CER
The Voice of European Railways

Position Paper

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Rail transport – revision of State aid guidelines: Inception Impact Assessment

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General remarks

The Community of European Railway and Infrastructure Companies (CER) would like to thank the Commission for this opportunity to provide our views on the Inception Impact Assessment for Revision of the Community Guidelines on State aid for railway undertakings[1] (hereinafter "the Guidelines").

CER members welcome the IIA's statement that no action, i.e. the mere continuation of use of the current text of the Guidelines, would mean that the latest regulatory and market developments are not taken into account, and that the Guidelines would be unable to effectively contribute to achievement of the targets of the European Green Deal and the policy objectives of the Sustainable and Smart Mobility Strategy.

At the same time the **railway sector is concerned by further postponement of the indicative planning of the revision** of the Guidelines to Q4 2023, instead of the earlier indicated deadline of Q1 2023. We believe that there is an urgency to update the text of the Guidelines in order for it to be able to achieve its objectives, and to help addressing climate change by stimulating less polluting modes of transport, while supporting decarbonisation of mobility. Besides, railway is one of the sectors that suffered the highest losses as a result of the COVID-19 crisis and needs to receive adequate support for its recovery and future growth, which should be further supported by the updated text of the Guidelines in a timely manner. Therefore, the sector would like to stress that it would be highly desirable to return to the original indicated deadline of Q1 2023, and at the very least **it is crucial that the revised planning of the revision is respected**, and the updated text of the Guidelines is adopted at the latest by Q4 2023.

The **sector fully supports the general objective of the revision** stated in the Inception Impact Assessment (hereinafter "the IIA"), which is to streamline and simplify provisions of the Guidelines to help the rail sector increase its competitiveness and to shift the current balance between different modes of transport. Our thoughts on specific policy objectives listed in the IIA may be found in the following paragraphs.

Remarks on specific policy objectives listed in the IIA

a) Objective to simplify procedures for aid to coordination of transport, including by way of a block exemption

CER would like to express its **full support for simplification of the existing procedures and in particular for establishing of the block exemption of aid for coordination of transport**. In this regard, CER supports the parallel initiative that has been launched by the Commission to submit a proposal to the Council for the adoption of a regulation enabling the Commission to block exempt State aid for the coordination of transport pursuant to Article 93 TFEU.

[1] Ref. Ares(2021)5975184 - 01/10/2021

b) Objective to extend the scope and to improve the toolbox of aid measures supporting sustainable transport modes

The **railway sector supports the IIA's policy objective to extend the scope of the Guidelines beyond only railway undertakings** to also include key land transport operators in the intermodal chain that similarly contribute to the modal shift of freight from road to less polluting and more sustainable transport modes. In addition to that, CER would like to further add that in our view the **extension of the scope of the Guidelines should also cover operators of rail service facilities**, irrespectively of the category of such operator (e.g. railway undertaking, rail infrastructure manager, private logistic operator etc), as currently funding of service facilities operators is not addressed in a clear and transparent way by the EU rules. While the rail sector supports the outlined extension of the scope of the Guidelines, we would like to highlight that it is important that the updated Guidelines strictly keep its focus on supporting the modal shift from road to less polluting and more sustainable transport modes and, therefore, do not cover aid to electrified road vehicles that does not contribute to the modal shift.

Furthermore, CER would like to express its full support to the IIA's policy objective to improve the Guidelines' toolbox of aid measures supporting more sustainable transport modes. In particular, in our view, the toolbox could be further improved as follows:

- **Presumption of compatibility of all types of aid for coordination of transport up to 100% of the eligible costs**. The current text of the Section 6 of the Guidelines sets the aid intensity threshold for aids for reducing external costs and interoperability aids to 50% of the eligible costs. Whereas it is possible for Member States to demonstrate the need and proportionality of the measure beyond such threshold, it imposes an unnecessary burden of proof upon Member States, having the possible effect of unnecessarily limiting their interventions to the set limit. Greater flexibility on the aid intensity thresholds, namely the presumption of compatibility of all types of aid for coordination of transport up to 100% of the eligible costs, 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.
- **Aid intensities of up to 100% for interoperability aid**. More specifically, in regard to interoperability aid, we would like to underline that the sector does no profit from such measures until they are fully deployed, for example onboard ETCS equipment or noise reduction measures, while the society as a whole does. Higher aid intensities of up to 100% of interoperability aid would trigger strong incentives for such retrofitting, while currently the vehicle owners are not sufficiently incentivized by a maximum of 50% aid intensity. Paragraph 106 of the current Guidelines on interoperability aid further covers investments associated with the deployment of the ERTMS, which is a vital tool to enhance the interoperability and safety of the whole European railway network. Without adequate public funding the deployment of ERTMS will not be ready by the set deadlines. Such interoperability measures specifically promote the Green Deal goals by raising railway infrastructure capacity, making room for further modal shift, as well as reduce noise pollution.
- **Additional types of incentive measures with intensities of up to 100%, for example aid for digitalization**. For example, aid for upgrades of traffic management, information- or ticketing systems, or for five key-technologies identified by the sector to enable modal-shift to rail (Digital Platforms, Digital Automated Coupler, Digital Capacity Management, ERTMS and Automated

Operation)[2]. In this regard it is important to note that up until now, it appears that the State intervention has been inefficient in cases that are not covered by the Guidelines.

- **Thresholds for the presumption of aid compatibility in relation to "total cost of rail transport" should be increased accordingly**. Thresholds for the presumption of aid compatibility in relation to "total cost of rail transport" are currently set at 30% for aid for rail infrastructure use and for reducing external costs, and in our view this threshold should be increased accordingly, to at least 60%. Considering the desired increase of the above-mentioned thresholds for eligible costs to up to 100%, an aid intensity in relation to the "total cost of rail transport" of at least 60% should also be presumed compatible. If this threshold is not increased accordingly, the increased thresholds for eligible costs would only have a very limited effect.
- **Covering not only the investment cost, but also the consequential investment-related additional costs of interoperability measures**. Currently the Guidelines only allow for funding the inception investment costs of interoperability measures. Covering not only the investment cost, but also the consequential investment-related additional costs, at least for a transitional period, would significantly increase the incentives for interoperability measures. Such an approach was already a part of the former 2008 Community guidelines on State aid for environmental protection.
- **Allowing aids for both rail infrastructure use and reduction of external costs that are higher than the minimum necessary only to level the playing field with less environmental-friendly transport modes**. Due to the fact that currently the negative effects of transport modes are unequally reflected in the costs of such modes, at the moment there is a price distortion and an unequal competition to the disadvantage of rail transport services.[3] These unequal competitive conditions shall be addressed by the updated text of the Guidelines to ensure that existing cost differences are vigorously compensated through State aid, in order to stimulate market players to use the less polluting rail transport mode. Currently, the Guidelines allow aid for rail infrastructure use and for reduction of external costs to be granted to the railway undertakings only to level the playing field with other modes of transport. In fact, with regard to the former, the eligible costs are the additional costs borne by rail transport and not by other more polluting transport modes, while in the latter case the eligible costs are the part of the external costs that rail transport allows to avoid compared with competing less sustainable transport modes. In other words, the current text of the Guidelines does not allow to stimulate the railway sector in comparison with transport modes that have higher external costs, to the detriment of the former. In our view, the updated Guidelines therefore should provide more flexibility, allowing for a higher aid, as well as extending eligible costs, for both aid for rail infrastructure use and aid for reducing external costs, in order to go beyond the sole aim of levelling the playing field with less environmental-friendly transport modes. Such higher levels of aid would further stimulate stronger modal shift to rail, and as a result would foster the Green Deal goals.

