneficiary starts works on a project before applying for aid, any aid granted for that project will not be considered compatible with the internal market. Aid granted to cover the costs of complying with EU standards has in principle, no incentive effect. As a general rule, only aid to go beyond EU standards can have an incentive effect. 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, unless otherwise indicated in Sections from 4.2.2.1 to 4.2.2.5. 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.

*Proportionality of the aid.*

71. The aid amount per beneficiary should be limited to the minimum needed to incentivise the beneficiary to carry out the aided project or activity. That minimum may be identified as a percentage of the eligible costs of the aided project or activity, as specified under each specific category in Section 4.2. While the proportionality assessment is generally carried out from an *ex ante* perspective, in exceptional cases where future developments in costs and revenues are subject to a high degree of uncertainty and there is a strong asymmetry of information, it may be very difficult to define necessary amount of State aid on an entirely *ex ante* basis; in such cases, apart from an *ex ante* quantification, Member States may introduce *ex post* mechanisms such as a claw-back or cost monitoring to ensure proportionality, while keeping incentives for the beneficiaries to minimise their costs and develop their business in a more efficient manner over time.
72. With regard to investment aid, if not otherwise specified for the specific categories of aid detailed in Section 4.2.2, the aid is considered proportionate if it corresponds to the net extra cost necessary to meet the objective of the aid measure, compared to the counterfactual scenario in the absence of aid ('funding gap'). To calculate the funding gap, it is necessary to calculate:
  - a) the estimated revenues and costs, including the investment, operation– and terminal value of the project ('factual scenario') and those of the alternative project that the aid beneficiary would credibly carry out in the absence of aid ('counterfactual scenario');
  - b) the estimated weighted average cost of capital ('WACC') of the beneficiary to discount future cash flows;
  - c) the net present value ('NPV') for the factual and counterfactual scenarios, over the lifetime of the project.
73. Based on the elements listed in letters from (a) to (c), the funding gap is the difference between the NPVs of the project in the factual scenario and in the counterfactual scenario, over the lifetime of the project, discounted at the level of the WACC. All assumptions and methodological choices underlying the calculation of the funding gap must be explained and substantiated. The analysis of both factual and counterfactual scenarios

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<sup>(101)</sup> The aid application may take various forms, including for example a bid in a competitive bidding process for the award of the subsidised activity. Any application must at least include the applicant's name, a description of the project or activity, including its location, and the amount of aid needed to carry it out.

must account for any existing or planned State aid measure, such as operating aid and/or a different type of relevant investment aid that affects the funding gap analysis.

74. An example of a counterfactual scenario is that the beneficiary does not carry out an activity or investment or continues business without changes. Where evidence supports that this is a credible counterfactual scenario, the funding gap may be approximated by the level of negative NPV of the project in the factual scenario without aid over the lifetime of the project (implicitly assuming that the NPV of the counterfactual scenario is zero) <sup>(102)</sup>.

*Avoidance of undue negative effects on competition and trade between Member States*

75. The distortion of competition inherent in aid must not jeopardise the general interests of the EU <sup>(103)</sup>. In assessing whether the measure's negative effects on competition and trade are limited, the Commission may consider the foreseeable impact that the aid measure, in particular if it consists of ad hoc aid, may have on competition between undertakings operating in the transport market(s) concerned, including up- or downstream markets, and the risk of creation of overcapacity.
76. In principle, the Commission considers that aid schemes are less likely to have a negative effect on competition and trade between Member States than ad hoc aid. In any event, to limit any negative effect on competition and trade, the Commission will only approve operating aid schemes for a maximum duration of 5 years and investment aid schemes for a maximum duration of 10 years <sup>(104)</sup>. If a Member State wishes to extend an aid scheme beyond these durations, it should submit a new notification in order to allow the Commission to re-examine it in the light of the results obtained and, where appropriate, to authorise its renewal.

*4.1.2 Compliance with other provisions of EU law*

77. State aid cannot be declared compatible with the internal market if the aid or the modalities that are so indissolubly linked to the object of the aid that it is impossible to evaluate them separately (including the financing method when it forms an integral part of the measure) entail a breach of EU law <sup>(105)</sup>. This may be the case, for instance, where in order to receive the aid, the beneficiary has an obligation to have its headquarters in the Member State concerned or be predominantly established in that Member State or the beneficiary has an obligation to use nationally produced goods or national services.

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<sup>(103)</sup> Even though Article 93 of the Treaty contains no equivalent to the second sentence of Article 107(3), point (c), of the Treaty, pursuant to which aid may only be declared compatible with the internal market where it does not adversely affect trading conditions to an extent contrary to the common interest, the Court of Justice of the European Union has already made clear that the Commission, when assessing an aid measure under Article 93 of the Treaty, must verify that the aid does not jeopardise the general interests of the EU, see judgment of 12 October 1978, *Commission v Belgium*, 156/77, mentioned at footnote 30, paragraph 10.

<sup>(104)</sup> That means that aid could be granted under approved schemes within a maximum period of 5 years (in case of operating aid schemes) or 10 years (in case of investment aid schemes) from the date of the notification of the Commission's decision declaring the aid compatible.

<sup>(105)</sup> See judgments of 22 March 1977, *Iannelli & Volpi SpA*, 74/76, EU:C:1977:51, paragraph 14, of 15 June 1993, *Matra SA v Commission*, C-225/91, EU:C:1993:239, paragraph 41, and of 31 January 2023, *Commission v Braesch and Others*, C-284/21 P, EU:C:2023:58, paragraphs 96 to 99.

#### 4.1.3 Cumulation

78. Aid may be awarded concurrently under several aid schemes or cumulated with ad hoc or *de minimis* aid covering the same eligible costs, provided that the total amount of aid for the same eligible costs does not lead to overcompensation or exceed the maximum aid amount allowed under these Guidelines. If the Member State allows aid under one measure to be cumulated with aid under other measures for the same eligible costs, then it must specify, for each measure, the method used for ensuring compliance with this condition.
79. Centrally managed EU funding that is not directly or indirectly under the control of the Member State does not constitute State aid. Where EU funding is combined with State aid, the Member State must ensure that the total amount of public funding granted for the same eligible costs does not lead to overcompensation.

#### 4.1.4 Transparency

80. Aid must be awarded in a transparent manner.
81. Where aid is awarded in a form other than a grant, the aid amount must be converted into its gross grant equivalent. Aid payable in several instalments must be calculated at its value at the moment of granting. The interest rate to be used for discounting purposes and for calculating the aid amount in a soft loan <sup>(106)</sup> is the reference rate applicable at the time of granting, set in accordance with the Commission Communication on the revision of the method for setting the reference and discount rates <sup>(107)</sup>.
82. To reduce negative effects of aid by ensuring that competitors have access to relevant information about supported activities, the Member State concerned must ensure that the following information is published in the Commission's transparency award module <sup>(108)</sup> or on a comprehensive State aid website, at national or regional level the following:
- a) the full text of the individual aid granting decision or the approved aid scheme and its implementing provisions, or a link to it;
  - b) information on each individual aid award exceeding EUR 100 000 using the structure in Annex II to these Guidelines <sup>(109)</sup>.
83. Member States must ensure that their comprehensive State aid websites, as referred to in point 82, are designed to provide easy access to the information. They must publish the information in a non-proprietary spreadsheet data format that allows data to be effectively searched, extracted, downloaded and easily shared on the internet, for instance in CSV or XML format. The general public must have access to the website without restrictions, including prior user registration.

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<sup>(106)</sup> A loan with a below-market interest rate.

<sup>(107)</sup> OJ C 14, 19.1.2008, p. 6.

<sup>(108)</sup> State Aid Transparency Public Search, available at: <https://webgate.ec.europa.eu/competition/transparency/public?lang=en>.

<sup>(109)</sup> At the substantiated request of a Member State, this requirement may be waived if a full detailed publication would undermine competition in subsequent allocation processes, for instance, by allowing for strategic bidding.

84. For schemes in the form of tax advantages, the conditions set out in point 82(b) will 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;  
1-2;  
2-5;  
5-10;  
10-30;  
30-60;  
60-100;  
100-250; and  
250 and over.

85. Member States must publish the information referred to in point 82(b) within 6 months from the date the aid was granted, or, for aid in the form of tax advantages, within 1 year from the date the tax declaration is due <sup>(110)</sup>. For aid that is unlawful but subsequently found to be compatible, Member States must publish this information within 6 months of the Commission decision declaring the aid compatible. To enable the enforcement of State aid rules under the Treaty, the information must be available for at least 10 years from the date on which the aid was granted.
86. The Commission will publish on its website links to the State aid websites referred to in point 82(b).

## **4.2 Compatibility conditions for specific categories of aid for the coordination of transport**

87. This section describes provides clarifications to some aspects of the key compatibility conditions set out in Section 4.1.1 for each type of aid for the coordination of transport covered by these Guidelines.

### *4.2.1 Operating aid*

#### 4.2.1.1 Aid to reduce the external costs of transport

88. These Guidelines provide for rules on aid to reduce the external costs of transport that can be granted to transport operators and/or transport organisers choosing sustainable land transport solutions.
89. Aid to reduce the external costs of transport can target rail, inland waterways and/or sustainable multimodal transport operations (i.e. those including at least one rail, inland waterways or short-sea shipping leg).

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<sup>(110)</sup> If there is no formal requirement for an annual declaration, the granting date for encoding purposes will be 31 December of the year for which the aid was granted.

90. To be considered compatible with the internal market, aid to reduce the external costs of transport must meet the compatibility conditions set out in this section and in Section 4.1.

#### Contribution to the needs of transport coordination

91. In line with the general principles set out in point 66, the Commission considers that operating aid to reduce the external costs of transport can foster a modal shift to sustainable land transport provided it addresses the price disparities between different modes of land transport and persuades transport users to choose sustainable modes of land transport. Price disparities arise when negative externalities are not sufficiently factored into the price of the land transport service.

#### Necessity of the aid

92. At this stage of the transport market's development, the external costs of transport are not sufficiently factored into the price of transport services. This results in the price of those services not fully reflecting the societal cost of the underlying transport mode. The SSMS indicated that, to deliver fair and efficient pricing across all transport modes, a comprehensive set of measures is needed <sup>(111)</sup>. Such pricing would make polluters and users take full responsibility for the costs they generate and help users make choices aligned with what is best for society. The strategy only expects external costs to be fully factored in within the EU by 2050. Therefore, aid to reduce such external costs before that date may be necessary to fulfil the objectives of the European Green Deal.
93. Sustainable land transport services are often not competitive with more polluting alternatives such as road-only transport services. As long as the price of the more polluting competing services does not fully reflect their cost to society, the market on its own is unlikely to ensure a level of deployment of sustainable land transport modes in line with the objectives pursued by the European Green Deal. Having regard to the general principles set out in point 67, the Commission considers that, in the presence of the negative externalities associated with competing transport modes such as road transport and aviation, operating aid to reduce the external costs of transport is necessary to support a modal shift to rail, inland waterways and sustainable multimodal transport.

#### Appropriateness of the aid

94. In line with the general principles set out in point 68, the Commission considers that aid to reduce the external costs of transport is an appropriate instrument <sup>(112)</sup> to maintain or increase the shift to sustainable land transport modes if it addresses the price disparities between the different modes of transport that are due to negative externalities and persuades transport users to choose sustainable modes of land transport.

#### Incentive effect of the aid

95. The aid should incentivise the maintenance or increase of the shift to sustainable land transport modes in line with the general principles set out in point 69. To comply with

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<sup>(111)</sup> See point 47 of the SSMS mentioned at footnote (20).

