Transport Block Exemption Regulation

and

Guidelines on State aid for land and multimodal transport

Explanatory note

On 18 June 2024, the Commission published for public consultation a draft Transport Block Exemption Regulation ("TBER") and draft Guidelines on State aid for land and multimodal transport ("LMTG"). The draft TBER deals with State aid measures granted in the rail, inland waterways and multimodal transport sectors that meet the needs of transport coordination. The draft TBER declares that, if such State aid measures meet certain conditions, they should be exempted from the notification obligation laid down in Article 108(3) of the Treaty. The draft TBER is accompanied by the draft LMTG, which replace the 2008 Guidelines on State aid for railway undertakings ("Railway Guidelines")[1] and provide further guidance on the assessment under Article 93 of the Treaty of State aid measures that are not exempted from prior notification under the TBER.

The purpose of the public consultation is to gather stakeholder feedback on the draft TBER and draft LMTG, and in particular on the way the Commission proposes to address the issues identified in the Fitness Check set out in the Commission Staff Working Document published on 30 October 2020[2]. The Fitness Check concluded that the 2008 Railway Guidelines needed to be revised taking into account the Commission's decisional practice, market developments and the policy objectives pursued by the European Green Deal.

Since the launch of the initiative with the inception impact assessment in October 2021, the Commission has gathered further evidence on the areas for improvement, including through an open public consultation that ran from 22 December 2021 to 16 March 2022, a call for evidence that ran in from 6 March 2024 to 3 April 2024, as well as in discussions with stakeholders and national authorities. The drafts of the TBER and the LMTG take into account all the evidence collected so far. The public consultation on these drafts forms an integral part of the fact-finding carried out by the Commission. It will inform the impact assessment, on which the final versions of the TBER and the LMTG will be based.

At this stage, the drafts of the TBER and the LMTG include proposals by the Commission based on the evidence gathered so far. This explanatory note sets out the main changes proposed compared to the 2008 Railway Guidelines in line with the following objectives of the review:

1. Broadening the scope of the new guidelines to cover operating aid (to the supply-side or demand-side of rail, inland waterways or sustainable multimodal transport, i.e., where at least one of the used transport modes is rail or inland waterways, or road if the latter is combined with short-sea shipping) and investment aid for assets and infrastructure that contribute to shift transport away from road to rail and/or inland waterways, on a standalone basis or in combination with other modes of transport;

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[1] Communication from the Commission, *Community Guidelines on State aid for railway undertakings*, (2008/C 184/07, 22.7.2008).

[2] Commission staff working document of 30 October 2020, *Fitness Check of the 2012 State aid modernisation package, railways guidelines and short-term export credit insurance*, SWD(2020)257 final.

2. To block exempt operating aid and investment aid under conditions mirroring in principle those of the draft LMTG with notification thresholds and thus reduce the administrative burden caused by the notification of straightforward State aid measures, given that in certain cases competition distortions are limited and the existing case practice is well-developed;
3. To consolidate and streamline the case practice on operating and investment aid, with appropriate safeguards;
4. To include rules on rail freight public services, aligned with the Commission's Communication on the European Union framework for State aid in the form of public service compensation ("SGEI Framework")[3]. This would provide clarity and fill the gap as the current State aid legislation on public services does not cover rail freight transport.

1. Broadening the scope (sectors/ activities/ investments covered)

Following the consultation of the stakeholders and based on the positive effects of the well-established case practice, according to the conclusions of the Fitness Check, the Commission defined the scope of the draft LMTG and TBER to include in the new rules all key players that contribute to the modal shift and thus cover both the offer and demand for more sustainable transport solutions. This approach is also reflected in the name of the new draft guidelines, which is no longer Railway Guidelines, but Land and Multimodal Transport Guidelines (LMTG). The overall logic of the LMTG is to no longer cover simply aid to rail but more broadly aid for the coordination of sustainable multimodal transport with the view to promoting a modal shift.

The proposed rules include aid for rail and inland waterways transport operators (the carriers), but also aid for the decision-makers, the carriers' clients, to incentivise them to use a land transport mode less polluting than road-only transport. The new rules also include aid for rail and/or inland waterways multimodal transport facilities (such as multimodal freight terminals) and to the missing links to the main rail network, as well as aid to make rail and inland waterways freight traffic more efficient thanks to improved transshipment technologies and smart rail and inland waterways freight traffic management systems. This approach is in line with the Commission's policy strategy for the greening of cargo operations in Europe and its sustainable and smart mobility strategy ("SSMS")[4].

2. Block exempt operating aid and investment aid to reduce administrative burden

In response to the long-standing call from Member States for procedural simplification of the rules applicable to all State aid measures supporting the coordination of transport, the Commission identified certain categories of State aid that meet the needs of transport coordination and do not give rise to any significant distortion to competition and trade between Member States provided that they are granted based on open, transparent and non-discriminatory procedures and that they meet certain clear *ex-ante* compatibility criteria set out on the basis of the Commission's decisional practice.

