

FEEDBACK TO A PUBLIC CONSULTATION

Consultation on the European Commission's draft new Land and Multimodal Transport Guidelines (LMTG) and Transport Block-Exemption Regulation (TBER)

ALLRAIL welcomes the opportunity to contribute to the European Commission's revision of the State Aid rules. We acknowledge the European Commission's initiative behind the proposed Land and Multimodal Transport Guidelines (LMTG) and the draft Transport Block-Exemption Regulation (TBER) in addressing the main imbalances of the sector, with the goal of creating a resilient and sustainable passenger rail market that supports modal shift to rail.

General concerns about the double role of Member States in passenger rail transport

Whilst we recognise the objective of promoting greener alternatives in comparison to aviation and road transport, and thus expanding the scope to include inland waterways transport services, we would like to emphasise the **specific position of the Member State in passenger rail in this context**. State aid should be approached with caution – and especially in passenger rail. As the current Guidelines (from 2008) precisely describe, absence of competition results in railway undertakings having no incentive to reduce their operating costs and develop new services – leading to heavy indebtedness. Any tool from the state aid categories should therefore lead to more resilient companies, not to companies that are dependent on state subsidies.

Regrettably, the broader interpretation of 'state aid' has been a key factor hindering passenger rail's ability to compete effectively with more polluting modes of transport. Member States, as 100% shareholders of their incumbent railway operators, have provided aid that, while portrayed as aimed at supporting the sector, has consistently benefited their incumbents. While this may have short-term positive effects on rail's attractiveness, such aid has come at the expense of new entrants, ultimately weakening competition and making the passenger rail (and also the incumbents) less competitive in the long term. This goes against the

recommendation Mr Draghi made in his report, according to whom “*the focus of [industrial policies] should be on sectors rather than companies*”¹.

Therefore, any state aid must be genuinely accessible to the smallest new entrants to avoid market distortion and a long-term decline in the competitiveness of passenger rail relative to aviation and road transport. Thus, we strongly support schemes as a main measure.

Additionally, establishing a truly functional Single European Railway Area is pivotal to achieving a successful modal shift. Therefore, the **harmonisation** of programmes, approaches, and conditions, particularly in the realm of state aid, is essential.

Our feedback also highlights probable cases and scenarios where well-intentioned state aid occurrences, while fully compliant with the relevant rules, could unintentionally exacerbate market distortions rather than mitigate them.

We need **strong regulatory bodies in the Member States**. Before granting any aid, it has to be ensured that any possible cross-financing is not possible and, in doubt, that aid cannot be granted. Moreover, all the proposed categories of aid have to be carefully **monitored and evaluated by the European Commission**.

We understand the reasoning behind broadening the scope of the Guidelines and the Regulation. However, while freight rail has demonstrated itself as an established market, passenger rail continues to be rather still a fragile, developing market. In passenger rail, the market is more sensitive to distortion mainly due to the specific role of Member States who grant aid, set conditions but also represent the interests of their incumbents.

Finally, it must be remembered that besides financial intervention in the form of aid, Member States have to focus actively on lowering track access charges and improving rail capacity management to accelerate the modal shift to rail.

In view of the aforementioned general considerations about the position of Member States, ALLRAIL makes the following recommendations:

- We recommend that both LMTG and TBER allow Member States to provide state aid through **schemes only**, and thus exclude ad hoc aid. Indeed, despite the European Commission stating its preference for aid schemes², it still allows ad hoc aid. Ad hoc aid is highly likely to lead to market distortion

¹ Draghi, M. (2024). "Part A | A Competitiveness Strategy for Europe" in *The Future of European Competitiveness. P. 13*. Link [here](#).

² "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." (LMTG, §76)

and is against the objective of Green Deal and Sustainable and Smart Mobility Strategy. Therefore, we believe there are no reasons for allowing ad hoc aid beyond above aid schemes in the passenger rail market which is already fragile.