<sup>(112)</sup> As regards the form of aid, in its past decisional practice on aid that meets the needs of transport coordination, the Commission has not raised objections to aid in the form of direct grants (see *ex multis* Commission Decision of 21 May 2024 in case SA.108800, Germany, *Support for rail freight transport (single wagon load and wagon group transport)* (not yet published in the OJ); Commission Decision of 11 December 2023 in case SA.109142, France, *Aide à l'investissement pour la création d'un terminal multimodal marchandises (autoroute ferroviaire) à Bayonne-Mouguerre* (not yet published in the OJ); and Commission Decision of 30 May 2023 in case SA.104156, Italy, *Sea Modal Shift incentive* (OJ C 203, 9.6.2023, p. 16).

those general principles and ensure that the aid brings about a change in the beneficiary's behaviour and incentivises a modal shift, the following conditions should be satisfied.

96. First, the aid should only be granted where a more polluting competing mode of transport is a commercially viable alternative to the mode of transport supported by the aid. Such viability depends on costs of operation, availability and accessibility of suitable terminals, network and connections and other factors such as differences in transit time. The Commission considers that for passenger services there is always a more polluting commercially viable alternative to transport by rail or by inland waterways. In the freight sector, where competitiveness depends on the distance covered by the transport operations <sup>(113)</sup>, competition with road-only transport can generally be presumed:
- a) in multimodal transport cases where the distance covered by the transport mode supported by the aid is below:
    - (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 where the distance covered by the transport mode supported by the aid is below:
    - (i) 350 kilometres for rail transport <sup>(114)</sup>;
    - (ii) 375 kilometres for inland waterways transport.
97. For operations in the freight sector beyond the distances specified in point 96, the Member State must demonstrate that a competing mode of transport more polluting than the one supported by the aid (e.g. road-only transport) is a commercially viable alternative to the operations supported by the aid as well as establish at which distance the more polluting competing mode of transport becomes not cost-competitive and therefore not commercially viable for the type of operations supported.
98. Second, in principle, aid cannot be granted for transport on routes that have established capacity constraints that would prevent increasing or maintaining the modal shift. This condition aims at ensuring that the prospects of maintaining or increasing the modal shift are realistic. If the Member State intends to support transport on routes with established capacity constraints, the Member State will have to explain what other measures will be taken to eliminate or reduce those constraints. For aid schemes, this means that the Member State must commit to ensuring that aid will not be granted if there are significant capacity constraints that would affect transport operations and ultimately prevent the maintenance or increase of a shift to the more sustainable mode of transport. If there are actual or expected capacity constraints, the Member State should ensure that solutions are put in place to eliminate or reduce such constraints so that the expected modal shift resulting from the aid can be achieved.

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<sup>(113)</sup> Impact assessment support study on amendment of Combined Transport Directive [Ricardo et al. (2023)].

<sup>(114)</sup> This threshold does not apply in the case of unimodal rail transport that is organised as single wagonload operations because that 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.

99. Third, railway undertakings and inland waterways and short-sea shipping operators must make all relevant information on the aid received publicly available <sup>(115)</sup>. Publicity aims to raise awareness about the measures available to reduce the competitiveness gap between sustainable land transport modes and more polluting competing alternatives and thus to increase demand for sustainable land transport services that is necessary to trigger a modal shift.
100. Lastly, to ensure that aid is only granted for sustainable land transport services actually provided, the aid should be granted on the basis of actual units of transport service provided <sup>(116)</sup> and not on a lump-sum basis.
101. The Commission considers that the aid has an incentive effect if the Member State complies with the general principles set out in point 69, as clarified in points 97 to 100.

#### Proportionality

102. In line with the general principles set out in point 71, the aid may reach up to 75% of the eligible costs.
103. The eligible costs are the part of the external costs of transport that are avoided by the unimodal or multimodal use of rail and/or inland waterways and/or by the use of short-sea shipping in the context of sustainable multimodal transport compared to the more polluting competing transport modes (i.e. the avoided external costs of transport) <sup>(117)</sup>. Where there are several competing options which cause higher levels of pollution, the limit corresponds to the highest cost differential among the various options.
104. The Member State must provide a transparent, reasoned and quantified comparative external cost analysis between the supported transport mode (rail, inland waterway and/or sustainable multimodal transport, including at least one rail, inland waterway or short-sea shipping leg) and the alternative more polluting competing option. The Member State should in principle refer to the Commission's *Handbook on the external costs of transport* <sup>(118)</sup>, as amended or replaced, to compare external costs across different transport modes, unless they put forward appropriate evidence to justify a different methodology for the estimation of the actual external costs. The methodology used and calculations performed must be made publicly available.

#### Avoiding undue negative effects on competition and trade between Member States

105. To ensure that the aid does not jeopardise the general interests of the Union by creating undue distortions of competition and trade, operating aid to reduce the external costs of transport must be granted in line with the general principles set out in points 75 and 76.
106. The aid should be, in principle, awarded in the form of aid schemes because they are likely to have a more limited distortive effect on competition and trade between Member States than ad hoc aid.

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<sup>(115)</sup> Including at least the following information: granting authority, date of granting of the aid, aid amounts received, period and operations covered by the aid.

<sup>(116)</sup> For instance, passenger-km for passenger transport services or tonne-km or vehicle-km for freight transport services, or, more generally, the unit of production of the transport service.

<sup>(117)</sup> Member States can use the external costs methodology to cover any operating cost, including operating costs related to the use of infrastructure.

<sup>(118)</sup> European Commission, Directorate-General for Mobility and Transport, Essen, H., Fiorello, D., El Beyrouy, 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>.

#### 4.2.1.2 Aid to launch new commercial connections

107. These Guidelines provide for specific rules on aid to launch:
- a) new commercial rail freight and inland waterways freight connections by railway undertakings and/or transport organisers gathering demand and organising scheduled freight operations between transport terminals;
  - b) new commercial rail passenger connections by 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').
108. To be considered compatible with the internal market, aid to launch new commercial connections must meet the compatibility conditions set out in this section and in Section 4.1.

##### Contribution to the needs of transport coordination

109. In line with the general principles set out in point 66, the Commission considers that aid to launch new commercial connections can foster a modal shift to sustainable land transport in that it ensures that there are sufficient transport services connecting transport terminals. The establishment of new commercial rail freight and inland waterways freight connections as well as of new cross-border and/or long-distance rail passenger connections is key for developing rail and inland waterways transport and essential for enabling sustainable multimodal transport.

##### Necessity of the aid

110. The SSMS includes amongst its objectives the development of rail and inland waterways connections <sup>(119)</sup>. As regards freight transport, the full deployment of rail transport suffers from the absence of some key links between transport terminals <sup>(120)</sup> and actions are necessary to seize the untapped potential of inland waterways transport <sup>(121)</sup>, particularly to have the European inland waterways network connected as much as possible to other transport modes <sup>(122)</sup>. As regards passenger transport, rail is not used to its full potential, especially not as a means of long-distance and/or cross-border travel particularly during night times <sup>(123)</sup>.
111. To further develop rail and inland waterways connections, Member States may have to grant aid to support the launch of new commercial rail freight and inland waterways freight connections as well as of new cross-border and/or long-distance rail passenger connections. This is because market forces alone do not always lead to transport operators and transport organisers investing in new rail or inland waterways connections as those connections can be prone to coordination failures. In particular, operators may incur significant fixed costs of starting new connections and those connections may only become profitable if a sufficient volume of customers use them. Without such a minimum volume, the operator would not be able in the short term to make sufficient profits to

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<sup>(119)</sup> See points 33 and 42 of the SSMS mentioned at footnote (20)

<sup>(120)</sup> See point 43 of the SSMS mentioned at footnote (20).

<sup>(121)</sup> See point 44 of the SSMS mentioned at footnote (20).

<sup>(122)</sup> See footnote (25), point 2.1.2.

<sup>(123)</sup> Communication from the Commission to the European Parliament and the Council, *Action plan to boost long distance and cross-border passenger rail*, COM(2021) 810 final, 14.12.2021.

make up for the operating losses suffered in the first years of operation of the new commercial connection and, therefore, would not develop it. Aid to launch new commercial connections can lower the entry barrier for launching new connections by reducing the amount of annual operating losses borne by transport operators and transport organisers during the first years of operation of the new connection.

112. Having regard to the general principles set out in point 67, the Commission considers that aid to launch new commercial rail freight and inland waterways freight connections and/or new cross-border and/or long-distance rail passenger connections may be necessary to fulfil the needs of transport coordination, if it effectively targets that market failure while taking into account any other policy and measure already in place to address the same market failure. As a result, the Member State must establish that at the moment of the granting of the aid, even with all other support in place for sustainable land transport, no operator plans to commercially develop the new commercial connection in question.

#### Appropriateness of the aid

113. Demand for new commercial services in the first years of operation may not be sufficient to ensure those services become profitable. Therefore, in line with the general principles set out in point 68, the Commission considers that aid to launch new commercial connections is an appropriate instrument <sup>(124)</sup> to support railway undertakings and/or transport organisers that wish to invest in a new rail or inland waterways freight connection or in new cross-border and/or long-distance rail passenger connections. However, the aid must be limited to supporting operations for a maximum of 5 years from the launch of the new connection (i.e. from the date the beneficiary starts operating the new connection).

#### Incentive effect of the aid

114. The aid should incentivise transport operators and/or transport organisers to launch new rail or inland waterways freight connections or new cross-border and/or long-distance rail passenger connections. The Commission considers that aid to launch new connections has an incentive effect if the beneficiary has applied for the aid in writing before the launch of the new commercial connections. The timing of the written application for aid is a valuable indication of the likely counterfactual scenario in the absence of aid. If an undertaking does not start operating the new connection before applying for aid, this indicates that the likely counterfactual scenario without aid would be the absence of new connection given that aid is needed by that undertaking to cover the upfront operating losses to launch the new commercial connection.

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<sup>(124)</sup> As regards the form of aid, in its past decisional practice on aid that meets the needs of transport coordination, the Commission has not raised objections to aid in the form of direct grants (see Commission Decision of 5 October 2011, in case SA 31981, Netherlands, *Start-up aid to new combined transport services based on Twin hub railway network* (OJ C 361, 10.12.2011, p. 1). With specific regard to aid to launch new commercial connections, the Commission acknowledges that direct grants allow railway undertakings and transport organisers wishing to invest in a new commercial connection to reduce their upfront operating losses during the first years of operation of the new commercial connection, and therefore improve the profitability of those services. For this reason, in the case of aid to launch new commercial connections, direct grants may be appropriate even if paid upfront, provided that the upfront payment is made on a periodical basis at least once per year (and not with a single one-off upfront payment covering the entire period that can be financed by the aid).

115. The Commission considers that the aid has an incentive effect if the general principles set out in point 69, as clarified in point 114, are complied with and there is evidence of expected operating losses.

#### Proportionality

116. In line with the general principles set out in point 71, aid to launch new commercial connections is considered proportionate if it does not exceed the following percentage of the eligible costs: 80% in the first year of operation of the new commercial connection, 70% in the second year, 60% in the third year, 50% in the fourth year and 40% in the fifth year.
117. The eligible costs are the operating losses incurred in respect of the operation of the new connection, for a maximum of 5 years from the date when the beneficiary starts operating the connection concerned. Operating losses means a negative difference between the revenues and operating costs over the first years of operation of the new connection (up to 5 years) <sup>(125)</sup>.
118. 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 must include the entire revenue earned from the new commercial connection.
119. If the aid is paid upfront, the following additional cumulative conditions should be met:
- a) the operating losses must be estimated *ex ante*, on the basis of reasonable projections;
  - b) the operating losses must be discounted to their value at the moment of granting;
  - c) the Member State must put in place an adequate monitoring and claw-back mechanism to ensure that the aid does not exceed the allowed aid intensity;
  - d) the upfront payments must not cover a period exceeding one year.

#### Avoiding undue negative effects on competition and trade between Member States

120. To ensure that the aid does not jeopardise the general interests of the Union by creating undue distortions of competition and trade, operating aid to launch new commercial connections must be granted in line with the general principles set out in points 75 and 76. Moreover, the aid should be limited to cover the costs borne by the beneficiary for a maximum of 5 years from the launch of the new commercial connection.
121. The aid should be, in principle, awarded in the form of aid schemes because they are likely to have a more limited distortive effect on competition and trade between Member States than ad hoc aid.

