



EUROPEAN COMMISSION

Brussels, 7.4.2017
C(2017) 2222 final

PUBLIC VERSION

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Subject: State aid SA.44621 (2016/N) – Czech Republic – Individual subprograms for ensuring interoperability in railway transport

Sir,

1. PROCEDURE

- (1) By electronic notification of 19 February 2016 the Czech authorities notified to the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (TFEU), an aid scheme aiming at ensuring interoperability in railway transport. The notified scheme aims at achieving interoperability through five sub-programmes covering European Rail Transport Management System and security subsystem; Energy consumption measure system; Adaptation to operation on 25 kV/50 Hz alternating current system; Telematics applications; and Noise reduction requirements. The notification was registered under case number SA.44621.
- (2) The Commission requested additional information on the proposed aid scheme on 18 April 2016, 17 July 2016, 14 October 2016, 17 January 2017 and 3 March 2017. The information requested was submitted by the Czech authorities on 17 May 2016, 14 August 2016, 14 November 2016, 24 January 2017 and 10 March 2017. By letter dated 10 January 2017, the Commission asked the Czech authorities to extend the period for the adoption of a decision pursuant to Article 4(5) of Council Regulation (EU) 2015/1589¹. By letter dated 13 January 2017, the Czech authorities agreed on the extension of that period.

¹ OJ L 248/11, 24.9.2015, p. 6.

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2. DETAILED DESCRIPTION OF THE MEASURE

2.1. Background

(3) The general objective of the measure is to ensure technical and operational interconnection of the railway systems in the Czech Republic and the neighbouring railway systems (interoperability), as well as among the individual entities involved in railway transport so that railway transport can compete against the other types of transport.

(4) The Programme entitled Interoperability in railway transport focuses on achieving interoperability in the following subsystems (the technical specification for interoperability (TSI) being established on the European Union level) as follows:

- Control-command and signalling subsystem

Commission Regulation (EU) 2016/919 of 27 May 2016 on the technical specification for interoperability relating to the ‘control-command and signalling’ subsystem of the rail system in the European Union (TSI CCS)²

- Railway carriage – locomotive subsystem and railway passenger carriages

Commission Regulation (EU) No 1302/2014 of 18 November 2014 concerning a technical specification for interoperability relating to the ‘rolling stock — locomotives and passenger rolling stock’ subsystem of the rail system in the European Union, as amended (TSI LOC& PAS)³

- Energy subsystem

Commission Regulation (EU) No 1301/2014 of 18 November 2014 on the technical specifications for interoperability relating to the ‘energy’ subsystem of the rail system in the European Union, as amended (TSI ENE)⁴

- Telematics applications in freight and passengers transport subsystem

Commission Regulation (EU) No 1305/2014 of 11 December 2014 on the technical specification for interoperability relating to the telematics applications for freight subsystem of the rail system in the European Union and repealing Regulation (EC) No 62/2006 (TSI TAF)⁵

Commission Regulation (EU) No 454/2011 of 5 May 2011 on the technical specification for interoperability relating to the subsystem ‘telematics applications for passenger services’ of the trans-European rail system, as amended (TSI TAP)⁶

- Rolling stock – noise subsystem

² OJ L 158, 15.6.2016, p. 1.

³ OJ L 356, 12.12.2014, p. 228.

⁴ OJ L 356, 12.12.2014, p. 179.

⁵ OJ L 356, 12.12.2014, p. 438.

⁶ OJ L 123, 12.5.2011, p. 11.

Commission Regulation (EU) No 1304/2014 of 26 November 2014 on the technical specification for interoperability relating to the subsystem 'rolling stock — noise' amending Decision 2008/232/EC and repealing Decision 2011/229/EU (TSI NOI)⁷

- Rolling stock- freight wagons

Commission Regulation (EU) No 321/2013 of 13 March 2013 concerning the technical specification for interoperability relating to the subsystem 'rolling stock — freight wagons' of the rail system in the European Union and repealing Decision 2006/861/EC, as amended (TSI WAG)⁸

2.2. Objective of the aid

(5) The Programme consists of five sub-programmes:

- Sub-programme 1: Implementation of the European Rail Transport Management System (ERTMS) and security subsystem.

The sub-programme aims at equipping railway vehicles with on-board ETCS and GSM-R units or upgrading already installed ETCS units to a newer version in line with the technical requirements of the infrastructure administrator for the relevant tracks.

