

# Flemish Position – State aid – draft Land and Multimodal Transport Guidelines (LMTG) and draft Transport Block Exemption Regulation (TBER)

In general terms, Flanders supports both the draft LMTG and the draft TBER. However, there are a number of observations that Flanders would like to pass on to the European Commission. These can be found below.

## Comments on definitions

A general finding is that the documents, both of which have the same focus and are complementary, do not always show consistency. This is detrimental to the readability and application of both documents. It may also lead to confusion and misuse/interpretation of certain concepts and rules.

In particular, it is noted that, under the heading ‘definitions’ in both documents, there is no consistency in numbering. Some terms are referred to differently or some are given two meanings. Furthermore, some terms are defined only in one of the documents where they are also used in the other document, but without a definition.

Below we give a non-exhaustive list of concepts that we believe should be better adapted to each other:

TBER	LMTG
(K) <b>‘IWT facility’</b> : any service facility (for example a terminal or a maintenance or storage facility) and the associated access infrastructure (including the physical equipment or computer hardware needed to use it) located within the Union and used for the purpose of inland navigation, with the exception of facilities or equipment required for non-transport operations;	(L) <b>‘inland waterway supply’</b> : any service facility (e.g. a terminal or a maintenance or storage facility) and its access infrastructure (including the physical or digital equipment necessary for its operation) located within the EU and used for inland waterway transport, with the exception of facilities or equipment necessary for the performance of non-transport operations;
Not defined	(e) <b>‘combined transport’</b> means: the form of intermodal transport that meets the conditions laid down for combined transport in the Combined Transport Directive;
(L) <b>‘inland waterway vessel’</b> means: a vessel for the carriage of persons or goods intended solely or principally for navigating on inland waterways or waters within, or in the immediate vicinity of, sheltered waters;	(m) <b>‘inland waterway vessels’</b> means: vessels sailing exclusively or principally on inland waterways or in waters within or closely adjacent to sheltered waters and used for the carriage of passengers or goods;

(m) <b>'Intermodal Loading Unit'</b> (ILU): a container, swap body or semi-trailer or road vehicle or vehicle combination used for intermodal transport;	Not defined
(N) <b>'intermodal transport'</b> : the transport of goods (in the same transport unit) for which successive modes of transport are used without the goods being moved during the change of mode of transport itself;	(N) <b>'multimodal transport'</b> : the movement of goods (in the same loading unit or vehicle) by successive modes of transport, without handling the goods themselves when changing transport modes;
(P) <b>'multimodal transport'</b> : movement of goods or persons by at least two different modes of transport;	(N) <b>'multimodal transport'</b> means: the movement of goods (in the same loading unit or vehicle) by successive modes of transport, without handling the goods themselves when changing transport modes;
(m) <b>'Intermodal Loading Unit'</b> (ILU): a container, swap body or semi-trailer or road vehicle or vehicle combination used for intermodal transport;	(o) <b>'swap body'</b> means: a container, outlet box or semi-trailer/road motor vehicle or combination of vehicles used for intermodal transport;
Not defined	(Q) <b>'Land transport'</b> means: transport by rail, inland waterway and road
	(s) <b>'multimodal transport'</b> : the carriage of goods or passengers by at least two different modes of transport; = 2 <sup>e</sup> definition see No n
(s) <b>'new commercial inland waterway link for freight transport'</b> means: a commercial route providing new regular inland waterway freight services between at least two terminals which have not been linked by regular freight services for at least five years before the start of the service in question;	(U) <b>'new commercial link for the carriage of goods by inland waterways'</b> : a commercial route involving new regular inland waterway freight transport operations between at least two terminals which were not connected by regular freight transport services for at least five years prior to the entry into service of the route in question;
(t) <b>'new commercial rail link for freight transport'</b> means: a commercial route providing new regular rail freight services between at least two terminals which have not been linked by regular freight services for at least five years before the start of the service in question;	(v) <b>'new commercial rail freight route'</b> means: a commercial route involving new regular rail freight transport operations between at least two terminals which were not connected by scheduled freight services for at least five years prior to the entry into service of the route in question
(v) <b>'newcomer'</b> means: a railway undertaking within the meaning of Article 3 (1) of Directive 2012/34/EU of the European Parliament and of	<b>"new entrant in the railway sector"</b> : a railway undertaking within the meaning of Article 3(1) of the Directive, a single European railway

the Council <sup>21</sup> which fulfils both of the following conditions	space <sup>88</sup> which fulfils both of the following conditions
(W) ' <b>non-transport activities</b> ': commercial services provided to transport undertakings or other users of facilities, which are not linked to rail or inland waterway transport or sustainable multimodal transport, including services auxiliary to passengers, freight forwarders or other service providers, including rental of offices, shops and hotels;	(y) ' <b>non-transport operations</b> ': commercial services provided to transport undertakings or other users of facilities not related to unimodal or multimodal transport by rail and inland waterway, including services auxiliary to passengers, freight forwarders or other service providers, such as rental of offices, shops and hotels
(x) ' <b>operating profit</b> ' means: the difference between the discounted revenues and the discounted operating costs over the economic lifetime of the investment, if this difference is positive. Operating costs include, inter alia, personnel costs, materials, contracted services, communications, energy, maintenance, rent and administration, but excluding depreciation charges and financial costs if they are covered by investment aid. Discounting revenues and operating costs at an appropriate discount rate allows a reasonable profit to be made;	Not defined
(y) ' <b>private rail connection</b> ': railway infrastructure (including rails and other installations or equipment necessary for its use) owned and operated by a private individual and connected to the charging facilities of the public railway network which do not fall within the definition of service facilities set out in Annex II to Directive 2012/34/EU, as well as any dedicated infrastructure used for the purpose of railway infrastructure owned and operated by a private individual;	(z) ' <b>private shunting track</b> ': a privately owned and managed railway infrastructure (including railway lines and any other installation or equipment necessary to make it functional), which is connected to the recharging facilities of the public railway network which do not qualify as service facilities under Annex II to the Single European Railway space <sup>89</sup> , as well as any specific infrastructure serving a private part of the railway infrastructure;
(CC) " <b>railway undertaking</b> " means: any public or private undertaking within the meaning of Article 3 (1) of Directive 2012/34/EU;	(dd) ' <b>railway undertaking</b> ' means: any public or private undertaking referred to in Article 3(1) (1) of the Single European Railway Area Directive
(dd) " <b>RIS platform</b> ": an electronic platform with central access containing information from national River Information Services (RIS) and providing River Information Services as well as fairway, traffic and transport management information services for RIS users, including routing and transport planning, for electronic	Not defined