- Due to the specific ownership relationships between certain Member States and their incumbent operators, and the potential impact on the market, passenger rail requires enhanced safeguards, and the European Commission should have greater oversight and control over decisions of the Member States in this sector. We recommend considering all state aid schemes in the passenger rail sector under the TBER to be subject to notification to the European Commission.
- We recommend **harmonisation and regular monitoring**, as differing State Aid schemes in various Member States could lead to fragmentation, contrary to the goals of the SERA, and create challenges for new entrants to navigate. If notification is not required under the TBER, then the European Commission must closely monitor the granting of state aid to prevent market distortion, as ex post action will not have a restorative effect.

About the definition of new entrant

Both LMTG and TBER are designed to support new entrants in passenger rail, as the opposite to legacy operators who benefited from state aid and their subsidiaries. It is important to note that the draft TBER and LMTG provisions for investment aid towards the acquisition of vehicles limit support new entrants and SMEs, and only in the form of guarantees on loans.

Under both LMTG and TBER, railway undertakings qualify as new entrants if they satisfy 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; [Emphasis added by ALLRAIL]*
- *(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.*

We recommend increasing the time period from 20 years to 30 years in the first condition. The rail sector presents significant barriers to entry, including regulatory, operational, and financial challenges, which many new entrants struggle to overcome even after several years. Despite being in the market for a long time,

these operators often remain in an early stage of development, unable to grow to full capacity due to these persistent obstacles.

About the categories of aid

1. Operational aid to reduce the external costs of transport (TBER Article 10, LMTG 4.2.1.1.)

ALLRAIL recommends that the European Commission restrict this category of operational aid to aid schemes only in both the LMTG and TBER, thereby excluding ad hoc aid. Given the specific position of Member States, it is essential that the Commission actively monitors potential market distortions to ensure fair competition.

The European Commission recognises that operating aid aimed at reducing external transport costs can encourage a modal shift towards more sustainable land transport by addressing price disparities between different modes and incentivising users to choose greener options.

One effective tool within this aid category is the reduction of track access charges (TACs). We advocate for the harmonisation of the TAC framework, reducing it to direct costs only, without mark-ups. Although Directive 2012/34/EU sets these standards, very few Member States currently follow the regulation, and while discounts are technically prohibited, ensuring compliance remains challenging in practice.

2. Operational aid to launch new commercial connections (TBER Article 11, LMTG 4.2.1.2.)

Operational aid to launch new connection has to be used very carefully as it can easily result in market distortion.

First, ALLRAIL recommends the distance threshold for eligible new commercial domestic connections be lowered to 150 km, without them being classified as regional connections. Many new entrants—who are the ones truly in need of aid to launch a new commercial connection without subsidies—operate on routes significantly shorter than the current 400 km threshold. These shorter routes are often critical for new market players to establish themselves and grow. Additionally, an absolute distance threshold of 400 km unfairly discriminates against smaller Member States.

Second, ALLRAIL recommends that the aid for the launch of new commercial passenger connections be limited exclusively to new entrants, with the same reasoning as for investment aid for the acquisition of vehicles.

Third, if the second recommendation is fulfilled, , ALLRAIL also recommends the creation of an additional eligibility criterion that specifically supports the launch of low-cost services and night trains. These segments cater to different types of customers and fulfil distinct market needs, which are not addressed by existing high-speed or premium services. Low-cost services provide affordable travel options for budget-conscious passengers, while night trains offer long-distance, eco-friendly alternatives, particularly attractive for those seeking overnight travel. Supporting these segments ensures greater market diversity. This would also foster fair competition by promoting the growth of differentiated services, even in corridors where other types of connections already exist.

