

UNIFE feedback on the draft rules for land and multimodal transport (LMTG) replacing the Guidelines on State aid for railway undertakings ('Railway Guidelines') and on its new Transport Block-Exemption Regulation ('TBER')

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The European Commission has published for consultation the draft Land and Multimodal Transport Guidelines (LMTG) and the Transport Block Exemption Regulation (TBER).

The TBER will exempt from prior notification 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. The LMTG will also replace the 2008 Railway Guidelines. These two sets of rules will form a comprehensive and up-to-date rulebook for aid to sustainable land transport.

UNIFE, the European Association of the Rail Supply Industry, welcomes the TBER as a new block exemption regulation and the new LMT Guidelines to enable Member States to provide public aid that contributes to a modal shift towards sustainable land transport modes. In this sense, rail must become the backbone of sustainable mobility in Europe, in line with European Green Deal and the European Sustainable and Smart and Mobility Strategy targets.

Nevertheless, **UNIFE has identified some aspects that require further clarifications and adjustments** in order to reap the full benefits of this initiative and, accelerating the modal shift to rail.

1. Operating aid for reducing external costs of transport and launching of new commercial connections

The economic viability of rail operations remains challenging and thus typically require public sector financial support. Due to the fact that, generally, rail operations are **not cost-covering and/or do not ensure competitiveness as compared to the road-only alternative**, State aid for rail operations is well justified.

In this sense, UNIFE considers that:

- Operating aid to account for the often limited stand-alone economic viability of rail transport, to support the launch of new commercial connections and to reduce external costs, should be authorized. This should also taking into account the magnitude of the underlying transport operations (i.e.: operation of alternative fuel powered trains encompassing hydrogen and batteries technologies) and the limited competition distortions.

Furthermore, to better contribute to the achievement of the European ambitious targets on shifting more activity towards more sustainable transport modes and to strengthen the competitiveness of the market,

UNIFE believes that State aid should be made available to railway undertakings and operators, **including new entrants¹**, as much as needed, and only subject to some reasonable conditionality.

2. Investment aid for the acquisition of vehicles for rail or inland waterways transport

According to the draft TBER and LMGT, the constraints to railway undertakings' ability to purchase rolling stock are mainly financial. Moreover, SMEs in particular may not have access to credit on competitive terms. This is because SMEs and new entrants face worse financing conditions compared to those made available to railway undertakings, who benefit from their existing position on the market. In particular, when they are publicly owned, these entities could demonstrate easier their credit-worthiness to investors and banks.

Furthermore, the draft proposals state that 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, railway undertakings that qualify as SMEs, and leasing operators in the rail and/or inland waterways sectors as long as they qualify as SMEs. Furthermore, the aid must be granted in the form of a public guarantee, which can be provided directly to final beneficiaries.

In this sense, UNIFE considers that:

- The scope of the beneficiaries of the aid, should be expanded to **include larger companies than SMEs, i.e.: sovereign, sub-sovereign and private sector entities (e.g. operators, leasing companies) regardless of size**. Otherwise, there is a risk that incumbent operators and railway undertakings will lack incentives to continue investing in the modernization of rolling stock fleets aimed at phasing out diesel powered technology.
- **The broad spectrum of instruments (guarantees, loans, equity or quasi equity, tax advantage or tax exemption, grants) should be available and applied on a case-by-case basis**. For example, guarantees, certain loan tranches and/or equity may be combined with private sector capital in some cases. In other situations, grants would be needed as the respective State may have financial spending limitations and the investment in more modern and environmentally friendly technologies shall be undertaken quickly.
- UNIFE is in favour of State aid to railway undertakings for the purchase and lease of rolling stock and their components. However, given the rising importance of leasing companies in the rolling stock market, **further clarifications need to be provided on what really is understood as a leasing company and its eligibility to receive State Aid**, taking into account the role that financial and banking institutions can play in this regard.

¹'new entrant' in the rail sector means a railway undertaking within the meaning of Article 3(1) of the Single European Railway Directive (88), 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;

State aid should support the outright acquisition (via capital expenditure grant) as well as leasing (via operational expenditure and/or capital expenditure grants) for rolling stock, especially in areas of new technology (e.g. alternative fuels) where access to private sector finance may be limited.