reporting in accordance with the once-only principle;	
(YY) “ <b>telematic applications for freight services</b> ”: applications including information systems (real-time tracking of goods and trains), shunting and composition systems, reservation, payment and billing systems, management of connections with other modes of transport and the preparation of accompanying electronic documents;	(KK) ‘ <b>telematic applications</b> ’ means: any of the following applications:  (I) applications serving passengers, such as information systems for travellers before and during the journey, reservation systems, payment systems, baggage management, management of connections between trains and other modes of transport;  (II) applications for freight transport, such as information systems (continuous tracking of goods and trains), shunting and composition systems, reservation, payment and billing systems, management of connections with other modes of transport, preparation of accompanying electronic documents;
(KK) ‘ <b>carrier</b> ’ means: any undertaking transporting passengers and/or goods in the rail, inland waterway and/or multimodal transport sectors;	(LL) ‘ <b>transport company</b> ’ means: an undertaking carrying passengers and/or goods in the rail, inland waterway and/or multimodal transport sectors;

## **TBER**

### **Recital 15**

*“.....Operating aid intended to reduce the external costs of transport should therefore under no circumstances be granted where the more polluting mode of transport is not a viable alternative to the sustainable mode of transport. For passenger services, there is always a more polluting but commercially viable alternative to rail or inland waterway transport, but in the freight sector competitiveness depends on transport distance. This does not apply to wagon load transport because, regardless of the distance travelled, this form of unimodal rail transport is less profitable than road transport because of the cost of collecting and assembling wagons from different customers.’*

The competitiveness of transport modes depends on many factors, the distance of which is one. In addition, many other factors play a role, such as legal provisions, nature, size and frequency of cargo, quality and availability of the transport offer, etc.

### **Recital 22**

*“... Furthermore, operating aid to railway undertakings or transport organisers introducing new commercial connections should only be covered by this Regulation where **the distortions of competition and trade are limited in scope and are subject to well-defined conditions**. This is the case for (i) new commercial rail and inland waterway freight links; and (ii) new commercial rail passenger services providing regular passenger services between transport terminals located in different Member States (‘international rail passenger services’) or more than 400 kilometres from each other (‘long-distance passenger services’). The amount of aid is calculated on the basis of the operating losses incurred by the beneficiary in the first five years of operation of the new commercial route and the aid intensity remains below a certain threshold...’*

What exactly is meant by ‘distortions of competition and trade limited in scope and subject to well-defined conditions’? We would like this to be clarified and, if possible, defined so that it does not lead to subsequent discussions.

#### **Article 4**

Given the experience of strong inflation in recent years, it seems useful that these maximum amounts of aid be indexed.

#### **Article 8 (3)**

This Article lays down the conditions for the cumulation of aid measures under the TBER with other aid measures. We would like to clarify who exactly assesses this cumulation. Is this the granting authority itself?

#### **Article 10 (5)**

At present, the TBER states in Article 10 (5) that *‘the aid intensity may be increased by [5-10] percentage points.’* Is the exact percentage still to be deliberately questioned at the time of publication of the draft or is this an error? In the first case, we support 10 %.

#### **Article 10 (6)**

Article 10 (6) imposes a maximum distance, which seems too low for rail traffic.

#### **Article 12 (5) (a)**

Article 12.5 (a) contains too much discretion. In addition, it is not clear who should establish these criteria.

#### **Article 13 (4) (a)**

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#### **Article 14 (3)**

The application of this Article shall be limited to new entrants or SMEs.

As far as rail traffic is concerned, this seems to be too restrictive, which in BE is made up of relatively large companies.

As regards the inland waterway transport sector, we also believe that not only SMEs but also larger companies can benefit from State aid, as the inland waterway transport sector as a whole is subject

to major challenges and difficulties. Similarly, it is particularly difficult, if not impossible, for larger companies to green the fleet without aid.

#### **Article 14 (4)**

The fact that aid under this article can only take the form of a guarantee seems to us to be too restrictive. This applies to both rail and inland waterway transport. Moreover, the current GBER and CEEAG regulations do allow subsidies. Can the interaction between these instruments and the TBER be clarified?

#### **Article 17**

The aid intensity shall not exceed 20 % of the eligible costs. This seems too low. This is a lower aid intensity than in the current GBER and CEEAG regulations. Aid intensities are also often higher in aid measures to remotor inland waterway vessels in neighbouring countries. E.g. NL: 20 % vegetable, 40 % medium and 50 % for small enterprises.

#### **LMTG**

The maximum aid intensity for investment aid for the technical adaptation and modernisation of vehicles and equipment for sustainable multimodal transport is only 20 %. This seems to us to be too low in terms of both rail and inland waterway transport. This is particularly the case for the retrofitting of inland waterway vessels.