Under the ERTMS National Implementation Plan over the next 6 years Level 2 ETCS will be installed on 1,359 km of transit corridor track. To secure the necessary functionality it is necessary to equip rail vehicles with ETCS on-board units. Approximately 900 rail vehicles will be equipped with ETCS by 2020.

- Sub-programme 2: Implementation of the railway carriage subsystem – locomotive units and railway passenger carriages – energy consumption measure.

The sub-programme aims at equipping railway locomotive units with a system for electrical energy consumption measurement. The aim is to equip all electric traction vehicles so that the benefits of energy measurement can be fully used to improve the energy efficiency of railway transport.

The system of charging by actual consumption is fairer and motivates operators to reduce energy demands and to make use of more modern and economical vehicles. It will lead to an overall improvement in energy efficiency in the sector and a reduction in operator costs for electricity with an impact on improved railway competitiveness and higher transport output using electrical traction on electrified tracks. It is necessary to equip vehicles with measuring equipment to secure the base information for billing actual traction electricity usage in railway transport. At the same

⁷ OJ L 356, 12.12.2014, p. 421.

⁸ OJ L 322, 3.12.2013, p. 23.

time it is a requirement on the part of the infrastructure manager to set up the necessary technological base.

- Sub-programme 3: Implementation of the railway carriage subsystem – locomotive and railway passenger carriages – adaptation to operation on 25 kV/50 Hz alternating current system.

The subprogram aims at modifying electric locomotive units equipped only for 3 kV direct current system to be able to operate also on the 25 kV / 50 Hz alternating current system. The alternating current system is more advantageous from the perspective of its technical properties and its investment demands and it is considered to be the target power system for the European railway network. The sub-programme facilitates modification of the vehicle park intended only for operation on the 3 kV direct current system that could otherwise hamper the decision of the infrastructure administrator on the transition to the 25 kV/50 Hz alternating current system.

- Sub-programme 4: Implementation of the telematics subsystem – telematics applications in freight transport and in passenger transport.

The sub-programme aims at implementing telematics applications in freight and passenger transport in line with current interoperability technical specifications.

The use of telematics applications securing sufficient high-quality information is an essential prerequisite for the proper functioning of the railway transport process, including the organisation of passenger and freight transport, further contributing to improved safety and flexibility of railway transport.

In freight transport it increases transport reliability and reduces costs for the transport chain, as well as improves movement monitoring for vehicles (operator's or other owner's property) and for goods being transported. For passenger transport this relates mainly to collaboration in ticketing and advising passengers, for different transport modes, with the aim of improving connections.

In freight transport several projects were implemented previously for meeting the TSI TAF requirements (upgrading information systems of freight operators, and implementation of certain project by Správa železniční dopravní cesty (SŽDC), the national railway infrastructure manager in the Czech Republic).

Under the sub-programme, in addition to a continuation of meeting the requirements under TSI TAF, projects relating to the requirements arising from TSI TAP will be implemented. This will involve, for example, the exchange of data during timetable development, tariff data, reservations, ticket printing, and assistance to disabled passengers. For this there is a need to arrange for the necessary information systems in line with the requirements defined in the current TSI TAF and TSI TAP.

- Sub-programme 5: Implementation of the rolling stock subsystem – freight wagons – meeting noise reduction requirements under the interoperability technical specifications for noise and freight wagon subsystems.

The sub-programme aims at reconstructing the braking equipment of freight wagons so as to meet the noise limits under current interoperability technical specifications.

In view of the longer lifetime of the railway vehicle park there are still many vehicles in operation which do not meet noise limits set in in TSI NOI and TSI WAG, and the sub-programme facilitates equipping freight wagons with non-metallic brakes instead of metallic brakes.