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<sup>(125)</sup> For the sake of clarity, this may include also operating costs related to and preceding the launch of the new connection. Those costs may be taken into account in the quantification of the eligible costs related to the first year of operation of the new commercial connection.

## 4.2.2 *Investment aid*

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

122. These Guidelines provide for specific rules on investment aid for the construction, upgrade and renewal (including the replacement) of rail facilities, inland waterways facilities and rail and inland waterways multimodal transport facilities.
123. Multimodal transport also uses multimodal transport facilities for combined road and maritime transport. Those facilities, when located in maritime ports, fall within the scope of these Guidelines if they have also rail or inland waterways connections and therefore qualify as rail or inland waterways multimodal transport facilities <sup>(126)</sup>.
124. Aid to construct, upgrade and/or renew rail facilities, inland waterways facilities and rail and inland waterways multimodal transport facilities must ensure that: (a) a site can be used as a facility supporting a modal shift for a first time (construction); (b) an existing facility can handle more traffic or become more appealing to users, e.g. by handling a type of traffic which was not handled before (upgrade); or (c) a facility that would otherwise face a downturn in activity without aid can continue its operations (renewal).
125. To be considered compatible with the internal market, aid for the construction, upgrade and/or renewal of rail facilities, inland waterways facilities and rail and inland waterways multimodal transport facilities must meet the compatibility conditions set out in this section and in Section 4.1.

#### Contribution to the needs of transport coordination

126. In line with the general principles set out in point 66, the Commission considers that aid for the construction, upgrade and/or renewal of rail facilities, inland waterways facilities and rail and inland waterways multimodal transport facilities can foster a modal shift to sustainable land transport. The aid can support investments in facilities serving rail or inland waterways transport on a standalone basis or in combination with other transport modes <sup>(127)</sup>. A wider availability of those facilities or an increase in their capacity, quality and/or efficiency is a precondition for the proper functioning of rail and inland waterways transport. In addition, these improvements will eventually lead to lower costs for transport and logistics companies operating in the rail, inland waterways and multimodal transport sectors and higher quality services.

#### Necessity of the aid

127. The sustainable and smart mobility strategy has pointed to the scarcity of transshipment infrastructure, in particular inland multimodal terminals, and called for investments to close the gaps in multimodal infrastructure with the highest priority <sup>(128)</sup>. The availability of enough adequate rail facilities, inland waterways facilities and rail and inland waterways multimodal transport facilities is key for the value chain of sustainable land

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<sup>(126)</sup> See the definition of ‘rail and/or inland waterways multimodal transport facility’ provided in point 54bb).

<sup>(127)</sup> Despite the lack of comprehensive information on multimodal transport, rail and inland waterways facilities in the EU, there are clear indications of a shortage of adequate, available and accessible facilities for sustainable land transport. In particular, investments are needed when it comes to railway and inland waterways facilities and multimodal freight terminals.

<sup>(128)</sup> See point 42 of the SSMS, mentioned at footnote (20).

transport. In particular, such facilities help develop multimodal transport with the aim of channelling all transport modes together via multimodal terminals.

128. Aid to facilities serving rail and inland waterways is crucial for unlocking the full potential of sustainable land transport. Such aid can help break the vicious circle of modal shift and facility availability. On the one hand, adequate facilities are a precondition for any growth in the use of sustainable land transport. On the other hand, as more users move to these modes of transport, additional facilities are necessary to support that growth. However, without aid, the incentives for private operators to invest in infrastructure facilities may be insufficient. This is because they do not factor in the benefits of reducing the external costs resulting from a modal shift made possible by the investment. Moreover, it may take time for the number and quality of service facilities to adjust to the increased demand for sustainable land transport. State support for facilities may therefore contribute to achieving the desired modal shift in a more effective and faster way <sup>(129)</sup>.
129. Having regard to the general principles set out in point 67, the Commission considers that aid for facility investments may be necessary to fulfil the needs of transport coordination in the presence of the market failure mentioned in points 127 and 128. This support is justified if the new capacity is likely to be used, thereby contributing to the increase of the use of sustainable land transport as compared to competing more polluting modes of transport. This is the case where a Member State shows, on the basis of sound traffic forecasts included in an *ex ante* business plan, that the potential demand for capacity, at least in the medium term, exceeds the current combined capacity of the aided facility and other existing or already planned facilities that could reasonably serve as alternatives for any future demand of the aided facility's capacity.

#### Appropriateness of the aid

130. The development of sustainable land transport is hindered by the scarcity of rail facilities, inland waterways facilities and rail and inland waterways multimodal transport facilities in the EU. Therefore, having regard to the general principles set out in point 68, the Commission considers that investment aid for the construction, upgrade and renewal of these facilities is an appropriate instrument <sup>(130)</sup> to accompany a modal shift to sustainable land transport.

#### Incentive effect of the aid

131. The aid should incentivise the construction, upgrade or renewal of rail facilities, inland waterways facilities and rail and inland waterways multimodal transport facilities. The Commission considers that the aid has an incentive effect if the general principles set out in points 69 and 70 are complied with and the aided project would have a funding gap in the absence of aid.

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<sup>(129)</sup> Given the considerable time required to construct, upgrade or renew such facilities (from inception to completion), aid may be necessary to ensure their availability is in lockstep with the expansion of sustainable land transport, in particular given the urgency of the Green Deal and SSMS targets.

<sup>(130)</sup> As regards the form of aid, in its past decisional practice on aid that meets the needs of transport coordination, the Commission has not raised objections to aid in the form of direct grants (see *ex multis* Commission Decision of 26 March 2024 in case SA.109124, Poland, *RRF: Investment aid to intermodal transport facilities, equipment and rolling stocks* (not yet published in the OJ); and Commission Decision of 9 February 2022, in case SA.64546, Slovakia, *Workshops for light maintenance of passenger* (OJ C 169, 22.4.2022, p. 1).

## Proportionality

132. In line with the general principles set out in points 71 to 74, investment aid in rail facilities, inland waterways facilities and rail and inland waterways multimodal transport facilities is considered to be proportionate if the aid amount does not exceed the lower of (a) the project's funding gap compared to the counterfactual scenario in the absence of aid, and (b) the eligible costs of the investment.
133. To calculate the funding gap, it is necessary to distinguish the transport activities financed under the project from non-transport activities. The relevant revenues include not only the revenues generated by the transport activities financed under the project but also the incremental operating net profits generated by non-transport activities connected to those transport activities (such as the rental of commercial spaces located in the financed facility). The relevant costs include both the operating costs and the investment costs related to the transport activities financed under the project. By contrast, investment costs related to non-transport activities should be excluded. Moreover, any existing or envisaged State aid measure, such as operating aid and/or a different type of investment aid that affects the funding gap analysis, should be taken into account when estimating the expected demand for the facility.
134. The eligible costs consist of investment costs in tangible assets (fixed and movable) and intangible assets directly related to the construction, upgrade or renewal of the relevant facility. The eligible costs may include:
  - a) 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;
  - b) related preparatory studies, such as feasibility and topological studies; and
  - c) planning and installation costs.
135. For aid schemes, Member States should commit to carry out the funding gap analysis set out in points 71 to 74 as clarified in points 133 and 134 for each project supported under the scheme. To that end, in their notification of any planned aid scheme, Member States must describe at least the categories of aided projects, the specific categories of eligible costs accepted (such as the costs of purchase of tangible (fixed and movable) and intangible assets), the methodology to calculate the funding gap and the maximum WACC applied.
136. For ad hoc aid, the funding gap is determined by comparing the profitability of the project in the factual and counterfactual scenarios according to the general principles set out in points 72 to 74 as clarified in point 133. Member States must present the calculations and projections mentioned in point 72 in the detailed project business plan.
137. When aid concerns facilities that are proposed and identified by a Member State in advance, an assessment of the funding gap is not required if the aid amount is determined through a competitive bidding process. In such cases, the Commission considers that the aid amount corresponds to the minimum aid requested by potential beneficiaries, and therefore the aid is considered proportionate if the cumulative criteria below are fulfilled:

- a) the bidding process is competitive, meaning that it is open, clear, transparent and non-discriminatory <sup>(131)</sup>. It is based on objective criteria, set out in advance and in line with the objective of the measure and minimising the risk of strategic bidding. The selection criteria used for ranking bids and, ultimately, for allocating the aid in the competitive bidding process should, as a general rule, link the contribution to the measure's main objectives directly or indirectly with the aid amount requested by the applicant. This may be expressed, for example, in terms of aid per unit of transshipment capacity created;
- b) the criteria are published enough time in advance of the deadline for submitting applications to enable effective competition;
- c) the expected number of bidders is sufficient to ensure effective competition;
- d) *ex post* adjustments to the bidding process outcome (such as subsequent negotiations on bid results) are avoided as they may undermine the efficiency of the process' outcome.

#### Avoiding undue negative effects on competition and trade between Member States

- 138. To ensure that the aid does not jeopardise the general interests of the Union by creating undue distortions of competition and trade, investment aid for the construction, upgrade and renewal of rail facilities, inland waterways facilities and rail and inland waterways multimodal transport facilities must be granted in line with the general principles set out in points 75 and 76.
- 139. Moreover, for any aided transport facility, the Member State has to demonstrate that the aid measure ensures non-discriminatory, open and transparent access to the facility to all interested users in line with sectoral legislation, including the Single European Railway Directive <sup>(132)</sup>.
- 140. When the owner, operator and expected end user of the aided transport facility are part of the same enterprise or are linked enterprises as set out in Annex I to the TBER, the operation of the facility has to be awarded based on an open, competitive, transparent and non-discriminatory procedure <sup>(133)</sup>. This ensures that the operator receives a rate of return in line with market conditions and mitigates any potential conflict of interest.
- 141. The Commission considers that aid schemes are likely to have a more limited distortive effect on competition and trade than ad hoc aid. For this reason, the Commission's assessment will take the elements below into account.
  - a) For schemes, the absence of undue negative effects on competition and trade can be presumed if the conditions set out in points 138 to 140 are complied with. In addition, the Member State, when notifying the scheme, should also commit to verifying, before granting individual aid to a facility, that the aided facility does not unduly distort competition and trade with existing and/or already planned facilities. To that end, the Member State must commit to identify the medium-term prospects for the use of the aided facility on the basis of sound traffic forecasts incorporated

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<sup>(131)</sup> No bidder should have privileged information or other advantages, for example, because they pre-developed or own the site of the facility. In such case, the Member State must put such relevant information at the disposal of all potential bidders.

<sup>(132)</sup> See footnote (8).

<sup>(133)</sup> Undertakings which constitute linked enterprises are allowed to participate in the procedure.

in an *ex ante* business plan. The Member State should also commit to verify that the investment will not have undue distortive effects on the use of existing and/or already planned facilities that can reasonably serve as alternatives substitutes for any of the future demand for the aided facility's capacity.

- b) For ad hoc aid, the Member State, in addition to complying with the conditions set out in points 138 to 140, must also prove that the aided facility does not unduly distort competition and trade with existing and/or already planned facilities. To that end, the Member State must identify the medium-term prospects for the use of the aided facility on the basis of sound traffic forecasts incorporated in an *ex ante* business plan. The Member State must also show that the investment will not have undue distortive effects on the use of existing and/or already planned facilities that can reasonably serve as alternatives for any of the future demand for the aided facility's capacity <sup>(134)</sup>. In principle, the aided investment does not have undue distortive effects if expected demand is such that the new facility will not divert demand from the existing and/or already planned facilities. In any event, given the diverse market structure in different areas, transport modes and facilities, the Commission will assess whether any existing and/or already planned facility would be unduly impacted case by case. In this assessment, the Commission might take into account, as the most relevant criteria, the utilisation rate of nearby facilities, the types of freight, passengers or rolling stock treated in those facilities, the applied technology and the advantages of a specific geographic location.

