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WORKING LANGUAGE

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**Subject: State aid SA.34156 (2012/N) – Germany – The Funding Guidelines
for noise reduction measures on freight wagons**

Sir,

1. PROCEDURE

- (1) On 22 December 2011, the German authorities submitted a pre-notification of the above-mentioned measure to the Commission. By letter of 13 April 2012, the Commission requested further information, which was provided by the German authorities by letter of 27 April 2012. On 8 June 2012, the Commission sent to the German authorities the preliminary assessment of the measure. On 12 June 2012, the Commission and the German authorities had a meeting concerning the case, after which the German authorities provided additional information by letter of 21 June 2012.
- (2) On 6 July 2012, the German authorities notified the above-mentioned measure, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (TFEU). By letter of 8 August 2012, the Commission requested further information, which was provided by the German authorities by letter of 6 September 2012. On 13 September 2012, the Commission and the German authorities had a meeting concerning the case after which the German authorities submitted additional information by letters of 19 October 2012 and 13 November 2012.

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2. DESCRIPTION OF THE MEASURE

Objective

- (3) The notified measure covers a State aid scheme of the German Federal Government supporting the retrofitting of existing railway freight wagons with less noisy, composite brake blocks. The objective of the notified measure is to better protect residents living adjacent to existing rail tracks from noise, which should consequently contribute to a greater acceptance of the development of rail freight transport.
- (4) The existing fleet of freight wagons is currently generally fitted with cast iron brake blocks, which generate significantly higher noise emissions than composite brake blocks. The surface wrinkling of the wheel running surface, as a result of the combination of the cast iron brake block acting on the steel wheel, constitutes the primary reason for the noise produced by train and railway. Retrofitting existing railway freight wagons with composite brake blocks is expected to produce a smoother wheel running surface, and consequently only around half of the running noise.
- (5) The German authorities claim that without the measure there would be insufficient incentive to retrofit existing freight wagons with silent technology and to adhere to the limiting values set out in Table 1 of the TSI Rolling Stock Noise Decision¹, which are only obligatory for new, renewed or upgraded wagons. The retrofitting operations undertaken with grants under the notified measure are therefore not mandatory by law. The objective is to achieve a noise emission standard for freight wagons operating on the State's rail network that is higher than mandatory rules.
- (6) The implementation of the notified measure will cease the Federal Government's "Leiser Rhein" pilot project for retrofitting freight wagons having cast iron brake blocks with composite brake blocks, which was approved by the Commission on 5 November 2009².

Type of aid, eligible costs and intensity

- (7) The aid will take the form of a non-refundable grant from the Federal budget. The grant is to be mileage-differentiated and its amount will depend on a retrofitted wagon's mileage in Germany. The wagon owner will be allowed to apply for a grant every year during the duration of the scheme by providing data on wagons' mileage in a given year. The sum of annual grants for a wagon will be paid to the wagon owner every consecutive year until reaching a limit equal to 50% of the eligible investment costs.
- (8) The eligible investment costs are calculated as the difference between the costs for the initial fitting of an average freight wagon with type LL composite brake

¹ Commission Decision 2011/229/EU of 4 April 2011 concerning the technical specifications of interoperability relating to the subsystem rolling stock – noise of the trans-European conventional rail system, OJ L 99, 13.4.2011, p. 1.

² Case N324/2009 - Support for the equipment of freight trains with certain brakes, OJ C 299/2009 of 9.12.2009, p. 5.

blocks and the costs of fitting cast iron brake blocks in the "do-nothing" scenario. That cost difference is currently calculated as equal to EUR 1 688 per wagon.

- (9) Where a wagon owner uses other noise-reducing technology, the eligible costs will be equal to the additional costs of retrofitting a wagon with type LL composite brake blocks.³
- (10) The aid will not cover anticipated additional costs for retrofitted wagons, such as the possible higher costs for the initial procurement of the blocks, the potentially higher wear and tear on the wheels, or shorter inspection intervals.