2.3. Beneficiaries

- (6) The beneficiaries of aid may be divided into two categories:
- The licensed railway transport undertakings (passenger and freight for sub-programmes 1-4, only freight for Sub-programme 5) that own or operate the rolling stock and owners of the rolling stock that are not railway undertakings.
 - SŽDC: a State organisation founded pursuant to Act No.77/2002 Coll., on Transformation of Czech Railways, state organization, and managing State property obliged by the law to ensure the operation, in the public interest, of the national and regional railways infrastructure owned by the State. SŽDC will be a beneficiary only for sub-programmes 1, 2 and 4.
- (7) Any discrimination on the basis of the nationality of the railway undertakings and/or vehicle owners is excluded. According to the Railways Act, any carrier may request access to the railways in the Czech Republic, as long as it holds a licence issued by a Member State of the European Union (see section 34a and 34d of the Railways Act). Aid may be granted to these licenced carriers who at the same time hold so-called Carriers Certificate in the sense of section 34h of the Railways Act (i.e. safety certificate under Art. 10 of Directive 2004/49/EC). Furthermore, under Section 71(1) and (3) of the Code of Administrative Procedure, the Rail Authority is obliged to register a vehicle without undue delay. Where this is not possible, it must do so no later than 30 days as of the initiation of the vehicle registration proceedings. In the experience of the Czech railway authorities applications to register a vehicle are approved within three working days on average. The registration process is free of charge.
- (8) All companies having registered offices, agencies, branches, organisational units or subsidiaries in the Czech Republic are eligible for aid under the scheme.
- (9) Sub-programme 1 is open to new rail vehicles. For new rolling stock, eligible expenditure will be set at the difference in price between rolling stock with and without on board ETSC units. Eligible expenditure for other rolling stock will be set at the sum of the price of the equipment plus the price of installing it in rolling stock. Only vehicles that are registered in the Czech national vehicle register following the procedure described in recital (7) at the time of the submission of

aid applications will be liable for aid, under sub-programmes 1, 2, 3 and 5. Sub-programme 4 concerns telematics applications and concerns rolling stock only indirectly. For sub-programme 1, the vehicle that is the subject of aid has to be registered in the national register after its approval for operation.

2.4. National legal basis

- (10) According to the Czech authorities the following forms the national legal basis: Act No 266/1994 on railways, as amended; Act No 218/2000 on budgetary rules and amending certain related acts (the budgetary rules), as amended; Government Decree No 133/2005 on technical requirements regarding the operational and technical interoperability of the European Railway System, as amended; Decree No 352/2004 on operational and technical interoperability of the European Railway System, as amended; Decree No 560/2006 on State budget financing of asset renewal programmes, as amended, Communication of the Ministry of Transport No 111/2004 on a list of railways included in the European Railway System; and Government Resolution No 558 of 9 June 2014 approving the draft Operational Programme for Transport 2014 – 2020.
- (11) After adoption of the Commission`s decision the Czech authorities will draft detailed rules governing the sub-programmes on the basis of the above national legislation. Individual calls are published for several sub-programmes separately or together. The conditions, duration and the amount of funds to be shared out (broken down by sub-programme) will be duly published on the contractor's website. The call will include detailed specifications of the required content of applications, which must be submitted to the contractor by the published deadline. Grant applications for projects will undergo a detailed assessment, the first stage of which will involve assessing whether it fulfils all conditions arising from the programme documentation and the call published. Applications that meet all of the requirements (i.e. eligible project applications) will proceed to the next stage of assessment and will be evaluated on the basis of predetermined criteria by an evaluation committee. If the aggregate amount of grants sought under eligible project applications exceeds the total amount of State aid allocated for that purpose under the call a ranking of eligible project applications will be established based on assessment criteria mentioned in section 2.8 of the decision. If the sum of grants sought under eligible project applications does not exceed this budget, all eligible project applications will be approved. Individual aid will be paid to the applicant on the basis of the grant decision.

2.5. Form of aid and eligible costs

- (12) The proposed aid takes the form of direct grants to eligible undertakings from the Ministry of Transport or, where relevant, the State Fund for Transport Infrastructure.
- (13) Eligible expenditure must be applied to the pre-determined purposes as stipulated in the aid granting decisions. The Czech authorities confirm that the proposed aid measure does not contain any elements of research, development and innovation aid within the meaning of the relevant frameworks and Regulations.

- (14) Eligible costs shall consist exclusively of capital investment projects aimed at achieving interoperability of railways within the meaning of TSI-s listed in recital 4 of the decision. The Czech authorities have confirmed that award of State aid in a form other than grants will not encourage the beneficiaries to make the required investments in accordance with each Sub-programme.
- (15) When applying for aid all beneficiaries shall indicate and submit documentation of the costs related to order and installation of the relevant equipment in each unit. As regards applications for support for new vehicles, the specific costs in the new vehicle shall be identified and documented.