#### 4.2.2.2 Aid for the construction, upgrade and/or renewal of private sidings

142. These Guidelines provide for specific rules to promote investments in the construction, upgrade and/or renewal (including the replacement) of private sidings.
143. Aid to construct, upgrade and/or renew private sidings must ensure that: (a) a site can be reached directly via a railway track for the first time (construction); (b) more rail traffic can reach the site, or the rail traffic will be less polluting through the electrification of the siding (upgrade); or (c) a private siding, which in absence of aid would have fallen into disuse, can continue operating (renewal).
144. To be considered compatible with the internal market, aid for the construction, upgrade and/or renewal of private sidings must meet the compatibility conditions set out in this section and in Section 4.1.

#### Contribution to the needs of transport coordination

145. Private sidings play a key role in reducing the need for first/last mile road transport for freight. This is because freight transported using sustainable land transport modes can only reach or depart from its customer's industrial sites if it is transhipped on trucks for the first/last mile (multimodal transport) or if the customer's site is directly connected to the railway network.
146. In line with the general principles set out in point 66, the Commission considers that aid for the construction, upgrade and/or renewal of private sidings can foster a modal shift to sustainable land transport. It can do so by incentivising the main leg of the transport

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<sup>(134)</sup> In any event, those facilities should also be identified to assess the necessity of the aid (see point 129).

operation<sup>(135)</sup> to be carried out by rail and by allowing the external costs of first/last mile transport by more polluting transport modes to be avoided by shifting transport from road to rail.

#### Necessity of the aid

147. Private sidings are essential for a sustainable first/last mile transport of freight. However, there has been a general decline in the number of private sidings in the EU<sup>(136)</sup>. This decline is expected to continue in the absence of sufficient incentives for undertakings to bear the costs and risks associated with the construction, upgrade and renewal of private sidings. Indeed, the decision to build a private siding can be influenced by several factors, such as the volume and type of freight moved, the number of manufacturing undertakings in the region or the level of the railway infrastructure's development. The Commission notes that any of those factors may dissuade an undertaking from investing in the construction, upgrade and/or renewal of private sidings.
148. The market tends to default to less expensive – but less sustainable – transport solutions to have freight delivered at/dispatched from industrial sites<sup>(137)</sup>. Therefore, having regard to the general principles set out in point 67, the Commission considers that aid for the construction, upgrade and/or renewal of private sidings is necessary to fulfil the needs of transport coordination.

#### Appropriateness of the aid

149. The development of rail transport is hindered by the absence of sufficient market incentives for undertakings to bear the costs and risks associated with the construction, upgrade and/or renewal of private sidings. Therefore, having regard to the general principles set out in point 68, the Commission considers that investment aid for the construction, upgrade and/or renewal of private sidings is an appropriate instrument<sup>(138)</sup> to increase a modal shift through first/last mile connections via private sidings.

#### Incentive effect of the aid

150. The aid should incentivise the construction, upgrade and/or renewal of private sidings. The Commission considers that the aid has an incentive effect if the general principles set out in points 69 and 70 are complied with and the aided project would have a funding gap in the absence of the aid.

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<sup>(135)</sup> A 'leg' is a section of a journey that is serviced by a transport mode. It is identified in terms of point of origin and point of destination serviced by the same carrier. The 'main leg' is the longest section of the relevant journey.

<sup>(136)</sup> Impact assessment support study for the review of the Community guidelines on State aid for railway undertakings, see footnote (42), section 2.5.

<sup>(137)</sup> When deciding to invest into a private siding, an undertaking must consider whether for the first/last mile transport from/to its site it wants to use road haulage or rail through a private siding. The former is less expensive up to a certain scale and the investment into road connections is carried out and paid for by public authorities. By contrast, for the latter, undertakings bear most of the construction cost (often including a feasibility study taking into account the topography) and pay for operation and maintenance. In addition, the investment has a long lifetime, which is an additional risk, as there are occurrences outside the undertaking's control that could preclude the future use of the private siding. This could for example be the case if railway undertakings stop the relevant connecting services in the area where the undertaking is located.

<sup>(138)</sup> As regards the form of aid, in its past decisional practice on aid that meets the needs of transport coordination, the Commission has not raised objections to aid in the form of direct grants (see Commission Decision of 17 December 2020 in case SA.58570, Germany, *Guidelines on the construction, extension, reactivation and replacement of railway sidings and related infrastructure* (OJ C 25, 22.1.2021, p. 1).

## Proportionality

151. In line with the general principles set out in points 71 to 74, investment aid in private sidings is considered to be proportionate if the aid amount does not exceed the lower of: (i) the funding gap of the project, compared to the counterfactual scenario in the absence of aid <sup>(139)</sup> (which, in the absence of evidence to the contrary, is presumed to be road transport), and (ii) the eligible costs of the investment.
152. The eligible costs consist of investment costs in tangible assets (fixed and movable) and intangible assets directly related to the construction, upgrade and/or renewal of the private siding in order to make it operational or keep it in operation. The eligible costs may include related preparatory studies, such as 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) cannot be included in the eligible costs.
153. For aid schemes, the Member State should commit to carrying out the funding gap analysis set out in points 71 to 74 for each project supported under the scheme. To that end, in its notification of any planned aid scheme, the Member State must describe at least the categories of aided projects, the specific categories of eligible costs accepted (such as the costs of purchase of tangible (fixed and movable) and intangible assets), the methodology to calculate the funding gap and the maximum WACC to be applied.
154. For ad hoc aid <sup>(140)</sup>, in line with the general principles set out in points 71 to 74, the Member State must always: (a) provide a detailed quantification of the funding gap at project level, substantiated by internal documentation of the beneficiary contemporary to the decision-making process, for example, board presentations or internal business plans; and (b) apply an adequate monitoring and *ex post* claw-back mechanism to ensure that the aid does not exceed the limits laid down in point 151.

## Avoiding undue negative effects on competition and trade between Member States

155. To ensure that the aid does not jeopardise the general interests of the Union by creating undue distortions of competition and trade, investment aid for the construction, upgrade and renewal of private sidings must be granted in line with the general principles set out in points 75 and 76.
156. The aid should in principle be awarded in the form of aid schemes because they are likely to have a more limited distortive effect on competition and trade than ad hoc aid.
157. In exceptional duly justified cases, the Commission may find that ad hoc aid to private sidings does not unduly distort competition and trade. As part of the justification of an exceptional case, a Member State must at least provide both of the following:
  - a) calculations showing a significantly higher reduction in external costs per unit of aid through the ad hoc aid than under an aid scheme, accompanied by a detailed explanation of the reasons for such external cost reduction, providing sources for all underlying data and assumptions;

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<sup>(139)</sup> For the funding gap analysis, any existing or envisaged State aid measure, such as operating aid and/or other types of investment aid, should be taken into account to estimate the funding gap.

<sup>(140)</sup> In exceptional duly justified cases, where ad hoc aid for a private siding can be considered compatible with the internal market in line with point 157.

- b) a demonstration, supported by documents such as studies and sector reports, that a particular market failure affects the chosen beneficiary but does not affect at all or only affects to a much more limited extent other undertakings in the Member State.

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

158. These Guidelines provide for specific rules on aid to support investments for the acquisition of (new or used) vehicles for rail or inland waterways transport to foster the modal shift towards rail and inland waterways transport.
159. To ensure that the aid is channelled to the operators that need it the most to establish themselves on the market, aid under this section can only be granted to new entrants in the rail sector <sup>(141)</sup>, railway undertakings that qualify as SMEs, SMEs in the inland waterways sector and leasing operators in the rail and/or inland waterways sectors as long as they qualify as SMEs.
160. The aid must be granted in the form of a public guarantee. Guarantees can be provided directly to final beneficiaries (i.e. the operators mentioned in point 159) 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 to the relevant Member State 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.
161. To be considered compatible with the internal market, aid for the acquisition of vehicles for rail or inland waterways transport must meet the compatibility conditions set out in this section and in Section 4.1.

#### Contribution to the needs of transport coordination

162. As mentioned in points 21 and 32, both the railway sector and the inland waterways sector suffer from a low degree of investment in vehicles, which hinders the full development of those sectors. In line with the general principles set out in point 66, the Commission considers that aid for the acquisition of vehicles for rail or inland waterways transport may foster a modal shift to sustainable land transport by giving SMEs and new entrants in the rail sector more affordable access to finance to acquire vehicles.
163. The Commission will continue to assess the compatibility of investment aid for the acquisition of clean vehicles (rolling stock and inland waterways vessels) under the Commission's *Guidelines on State aid for climate, environmental protection and energy 2022* <sup>(142)</sup>.

#### Necessity of the aid

164. Having adequate fleets is necessary to keep transport by rail and inland waterways competitive with other modes of transport and thus promote the shift to sustainable land transport modes. Yet access to finance for the acquisition of vehicles for rail or inland

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<sup>(141)</sup> For the sake of clarity, new entrants in the rail sector may be eligible for aid for the acquisition of rolling stock even though they do not qualify as SMEs.

<sup>(142)</sup> See footnote (71).

waterways transport is currently a major barrier to market entry and/or expansion for SMEs in the rail and inland waterways sectors and new entrants in the rail sector.

165. As regards rail transport, the constraints to railway undertakings' ability to purchase rolling stock are mainly financial and SMEs in particular may not have access to credit on competitive terms <sup>(143)</sup>. This is because SMEs and new entrants face worse financing conditions compared to those made available to incumbents, who benefit from their position on the market and, in particular when they are publicly owned, could more easily demonstrate their credit-worthiness to investors and banks. Similarly, the inland waterways sector suffers from its limited financial capacity due to the fact that the sector consists mostly of SMEs and family businesses, which makes it difficult for them to engage in expensive investments <sup>(144)</sup>. In that context, the increasing cost of inland waterways vessels <sup>(145)</sup> represents a significant barrier to entry and/or expansions on the inland waterways transport market, especially given the need for specialised vessels for different types of cargo and routes <sup>(146)</sup>.
166. Having regard to the general principles set out in point 67, the Commission considers that aid for the acquisition of rolling stock and vessels is necessary to fulfil the needs of transport coordination. This is because the market on its own is unable to ensure that SMEs in the rail and inland waterways sectors and new entrants in the rail sector have adequate access to financing for the acquisition of vehicles for rail or inland waterways transport.

#### Appropriateness of the aid

167. In line with the general principles set out in point 68, the Commission considers that investment aid for the acquisition of vehicles for rail or inland waterways transport can be, in principle, an appropriate instrument if it takes the form of public guarantees. Public guarantees on loans for a limited period are the most appropriate aid instrument to restore the level playing field between SMEs and new entrants, on the one hand, and large incumbents on the other, when it comes to access to finance for the acquisition of vehicles. Such guarantees are intended to enable their beneficiaries to enjoy credit conditions on the market more similar to those normally enjoyed by incumbents.
168. The Commission considers that investment aid for the acquisition of vehicles for rail or inland waterways transport in the form of public guarantees is appropriate to help SMEs and new entrants in the rail sector finance the high cost of purchasing vehicles for rail or inland waterways transport if the general principles set out in point 68, as clarified in point 167, are complied with.

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<sup>(143)</sup> Impact assessment support study for the review of the Community guidelines on State aid for railway undertakings, see footnote (42), section 4.3.2.

<sup>(144)</sup> See footnote (58).

<sup>(145)</sup> As a result of inflationary tendencies, steel prices and prices for other materials that are needed in shipbuilding have strongly increased over the last years. Source: CCNR Market Observation [Annual report 2023, 109].

<sup>(146)</sup> The inland waterways fleet consists of three main categories of vessels depending on the type of freight transported: dry cargo vessels, liquid cargo vessels and push-and-tug boats. Each category includes different types of vessels depending on the waterway class and shipping conditions. Source: CCNR Market Observation, see footnote (145).

### Incentive effect of the aid

169. The aid should incentivise the acquisition of new or used vehicles for rail or inland waterways transport. The Commission considers that the aid has an incentive effect if the general principles set out in points 69 and 70 are complied with.

