

# Position Paper

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## **Fitness Check on State Aid Rules (*'Guidelines on State Aid for Railway Undertakings'*)**

18 July 2019

## Executive Summary

In order to help to establish the currently non-existing level playing field with other more polluting modes of transport and to ensure the so urgently needed modal shift to environmentally friendly transportation, the rail sector pleads for the revision of the Guidelines in favour of the rail sector. In particular, we would like to highlight the following:

- Experience from the past has shown that the scope of the Guidelines fits well as it is. It might be broadened to accommodate additional financing possibilities.
- Greater flexibility on the intensity thresholds for aid for coordination of transport is desirable. Namely, presumption of compatibility of such aid up to 100% of the eligible costs, or even a block exemption for such measures, would be welcome.
- State aid rules should be proportionate to current EU priorities (e.g. 2050 long-term climate strategy) and hence allow to sufficiently stimulate the railway sector in comparison with more polluting modes of transport.
- Specific state investments related to ERTMS, noise reducing measures and the temporary reduction of Track Access Charges should continue to be allowed for under the current conditions. Only then, the underlying policy objectives of those rules can be successfully achieved.

## 1. Introduction

The Community of European Railway and Infrastructure Companies (CER) and the European Rail Infrastructure Managers (EIM) would like to thank the European Commission for the opportunity to respond to the Fitness Check on State Aid rules and for taking our views into account. The Community guidelines on State aid for railway undertakings<sup>1</sup> ('the Guidelines') are the relevant legal basis for the approval of national rail funding measures and therefore play a significant role for the sector. In the view of the current climate change debate and urgent need to decarbonise transport, a revision in favour of the rail sector would be consistent with the current EU priorities on shifting to low-emission mobility.

CER and EIM welcome the fact that the Guidelines are included in the Fitness check. The Guidelines were published 11 years ago (in 2008) and were left out of the State Aid Modernisation package of 2012. In the meantime, the liberalisation of the railway market continued cumulating in the 4<sup>th</sup> Railway Package of 2016, which brought many changes to the railway landscape in Europe.

We believe that any revision of the Guidelines should give a greater level of certainty. In our view, provisions of the Guidelines should recognise circumstances when funding that could potentially be classed as State aid may be permitted, such as when it is being used to further Commission objectives, while having a negligible or no likely potential to distort competition.

## 2. Scope

The current Guidelines are limited in their scope to the railway undertakings (RUs), which, in our view, should not be changed.<sup>2</sup> However, we believe that in regard to the RUs the current scope of the Guidelines could be broadened to foresee possibilities for public financing of additional incentive measures for the RUs, apart from the currently included types of aid, for example aid for digitization. Up until now, it appears that the State intervention has been inefficient in the cases that are not covered by the Guidelines.

Unlike the RUs, which are (gradually) being exposed to competition, the infrastructure managers (IMs) have a different role within the railway system and are therefore not exposed to competition (in relation to the management of infrastructure). A true extension of the scope of the current Guidelines to IMs is therefore neither desirable, nor needed. However, some of the rules in the Guidelines indirectly do affect IMs, as outlined further and in particular in paragraph 5 of this position paper.

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<sup>1</sup> Communication from the Commission – Community guidelines on State aid for railway undertakings (2008/C 184/07)

<sup>2</sup> See Paragraph 23: '*These guidelines only apply to railway undertakings*'

### **3. Higher intensity thresholds or a block exemption for aid for coordination of transport**

Currently, any scheme qualified as State aid and falling within the scope of the Guidelines must be notified to the European Commission services, meaning that the Guidelines do not serve as a so-called block exemption. Besides, the Guidelines do not presume the compatibility of the State aid beyond the set thresholds.

Section 6 of the Guidelines provides for a specific assessment for aid for coordination of transport. In particular, it sets the intensity threshold for such aid, which for aid for reducing external costs and interoperability aid amounts to 50% of the eligible costs.<sup>3</sup>

Greater flexibility on these thresholds, namely presumption of compatibility of all types of aid for coordination of transport up to 100% of the eligible costs, or even a block exemption for such measures, would be welcome. Such improvement of the text of the Guidelines would help to ensure the currently non-existing level playing field with other more polluting modes of transport and a so urgently needed modal shift to lower emission transport modes.