2.6. Aid ceiling and aid intensity

- (16) There is no maximum compensation except for under sub-programme 5 where the maximum compensation of CZK 12 000 (approximately EUR 444) per modernised wagon applies. According to the Czech authorities this value is based on similar projects implemented abroad, and the aim of it is to limit any possible inefficient use of programme funds. The Czech authorities explain that differently from other sub-programmes there is a significant degree of standardisation in the area of freight wagons, and it can be assumed that unit costs for the conversion of wagons falls over time as the total number of the wagons increases.
- (17) The maximum aid intensity permitted under the scheme is as follows:
- 50% of eligible costs for sub-programme 1 in relation to the fitting-out of vehicles with GSM-R units and for sub-programmes 2 to 5;
 - 85% of eligible costs for sub-programme 1 in relation to ETCS on-board units. Such aid intensity is due to exceptionally high investment demands and the need to achieve the objectives set out in the ERTMS National Implementation Plan. This value is based on the anticipated costs for one vehicle, in excess of CZK 10 million (approximately EUR 370 000). The same value was applied for this area for the so-called Cohesion Call of the CEF facility;
 - 100% of eligible costs for sub-programmes 1, 2 and 4 if the beneficiary is SŽDC.

2.7. Budget and duration

- (18) The total financial volume of the aid is CZK 2.5 billion (approximately EUR 92 million), and annually CZK 500 million (approximately EUR 18 million), financed from the Cohesion Fund.
- (19) The Cohesion Fund funding is provided as a part of the 2014-2020 Operational Programme for Transport in the Czech Republic (OP), adopted by the Commission on 11 January 2015⁹. The main aim of the funding available under the OP is to promote sustainable transport modes and remove bottlenecks on key

⁹ See: http://ec.europa.eu/transport/infrastructure/tentec/tentec-portal/site/index_en.htm

network infrastructures in order to enable a competitive economy and adequate transport services. Furthermore, aid for investments related to railways infrastructure concern lines that form part of the Trans-European transport network¹⁰.

- (20) The table below shows the estimated allocations proposed for the individual sub-programmes as a result of the Czech authorities' consultations with potential beneficiaries. The Czech authorities state that the allocation may be changed in the future. The table distinguishes between SŽDC and other beneficiaries, with the latter category covering both owners and operators of rolling stock, as no breakdown is available of the allocation between these entities. The Czech authorities state that it emerged from the Ministry of Transport's consultations with potential beneficiaries that both owners and operators are equally interested in grants, so it is to be expected that the allocation in the column 'other' will be divided equally between owners and operators of rolling stock.

Sub-programme	SŽDC	Other	Total
Sub-programme 1 - ERTMS	CZK 500 million	CZK 678 million	CZK 1178 million
Sub-programme 2 - energy measuring system	CZK 15 million meters CZK 100 million on board metering devices	CZK 105 million rolling stock	CZK 220 million
Sub-programme 3 - enabling operation at 25 kV/50Hz		CZK 372 million	CZK 372 million
Sub-programme 4 - TAF and TAP telematic applications	CZK 200 million	CZK 350 million	CZK 550 million
Sub-programme 5 - meeting noise requirements		CZK 180 million	CZK 180 million

- (21) Resources under the programme may be switched between sub-programmes depending on actual interest.

¹⁰ Communication of the Ministry of Transport No 111/2004 on a list of railways included in the European Railway System.

- (22) The duration of the measure is 5 years (1 January 2017 – 31 December 2021), or from the date of the Commission's approval of the program. The Czech authorities have committed not to put the program in place before the Commission had adopted a decision.

2.8. Evaluation criteria

- (23) Basic evaluation criteria applicable in the assessment of the project applications are the following:
- (24) Sub-programmes 1, 2 and 3:
- the period from manufacturing or substantial vehicle modernisation (shorter period – higher valuation).
 - total annual mileage of a vehicle on tracks run by SŽDC in the last 2 calendar years before submission of aid application, the greater the mileage covered by rolling stock on SŽDC lines, the higher the score awarded to the applicant.
- (25) Sub-programme 4:
- the number of reports implemented under TAF-TSI during a definite defined period in the past;
 - the number of journeys by trains able to transmit reports under TAF-TSI following system commissioning;
 - the number of reports implemented under TAP-TSI during a definite defined period in the past;
 - the number of journeys by trains able to transmit reports under TAP-TSI following system commissioning;
 - software / hardware installation at applicant.
- (26) Sub-programme 5:
- total annual mileage of a vehicle on tracks run by SŽDC in the last 2 calendar years before submission of aid application;
 - the applicant's assumed annual mileage of a vehicle on tracks run by SŽDC during the 2 years following grant provision.