### Proportionality

170. In line with the general principles set out in points 71 to 74, aid in the form of public guarantees for the acquisition of inland waterways vessels by SMEs and of rolling stock by SMEs and/or new entrants in the rail sector may be considered transparent and proportionate if the cumulative conditions below are met:

- a) The guarantee is provided on new individual loans for the acquisition of vehicles for rail or inland waterways transport.
- b) The nominal amount of the underlying loan does not exceed the eligible costs of the aided acquisition, which encompass all costs linked to the acquisition of new or used vehicles for rail or inland waterways transport, including the price of the vehicle, delivery costs, and costs of design studies, consulting or engineering, provided they are linked to and part of the investment.
- c) The guarantee coverage does not exceed 90% of the underlying loan.
- d) The guarantee is provided against a fee of at least 50 basis points if the granting Member State's sovereign credit rating is equal to AAA-A. Otherwise Member States are free to apply a lower fee.
- e) The duration of the guarantee is limited to a maximum of 15 years.

171. 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 investments and/or technical adaptation and modernisation investments are excluded from the eligible costs set out in point 170(b). The net extra costs for interoperability investments and/or technical adaptation and modernisation investments are calculated as the difference between, on the one hand, the total cost of purchasing the vehicle planned to be acquired and that is equipped with such investments, and on the other hand the total cost of purchase in the counterfactual scenario, i.e. of a vehicle that is not equipped with interoperability investments or requires technical adaptation and modernisation.

### Avoiding undue negative effects on competition and trade between Member States

172. To ensure that the aid does not jeopardise the general interests of the Union by creating undue distortions of competition and trade, investment aid for the acquisition of vehicles for rail or inland waterways transport must be granted in line with the general principles set out in points 75 and 76.
173. The aid should be, in principle, awarded in the form of aid schemes because they are likely to have a more limited distortive effect on competition and trade between Member States than ad hoc aid.
174. When the aid concerns the acquisition of rolling stock used for the provision of public services in the rail freight transport sector, Member States should ensure that:

- a) publicly financed rolling stock is used only on specific lines served under public service obligations, or within specific regions either for the duration of the public service contract or at least 10 years (whichever is longer);
- b) in case of a transfer of the public service contract to another operator, the publicly financed rolling stock is transferred to the new operator at market price taking into account any public funding received by the outgoing operator for the purchase of that rolling stock.

#### 4.2.2.4 Interoperability aid

175. These Guidelines provide for specific rules on aid intended to promote investments in technologies that ensure uninterrupted traffic flows of goods and passengers between national networks and transport modes ('interoperability aid').
176. Interoperability aid can support investments in tangible and intangible assets, including feasibility studies <sup>(147)</sup>, that contribute to uninterrupted traffic flows ('interoperability investments'). Interoperability investments may concern, in particular, the following technologies and activities:
- 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 legislation <sup>(148)</sup>;
  - b) digital automatic coupling (DAC) <sup>(149)</sup>;
  - 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;

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<sup>(147)</sup> Studies aiming at assessing the feasibility of a modal shift or of sustainable multimodal transport for goods or passengers on routes for which an undertaking currently resorts to road transport.

<sup>(148)</sup> 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 ETCS (i.e. a cab-signalling system that incorporates automatic train protection), the Railway Mobile Radio (RMR), Automated Train Operation (ATO) and operating rules. See 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). The RMR system currently used for railway operations, namely the Global System for Mobile Communications – Rail (GSM-R), is based on specifications that were finalised 20 years ago. Due to technological obsolescence, industrial support for GSM-R is unlikely to be assured much after 2030. The FRMCS will succeed GSM-R as one of the essential parts of the ERTMS. It will support railway digitalisation and service innovation. [*Reference to the relevant EU secondary legislation to be inserted once adopted*]

<sup>(149)</sup> 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 is intended to increase efficiency thanks to automation processes, but also to 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*]

- 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 (RIS), such as the river information services platform ('RIS Platform') <sup>(150)</sup>, Inland Electronic Chart Display and Information System ('Inland ECDIS'), notices to skippers, Inland Automatic Identification System ('Inland AIS') and Electronic Reporting International (ERI);
  - j) telematics applications and other software insofar as they contribute to uninterrupted traffic flows, in particular intermodal identification, tracking and traceability systems, and intermodal data exchange platforms.
177. For at least 5 years after the aid is granted, contractual arrangements for the transfer or use against payments of assets financed with interoperability aid <sup>(151)</sup> must include a clause specifying that the investment ensuring the interoperability of the asset concerned was funded with State aid. They must also mention the corresponding obligations laid down in point 193 and indicate the aid amount.
178. To be considered compatible with the internal market, interoperability aid must meet the compatibility conditions set out in this section and in Section 4.1.

#### Contribution to the needs of transport coordination

179. In line with the general principles set out in point 66, the Commission considers that interoperability aid can foster a modal shift to sustainable land transport by ensuring uninterrupted traffic flows of passengers and goods between Member States' networks and between different modes of transport. The smooth interlinkage of transport networks and modes throughout the EU allows for: (a) rail and inland waterways transport to accommodate the traffic growth ambitioned by the SSMS by optimising the use of the limited capacity of rail and inland waterways transport infrastructures; (b) multimodal transport to truly compete with unimodal polluting transport modes as it enables smooth integration of transport chains and synergies between different transport modes in terms of infrastructure, information flows and procedures; and (c) cross-border traffic growth.

#### Necessity of the aid

180. The Commission notes that installing and upgrading interoperability systems plays a significant role in developing sustainable land transport modes. However, it is an expensive process with more public benefits compared to the private benefits for undertakings, in particular in the initial roll-out phase. There are therefore few incentives for private investment. This may be due, in particular, to: (a) the wide roll-out required before the benefits of certain technologies materialise ('first-mover disadvantage') <sup>(152)</sup>; (b) the need for parallel investments by different actors (e.g. the infrastructure manager

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<sup>(150)</sup> Article 1(3), point (hh), of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/44/EC on harmonised river information services (RIS) on inland waterways in the Community, COM/2024/33 final, 26.1.2024.

<sup>(151)</sup> Such as leasing contracts of rolling stock.

<sup>(152)</sup> Most of the technologies and activities mentioned in point 176 are characterised by the fact that their benefits can only be fully achieved if a critical level of synchronised roll-out is reached. Due to the high upfront investment costs, direct costs are currently higher for operators than the savings made from the transition to these technologies.

and the railway undertakings) and at cross-border level; and (c) the limited private benefits ensuing from the investments in comparison to the public benefits (e.g. safety).

181. Having regard to the general principles set out in point 67, the Commission considers that interoperability aid is necessary to fulfil the needs of transport coordination. This is because the market on its own is unable to sufficiently roll out technologies that contribute to uninterrupted traffic flows <sup>(153)</sup>.

#### Appropriateness of the aid

182. In line with the general principles set out in point 68, the Commission considers that interoperability aid can be in principle an appropriate instrument <sup>(154)</sup> to promote technologies enabling uninterrupted traffic flows of goods and/or passengers between national networks and/or transport modes, particularly in the absence of regulatory measures mandating the introduction of the same technologies. Interoperability aid is not appropriate where there are regulatory measures in place that require introducing the same technologies at a similar time as that planned to be achieved with the use of such aid.

#### Incentive effect of the aid

183. The aid should incentivise investments in technologies that ensure uninterrupted traffic flows of goods and passengers between different national networks and different transport modes. In line with the general principles set out in points 69 and 70, for interoperability aid to have an incentive effect, the cumulative conditions below must be met:
- a) the beneficiary has applied for the aid before the start of works on the investment project;
  - b) the works on the investment project should be finalised at least 1 year before the date the supported investment becomes mandatory at EU level.
184. The Commission considers that the aid has an incentive effect if the general principles set out in points 69 and 70, as clarified in point 183, are complied with. Aid granted to cover the costs of complying with EU standards has, in principle, no incentive effect.

#### Proportionality

185. In line with the general principles set out in points 71 to 74, in principle, the aid may be considered proportionate if it does not exceed 50% of the eligible costs.
186. The eligible costs are:
- a) all costs necessary for or ancillary to implementing the interoperability investments; depending on the type of investment, such costs may include the costs for purchasing

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<sup>(153)</sup> Impact assessment support study for the review of the Community guidelines on State aid for railway undertakings, see footnote (42), section 4.5.4.

<sup>(154)</sup> As regards the form of aid, in its past decisional practice on aid that meets the needs of transport coordination, the Commission has not raised objections to aid in the form of direct grants (see *ex multis* Commission Decision of 26 May 2023 in case SA.102707, Italy, *Italian scheme to support the upgrade of rolling stock with ERTMS equipment* (OJ C 266, 28.7.2023, p. 4); and Commission Decision of 5 November 2019 in case SA.55451, Netherlands, *Support for ERTMS upgrade* (OJ C 59, 21.2.2020, p. 1). Aid in the form of direct grants allows beneficiaries to reduce their upfront investment costs (prototype costs, revenue losses during the immobilisation of the rolling stock, interoperability investment itself) that under normal market conditions are difficult to recoup, particularly when the investment becomes profitable only subject to a wide roll-out of these technologies, which can take a time longer than the lifetime of the asset.

and installing the relevant technology <sup>(155)</sup>, project management costs and delivery costs <sup>(156)</sup>;

- b) costs related to studies, testing and approval, and pilot and prototype installations; and
  - c) costs related to upgrading a previously installed technology.
187. As regards interoperability investments related to the ERTMS as defined in point 176(a), costs related to the integration of European Global Navigation Satellite System (EGNSS) functions within the ERTMS are eligible for support. Costs related to GSM-R are not eligible for support.
188. As regards interoperability 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 interoperability <sup>(157)</sup>. They 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 without interoperability investments in the counterfactual scenario.
189. By way of exception, aid for technologies listed in point 176(a) and (b) may be considered proportionate if it does not exceed 80% of the eligible costs. This is because those technologies are particularly affected by coordination problems at the rollout stage and produce significant external benefits that cannot be internalised.
190. Depending on the specific characteristics of the measure, the Member State may also demonstrate that a higher aid intensity is required, based on a funding gap analysis in line with the general principles set out in points 71 to 74. The Commission will, in that case, consider the aid to be proportionate if the aid amount per beneficiary is limited to the minimum needed for carrying out the investment (i.e. if the aid corresponds to the funding gap necessary to meet the objective of the aid measure, compared to the counterfactual scenario in the absence of aid). In any event, the aid cannot exceed 100% of the eligible costs.

#### Avoiding undue negative effects on competition and trade between Member States

191. To ensure that the aid does not jeopardise the general interests of the Union by creating undue distortions of competition and trade, interoperability aid must be granted in line with the general principles set out in points 75 and 76.
192. The aid should be, in principle, awarded in the form of aid schemes because they are likely to have a more limited distortive effect on competition and trade than ad hoc aid.
193. In addition, for rolling stock and inland waterways vessels, the beneficiary of the aid, as well as any subsequent owner or keeper of the piece of rolling stock or the inland waterways vessel benefiting from the supported investment, must keep them registered in the relevant national register of any Member State and/or in a relevant European vehicle register for 5 years after the implementation of the investment.

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<sup>(155)</sup> The relevant technology may be acquired new or used.

<sup>(156)</sup> For the sake of clarity, maintenance costs are not eligible for support.

<sup>(157)</sup> Provided they are not already covered by any other form of aid, in particular aid under Section 4.2.2.3.