Beneficiaries

- (11) The aid scheme is available to wagon owners who:
 - retrofit their existing freight wagons with composite brake blocks as from 9 December 2012, or use other noise-reducing technology having at least the same result in terms of noise reduction as from 9 December 2012;
 - register their retrofitted wagons in a retrofitting register maintained by the infrastructure operator;
 - operate their retrofitted wagons on the tracks of the State infrastructure operator in Germany within the scope of the General Railway Act (*Allgemeine Eisenbahngesetz*);
 - apply for the grant to the infrastructure operator.

Duration and budget

- (12) The duration of the scheme is envisaged for a period of 8 years, from December 2012 to December 2020, with payments from 2013 to 2021. This notification covers the first five years of the scheme i.e. December 2012 to December 2017, with payments from 2013 until 2018. The German authorities intend to re-notify the measure in the future to have it prolonged for the remaining three-year period.
- (13) The scheme will reimburse, in the notified period, no more than EUR 152 million.

Procedure

- (14) The aid will be transferred to the final beneficiaries through the railway infrastructure operator, DB Netz AG.
- (15) The railway infrastructure operator will be obliged to set up a suitable system for the payments of grants to wagon owners. It will separately define the details of the non-discriminatory evidential requirements in relation to retrofitting and mileage that, before implementation, must be agreed with the Federal Network Agency for Electricity, Gas, Telecommunications, Post Office and Rail (Bundesnetzagentur).

³ Currently only the K-blocks technology can be considered as an alternative to LL composite brake blocks. While this technology is regarded as cost-neutral for new vehicles, using it for exiting wagons is more expensive than retrofitting with LL composite brake blocks.

- (16) The operator will establish appropriate databases of both the wagons eligible for the aid (the retrofitting register) and the mileage data. In the case a wagon owner wishes to apply for the aid, it will have to register retrofitted wagons in the retrofitting register first.
- (17) After this registration, the wagon owner will be allowed to apply annually for a grant by submitting the mileage data for its wagons.

Control measures

- (18) Applicants must prove that retrofitting has taken place and the date thereof when registering the wagons in the retrofitting register.
- (19) The infrastructure operator will be obliged to verify if the cumulative sum of yearly grants for a wagon transferred to a wagon owner does not exceed 50 % of the eligible costs.

Legal basis

- (20) The legal basis of the notified aid scheme are the *Guidelines of the Federal Ministry of Transport, Building and Urban Development on the funding of noise abatement measures on freight wagons in connection with the introduction of a noise-differentiated track access pricing system on tracks of the State railway infrastructure undertakings* and the General Administrative Regulations (Allgemeine Verwaltungsvorschriften) adopted according to paragraphs 23 and 44 of the Federal Budget Code (Bundeshaushaltsordnung).

Cumulation of aid

- (21) Aid shall not be cumulated with aid received from other local, regional, national or Union schemes to cover the same eligible expenses⁴.

3. APPRECIATION OF THE MEASURE

3.1. Assessing the existence of aid

- (22) Pursuant to Article 107(1) TFEU “any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.”
- (23) Therefore, in order to determine whether the measure at issue constitutes state aid within the meaning of Article 107 (1) TFEU, it must be established (a) whether the measure has been financed through State resources, (b) whether the measure confers an economic advantage on certain undertakings or the production of certain goods, (c) whether the measure distorts or threatens to distort competition and, finally, (d) whether the measure is liable to affect trade between Member State.

⁴ Resources under EU programmes that are not considered to be State aid fall outside the rules on cumulation.

- (24) State resources: The measure is financed by the Federal State budget and therefore through State resources.
- (25) Selective economic advantage: The notified measure allows owners of freight wagons to be relieved of a part of the costs which they would normally have to bear themselves when retrofitting their freight wagons with composite brakes. Therefore, it involves a selective advantage.
- (26) Distortion of competition and effect on trade between Member States: The aid is likely to distort competition and affect trade between Member States if the recipient of the aid competes with other businesses on markets open to competition⁵.
- (27) According to the Directive on the development of the Community's railways⁶ the international rail freight transport is liberalised as from 1 January 2006 and all other rail freight transport services as from 1 January 2007. The aid beneficiaries are involved in competition with other railway undertakings within the EU. Therefore, the aid scheme may affect intra-Community trade and distort competition in the common market.
- (28) The Commission therefore finds that the notified aid scheme involves aid within the meaning of Article 107(1) of the TFEU.