### **4. Greater support for railway sector to reach climate targets**

Transport shall be made more sustainable as transport greenhouse gas emissions continue to grow over the past years. Besides, still unequal competitive conditions between road and environmentally friendly modes of transport shall be addressed. The urgency to address climate change requires to stimulate less polluting modes of transport and actively support decarbonisation of mobility. In this regard it should be remembered that a modal shift from road to rail contributes to achieve the EU's climate targets and the Paris Agreement, since rail is the most environmental friendly mode of transporting goods and passengers.<sup>4</sup>

In our view, the State aid rules should always be proportionate to current EU priorities. In this regard, to adequately support railway transport that bears high infrastructure and operating costs, but incurs significantly lower external effects on the environment (pollution, accidents, greenhouse gas emissions), the Guidelines should allow for more flexibility. Currently, the Guidelines allow aid for reducing external costs to be granted to the RUs only to level the playing field with other modes of transport, but not to stimulate the railway sector compared

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<sup>3</sup> See paragraph 107 of the Guidelines

<sup>4</sup> See for more information the [Position Paper of EIM-CER-UNIFE on the 'EU Strategy for long-term greenhouse gas emissions reductions – The crucial role of rail'](#).

to more polluting modes of transport. As already stated in the previous paragraph in regard to the aid for coordination of transport in general, the Guidelines could be further improved to make the aid for reducing external costs easier to be granted to the RUs, or provide for a block exemption.

Besides, the current Guidelines provide IMs with the possibility to compensate for environmental, accident or infrastructure costs or to provide discounts.<sup>5</sup> The possibilities offered in this category are used by IMs to promote a modal shift from road to rail, for example by granting rebates on the so-called Track Access Charges ('TACs'). Regarding those possibilities, the same conditions and terms should continue to exist in the case of any possible revision of the Guidelines.

## **5. Public funding of ERTMS and noise reduction measures**

One of the areas that affect IMs is described in Paragraph 106 of the Guidelines. This paragraph provides for the possibility to use state funds to cover investments associated with the deployment of the European Rail Traffic Management System ('ERTMS').<sup>6</sup> The ERTMS project is vital for the establishment of the Single European Railway Area ('SERA'), which is in itself the main objective of the rail policy of the European Union.

Another field in which IMs are active is the field of noise reduction measures, both in rail infrastructure (e.g. noise barriers) and also concerning the rolling stock (e.g. retrofitting of vehicles with composite brake blocks which produce less noise).<sup>7</sup>

Some IMs (via their Member States) are recipients of public funding for both ERTMS and noise reduction. Therefore the possibilities offered under the current Guidelines should continue to exist under the current conditions and terms. Without public funding in these domains, the deployment of ERTMS will not be ready by the deadlines as specified in the Trans-European Transport Network (TEN-T) Guidelines. ERTMS is also a vital tool to enhance the interoperability and safety of the whole European railway network and needs adequate funding.

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<sup>5</sup> See paragraph 104 of the Guidelines in conjunction with Articles 33 and 34 of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ L 343, 14.12.2012, p. 32–77).

<sup>6</sup> Paragraph 106: '*As regards interoperability aid, the eligible costs cover, to the extent to which they contribute to the objective of coordinating transport, all investments relating to the installation of safety systems and interoperability, or noise reduction both in rail infrastructure and in rolling stock. In particular they cover investment associated with the deployment of ERTMS (European Rail Traffic Management System) and any like measure which can help to remove the technical barriers in the European rail services market.*'

<sup>7</sup> See also paragraph 106 of the Guidelines

## **About CER**

The Community of European Railway and Infrastructure Companies (CER) brings together railway undertakings, their national associations as well as infrastructure managers and vehicle leasing companies. The membership is made up of long-established bodies, new entrants and both private and public enterprises, representing 71% of the rail network length, 76% of the rail freight business and about 92% of rail passenger operations in EU, EFTA and EU accession countries. CER represents the interests of its members towards EU policy makers and transport stakeholders, advocating rail as the backbone of a competitive and sustainable transport system in Europe. For more information, visit [www.cer.be](http://www.cer.be) or follow us via Twitter at @CER\_railways.

## **About EIM**

EIM, the association of European Rail Infrastructure Managers, was established in 2002 to promote the interests and views of independent infrastructure managers in Europe, following the liberalisation of the EU railway market. It also provides technical expertise to the appropriate European bodies such as the European Union Agency for Railways. EIM's primary goal is promoting growth of rail traffic and the development of an open sustainable, efficient, customer orientated rail network in Europe. For more information, visit [www.eimrail.org](http://www.eimrail.org).

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