



10 September 2024

Ministry of Climate and Enterprise

European Commission
DG Competition
State Aid Registry
B-1049 BRUSSELS
BELGIUM

Public consultation of draft LMTG and TBER

The Swedish Government welcomes the two drafts on Land and Multimodal Transport Guidelines (LMTG) and Transport Block Exemption Regulation (TBER). We would, however, like to highlight the following.

Land and Multimodal Transport Guidelines - LMTG

Recital 70 states that 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 Swedish Government would like to raise the question of whether aid really can and should be approved in circumstances where measures already would be taken in accordance with a national standard.

Recitals 96-97: The Swedish Government finds that the implementation of maximum distances for transports supported by aid may result in negative constraints for sparsely populated areas of Member States, where transports over long distances are common. Transports of goods on roads can have a competitive advantage to transports of goods on rail even over long distances. Please note that such a demand to keep track of the mode of transport where aid is granted would also result in an increase in administration costs for both the granting authority and the beneficiaries. An adjustment of recitals 96-97 is therefore in our view warranted.

Recital 98 states that the requirement that aid, in principle, cannot be granted for transport on routes that have established capacity constraints that would prevent increasing or maintaining the modal shift should not prevent aid if a modal shift can take place, although this may lead to capacity allocation that

is not optimal for the transport in question, thus further motivating aid for the transport in question.

Recital 134: The Swedish Government understands that all costs for tangible assets are seen as eligible costs. If there is a need to keep the lists with example it should be clarified that this list is not exhaustive and shall not be seen as confining the types of costs that are eligible.

Recital 225 states that the duration of the period of entrustment should be limited to 15 years. At the same time, recitals 228 and 229 convey the need of compliance with EU public procurement rules. The Swedish Government does not exclude the possibility that such long contracts may conflict with public procurement regulations.

Recital 259: An obligation to adjust existing aid schemes may cause legal uncertainty. Already notified schemes should be able to be concluded under their original duration and terms.

Transport Block Exemption Regulation - TBER

Recital 34: Regarding transparency and reporting it should be clarified that Member States also can use the Commission's website for this purpose, in the same manner as for other types of state aid. For comparison, recital 82 of the draft LMTG, refers to the transparency module applied for transparency reporting of other state aid. A corresponding reference should be made in the Transport Block Exemption Regulation.

Article 2(o): please note that the term interoperability, which has an established meaning within the terminology of railway system technology, differ from the corresponding definitions in other directives within railway regulation. Interoperability according to Article 2.2 of the Interoperability Directive: means the ability of a rail system to allow the safe and uninterrupted movement of trains which accomplish the required levels of performance. Interoperability according to Article 2(o) TBER: means uninterrupted traffic flows of goods or passengers, in particular between Member States or modes of transport. Misunderstandings could arise from the extensive diversification of language usage in the regulation. However, there are no formal obstacles to different legal acts containing non-identical definitions.

Article 4: The Swedish Government perceives a risk that some of the thresholds specified for the applicability of the regulation do not sufficiently take into account the conditions and circumstances specific to Member States such as Sweden. For example, there seems to be an assumption that the eligible, more sustainable modes of transport, are not subject to commercially viable competition from more polluting modes of transport, beyond a certain maximum distance. It is not evident that this adequately reflects Swedish – or indeed other Member States’ – conditions.

Article 10.3 states that “The avoided external costs shall be calculated in accordance with the rules and methodology set out in the Commission’s Handbook on the external costs of transport, as amended or replaced” but then says that “cover any operating cost”. Therefore, it would be helpful to clarify which types of costs that can be covered by this aid.

Article 10.6: the implementation for maximum distances for transports supported by the aid results in negative constraints for sparsely populated countries where transports over long distances are common. We can see that transports of goods on roads have a competitive advantage to transports of goods on rail, even over long distances. A requirement to monitor the mode of transport for which aid is granted would result in increased administrative burden for both the granting authority and the beneficiaries.

Articles 15.2 and 16.2: It appears that the requirement for aid to be granted to all/any companies undertaking a specific type of measure within a Member State may exceed the Commission’s authority in controlling state aid. While the Commission can verify the compatibility of state aid, it should not mandate that aid be extended to additional companies within this framework.

Technical remarks

- Please note the reference in Article 2(cc) “*railway undertaking*” means any public or private undertaking referred to in Article 3(1)(1) of Directive 2012/34/EU, should say Article 3(1) instead of 3(1)(1).