2.9. Other conditions for granting the aid

- (27) Aid shall not be granted to beneficiaries that have not settled all of their liabilities towards the State Budget or health insurance companies (as of 31 December of the previous year). The term 'liabilities towards the State Budget' means any liabilities towards the Tax, Customs and Social Securities Authorities.
- (28) If the beneficiary is the owner of the rolling stock assets acquired with State participation shall neither be transferred to any other owner, nor pledged for the term

of five years. If the beneficiary is an operator it may not for a period of 5 years from the issue of aid granting decision allow the supported vehicle to be operated by another entity.

- (29) The application of the aid shall be bound to a special purpose and its binding parameters, deadlines, and the drawdown conditions represent an integral part of the relevant issued aid granting decision.
- (30) The selection of the supplier of the job shall be performed in keeping with Act No. 137/2006 Coll., on public contracts, as amended in case of subsidised or sector contractor, or otherwise in accordance with the Methodological Instructions for Awarding Contracts for the programme period 2014-2020.
- (31) The aid shall be drawn down within the deadline as stipulated by the granting authority.
- (32) The aid shall be accounted for within the relevant year, in keeping with the instruction of the Ministry of Finance applicable to accounting for funds from the State Budget. The aid granted to the beneficiary shall not be transferred to any other commercial entities and any unused aid shall not be transferred by this beneficiary to the next year.
- (33) Aid shall not be granted to an entity in any of the following circumstances: (i) formal insolvency proceedings have been opened against it; (ii) it is in liquidation; or (iii) it is subject to execution ordered pursuant to a judgement or other enforceable title.
- (34) Aid relating to capital investments cannot be cumulated with any other aid under any local, regional or national projects or Community projects covering any identical eligible costs.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid within the meaning of Article 107(1) TFEU

- (35) According 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 provision of certain goods shall be incompatible with the common market, in so far as it affects trade between Member States, save as otherwise provided for in the TFEU.
- (36) State resources: the measure envisaged establishes that the beneficiaries will receive a contribution from the authorities of the Czech Republic, 100% of which should be covered from the Cohesion Fund. The resources of the Cohesion Fund which are transferred to the national budget and the budget of the regions before being paid to beneficiaries are considered to be at the disposal of the Czech Republic. Moreover, the decision of the Czech authorities to co-finance the investment from their own budgetary resources constitutes a transfer of State resources. The Commission therefore concludes that the measure implies the use of state resources.

- (37) Selective economic advantage: the measure reduces the costs that the beneficiaries would have normally to bear. In addition, the measure only concerns the railway sector. The Commission therefore concludes that the measure favours certain undertakings.

3.1.1. Railway transport undertakings and vehicle owners

- (38) Distortion of competition and affectation of trade between Member States. When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid¹¹. It is sufficient that the recipient of the aid competes with other undertakings on markets open to competition¹². In the present case, the notified measure strengthens the position of the beneficiary undertaking in relation to other undertakings active in intra-Union trade.
- (39) In that regard, the fact that an economic sector has been liberalised at Union level is an element which may serve to determine that the aid has a real or potential effect on competition and on trade between Member States¹³. In fact, 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 railways¹⁴ has liberalised the international rail freight transport as from 1.1.2006 and all other rail freight transport services as from 1 January 2007.
- (40) In addition, it is not necessary that the beneficiary undertaking itself be involved in intra-Union trade. Aid granted by a Member State to an undertaking may help to maintain or increase domestic activity, with the result that undertakings established in other Member States have less chance of penetrating the market of the Member State concerned¹⁵. Furthermore, the strengthening of an undertaking which, until then, was not involved in intra-Union trade may place that undertaking in a position which enables it to penetrate the market of another Member State.
- (41) The Commission therefore concludes that the measure at stake affects trade between Member States and distorts competition as regards railways transport undertakings.

¹¹ See, in particular, Case 730/79 Philip Morris v Commission [1980] ECR 2671, paragraph 11; Case C-53/00 Ferring [2001] ECR I-9067, paragraph 21; and Case C-372/97 Italy v Commission, [2004] ECR I-3679, paragraph 44.

