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Ireland's position on first draft of the proposed Transport Block Exemption Regulation ('TBER') & Land and Multimodal Transport Guidelines ('LMT Guidelines')

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Introduction

The Commission is publishing for consultation the draft Land and Multimodal Transport Guidelines (LMTG) and Transport Block Exemption Regulation (TBER), for which an Enabling Regulation¹ was already adopted in December 2022.

Ireland welcomes the opportunity to submit a Position Paper to the Commission on these proposals.

Ireland supports the introduction of a new Transport Block Exemption Regulation and Land and Transport Multimodal Guidelines, which are an important part of the State Aid framework in the area of transport, namely rail, road and short sea shipping.

To achieve the ambition set out in the European Green Deal Communication and the REPowerEU Communication, significantly higher levels of investment will be required compared to the period 2014-2020. Also, EU policy priorities in the context of the European Green Deal and the Sustainable and Smart Mobility Strategy (SSMS) have increased the importance of a modal shift to transport modes less polluting than road to meet the emission reduction target by 2050.

State aid rules have an important role to play in enabling and supporting the EU in fulfilling its Green Deal policy objectives and Ireland is of the view that the role that the TBER and LMT Guidelines can play in delivering this higher level of investment in transport must be considered, while keeping competition distortions to a minimum and adequate safeguards to the integrity of the single market.

¹ ¹ 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. 35–39.

The importance of TBER and LMT Guidelines

Regulatory tools facilitating aid amounts with defined thresholds and eligible costs results in less administrative complexities which are important safeguards of the level playing field. The simpler approach and defined aid amounts provide equal opportunities for all Member States, irrespective of fiscal or administrative capacity.

Furthermore, the proposals follow the conclusions of the Fitness Check on the existing State aid rules in the field of land transport sector that showed that adjustments were needed to reflect market developments and the current EU's strategic priorities, including the European Green Deal. It was found that certain categories of cases in the rail and other sustainable land transport sectors (such as inland waterways and certain multimodal transport solutions) have routinely led to non-objection decisions. In particular, this concerns aid for external costs reduction (i.e. aid that makes it possible to cover the difference in overall cost (also including for example pollution cost) between different transport modes), aid for infrastructure use, and aid for interoperability, but also aid for facilities such intermodal terminals and private sidings.

Therefore, Ireland supports the introduction of the Transport Block Exemption and complementary LMT Guidelines which provide further clarity to the application of state aid rules to the sector.

Scope

Ireland has only one rail freight operator, Iarnród Éireann (IÉ). While there is an exclusion in the notion of state aid in the case of “legal monopolies”, this provision does not apply in the case of Ireland where an open market exists. Ireland is considered an isolated network due to our differing rail track gauge from the European standard and geographic isolation from the rest of the European mainland. The Irish network has a broad-gauge of 1600 mm compared to the European standard of 1435mm. Given our isolation from the continent due to our island geography, there is no identified requirement for Ireland to replace its existing 1600mm track gauge network with the standard European 1435mm track gauge. Precedence of the Commission recognising Ireland as an isolated network exists in the form of Ireland being exempt from the ERTMS requirements under the new TEN-T Regulation.

Additionally, for context it must be noted Iarnród Éireann's (IÉ) existing and ageing fleet of intermodal wagons does not provide capacity to accommodate the potentially growing market demand for rail freight. The existing container wagon fleet are of a bespoke design and were manufactured by IÉ in the early 1970s. They are now in effect life expired and incur a high maintenance and associated cost burden. They operate at relatively low speeds, are constrained in the type of containers they can carry and have not kept pace with changing rail technologies. Rail freight currently accounts for less than 1% of freight movements in Ireland and achieving the modal shift in this area will play an important part in meeting Ireland's decarbonisation goals. It will not be possible to enhance rail freight operations without purchasing additional freight wagons.

Investment Aid: acquisition of vehicles, facilities, sidings, intermodal loading units etc

- Ireland is of the view that, while the introduction of a block exemption in Article 14 of the TBER for investment aid for the acquisition of vehicles for rail, is a welcome development, Ireland suggests that the Commission considers a wider scope in Article 14(3) in certain limited circumstances. For example, where operating in an isolated network with unique infrastructure, aid for a large and/or established undertaking would be permissible. This is because Ireland's sole rail freight operator does not fall within these limitations and as previously stated due to Ireland's isolation from the continent and different track gauge it is unlikely another EU rail freight operator would commence operations here. Therefore, Ireland is unlikely to have new entrants and will not be able to provide aid under the TBER to encourage growth in the rail freight market and modal shift away from more emissions intensive road transport, in line with Irish and EU climate targets.

- Additionally, as previously mentioned IÉ's fleet is in effect life expired and requiring renewal but current market demand is insufficient to fully fund the purchase of new rail freight rolling stock. Without external financial support the rail freight market in Ireland will not grow to enable modal shift from road. ***[insert reasons, data and evidence]***
- In addition, Ireland suggests that a higher guarantee coverage above 80% of the underlying loan should be applicable in Article 14(5) where operating in an isolated network with unique infrastructure. Given the high costs for the acquisition of rail vehicles, especially in circumstances where bespoke vehicles are required due to a track gauge differing from the European standard, guarantee coverage up to 100% should be allowed where it is evidenced to be necessary. ***[insert reasons, data and evidence]***

Ireland therefore considers that the scope of Article 14 should be widened and we ask the Commission to give consideration to such a change.

- Ireland suggests that higher notification thresholds should be applicable in Article 4 of the TBER where operating in an isolated network with unique infrastructure, given the high costs for the construction, upgrade and renewal of rail facilities and rail infrastructure. Where there is a lack of market incentive and no likelihood of new entrants, state aid should be allowed up to the threshold deemed necessary in each individual member state's case, as evidenced to be necessary to incentivise the market to grow large enough to enable modal shift from road.
- Ireland suggests that eligible costs in Article 10(4) of the TBER be increased from 50% of eligible costs in certain limited circumstances. For example, where operating in an isolated rail network with unique infrastructure and insufficient market incentives to encourage modal shift to greener transport alternatives, aid intensity be increased to up to 100% of eligible costs where it is evidenced to be necessary. Where there is a lack of market incentive and no likelihood of new entrants, state aid should be allowed up to the threshold deemed necessary, based on to incentivise the market to grow large enough to enable modal shift from road.

In terms of the LMT Guidelines, Ireland is of the view that the scope of section 4.2.2.3 on aid for the acquisition of vehicles for rail, could be widened in certain limited circumstances. For example, where operating in an isolated network with unique infrastructure, aid for a large and/or established undertaking would be permissible. Ireland's reasoning for this request is identical the above request to widen the scope in Article 14(3) of the TBER.

Concluding remarks

Ireland thanks the Commission for their work in introducing block exemptions and revising the Railway Guidelines.

The Irish Government reserves the right to submit additional comments later on.

The TBER will exempt from prior notification to the Commission certain categories of aid in the rail, inland waterways and multimodal transport sector. The TBER will complement the LMTG, which set out the conditions to assess the compatibility with the Single Market of aid to sustainable land transport that is not block-exempted and will replace the 2008 Railway Guidelines. Ireland is of the view that these two sets of rules will form a comprehensive and up-to-date rulebook for aid to sustainable land transport and will still maintain the level playing field without unduly affecting trade or competition.

In summary, Ireland proposes [].

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