The provisions of the draft TBER mirror the compatibility principles set out in the draft LMTG. The draft TBER block exempts all types of aid covered by the draft LMTG based on notification thresholds, with limited exceptions. Moreover, as a general rule, aid measures are block exempted on condition that they are designed in the form of schemes, with the exception of aid for the

[3] Communication from the Commission, European Union framework for State aid in the form of public service compensation, (2011) (OJ C 8, 11.1.2012, p. 15).
[4] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Sustainable and Smart Mobility Strategy – putting European transport on track for the future', COM(2020) 789 final, 9.12.2020.

construction, upgrade or renewal of multimodal freight terminals where ad hoc aid measures are justified by the nature of the investment and entail limited risks of competition distortions.

The draft TBER allows for greater simplification, while preserving the institutional powers of the Commission and Member States. This is in line with the Commission's Communication on EU State Aid Modernisation ("SAM")[5] and the outcome of the Fitness Check carried out by the Commission in 2020 highlighting the need to reduce administrative burden and ensure efficient public spending.

3. Consolidate and streamline the case practice on operating and investment aid

One of the main objectives of the review is to consolidate the well-established case practice on operating and investment aid for the coordination of transport and provide Members States with guidance on the types of aid and criteria for the compatibility assessment under the draft LMTG and exemption from notification under the draft new TBER. The proposed rules also align those compatibility criteria to the principles of SAM[6].

Operating aid to reduce external costs of transport

Operating aid is covered by both the draft LMTG and the draft TBER in the light of the Commission's extensive experience acquired in the assessment of operating aid measures supporting the modal shift where the aid is quantified either in relation to the external costs avoided by the greener transport solution as compared to road-only, or in the form of a reduction of the charges paid by railway undertakings to use the rail network infrastructure as compared to the charges paid by road operators to use road infrastructure.

The draft TBER and draft LMTG use one single methodology linked to the quantification of the external costs avoided by adopting a greener transport solution compared to a competing, more polluting mode of transport, such as road-only transport. Aid can take the form of a reduction in the charges that railway undertakings pay to use rail network infrastructure compared to the charges road operators pay to use road infrastructure.

Where distortions of competition are limited and subject to well-defined conditions, operating aid can be block exempted. This is the case where the external costs avoided are calculated in accordance with the rules and methodology set out in the Commission's Handbook on the external costs of transport and the aid intensity remains under certain thresholds.

The maximum allowed aid intensity is increased under the draft LMTG compared to the 2008 Railway Guidelines, while the additional cap of total costs of transport is abandoned in both the draft TBER and the draft LMTG to allow for simplification in the calculation of the aid.

The draft LMTG introduce additional safeguards to ensure (**i**) that the aid has an incentive effect; (**ii**) that the aid is passed on to the users and therefore that there is an increase in demand of sustainable transport services and a modal shift; and (**iii**) that there are realistic prospects of maintaining or increasing the modal shift.

Aid to launch new commercial connections

[5] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU State Aid Modernisation (SAM), COM(2012) 209 final, 9.05.2012.

[6] Such as transparency, Deggendorf principle, exclusion of undertakings in difficulty, evaluation, monitoring. Commission staff working document of 30 October 2020.

Both the draft LMTG and the draft TBER allow operating aid to support railway undertakings or transport organisers when launching new commercial connections subject to well-defined conditions. This is the case of i) new commercial rail freight and inland waterways freight connections; and ii) new commercial rail passenger connections for scheduled passenger services between transport terminals located either in different Member States ('cross-border rail passenger services') or more than 400 kilometres from each other ('long-distance rail passenger services'). The aid amount is calculated in relation to the operating losses incurred by the beneficiary during the first 5 years of operation of the new commercial connection and the aid intensity remains under a certain threshold. Where distortions of competition are limited, below certain individual notification thresholds, such measures can be block exempted.

<u>Aid for the construction, upgrade and renewal of unimodal and multimodal rail and inland waterways transport facilities and private sidings</u>

Investments in rail and inland waterways unimodal and multimodal transport facilities and in private sidings across the EU are essential to ensure connectivity and the sustainable functioning of the economy and cohesion among Member States. Therefore, the draft LMTG and the draft TBER allow for investment aid for the construction, upgrade and renewal of rail facilities, inland waterways facilities, rail and inland waterways multimodal transport facilities and private sidings. Investment aid to facilities is allowed on the basis of compatibility conditions ensuring the proportionality and incentive effect of the aid and subject to the obligation to ensure open, transparent, and non-discriminatory access to the infrastructure, as also mandated by EU sectoral regulations (except for private sidings which are by definition of private use). To avoid conflicts of interest when owner, operator and end user of the aided transport facility are part of the same enterprise or are linked enterprises, an additional safeguard is introduced: the requirement to award the operation of the facility based on an open, competitive, transparent and non-discriminatory procedure.

To reduce the administrative burden caused by the notification of straightforward State aid measures and enable the Commission to focus on the potentially most distortive cases, investment aid to facilities and private sidings is block exempted under certain conditions.