#### 4.2.2.5 Aid for technical adaptation and modernisation

194. These Guidelines provide for specific rules to support investments in tangible and intangible assets for the technical adaptation or modernisation of rolling stock, inland waterways vessels and equipment for sustainable multimodal transport.
195. The following activities and technologies could, in particular, be supported:
- a) retrofitting and/or refurbishing of rolling stock;
  - b) retrofitting and/or refurbishing 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 inland waterways vessels to new types of freight;
  - e) telematics applications and other software not falling under Section 4.2.2.4 of these Guidelines, such as systems providing information to passengers exclusively within one transport mode, or digital reservation and payment systems that do not contribute to uninterrupted traffic flows;
  - f) logistics systems, such as load optimisation software;
  - g) traffic forecast software (Estimated Time of Departure/Estimated Time of Arrival) and route optimisation software.
196. For at least 5 years after the grant of the aid, contractual arrangements for the transfer or use against payment of assets financed with aid for the technical adaptation and modernisation of rolling stock, inland waterways vessels and equipment for sustainable multimodal transport <sup>(158)</sup> must include a clause specifying that the adaptation or modernisation of the asset concerned was funded with State aid, and must indicate the aid amount.
197. To be considered compatible with the internal market, aid for technical adaptation and modernisation of rolling stock, inland waterways vessels and equipment for sustainable multimodal transport must meet the compatibility conditions set out in this section and in Section 4.1.

#### Contribution to the needs of transport coordination

198. In line with the general principles set out in point 66, the Commission considers that aid for the technical adaptation and modernisation of rolling stock, inland waterways vessels and equipment for sustainable multimodal transport can foster a modal shift to sustainable land transport. Technical adaptation enables sustainable land transport to adjust to demand for new types of passenger and freight transport services and develop in areas where it has the biggest growth potential, such as the transport of oversized, heavy or dangerous goods and overnight passenger transport. By contrast, modernisation increases the safety, security, reliability and quality of sustainable land transport. Technical adaptation and modernisation also contribute to the optimal cost-effective use of existing rolling stock, inland waterways vessels and equipment for sustainable multimodal transport.

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<sup>(158)</sup> Such as leasing contracts of rolling stock.

199. The Commission will continue to assess the compatibility of investment aid in clean vehicles (rolling stock and inland waterways vessels) under the Commission's *Guidelines on State aid for climate, environmental protection and energy 2022* <sup>(159)</sup>. In the same vein, investment aid for reducing rail transport noise is not covered by these Guidelines but it is covered under the *Guidelines on State aid for climate, environmental protection and energy 2022* (with specific rules on aid for preventing or reducing pollution other than from greenhouse gases).

#### Necessity of the aid

200. The technical adaptation and modernisation of rolling stock, inland waterways vessels and equipment for sustainable multimodal transport allows those products to retain their highest level of value and utility. Those types of investment not only support the competitiveness of sustainable land transport but also allow for the development of a second-hand market contributing to foster a shift to sustainable land transport modes. Technical adaptation and modernisation might be very costly because the rolling stock, inland waterways vessels and equipment for sustainable multimodal transport cannot be used for the duration of the intervention, leading to significant reductions in revenues. Moreover, some types of technical adaptation and modernisation investments require developing a prototype to understand the structural changes necessary to implement the technology depending on the type of vehicle or equipment for sustainable multimodal transport. Those costs (cost of the prototype and cost of the retrofit) often exceed the value of the retrofitted item <sup>(160)</sup>.
201. Having regard to the general principles set out in point 67, the Commission considers that aid for the technical adaptation and modernisation of rolling stock, inland waterways vessels and equipment for sustainable multimodal transport may be necessary to fulfil the needs of transport coordination to the extent that the market on its own does not deliver a sufficient level of investment in technical adaptation and modernisation supporting the competitiveness of sustainable land transport.

#### Appropriateness of the aid

202. In line with the general principles set out in point 68, the Commission considers that investment aid for the technical adaptation and modernisation of rolling stock, inland waterways vessels and equipment for sustainable multimodal transport can be, in principle, an appropriate instrument <sup>(161)</sup>. Such aid ensures an adequate level of investment in technical adaptation and modernisation supporting the competitiveness of sustainable land transport, particularly in the absence of regulatory measures mandating the introduction of the same technologies. Aid for technical adaptation and modernisation is not appropriate for the purpose of implementing regulatory measures requiring the introduction of the same technologies at a similar time as that planned to be achieved with the use of such aid.

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<sup>(159)</sup> See footnote (71).

<sup>(160)</sup> Impact assessment support study for the review of the Community guidelines on State aid for railway undertakings, see footnote (42), section 3.5.

<sup>(161)</sup> As regards the form of aid, in its past decisional practice on aid that meets the needs of transport coordination, the Commission has not raised objections to aid in the form of direct grants (see Commission Decision of 1 July 2021 in case SA.57137, Germany, *State aid scheme for modernisation of inland waterway fleet* (OJ C 317, 6.8.2021, p. 1). Aid in the form of direct grants allows beneficiaries to reduce their upfront investment costs (prototype costs, revenue losses during the immobilisation of the rolling stock, interoperability investment itself) that under normal market conditions are difficult to recoup.

### Incentive effect of the aid

203. The aid should incentivise investments in the technical adaptation and modernisation of rolling stock, inland waterways vessels and equipment for sustainable multimodal transport. To have an incentive effect the aid must not finance investments that are necessary to comply with an EU standard, or must finance investments that allow to comply with an EU standard significantly ahead of the date of mandatory entry into force of the standard at EU level. In line with the general principles set out in points 69 and 70, for an aid to have an incentive effect, the cumulative conditions below must be met.
- a) The beneficiary has applied for the aid before on the start of works on the investment project.
  - b) The works on the investment project should be finalised at least 1 year before the date the supported investment becomes mandatory at EU level.
204. The Commission considers that the aid has an incentive effect if the general principles set out in points 69 and 70, as clarified in point 203, are complied with.

### Proportionality

205. In line with the general principles set out in points 71 to 74, in principle, the aid may be considered proportionate if it does not exceed 20% of the eligible costs.
206. The eligible costs are:
- a) all costs necessary for or ancillary to implementing the eligible investments; depending on the type of investment, such costs can include costs necessary for purchasing and installing the relevant technology, project management costs and delivery costs <sup>(162)</sup>;
  - b) costs related to studies, testing and approval, and pilot and prototype installations; and
  - c) costs related to upgrading a previously installed technology.
207. Depending on the specific characteristics of the measure, the Member State can also demonstrate, based on a funding gap analysis as set out in points 71 to 74, that a higher aid intensity is required. In that case, the Commission will consider the aid to be proportionate if the aid amount per beneficiary is limited to the amount needed for carrying out the investment (i.e. if the aid corresponds to the funding gap necessary to meet the objective of the aid measure, compared to the counterfactual scenario in the absence of aid). In any event, the aid cannot exceed 100% of the eligible costs.
208. As regards technical adaptation and modernisation 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 <sup>(163)</sup>. They 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

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<sup>(162)</sup> For the sake of clarity, maintenance costs are not eligible for support.

<sup>(163)</sup> Provided they are not already covered by any other form of aid, in particular aid under Section 4.2.2.3.

same vehicle or a similar one without technical adaptation and modernisation investments in the counterfactual scenario.

Avoiding undue negative effects on competition and trade between Member States

209. To ensure that the aid does not jeopardise the general interests of the Union by creating undue distortions of competition and trade, investment aid for technical adaptation and modernisation must be granted in line with the general principles set out in points 75 and 76.
210. The aid should be, in principle, awarded in the form of aid schemes because they are likely to have a more limited distortive effect on competition than ad hoc aid.

## **5. AID THAT REPRESENTS REIMBURSEMENT FOR THE DISCHARGE OF CERTAIN OBLIGATIONS INHERENT IN THE CONCEPT OF A PUBLIC SERVICE IN THE RAIL FREIGHT SECTOR**

### **5.1 General provisions**

211. Article 93 TFEU provides for the compatibility of State aid that represent reimbursement for the discharge of certain obligations inherent in the concept of a public service. In that context, Article 14 of the Treaty and Protocol No 26 on SGEIs annexed to the Treaty lay out the general principles of how Member States define and provide SGEIs. According to Protocol No 26, national, regional and local authorities play an essential role and have wide discretion in providing, commissioning and organising SGEIs tailored as closely as possible to the needs of the users. The specification of a public service obligation may only be called into question by the Commission in the event of a manifest error in the exercise of Member States' discretion<sup>(164)</sup>. However, the Member State's power to define a SGEI is not unlimited and may not be exercised arbitrarily for the sole purpose of allowing a particular sector to circumvent the application of competition rules<sup>(165)</sup>.
212. In the SGEI Communication<sup>(166)</sup>, which also applies to the rail freight transport sector, the Commission clarified the conditions under which public service compensation is to be regarded as State aid.
213. Furthermore, the Regulation on the application of Articles 107 and 108 of the Treaty to *de minimis* aid granted to undertakings providing SGEIs<sup>(167)</sup> also applies to the rail freight transport sector. In the Regulation, the Commission set out the conditions under which small amounts of public service compensation are deemed not to affect trade between Member States and/or not to distort or threaten to distort competition. In those circumstances, compensation falls outside the scope of Article 107(1) of the Treaty.
214. If Member States wish to lay down measures that represent reimbursement for the discharge of certain obligations inherent in the concept of a public service in the rail freight transport sector that do not fulfil the conditions set out in the *Altmark* judgment

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<sup>(164)</sup> Judgement of 29 November 2018, *ARFEA v European Commission*, T-720/16, EU:T:2018:853, paragraph 88; judgement of 24 November 2020, *Viasat Broadcasting UK Ltd*, C-445/19, EU:C:2020:952, paragraph 33.

<sup>(165)</sup> Judgment of 12 February 2008, *BUPA and Others v European Commission*, T-289/03, EU:T:2008:29, paragraph 168.

<sup>(166)</sup> See footnote (36).

<sup>(167)</sup> See footnote (99).

(<sup>168</sup>) and constitute State aid, they must notify those measures to the Commission in line with Article 108(3) of the Treaty.

215. These Guidelines lay down the conditions under which State aid that represents reimbursement for the discharge of certain obligations inherent in the concept of a public service in rail freight transport can be found compatible with the internal market under Article 93 of the Treaty (<sup>169</sup>). Even though the SGEI Framework (<sup>170</sup>) does not apply to the land transport sector, in its compatibility assessment, the Commission will take into account the conditions laid down in sections 2.2 to 2.10 of the SGEI Framework (<sup>171</sup>) adjusted to the specificities characteristics of the rail freight transport sector, as set out in this chapter.

## 5.2 Genuine service of general economic interest

216. The aid must be granted for a genuine and correctly defined SGEI. This means that freight transport services can only be qualified as an SGEI when the Member State concerned determines that there is a genuine need for such services and such genuine need is not, or not sufficiently, met by the market.
217. In relation to the definition of a genuine SGEI, the Member State concerned must establish that the rail freight transport service has special characteristics compared to those of commercial services if such services exist in the market. In that respect, the Commission has clarified that Member States cannot attach specific public service obligations to services that are already provided or can be provided satisfactorily by undertakings operating under normal market conditions and under conditions, such as price, objective quality characteristics, continuity and access to the service, consistent with the public interest as defined by the Member State (<sup>172</sup>).
218. Member States should show that the specific service is in the interest of society as a whole (<sup>173</sup>) and that they have given proper consideration to the public service needs supported by way of a public consultation or other appropriate instruments to take the interests of users and providers into account (<sup>174</sup>). According to the EU courts, the absence of evidence, provided by the Member State, that those criteria are satisfied (i.e. the scope of the public service obligation is necessary and proportionate to a real public service need) or failure to comply with them might constitute a manifest error of assessment that the Commission must take into consideration (<sup>175</sup>).
219. Considering the above, when checking whether the scope of the public service obligation is necessary and proportionate to a real public service need in the rail freight transport

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(<sup>168</sup>) Judgment of 24 July 2003, *Altmark Trans*, C-280/00, EU:C:2003:415. See points 42 ff. of the Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (see footnote (36)).

(<sup>169</sup>) Article 93 of the Treaty contains no equivalent to the second sentence of Article 106(2) of the Treaty, under which the development of trade must not be affected to such an extent as would be contrary to the interests of the EU. However, the Court has already made it clear that the Commission, when assessing an aid measure under Article 93 of the Treaty, has to verify that the aid does not jeopardise the general interests of the EU, see judgment of 12 October 1978, *Commission v Belgium*, 156/77, mentioned at footnote (30), paragraph 10.

(<sup>170</sup>) See footnote (70).