[2] See joint position paper of CER and the Rail Freight Forward coalition "30 by 2030 – how rail freight achieves its goals" https://www.cer.be/publications/latest-publications/30-2030-how-rail-freight-achieves-its-goals
[3] See Study Sustainable Transport Infrastructure Charging and Internalisation of Transport Externalities (June 2019) https://ec.europa.eu/transport/themes/sustainable/internalisation-transport-external-costs_en

c) Objective to clarify the rules for the financing of rail rolling stock in liberalised markets

CER also supports the political objective of clarifying the Guidelines' rules for the financing of rail rolling stock outlined in the IIA. In our view, the current text of the Section 3 of the Guidelines "Measures to encourage purchase and renewal of rolling stock" lacks clarity, in particular in respect to the possibility of granting State aid for the purchase of freight rolling stock. We believe that the **updated text of the Guidelines should explicitly refer to the aid for purchase, renewal and retrofitting of freight rolling stock**.

As one of the main identified problems the IIA indicates that there remain barriers to entry for new market operators, in particular as regards access to passenger rolling stock. In this regard we would like to stress that **in our view the updated text of the Guidelines should not contain more favourable conditions for cases when the aid for purchase, renewal and retrofitting of rail rolling stock is received by a new entrant railway undertaking**. In our view, such diverging treatment may unfairly disadvantage other railway undertakings receiving aid for rolling stock. In some Member States incumbent railway undertakings suffer from low quality of rolling stock and are very much in need of obtaining adequate and timely public support. 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 for purchase, renewal and retrofitting of rolling stock. We therefore hope that the updated text of the Guidelines will not contain provisions outlining such differentiation.

Besides, the sector would also like to point out that the draft text of the revised Climate, Energy and Environmental Aid Guidelines (CEEAG), which adoption is foreseen for Q4 2021, covers, in particular, aid for the acquisition, leasing, and retrofitting of clean transport vehicles used for railway. It would, therefore, seem appropriate that the updated text of the Guidelines provides a **clarification regarding the interplay between the CEEAG and the Guidelines in relation to aid for rail rolling stock**. In our view, it would also be beneficial if the Guidelines explicitly stated that if a specific aid measure falls under the scope of both of the Guidelines, it is the ones with more favourable conditions for the aid recipient that should be applicable.

d) Objective to adjust the rescue and restructuring rules applicable to RUs to address high level of indebtedness of RUs

One of the main problems rightfully identified during the Fitness check of the Guidelines and listed in the IIA is the remaining high level of indebtedness of railway undertakings, along with the fact that the horizontal Rescue and Restructuring Guidelines are difficult to apply to rail undertakings, as they do not cater for the specificities of the rail sector. CER can only confirm this. Therefore, we are happy to see that the IIA states as one of its specific policy objectives the adjusting of the rescue and restructuring rules applicable to railway undertakings, to introduce some derogations from the general rules on rescue and restructuring to take into account the specificities of the sector, in order to address the said issues. In our view, in certain cases restructuring aid should indeed be considered compatible with the purposes of coordination of transport set in Article 93 TFEU, which should be reflected in the updated text of the Guidelines.

e) Objective to increase legal certainty regarding existing principles governing the financial flows within vertically integrated companies

As one of the main identified problems the IIA indicates that there is still limited transparency of financial flows and transactions within vertically integrated rail companies, resulting in risk of cross-subsidisation between the commercial activities and those subject to public service obligations. As a corresponding possible action, the IIA suggests to increase legal certainty regarding the interplay between existing general and sector-specific principles governing the financial flows within vertically integrated companies. The sector recognizes the possible benefits of providing further guidelines to the Member States on which of the two sets of rules should be applicable in each case, - the general legislation on transparency of financial relations between the Member States and public undertakings *or* the rail sector-specific financial transparency requirements. As the current version of the Guidelines were published before the adoption of the Directive 2012/34 establishing a Single European Railway Area, the Guidelines would benefit from alignment with the provisions on independence of railway undertakings set out in Articles 4-6 Directive 2012/34/EU, including a proper separation of accounts. It should, however, be noted that the Commission Guidelines are of a non-binding nature and therefore the updated text of the Guidelines may not establish any new legal obligations in addition to the existing comprehensive set of rules on transparency of financial flows already provided for by the EU law. This is especially the case with regard to the existing transparency obligations of Directive 2016/2370 for vertically integrated companies. Besides, Directive 2012/34/EU and Regulation 1370/2007 fully ensure the absence of any cross-subsidisation between the commercial activities of the railway undertakings and those subject to public service obligations.