<u>Aid for the renewal of the fleet</u>

To meet the Union's ambitious modal shift targets, fleets for rail or inland waterways transport need to be modernised. This is necessary to ensure that more sustainable transport options are deployed, including through retrofitting and appropriate renewal schemes. The draft TBER and draft LMTG therefore include not only investment aid for the acquisition of vehicles for rail or inland waterways transport but also investment aid for modernisation and technical adaptation of vehicles for rail or inland waterways transport and/or of and equipment for sustainable multimodal transport. Support for such investments is subject to conditions that limit distortions of competition and trade that would undermine the level playing field in the internal market. In particular, those conditions ensure the necessity and proportionality of the aid and include safeguards on the type of aid, the eligible beneficiaries and the eligible costs.

To be noted that the draft TBER and draft LMTG on investment aid for the acquisition of vehicles for rail or inland waterways transport allow support only for SMEs and new entrants and only in the form of guarantees. This is because access to finance for the acquisition of rolling stock and vessels for inland waterways transport currently constitutes a major barrier to market entry and/or expansion for new operators and SMEs and guarantees best address the problem of access to finance for these operators.

In addition, the draft TBER covers investment aid schemes for the acquisition of intermodal loading units and cranes on board of vessels, under certain conditions (including very limited aid intensities). Beyond those cases, the Commission considers that aid for the acquisition of equipment for multimodal transport where at least one of the used transport modes is rail or inland waterways, or road if the latter is combined with short-sea shipping, can be authorised only exceptionally, and therefore will assess it directly under Article 93 of the Treaty.

Aid for interoperability

In line with the Union's transport and digital policies, further efforts are required to enable communication between different transport information systems, coordination of transport networks and cross-border competition and improve transport safety in the EU. This is necessary because of transport networks' different standards and the lack of technical harmonisation, incompatible tools and systems for data collection and sharing and data sovereignty concerns. Furthermore, the Commission's experience in assessing State aid for interoperability support under the 2008 Railway Guidelinespoints at the existence of market failures, in particular coordination failures and first-mover disadvantage issues, where the benefits linked to adopting a specific technology or standard go beyond the commercial interest of transport operators.

The draft TBER and draft LMTG introduce different levels of aid intensity depending on the underlying market failure: (**i**) aid for technologies suffering from acute market failures due to coordination problems at the roll-out stage (first-move disadvantage) and the significant benefits induced by these technologies (as acknowledged by the EU's digital and transport policies) that cannot be appropriated by market operators ; and (**ii**) aid for other interoperability technologies .

Higher aid intensities are foreseen for investments in interoperability technologies with the most acute market failures, notably technologies the benefits of which materialise for the transport operator only once all (or a majority of the) operators and the entire infrastructure are equipped. These technologies are identified under the draft LMTG and the draft TBER based on an exhaustive list that reflects the current EU deployment priorities. This is the case, for example, with train and traffic control systems such as the European Railway Traffic Management System (ERTMS)[7].

Investments in other interoperability technologies which suffer from market failures are also allowed but with lower aid intensities. This is the case, for example, for investments in the adaptation of rolling stock to different national voltages or gauge widths which enable the operator to enter another Member State's market. It is in the Union's interest to promote such investments which increase competition in the internal market, but the aid necessary to stimulate such investments is likely of more limited amount, given the direct private benefits they induce for the operators. These technologies are identified based on a list (exhaustive under the draft TBER, while non-exhaustive under the draft LMTG and coupled with a functional future-proof definition of "interoperability technologies").

In view of the limited negative effects on competition and trade that aid for interoperability has and considering the experience acquired, aid for interoperability is block exempted under well-defined conditions linked to the acuteness of the market failure.

4. Include rules on rail freight public services

[7] The ERTMS is a single European signalling and speed control system that ensures interoperability of the national railway systems, reducing the purchasing and maintenance costs of the signalling systems and increasing the speed of trains, the capacity of infrastructure and the level of safety in rail transport. ERTMS is comprised of the European Train Control System (ETCS), i.e. a cab-signalling system that incorporates automatic train protection, the Railway Mobile Radio (RMR), Automated Train Operation (ATO) and operating rules.

Although rail freight has been open to competition since 2007 and competition has increased, certain rail freight operations are bound to be more expensive and less competitive than road transport, especially over very short distances or when the demand for rail freight services is structurally fragmented and insufficient to fill a full train. Operating aid to reduce rail costs has been insufficient in some cases in the past and public service support could be justified.

To take into account these concerns the draft LMTG introduce rules on public services in the rail freight sector. These rules fill an existing gap, because article 93 TFEU provides that aid in the form of public service compensation shall be compatible, but the rules on public services in the land transport sector set out in Regulation 1370/2007[8] apply only to passenger transport, while the SGEI Framework does not apply to rail. Rail freight is thus one of the rare economic sectors with no secondary legislation on public services.

The draft LMTG reflect the well-established principles set out in the SGEI Framework. This ensures the alignment with the general principles applicable to public service compensation across all sectors, while the draft LMTG include some clarifications catering for the specificities of the land transport sector.

[8] Regulation (EC) No 1370/2007 of the European Parliament and the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, (OJ L 351, 3 December 2007, p. 1).