(<sup>171</sup>) See footnote (70).

(<sup>172</sup>) Paragraph 13 of the SGEI Framework, see footnote (70).

(<sup>173</sup>) See Commission Decision of 24 November 2023 in case SA.32953, Italy, *State aid measures in favour of Trenitalia SpA* (not yet published in the OJ), recitals 443-445.

(<sup>174</sup>) Paragraph 14 of the SGEI Framework, see footnote (70).

(<sup>175</sup>) Judgment of 1 March 2017, *France v Commission*, T-366/13, EU:T:2017:135, paragraph 105.

sector, the Commission will verify that the competent authority has cumulatively assessed: (i) the transport needs at stake based on the public objective pursued by the Member State concerned (i.e. the existence of a real public service need); (ii) to what extent market forces alone could satisfy those needs (i.e. existence of a market failure); and (iii) alternative measures that could meet those same needs while being less distortive of competition and trade.

220. When assessing the demand for transport, competent authorities may consider not only existing but also prospective demand from users (in particular when that expected demand can reasonably arise from pursuing policy objectives such as the promotion of sustainable transport connectivity or social cohesion). The ex-ante assessment of the demand for a public transport service can be carried out through different methods, such as for example the use of historical data, representative polls or public consultation of the users to identify their expectations from the public services.
221. The assessment of the market offer should, as a matter of principle, include the consultation of operators on their interest to offer the relevant services through open access services and assess its results. Market operators may, for example, be consulted on the nature, volume and frequency of services they already provide or plan to provide in the geographical area concerned or on the level of tariffs they apply or intend to apply. When commercial services are provided or expected or announced by a market operator to be launched within a reasonably short deadline (for example in rail, where the operator has informed the regulatory body and the infrastructure manager of its intention to launch the service pursuant to Article 38(4) of the Single European Railway Directive <sup>(176)</sup>), competent authorities should take them into account when specifying the scope of public service obligations unless there are objective justifications for not doing so. To prevent the crowding out of commercial offer, the services for which there is no demonstrated market failure cannot fall under the scope of the public service obligation.
222. When considering whether the public service obligations laid down in a public service contract are the least distortive of competition and trade, the competent authority should consider alternative measures in line with EU law. For example, if the main objective of public interest pursued by the measure is the reduction of the environmental impact of freight transport (e.g. because the markets concerned by the measure are already serviced by more polluting transport modes), the competent authority should explain why the same result cannot be achieved by less distortive measures for the coordination of transport (e.g. in the form of investment and/or operating aid schemes).

### **5.3 Need for an entrustment act specifying the public service obligations and the methods for calculating compensation**

223. The operation of the SGEI must be entrusted to the undertaking concerned by way of one or more acts, the form of which may be determined by each Member State <sup>(177)</sup>.
224. The entrustment act(s) should specify, in particular: (a) the content and duration of the public service obligations; (b) the undertaking and the territory concerned; (c) the nature of any exclusive or special rights assigned to the undertaking by the granting authority; (d) the description of the compensation mechanism and the parameters for calculating, monitoring and reviewing the compensation; and (e) the arrangements for avoiding and recovering any overcompensation.

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<sup>(176)</sup> See footnote (8).

<sup>(177)</sup> The term 'Member State' covers the central, regional and local authorities of the said Member State.

#### **5.4 Duration of the period of entrustment**

225. The duration of the period of entrustment should be limited to 15 years. However, if the most significant assets required to provide the SGEI consist of rolling stock that has been in full or in part publicly financed, the duration of the period of entrustment should not exceed 10 years <sup>(178)</sup>.

#### **5.5 Compliance with the Single European Railway Directive and the Transparency Directive**

226. Aid that represents reimbursement for the discharge of public service obligations in the rail freight transport sector is considered compatible with the internal market on the basis of Article 93 of the Treaty only if it is in line with the relevant provisions of the Single European Railway Directive <sup>(179)</sup> and Commission Directive 2006/111/EC (the ‘Transparency Directive’) <sup>(180)</sup>, where applicable.
227. Aid that is not in line with the relevant provisions of those Directives, as recalled in Section 6, is considered to affect the development of trade to an extent that would jeopardise the general interests of the EU.

#### **5.6 Compliance with EU public procurement rules**

228. Aid that represents reimbursement for the discharge of public service obligations in the rail freight transport sector is considered compatible with the internal market on the basis of Article 93 of the Treaty only where the responsible authority, when entrusting the provision of the service to the undertaking in question by means of public service contracts <sup>(181)</sup> or concession contracts <sup>(182)</sup>, has complied or commits to comply with the applicable EU public procurement rules. This includes any requirements for transparency, equal treatment and non-discrimination resulting directly from the Treaty and, where applicable, EU secondary law.
229. Aid that does not comply with such rules and requirements is considered to affect the development of trade to an extent that would jeopardise the general interests of the EU.

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<sup>(178)</sup> At the end of the entrustment period, the operator can transfer that rolling stock to the incoming operator or to the competent authority, provided that the transfer is at market price and takes into account any public funding received for the purchase of that rolling stock (see point 234).

<sup>(179)</sup> See footnote (8).

<sup>(180)</sup> Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ L 318, 17.11.2006, p. 17).

<sup>(181)</sup> Article 2(1), points (1), (2) and (5) of Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors (OJ L 94, 28.3.2014, p. 243) defines ‘service contracts’ as contracts for pecuniary interest concluded in writing between one or more contracting entities, pursuing the activities referred to in Articles 8 to 14 of the Directive, and one or more economic operators and having as their object the provision of services. When these contracts involve ‘contracting authorities’, within the meaning of Article 2(1) point (1) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement (OJ L 94, 28.3.2014, p. 65), not exercising the activities referred to in Articles 8 to 14 of Directive 2014/25/EU, they are considered as ‘public service contracts’ in accordance with Article 2(1) points (6) and (9) of Directive 2014/24/EU.

<sup>(182)</sup> Article 5(1)(b) of Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1) defines ‘service concessions’ as contracts ‘for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrust the provision and the management of services other than the execution of works referred to in point (a) to one or more economic operators, the consideration of which consists either solely in the right to exploit the services that are the subject of the contract or in that right together with payment’.

## **5.7 Absence of discrimination**

230. Where an authority assigns the provision of the same SGEI to several undertakings, the compensation should be calculated on the basis of the same method in respect of each undertaking.

## **5.8 Amount of compensation**

231. The amount of compensation must not exceed what is necessary to cover the net cost of discharging the public service obligations, including a reasonable profit.
232. In this regard, the Commission will apply the criteria laid down in paragraphs 21 to 50 of the SGEI Framework <sup>(183)</sup>, subject to the following clarifications.
233. First, the net cost necessary, or expected to be necessary, to discharge the public service obligations can be determined either on the basis of the net avoided cost methodology, as described in paragraphs 25 to 27 of the SGEI Framework <sup>(184)</sup>, or on the basis of the cost allocation methodology, as described in paragraphs 28 to 31 of the SGEI Framework <sup>(185)</sup>.
234. Second, as regards the purchase of rolling stock used for the provision of public services, Member States should ensure that the following cumulative conditions are met:
- a) State aid already received and approved, in particular under these Guidelines (under Section 4.2.2.3) in respect of rolling stock that will be used for the provision of public services is taken into account in the calculation of the public service compensation;
  - b) if the rolling stock used for the provision of the public services is transferred at the end of the contract to the incoming operator or to the competent authority, the transfer should be made at market price and take into account any public funding received by the outgoing operator for the purchase of that rolling stock.

## **5.9 Additional requirements that may be necessary to ensure that the aid does not jeopardise the general interests of the EU**

235. The Commission may require conditions or request commitments from Member States in the exceptional circumstances where the requirements set out above are not sufficient to address serious competition distortions in the internal market and the aid could affect trade in a way that would jeopardise the general interests of the EU. To that end, the Commission will apply the criteria laid down in paragraphs 51 to 59 of the SGEI Framework <sup>(186)</sup> with the necessary adjustments.
236. The Commission observes that market failures identified by Member States (e.g. for the shipment of single wagon loads) could have a local or regional dimension. Therefore, the Commission will carefully assess that the geographical scope of any public service contract is duly justified. In that regard, the Commission does not, in principle, regard a public service contract covering the entire territory or rail network of a Member State as a proportionate way to address a potential market failure given the potential competition distortion that may arise from awarding such a contract.

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<sup>(183)</sup> See footnote (70).

<sup>(184)</sup> See footnote (70).

<sup>(185)</sup> See footnote (70).

<sup>(186)</sup> See footnote (70).

## 5.10 Transparency

237. For SGEI compensation falling within the scope of these Guidelines, the Member State concerned must publish the following information on the internet or by other appropriate means: (a) the results of the public consultation or other appropriate instruments referred to in point 218; (b) the content and duration of the public service obligations; (c) the undertaking and, where applicable, the territory concerned; and (d) the amount of aid granted to the undertaking on a yearly basis.

## 5.11 Conditions and obligations attached to Commission decisions

238. Under Article 9(4) of Council Regulation (EU) 2015/1589<sup>(187)</sup> the Commission may attach to a positive decision conditions subject to which aid may be considered compatible with the internal market and may lay down obligations to enable compliance with the decision to be monitored. Such conditions and obligations may be necessary to ensure that aid granted to the undertakings concerned does not lead to undue distortions of competition and trade in the internal market. In that context, periodic reports or other obligations may be necessary based on the specific situation of each SGEI.

## 6. FINANCIAL FLOWS IN VERTICALLY INTEGRATED RAILWAY UNDERTAKINGS

239. The adoption of the successive railway packages referred to in point 2 of these Guidelines has led to all rail transport operations gradually opening to competition. That process has put vertically integrated railway undertakings in the situation where some of their activities (in particular rail infrastructure management) may still enjoy some exclusive and/or special rights under certain conditions, while freight and passenger rail transport activities are now subject to competition under the conditions set out in the Single European Railway Directive<sup>(188)</sup> and Regulation (EC) No 1370/2007<sup>(189)</sup>.
240. As mentioned in point 3 of these Guidelines, it is crucial that the legal framework governing financial transactions of public and vertically integrated undertakings in the rail sector is properly respected and enforced. Compliance with the applicable financial transparency rules: (i) ensures that aid given under these Guidelines is not diverted to other activities than those for which aid is authorised; and (ii) mitigates the risk that the proceeds of market-based financial instruments (such as bonds) used by vertically integrated undertakings to finance their operations, investments, and the maintenance and development of the rail infrastructure are used for intra-group refinancing to the detriment of new entrants and, ultimately, of competition.
241. This chapter recalls the principles governing financial transactions of public and vertically integrated railway undertakings. Compliance with those principles is important not only to ensure that aid for reimbursements for the discharge of public service obligations in the rail freight transport sector is compatible with the internal market (see Section 5.5). Compliance is also important, more generally, to ensure the correct allocation of costs and revenues to the different activities of public and vertically integrated undertakings, thus avoiding cross-subsidisation.

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<sup>(187)</sup> 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).

<sup>(188)</sup> See footnote (8).

<sup>(189)</sup> See footnote (31).

242. Public and vertically integrated undertakings' financial transactions are governed by the Transparency Directive. This Directive concerns any public undertaking <sup>(190)</sup> and any undertaking required to maintain separate accounts, in particular any undertaking entrusted with a public service <sup>(191)</sup>. Under Articles 1(2) and 4(1) of the Directive, Member States must ensure that: (i) undertakings falling in the Directive's scope hold separate accounts for different activities; (ii) those accounts clearly identify the costs and revenues associated with different activities; and (iii) they provide full details of the method by which costs and revenues are assigned or allocated to different activities.
243. In the rail sector, the obligation above has been clarified and further detailed in the Single European Railway Directive <sup>(192)</sup>, which applies to the management of railway infrastructure and to rail transport activities of railway undertakings.
244. Under Article 6 of the Single European Railway Directive <sup>(193)</sup>, the separation of accounts is mandatory: (i) between the provision of transport services and the business related to the management of railway infrastructure; (ii) between passenger and freight transport services; and (iii) between the public service and commercial activities. In addition, in terms of financial transparency, Article 7(d) of the Single European Railway Directive <sup>(194)</sup> expressly requires that:
- a) 'loans between legal entities of a vertically integrated company, shall only be granted, disbursed, and serviced at market rates and conditions which reflect the individual risk profile of the entity concerned' <sup>(195)</sup>;
  - b) '[d]ebts attributed to the infrastructure manager shall be clearly separated from debts attributed to other legal entities within vertically integrated undertakings. Such debts shall be serviced separately [...]' <sup>(196)</sup>; and
  - c) '[w]ithin vertically integrated undertakings, the infrastructure manager shall keep detailed records of any commercial and financial relations with the other legal entities within that undertaking' <sup>(197)</sup>. The power to verify compliance with those provisions lies primarily with the national regulatory bodies <sup>(198)</sup>.