3.2. Compatibility of the aid

- (29) Article 93 TFEU provides that "aids shall be compatible with the Treaties if they meet the needs of coordination of transport [...]".
- (30) After the entry into force of Regulation (EC) No 1370/2007⁷, Article 93 TFEU became directly applicable as the legal basis for establishing the compatibility of aid not covered by that regulation and, in particular, of aid for the coordination of freight transport (points 20 and 85 Railway Guidelines⁸). Since the aid measure at issue is not covered by Regulation (EC) No 1370/2007, its compatibility will be assessed directly under Article 93 TFEU.
- (31) Article 93 TFEU states that State aid shall be compatible if it "meets the needs of coordination of transport". The concept of aid meeting the needs of co-ordination of transport refers to the need for governmental intervention arising in the absence of competitive market or in the presence of market failures. In this regard, the Commission notes that measures focused on the reduction of noise pollution in the rail transport sector may be needed when other modes of transport do not bear the costs of noise pollution they cause for the society.

⁵ Case T-214/95 *Het Vlaamse Gewest v Commission* [1998] ECR II-717.

⁶ Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC on the development of the Community's railways OJ L 164 of 30.4.2004, p.164.

⁷ Regulation (EC) No 1370/2007 of the European Parliament and of 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 315 of 3.12.2007, p.1.

⁸ Community Guidelines on State aid for railway undertakings, OJ C 184 of 22.7.2008, p. 13.

- (32) The Commission has, in line with its constant decision practice, considered that aid is compatible with the internal market on the basis of Article 93 TFEU if the following conditions are met: (i) the aid contributes to an objective of common interest, (ii) the aid is necessary, and provides an incentive effect, (iii) the aid is proportionate, (iv) the access to the infrastructure in question is open to all users on a non-discriminatory basis, and (v) the aid does not lead to distortions of competition contrary to the common interest.
- (33) As regards railway transport undertakings in particular, the rules for the interpretation of Article 93 TFEU have been set out in the Railway Guidelines. According to point 95 of the Railway Guidelines, aid which meets the needs of transport coordination has to be considered compatible with the TFEU. Point 96 of the Railway Guidelines provides that for a given aid measure to be considered to 'meet the needs' of transport coordination, the aid has to be necessary and proportionate to the intended objective. Furthermore, the distortion of competition which is inherent in the aid must not jeopardise the general interests of the Union
- (34) Taking into account that the scope of the Railway Guidelines covers exclusively railway undertakings and the fact that the notified measure can be of benefit to both railway undertakings and undertakings which own freight wagons but are not railway undertakings, the Commission will apply the compatibility criteria under the Railway Guidelines only to the former undertakings and the compatibility criteria of Article 93 TFEU to the latter group. However, to the extent these compatibility criteria coincide, the Commission will follow the layout of the Railway Guidelines below, unless otherwise noted.
- (35) Point 98 (c) of the Railway Guidelines provides that aid for the needs of transport coordination can take several forms, one of which is aid for the reduction of noise pollution in the rail transport sector, referred to as "interoperability aid".
- (36) As stipulated in the Commission's communication on rail noise abatement measures addressing the existing fleet⁹, noise is one of the most widespread public health threats in industrialised countries and the contribution of rail transport to noise pollution is significant, with about 10 % of the population exposed to noise levels above the threshold for "serious annoyance". The Commission points out that "*[if] no remedial action is taken, this could lead to restrictions on rail traffic along the most important European rail corridors, in particular freight trains, and the resulting bottlenecks would be likely to adverse effects on European economies. Furthermore, a possible modal shift from rail to road on these corridors would lead to increasing environmental impacts, in particular greenhouse gas emissions as the specific CO₂ emissions of rail freight are significantly lower than those of road haulage. This would happen at a time when the Community is considering the opportunity to develop a rail network giving priority to freight*"¹⁰.

