Position Paper on targeted review of the General Block Exemption Regulation

Ferrovie dello stato Italiane welcomes the current targeted review of the General Block Exemption Regulation (GBER) as it ensures that these principles are applied in the simplest and most effective way possible.

In this respect, Ferrovie dello Stato Italiane endorses the European Commission approach which is seeking to facilitate the national funding of certain transport and transport infrastructures under rhe financial products supported by InvestEU Fund.

In this respect, Ferrovie dello Stato Italiane would like to express some considerations with regard to

1. a possible unfounded preferential treatment introduced by the Draft Commission Regulation amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Article 107 and 108 of the Treaty;
2. the possibility to speed-up and simplify the State Aid procedures aimed at providing public financial support to combined transport under a wider review of the General Block Exemption Regulation;

I. On Definition of "New Entrant":

The Proposal introduces a definition of a 'new entrant' which was previously absent in the EU legislation. The Proposal adds a new block of definitions to Article 2 of the GBER, namely 'Definitions for Aid involved in financial products supported by the InvestEU Fund', with the point (182) stating:

*"new entrant" means a railway undertaking as defined in Article 3(1) of Directive 2012/34/EU of the European Parliament and of the Council**, which fulfils the following conditions:*

> *(a) it received a licence pursuant to Article 17(3) of Directive 2012/34/EU less than ten years before the aid is granted;*
>
> *(b) it is not linked in the meaning of Article 3(3) of Annex I to a railway undertaking that received a license in any Member State prior to 1 January 2010;*

In our view, **the reference to the date of receiving a licence by a railway undertaking in the definition of a new entrant contained in Article 2 (182) is not adequate**.

First of all, a licence itself does not constitute the right to operate rail transport services. Usually, a railway undertaking that has already received a licence still cannot start operating for few more years as it needs to obtain all the rest of the required paperwork. Besides, some railway undertakings still do not start provision of rail transport services for a few more years after obtaining all necessary documentation due to absence of business.

Hence, the moment of receiving a licence is not an adequate starting point and would result in unfair exclusion of railway undertakings that recently commenced provision of the rail transport services, but nevertheless obtained their licences a while ago.

Apart from that, it is important to note that a licence can also be suspended, revoked and repeatedly granted to a railway undertaking, as outlined in Chapter III of Directive 2012/34/EU. The date of receiving a licence in case it was re-granted to a railway undertaking would be of no relevance in defining the status of the latter as a newcomer to a market.

Based on the above, Ferrovie dello Stato Italiane is of the opinion that the definition of a 'new entrant' contained in Article 2 (182) should be removed from the Proposal.

I.I Point (v) of Article 56e.7(a)

Point (v) of proposed Article 56e.7(a) states:

> (a) aid shall be provided only to the following projects:
>
> …
>
> > (v) rolling stock for the provision of rail transport services on lines fully opened to competition, provided the beneficiary is a new entrant;

Ferrovie dello stato Italiane would like to stress the following several issues related to the proposed wording of Article 56e.7(a)(v):

a. Vehicles are mobile per definition

In its current wording Article 56e.7(a)(v) contains a restriction to the 'lines fully opened to competition'. Ferrovie dello Stato Italiane would like to underline that rolling stock is mobile by its nature and cannot only be used 'on lines fully opened to competition'. In addition, it wouldn't be practically possible to monitor whether the rolling stock is being used only on the specified lines. Hence, Ferrovie dello Stato would suggest to **remove the proposed interlink between rolling stock and lines from the text of Article 56e.7(a)(v)**.

b. Provided services, and not the lines, are decisive

Ferrovie dello Stato Italiane would like to further point out that it is not the lines themselves that are decisive, but the traffic that takes place on the lines. On many lines in Europe both public service obligation (PSO) services as well as open access services are being provided. Consequently, **the reference to lines fully opened to competition should be excluded from the text of Article 56e.7(a)(v)**.

c. Limitation of the exemption to new entrants only

The proposed wording of Article 56e.7(a)(v) limits the applicability of the GBER only to the aid received by a new entrant. However, such positive discrimination towards new entrants doesn't appear well founded. In our view, such restriction may unfairly disadvantage other railway undertakings that receive aid for rolling stock in the framework of InvestEU Fund.

In some of the EU-13 Members States incumbent railway undertakings suffer from low quality of rolling stock and are very much in need of obtaining timely public support. Granting exemption from the prior notification of aid and, hence, reducing administrative burden and increasing the speed of delivery of the aid only for new entrant railway undertakings would be discriminatory towards other railway undertakings in above explained circumstances.

Besides, in several Member States new entrant railway undertakings were able to successfully purchase or lease new or second-hand rolling stock required for their services. In some cases, new entrant railway undertakings grew to represent high market shares on the lines where they operate. Therefore, in our view there is no sufficient evidence to support preferential treatment of new entrant railway undertakings in comparison with the other railway undertakings that receive public support to obtain rolling stock via the EU structural funds.

Hence, Ferrovie dello Stato Italiane believes that **the scope of the exemption should be broadened to all railway undertakings that receive aid for rolling stock in the framework of InvestEU Fund**.

Ferrovie dello Stato Italiane Proposal :

Based on the foregoing Ferrovie dello Stato Italiane proposes to amend the text of the Proposal as follows:

1. **To delete Article 2 (182).**
2. **To add new point (viii) to Article 56e.7(a):**

   (a) aid shall be provided only to the following projects:
3. **To amend Article 56e.7(a)(v) as follows:**

   (a) aid shall be provided only to the following projects:

   …

   (v) rolling stock for the provision of rail transport services ~~on lines fully opened to competition, provided the beneficiary is a new entrant~~;

II. On Combined Transport:

Road-rail combined transport services play a major role in the rail freight business and in the wider freight transport sector.

To further increase the competitiveness of combined transport compared to long-distance freight services and therefore strengthen the shift from road freight to other modes of transport, Ferrovie dello Stato proposal is to make public support to combined transport expenditures automatically compatible with the EU relevant state-aid rules, hence without the need of notifying the support scheme to the European Commission, if the state-aid is below the 35% of the total expenditure incurred. This threshold is appropriate as it would compensate the current regulatory discrepancies suffered by rail freight vis-à-vis other transport modes, without a distortive effect on competition. This provision will significantly speed-up the process and boost the market by making state aid eligible 3 years earlier compared to the current framework.

Therefore, Ferrovie dello Stato proposes the Commission to consider to introduce in the GBER a general exemption for the aid of combined transport **that does not exceed 35% of the total expenditure incurred.**