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<sup>(190)</sup> Defined in Article 2(b) of the Transparency Directive as 'any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence on the part of the public authorities shall be presumed when these authorities, directly or indirectly in relation to an undertaking: (i) hold the major part of the undertaking's subscribed capital; or (ii) control the majority of the votes attaching to shares issued by the undertakings; or (iii) can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body'.

<sup>(191)</sup> Defined in Article 2(d) of the Transparency Directive as 'any undertaking that enjoys a special or exclusive right granted by a Member State pursuant to Article [106(1)] of the Treaty or is entrusted with the operation of a service of general economic interest pursuant to Article [106(2)] of the Treaty, that receives public service compensation in any form whatsoever in relation to such service and that carries on other activities'.

<sup>(192)</sup> See footnote (8).

<sup>(193)</sup> See footnote (8).

<sup>(194)</sup> See footnote (8).

<sup>(195)</sup> Article 7d(4) of the Single European Railway Directive, see footnote (8).

<sup>(196)</sup> Article 7d(7) of the Single European Railway Directive, see footnote (8).

<sup>(197)</sup> Article 7d(9) of the Single European Railway Directive, see footnote (8).

<sup>(198)</sup> Under Article 56(12) of the Single European Railway Directive, the national regulatory body has the power to carry out audits or initiate external audits with infrastructure managers, operators of service facilities and, where relevant, railway undertakings in order to verify compliance with accounting separation provisions laid down in Article 6 of the Directive and provisions on financial transparency laid down in Article 7d of the Directive. In the case of vertically integrated undertakings, those powers extend to all legal entities.

245. As regards the financing of the infrastructure manager, under Article 8 of the Single European Railway Directive <sup>(199)</sup>, the infrastructure manager should adopt a business plan, including investments and financial programmes. The plan should be designed to ensure an optimal and efficient use, provision and development of the infrastructure while ensuring financial balance and providing the means to achieve these objectives <sup>(200)</sup>.

## 7. *EX POST* EVALUATION PLAN

246. To further ensure that distortions of competition and trade are limited, the Commission may require schemes identified in point 247 to be subject to an *ex post* evaluation. This will check: (a) the effectiveness of the aid measure based on its pre-defined objectives; (b) the impact of the aid measure on competition; and trade and whether (c) no undue distortive effects arise throughout the duration of the aid scheme that are contrary to the interests of the EU.

247. An *ex post* evaluation is required for schemes where the potential distortion of competition and trade is particularly high, i.e. that may significantly risk restricting or distorting competition if implementation is not reviewed in due time. For instance, this is the case for schemes with large aid budgets, that contain novel characteristics, or when significant market, technology or regulatory changes are expected. In any event, an *ex post* evaluation is required for any scheme with a State aid budget or accounted expenditure over EUR 150 million in any given year or EUR 750 million over its total duration. The total duration of the scheme includes the combined duration of the scheme and any predecessor schemes covering a similar objective and geographical area, starting from the publication of these Guidelines. Given the objectives of the evaluation and in order not to impose a disproportionate burden on Member States, *ex post* evaluations are only required for aid schemes whose total duration exceeds 3 years, starting from the publication of these Guidelines.

248. The *ex post* evaluation requirement may be waived with respect to aid schemes that are the immediate successors of schemes covering a similar objective and geographical area that have been subject to an evaluation, have delivered a final evaluation report in compliance with the evaluation plan approved by the Commission and have generated no negative findings. Any scheme where the final evaluation report does not comply with the approved evaluation plan must be suspended with immediate effect.

249. As regards aid schemes subject to the evaluation requirement referred to in point 247, Member States must notify a draft evaluation plan, which will form an integral part of the Commission's assessment of the scheme. The plan must be notified:

- a) together with the aid scheme 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 any 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;

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<sup>(199)</sup> See footnote (8).

<sup>(200)</sup> Article 8(3) of the Single European Railway Directive, see footnote (8).

- c) for schemes not falling under point (a) or (b), within 30 working days following the recording in official accounts of expenditure under the scheme in excess of EUR 150 million in any year.
250. The draft evaluation plan must be in line with the common methodological principles provided by the Commission <sup>(201)</sup>. Member States must publish the evaluation plan approved by the Commission.
251. The *ex post* evaluation must be carried out by an expert, independent from the aid granting authority, on the basis of the evaluation plan. Each evaluation must include at least one interim and one final evaluation report. Member States must publish both reports.
252. The final evaluation report must be submitted to the Commission in due time so it can assess any prolongation of the aid scheme and at the latest 9 months before its expiry. That period may be reduced for schemes triggering the evaluation requirement in their last 2 years of implementation. The precise scope and arrangements for each evaluation will be set out in the decision approving the aid scheme. The notification of any subsequent aid measure with a similar objective must describe how the results of the evaluation have been taken into account.

## **8. REPORTING AND MONITORING**

253. Under Council Regulation (EU) 2015/1589 <sup>(202)</sup> and Commission Regulation (EC) No 794/2004 <sup>(203)</sup>, Member States are required to submit annual reports to the Commission in respect of each aid measure approved under these Guidelines.
254. Member States must maintain detailed records of all aid measures. Those records must contain all information needed to determine that all the compatibility conditions set out in these Guidelines are fulfilled. Member States must maintain those records for 10 years from the date of award of the aid and must provide them to the Commission upon request.
255. In addition, as regards the aid that represents reimbursements for the discharge of certain obligations inherent in the concept of a public service referred to in Chapter 5, the Commission will also apply Chapter 3 of the SGEI Framework <sup>(204)</sup> with the necessary adjustments (except points 62, last indent, and 65).

## **9. APPLICABILITY**

256. These Guidelines replace the 2008 Railway Guidelines <sup>(205)</sup>.
257. The Commission will apply these Guidelines to notified aid on which it is called upon to take a decision after the date of publication of these Guidelines in the *Official Journal of the European Union*, even where the aid was notified before that date.

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<sup>(201)</sup> Commission staff working document, Common methodology for State aid evaluation, 28 May 2014, (SWD(2014) 179 final), or any of its successors.

<sup>(202)</sup> 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).

<sup>(203)</sup> Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).

<sup>(204)</sup> See footnote (70).

<sup>(205)</sup> See footnote (38).

258. In line with the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid <sup>(206)</sup>, in case of unlawful aid, the Commission will apply the rules in force when the aid was granted. The Commission will apply these Guidelines accordingly if unlawful aid is granted after their date of publication.
259. The Commission proposes the appropriate measures below to Member States under Article 108(1) of the Treaty.
- a) Member States amend, where necessary, existing aid schemes authorised under the 2008 Railway Guidelines or directly under Article 93 of the Treaty in order to bring them into line with these Guidelines no later than [31 December 2026];
  - b) Member States give their explicit unconditional agreement to the appropriate measures proposed in point 259(a) within 2 months from the date of publication of these Guidelines in the *Official Journal of the European Union*. In the absence of a reply, the Commission will assume that the Member State in question does not agree with the proposed measures.

## 10. REVISION

260. The Commission may decide to review or amend these Guidelines at any time if this should be necessary for reasons associated with competition policy, to take account of other EU policies or international commitments or for any other justified reason.

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<sup>(206)</sup> OJ C 119, 22.5.2002, p. 22.

## ANNEX I

### Aid that meets the needs of transport coordination — measures covered by the TBER and measures to be notified under these 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 &lt; 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 &lt; EUR 20 million</p> <p>Ad hoc aid to sustainable multimodal freight terminals &lt; EUR 10 million</p>	<p><i>50% eligible costs if aid &lt; 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	<p>Aid schemes</p> <p>Individual aid amount awarded under a scheme per project &lt; EUR 2 million</p>	<p><i>50% eligible costs if aid &lt; EUR 500 000 per project</i></p> <p><i>50% eligible costs but within</i></p>	<p>Ad hoc aid</p> <p>Individual aid amount awarded under a scheme per project ≥ EUR 2 million</p>	<p><i>Funding gap limited to 100% of the eligible costs</i></p>

		<i>the limit of the difference between eligible costs and operating profit of the investment over its lifetime and terminal value if aid <math>\geq</math> EUR 500 000 per project</i>	Aid schemes with intensities above those authorised under the TBER	
Investment aid for the acquisition of vehicles for rail or inland waterways transport	Aid schemes	<i>Nominal amount of the underlying loan <math>\leq</math> eligible costs. Guarantee coverage <math>\leq</math> 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 <math>\leq</math> eligible costs. Guarantee coverage <math>\leq</math> 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)  20% eligible costs (for cranes on board of vessels)</i>	n/a	
Investment aid for interoperability	Aid schemes	<i>50% eligible costs  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  80% eligible costs (for ERTMS and DAC)  Funding gap limited to 100% of the eligible costs</i>
Investment aid for technical adaptation and modernisation of vehicles and equipment for sustainable multimodal transport	Aid schemes	<i>20% eligible costs</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>20% eligible costs  Funding gap limited to 100% of the eligible costs</i>

## ANNEX II

### Information referred to in point 82(b)

The information on individual awards referred to in point 82(b) of these Guidelines must include the following:

- a) Identity of the individual aid beneficiary <sup>(207)</sup>:
  - name
  - aid beneficiary's identifier
- b) Type of aid beneficiary at the time of application:
  - SME
  - large company
- c) Region in which the aid beneficiary is located (at NUTS level II or below)
- d) The main sector or activity of the aid beneficiary for the given aid, identified by the NACE group (three-digit numerical code) <sup>(208)</sup>
- e) Aid element expressed in full in the national currency
- f) Where different from the aid element, the nominal aid amount expressed in full in the national currency <sup>(209)</sup>
- g) Aid instrument <sup>(210)</sup>:
  - grant, interest rate subsidy, debt write-off
  - loan, repayable advances, reimbursable grant
  - guarantee
  - tax advantage or tax exemption
  - risk finance
  - other (please specify)

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<sup>(207)</sup> With the exception of business secrets and other confidential information in duly justified cases and subject to the Commission's agreement (Commission communication of 1.12.2003 on professional secrecy in State aid decisions, C(2003) 4582 (OJ C 297, 9.12.2003, p. 6)).

<sup>(208)</sup> 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 regulations governing specific statistical domains (OJ L 393, 30.12.2006, p. 1).

<sup>(209)</sup> Gross grant equivalent, or where applicable, the amount of the investment. For operating aid, the annual aid amount per aid beneficiary can be provided. For fiscal schemes, this amount can be provided by the ranges set out in point 84. The amount to be published is the maximum tax benefit permitted and not the amount deducted each year (e.g. in the context of a tax credit, the maximum tax credit permitted must be published rather than the actual amount, which might depend on the taxable revenue and vary each year).

<sup>(210)</sup> If the aid is granted through multiple aid instruments, the aid amount must be specified by instrument.

- h) Date of award and date of publication
- i) Objective of the aid
- j) Identity of the granting authority or authorities
- k) Where applicable, the name of the entrusted entity and the names of the selected financial intermediaries
- l) Reference of the aid measure <sup>(211)</sup>

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<sup>(211)</sup> As provided by the Commission under the notification procedure referred to in Chapter 3.