¹² Case T-214/95 Het Vlaamse Gewest v Commission [1998] ECR II-717.

¹³ See Case C-409/00 Spain v Commission [2003] ECR I-1487, paragraph 75.

¹⁴ OJ L 164 of 30.4.2004, p.164.

¹⁵ See, to that effect, in particular, Case C-310/99 Italy v Commission [2002] ECR I-2289, paragraph 84.

3.1.2. Railway infrastructure undertakings

- (42) SŽDC operates as the manager of the monopoly railway infrastructure in the Czech Republic. Moreover, SŽDC fulfils the functions of a rail infrastructure owner, providing operation, operability, path capacity allocation, modernization and development of the Czech railway infrastructure.
- (43) The funding made available to SŽDC may be used only for purposes that are directly related to the management and operation of the Czech Republic's main rail infrastructure network and cannot benefit other activities. The Commission in its decision of 2 May 2013 related to interoperability scheme in Czech Republic concluded that, since the market for operating and managing the national rail network has been effectively closed to competition, the notified measure as regards SŽDC excludes a possible distortion of competition¹⁶.
- (44) The situation has not changed as regards the status and activities of SŽDC and therefore, as regards SŽDC, the notified measure does not constitute aid within the meaning of Article 107(1) TFEU.

3.1.3. Conclusion as regards the existence of the aid

- (45) The Commission finds that the notified aid scheme involves aid within the meaning of Article 107(1) TFEU, except for the railway infrastructure manager SŽDC.

3.2. Legal basis for the assessment

- (46) Article 93 TFEU provides that “*aids shall be compatible with the Treaties if they meet the needs of coordination of transport [...]*”.
- (47) After the entry into force of Regulation (EC) No 1370/2007¹⁷, 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 of the Communication from the Commission "Community guidelines on State aid for railway undertakings" (the Railway Guidelines¹⁸)). 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.
- (48) 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.

¹⁶ See Commission decision of 2 May 2013, SA.35948 (SA.2012/N) Czech Republic, Prolongation of the interoperability scheme in railway transport, OJ C 306 of 22.10.2013, p 4, paragraphs 14 and 22.

¹⁷ 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.

¹⁸ OJ C 184 of 22.7.2008, p. 13.

- (49) 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.
- (50) 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.
- (51) 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 vehicles 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 lay-out of the Railway Guidelines below, unless otherwise noted.

3.3. Compatibility of the aid

3.3.1. Objective of common interest

- (52) The objective of the aid scheme is to develop interoperability in railway transport in the Czech Republic. The European Union pursues a policy aiming at improving conditions for better competitiveness and broader usage of railway transport and a progressive getting over the differences throughout the European Union for railways quality and reliability. This aim is also stipulated in the 2014-2020 Operational Programme for Transport in the Czech Republic, dedicated for the improvement of transport infrastructures across the country¹⁹. The aid measure aims at ensuring interoperability on important railway lines, including those that are part of the Trans-European networks, in all sub-systems pursuant to the TSIs listed in recital 4 of the decision.
- (53) The aid will have the effect of encouraging the modal shift to rail as one of the fundamental goals of the proposed measure is the strengthening of competitiveness of railway transport against road transport. The Commission recalls that no railway system can be fully competitive unless all matters relating to the removal of technical barriers to trade in trains and to their interoperability

¹⁹ See: http://ec.europa.eu/regional_policy/en/atlas/programmes/2014-2020/czech-republic/2014cz16m1op001

are resolved first²⁰. In addition, the aid will at least partially reduce the additional costs incurred by railway transport in an effort for ensuring interoperable systems. In addition, the introduction of interoperability criteria will have a direct impact on the actual liberalisation of the railways market, which is sometimes prevented by both technical and operational obstacles resulting from incompatible railway networks. The existing obstacles work to the benefit of the railway carriers established in the territory of the Czech Republic and prevent the entry to the market by new operators. More equal conditions will be created in the transport market for all kinds of transports, thus supporting competitiveness of the railway transport against road transport, which represents one of the major long-term goals of the European Commission in the area of transport²¹. Finally, the technical and operational interconnection of the railway networks in the Czech Republic and its neighbouring countries represents an indispensable condition for achieving the growth potentials in the long-distance transport category²². It results that the aid will have the effect of encouraging the modal shift to rail and, by favouring competition, lead to a reduction of the price demanded from the passenger or the shipper within the meaning of paragraph 110 of the Railway Guidelines.