Fourth, ALLRAIL recommends that the European Commission provide clearer guidance on what qualifies as a "new passenger commercial connection". Specifically, it should clarify whether a new direct service, which replaces a connection that previously required a transfer, would be considered a new service. Similarly, guidance is needed on whether the extension of an existing route qualifies as a new connection under the current definition and, if so, whether the existing section would be eligible to state aid. Furthermore, there is a risk that incumbents may exploit loopholes by introducing so-called "new services" that merely add intermediate stops or connect stations located very close to those already served by existing routes. In some cases, they might introduce a "new service" that takes an alternative route but still connects the same distant points, thus bypassing the intent of fostering genuinely new connections. In the past, some of ALLRAIL members have faced similar situations, where their new open access services were subsequently undermined by Public Service Obligations (PSOs) introduced over the same routes. As it will be the Member States who will decide about the new connection, their stakeholder approach can significantly undermine the European Commission's objectives underpinning the revised state aid framework.

Fifth, ALLRAIL recommends reducing both the aid intensity and the duration for new commercial rail connections. We propose a **degressive structure of 30% in the first year, 20% in the second year, and 10% in the third year**, instead of the current higher percentages spread over five years. The rationale behind this recommendation is to prevent the over-proliferation of new services that are unsustainable in the long term. Offering too much aid over an extended period can incentivise the creation of services that may fail once the aid ends, leaving the market or requiring further taxpayer support through PSOs.

3. Investment aid for the construction, upgrade and renewal of unimodal and multimodal rail and inland waterways transport facilities (TBER Article 12, LMTG 4.2.2.1.)

First, ALLRAIL recommends that a prerequisite for granting aid under this category be the correct transposition of EU legislation, particularly Directive 2012/34/EU and its related regulations. Indeed, transport facilities are critical access points for RUs and play a significant role in opening the market to competition. Ensuring that private networks comply fully with EU law is essential for fair access. Strong, independent regulators must oversee this process to ensure that these facilities are operated without discrimination and that all RUs can access them on equal terms.

Second, recommends that the European Commission restrict this category of investment aid to aid schemes only under both LMTG and TBER, excluding ad hoc aid.

4. Investment aid for the construction, upgrade and/or renewal of private sidings (TBER Article 13, LMTG 4.2.2.2.)

First, ALLRAIL recommends that a prerequisite for granting aid under this category be the correct transposition of EU legislation, particularly Directive 2012/34/EU and its related regulations.

Second, recommends that the European Commission restrict this category of investment aid to aid schemes only under both LMTG and TBER, excluding ad hoc aid.

5. Investment aid for the acquisition of vehicles for rail or inland waterways transport (TBER Article 14, LMTG 4.2.2.3.)

ALLRAIL commends the European Commission for limiting this category of aid to new entrants and SMEs. This decision acknowledges that access to rolling stock, both brand new and second-hand, remains one of the major barriers for new entrants in the rail sector. By making this distinction, the Commission recognises the significant difference in resources and market access between new entrants and incumbents, along with their subsidiaries, who already benefit from established networks and existing rolling stock.

6. Interoperability aid (TBER Article 16, LMTG 4.2.2.4.)

ALLRAIL commends the European Commission for recognising the importance of interoperability aid in advancing the development of the rail sector and helping to create the SERA. Supporting the deployment of key technologies like ERTMS is crucial for enhancing rail efficiency and facilitating cross-border operations.

Nevertheless, ALLRAIL first **recommends increasing the support to cover 100% of eligible costs related to ERTMS**. Costs related to the implementation of ERTMS are extremely high and ERTMS provides little first move advantages for operators, making it particularly burdensome for new entrants and smaller operators. Full coverage of costs would significantly ease the financial pressure and encourage quicker adoption of ERTMS.

Second, ALLRAIL recommends allowing the possibility of **upfront payments for new entrants**. Ex post payments are not always a viable option for them, as they often lack the initial capital to finance such costly investments. Offering upfront payments would enable new entrants to implement these technologies without being constrained by their financial limitations.

Third, recommends that the European Commission restrict this category of investment aid to aid schemes only under both LMTG and TBER, excluding ad hoc aid.

7. Investment aid for technical adaptation and modernisation of rolling stock (TBER Article 17, LMTG 4.2.2.5.)

ALLRAIL recommends that the European Commission restrict this category of investment aid to aid schemes only under both LMTG and TBER, excluding ad hoc aid.