⁹ Communication from the Commission to the European Parliament and the Council on rail noise abatement measures addressing the existing fleet, COM(2008) 432 of 8.7.2008.

¹⁰ Communication COM(2007) 608 from the Commission "Towards a rail network giving priority to freight".

- (37) According to the Commission Communication on rail noise abatement measures addressing the existing fleet¹¹, the retrofitting of the fleet of freight wagons with composite brake blocks constitutes the most effective technical measure to reduce noise emissions. Such noise reduction at source is also seen as more cost effective than investments in noise abatement measures for existing and new tracks.
- (38) Therefore, the Commission concludes that aid granted for retrofitting freight wagons with composite brake blocks in order to protect residents from noise pollution contributes to an objective of common interest and that such aid is an appropriate means of achieving this objective.
- (39) Point 107(c) of the Railway Guidelines provides that the necessity and proportionality of the aid will be presumed if the interoperability aid does not exceed 50 % of the eligible costs.
- (40) According to point 106 of the Railway Guidelines, 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 the rolling stock.
- (41) Under the notified measure, the eligible investment costs are calculated as the difference between the costs for the initial fitting of an average freight wagon with type LL composite brake blocks and the costs of fitting cast iron brake blocks in the "do-nothing" scenario. Hence, the eligible costs for the measure are limited to the extra costs, i.e. retrofitting costs that are necessary to achieve noise reduction in the rolling stock.
- (42) Since the maximum aid intensity under the notified scheme is 50 % of the eligible costs and the aid cannot be cumulated with aid received from other local, regional, national or Community schemes, the notified measure can be presumed to be necessary and proportionate in accordance with point 107(c) of the Railway Guidelines.
- (43) In any event, since without the aid, owners of existing freight wagons would have insufficient incentive to undertake retrofitting operations which are only mandatory for new, renewed or upgraded wagons, the scheme can be considered necessary to incentivise these owners to achieve noise emission standards that are not mandated by law. The measure can also be regarded as proportionate, as the amount of aid is dependent on the wagon's mileage and therefore corresponds to the magnitude of noise reduction resulting from their use. Moreover, for wagons with low mileage, the effective aid intensity can be expected to be even lower than the 50 % maximum aid intensity under the scheme.
- (44) The German authorities have further confirmed that all wagon owners whose wagons operate in Germany will be able to benefit from the same treatment and thus that the aid is granted on non-discriminatory terms.
- (45) Given that the aid scheme is an appropriate, necessary and proportionate means to ensure the protection of residents from noise pollution and is accessible to all wagon owners operating in Germany, that aid does not lead to distortions of competition contrary to the common interest.

¹¹ See footnote 9.

- (46) Finally, as stated in point 97 of the Railway Guidelines, in view of the rapid development of the transport sector, and hence the need for coordinating it, any aid notified to the Commission for the purpose of obtaining a decision on the basis of Article 93 TFEU, has to be limited to a maximum of five years in order to allow the Commission to re-examine it in the light of the results obtained and, where necessary, to authorise its renewal. Considering the notification submitted by the German authorities to the Commission covers a five-year period only and that the German authorities have committed to re-notify the measure for the remaining duration of three years upon the expiry of this initial five-year period, this condition is also fulfilled.
- (47) The German authorities have respected their obligation under Article 108(3) TFEU and have not put the proposed measure into effect before the Commission final decision.
- (48) In light of the above, the Commission considers the notified aid measure to be compatible with the internal market under article 93 TFEU.

4. DECISION

The Commission has accordingly decided that the aid scheme is compatible with the internal market under Article 93 Treaty on the Functioning of the European Union until 8 December 2017.

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Your request should be sent by registered letter or fax to:

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President