3. Investment aid for interoperability

Rail interoperability is key to achieve the Single European Railway Area and the TEN-T targets, especially in terms of **ERTMS** (European Rail Traffic Management System) deployment, **both trackside and onboard units**. Furthermore, emerging game changer technologies for the rail freight sector such as **DAC** (Digital Automatic Coupler), with a massive need of investment support, are also included in the TBER and LMGT with relatively high aid intensity co-efficients. UNIFE welcomes these efforts as a good step in the right direction to facilitate the deployment of such technologies.

In this sense, UNIFE considers that:

- Clarifications are needed in order to better understand in which cases **the funding gap for ERTMS and DAC can be limited to 100% of the eligible costs**, as stated in the LMGT pertaining to the aid intensity which is allowed for this investment category.
- ERTMS functionality and scalability allows economically viable solutions for all types of railway lines on the entire European network, from low-density lines to high speed and high-density lines. **Deploying ERTMS and not removing the class-B system (as mandated by the TEN-T Regulation) will amount to €22 billion of maintenance costs by 2040.** Therefore, UNIFE believes that the aid intensity associated to ERTMS deployment both trackside and on board units should be **increased to 100% in a simplified manner**; i.e.: by clarifying, as mentioned above, in which cases the funding gap for ERTMS and DAC can be limited to 100% of the eligible costs.
- For DAC to succeed, it must be deployed in a rapid manner over a short period of time. To this end, according to estimates, **460 000 freight wagons and 17 000 locomotives in Europe must be equipped with DAC between 2027 and 2033.** These investments costs amount to at least **€13 billion**. Therefore, UNIFE believes that the aid intensity associated to DAC should be **increased to 100% in a simplified manner**.

4. Compatibility under the Commission's Guidelines on State aid for climate, environmental protection and energy

According to the TBER and LMGT, the Commission will continue to assess the **compatibility of investment aid for the acquisition of clean vehicles** (rolling stock and inland waterways vessels), **and investment aid for technical adaptation and modernisation of vehicles and equipment for sustainable multimodal transport** under the 2022 Commission's Guidelines on State aid for climate, environmental protection and energy.

In this sense, UNIFE considers that:

- **Rail economic activities already proved to be aligned with the EU Taxonomy Regulation**, especially under the transport and manufacturing thematic areas. On the one hand, transport is considered a “climate mitigation activity” for its potential to “increase clean or climate-neutral mobility”. On the other, manufacturing is considered a “climate mitigation activity” for its potential to “enable greenhouse gas emission avoidance and reductions in other sectors of the economy”. UNIFE members’ economic activities have been contributing to climate change mitigation as they comply with the following general requirements, namely: the contribution to stabilising greenhouse gas emissions by avoiding or reducing them and the contribution to keep the increase in the global average temperature to well below 2°C and pursue efforts to limit it to 1,5 °C above pre-industrial levels as specified in the Paris Agreement in 2015.
- **Since zero-emissions and bi-mode rolling stock² are already recognized in the** Guidelines on State aid for climate, environmental protection and energy, clarifications are needed on what will be the impact of further assessing the compatibility of such investment once they are approved under the TBER and LMGT.

5. Cross-cutting issues

Last but not least, the European Rail Supply Industry is a diverse, geographically widespread industry that includes thousands of companies – from SMEs to major industrial champions – striving to export worldwide. One of its main specificities is the predominance of public procurement; in the vast majority of cases, and especially in Europe, customers are most of the time public authorities which projects are launched through public procurement procedures.

In this sense, UNIFE would like to highlight that, when the State Aid is aimed at supporting the **procurement of assets and regardless the private or public nature of the beneficiary, the principle of the Most Economic Advantageous Tender (MEAT) as well as the necessity to ensure a level playing field with non-European economic operators (including as *per* the Foreign Subsidies Regulation) must be properly implemented.**

²(i) rolling stock that has zero direct (tailpipe) CO₂ emissions; (ii) rolling stock that has zero direct tailpipe CO₂ emissions when operated on a track with necessary infrastructure and that uses a conventional engine where such infrastructure is not available (bimode).