

Position Paper

Brussels, 26 September 2019

Targeted review of the General Block Exemption Regulation (State aid): extension to national funds combined with certain Union programmes

CER contribution to the Targeted review of the General Block Exemption Regulation (State aid): extension to national funds combined with certain Union programmes

1. Introduction

Community of European Railway and Infrastructure Companies (CER) welcomes present targeted review of the General Block Exemption Regulation (hereinafter 'GBER') as it simplifies the procedures for receiving aid in the framework of the EU structural funds.

In particular, CER strongly supports that the European Commission is seeking to facilitate the national funding of certain transport and transport infrastructure projects under the financial products supported by the Invest EU Fund. However, CER believes that the list of such projects, aid for which is exempted from the notification requirement of Article 108(3) of the Treaty, shall be further extended in order to include combined transports projects.

Besides, CER would like to express its concern regarding 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 Articles 107 and 108 of the Treaty (hereinafter 'Proposal').

2. 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, CER members are of the opinion that the **definition of a 'new entrant' contained in Article 2 (182) should be removed from the Proposal.**

3. Combined transport

New Section 16 added to the GBER by the Proposal defines when the aid involved in financial products supported by the InvestEU Fund shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty. Conditions that are ought to be fulfilled by the aid in order to fall under the scope of the Section 16 are laid down in proposed Article 56e and Article 56f. Thus, Article 56e in its point 7 sets the requirements to be complied with by the aid for transport and transport infrastructures. CER believes that the list of eligible projects set in Article 56e.7(a) shall be supplemented by combined transport projects.

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, CER proposes to make public support to combined transport projects provided under financial products supported by the InvestEU Fund automatically compatible with the internal market within the meaning of Article 107(3) of the Treaty and, hence, exempted from the notification requirement of Article 108(3) of the Treaty, as long as such aid does not exceed 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, and is fully in line with the existing practices of the European Commission in regard to the environmental performance of the freight transport system and modal shift to transport modes with less negative externalities. This provision would significantly speed-up the process and boost the market by making state aid eligible much earlier compared to the current framework.

Therefore, CER proposes to **add aid for combined transport that does not exceed 35% of the total expenditure incurred to the list of the eligible transport and transport infrastructure projects contained in Article 56e.7(a).** CER would also like to underline that in our view, based on all above considerations, a general exemption for the aid for combined transport that does not exceed 35% of the total expenditure incurred should be introduced in the GBER.

4. 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:

...

Position Paper

Targeted review of the General Block Exemption Regulation (State aid): extension to national funds combined with certain Union programmes



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

CER members 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'. CER members 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, CER 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

CER members 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, in view of CER **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, CER members believe 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**.

5. CER Proposals

Based on the foregoing CER 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):**

Position Paper

Targeted review of the General Block Exemption
Regulation (State aid): extension to national funds
combined with certain Union programmes



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

...

(viii) combined transport, provided that the aid does not exceed 35% of the total expenditure incurred.

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;~~

Position Paper

Targeted review of the General Block Exemption Regulation (State aid): extension to national funds combined with certain Union programmes



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 or follow [@CER_railways](https://twitter.com/CER_railways) on Twitter.

This CER document is for public information.

Although every effort is made to ensure the accuracy of the information in this document, CER cannot be held responsible for any information from external sources, technical inaccuracies, typographical errors or other errors herein. Information and links may have changed without notice.