- (54) The Commission therefore concludes that aid granted for achieving interoperability in the relevant subsystems according to the relevant TSI-s contributes to an objective of common interest and that such aid is an appropriate means of achieving this objective.

²⁰ White Paper European transport policy for 2010: time to decide. COM (2001) 370, of 12.9.2001, p 30

²¹ See in particular recitals 2 and 5 of Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (Recast) (2) *"In order to enable citizens of the Union, economic operators and regional and local authorities to benefit to the full from the advantages deriving from the establishing of an area without internal frontiers, it is appropriate, in particular, to improve the interlinking and interoperability of the national rail networks as well as access thereto, implementing any measures that may prove necessary in the field of technical standardisation, as provided for in Article 155 of the Treaty."* (5) *"The commercial operation of trains throughout the rail network requires in particular excellent compatibility between the characteristics of the infrastructure and those of the vehicles, as well as efficient interconnection of the information and communication systems of the different infrastructure managers and railway undertakings. Performance levels, safety, quality of service and cost depend upon such compatibility and interconnection, as does, in particular, the interoperability of the rail system."*

²² See in particular recitals 7 and 8 of Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (Recast) (7) *"There are major differences between the national regulations and between internal rules and technical specifications which the railways apply, since they incorporate techniques that are specific to the national industries and prescribe specific dimensions and devices and special characteristics. This situation prevents trains from being able to run without hindrance throughout the Community network"*. (8) *"Over the years, this situation has created very close links between the national railway industries and the national railways, to the detriment of the genuine opening-up of markets. In order to enhance their competitiveness at world level, these industries require an open, competitive European market"*.

3.3.2. *Other conditions*

- (55) 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.
- (56) 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.
- (57) Under the notified measure, the eligible investment costs are investment costs for particular equipment.
- (58) Since the maximum aid intensity under the notified sub-programmes (except sub-programme 1 in relation to ETCS) 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.
- (59) The maximum aid intensity permitted under the scheme is as 50% of eligible costs for sub-programme 1 in relation to the fitting-out of vehicles with GSM-R units and for Sub-programmes 2 to 5 and the aid cannot under any sub-programme 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 as regards these Sub-programmes.
- (60) Under sub-programme 1 in relation to ETCS on-board units the maximum aid intensity permitted under the scheme 85% of eligible costs. According to point 108 of the Railway Guidelines for aid above 50% aid intensity threshold for interoperability aid the Member States must demonstrate the need and proportionality of the measures in question. According to footnote 8 of the Railway Guidelines, this could be the case with interoperability measures on the trans-European transport network.
- (61) Sub-programme 1 concerns investments that are to be used, among others, on railway routes that are part of the trans-European network. In addition, the Czech authorities have explained that that higher aid intensity is due to exceptionally high investment demands and the need to achieve the objectives set out in the ERTMS National Implementation Plan. This value is based on the anticipated costs for one vehicle, of in excess of CZK 10 million (approximately EUR 370 thousand). The same value was applied for this area for the so-called Cohesion Call of the CEF facility.
- (62) Taking into account the above the notified measure is considered to be necessary and proportionate in accordance with points 107(c) and 108 of the Railway Guidelines also as regards aid for ETCS on-board units under sub-programme 1.

- (63) The Czech authorities have further confirmed that all wagon owners whose wagons operate in the Czech Republic will be able to benefit from the same treatment and thus that the aid is granted on non-discriminatory terms.
- (64) As explained in recital (8), beneficiaries may only be entities with its headquarters, branch office or an organisational unit in the Czech Republic. In this regard, applicants do not have to be predominantly established in the Czech Republic, a secondary establishment is enough.
- (65) Therefore, the Commission concludes that the aid scheme is necessary and proportionate to the intended objective to ensure interoperability in the relevant subsystems according to the TSI-s listed in recital (4) and that a possible distortion of competition which is inherent in the aid scheme does not jeopardise the general interest of the Union.
- (66) 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 Czech authorities to the Commission covers a five-year period only and that the Czech 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.

4. CONCLUSION

- (67) The Commission finds that the measure regarding the railway infrastructure manager SŽDC does not constitute aid and, for the rest, has decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 93 of the Treaty on the Functioning of the European Union.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission
Margrethe VESTAGER
Member of the Commission