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Subject: **State Aid SA.46720 – Germany - Guidelines on the construction, extension and reactivation of private railway sidings (*Richtlinie zur Förderung des Neu- und Ausbaus sowie der Reaktivierung von privaten Gleisanschlüssen*)**

Sir,

1. PROCEDURE

- (1) By electronic notification registered on 27 October 2016, the German authorities notified to the Commission the re-introduction and the amendment of the aid scheme *Richtlinie zur Förderung des Neu- und Ausbaus sowie der Reaktivierung von privaten Gleisanschlüssen* (Guidelines on the construction, extension and reactivation of private railway sidings), first approved by the Commission on 6 October 2004 (N 170/2004)¹, with subsequent prolongations approved by the Commission on 10 September 2009 (N 184/2009)² and on 27 November 2012 (SA. 35363 (2012/N))³.

¹ Commission decision in state aid case N 170/2004 of 6.10.2004, OJ C 125 of 24.5.2005, p. 7.

² Commission decision in state aid case N 184/2009 of 10.9.2009, OJ C 246 of 14.10.2009, p. 4.

³ Commission decision in State aid case SA.35363 of 27 November 2012,
http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_35363

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2. DESCRIPTION OF THE MEASURE

2.1. Objective of the aid measure

- (2) The German authorities intend to promote a modal shift from road to rail by developing rail freight transport, in particular by supporting the development of private connecting railways (“railway sidings”). The investments into the construction, extension and reactivation of private railway sidings are expected to restore competition between road and rail transport, increase environmental protection and improve transport safety.

2.2. Legal basis

- (3) The legal basis for the scheme is the General Administrative Regulations (VV-BHO), adopted according to paragraphs 23 and 44 of the Federal Budget Code (BHO).
- (4) The scheme is administered by the Federal Agency for Rail (Eisenbahn Bundesamt, EBA).

2.3. Duration and budget of the notified scheme

- (5) The present scheme is a re-introduction from 1 January 2017 to 31 December 2020 of the scheme authorised by the Commission on 27 November 2012 (SA. 35363 (2012/N)) and which expired on 31 August 2016⁴.
- (6) The total budget of the scheme is € 56 million, with an annual budget of € 14 million. The German authorities committed not to pay out any aid before the re-introduction of the scheme has been approved by the Commission.

2.4. Beneficiaries

- (7) Beneficiaries are private companies. Federal railway infrastructure companies (*Eisenbahninfrastrukturunternehmen des Bundes*) and companies in insolvency may not benefit from the scheme. The beneficiaries of the scheme are the owners of railway sidings who are also responsible for their organisation and operation. The railway siding must be connected directly or indirectly to the network of a public rail infrastructure company. The scheme applies to all business sectors (e.g. commerce, small businesses and industry). Around 72 beneficiaries are expected under the scheme in the funding period.

2.5. Form of aid and aid intensity

- (8) The aid is granted in the form of direct grant.
- (9) The aid can be up to 50 % of the eligible investment costs in respect of the construction of new connecting railway sidings and the extension or reactivation of existing connecting railway sidings as well as for loading and unloading equipment. In addition to sidings, aid for the acquisition of equipment not exclusively related to transshipment of rail freight wagons is available in proportion to its use with sidings, with a maximum aid intensity of 30 % of the cost of that equipment.

⁴ The scheme had been previously approved on 6 October 2004 under N 170/2004.

- (10) In order to ensure efficient funding, the aid must not be disproportional to the additional rail freight transport volume achieved. To this end, when awarding grants, maximum aid amounts are laid down up to € 8 per tonne of rail freight transported per year or up to € 32 per 1000 tonne-kilometres of rail freight transport performance per year.

2.6. Eligible costs

- (11) The eligible costs as in the predecessor scheme encompass railway tracks, site clearance, civil engineering, earthworks, overhead line and signalling equipment, loading and unloading equipment, other plants equipment - on the basis of special justification in individual cases -, and accompanying measures in the case of new construction and major extensions (environmental protection, landscaping, rainwater reservoir)⁵. Planning costs can be included up to 10% of the total eligible costs.

2.7. Cumulation

- (12) In case of cumulation with national or European Union subsidies the maximum aid intensity allowed under this scheme will be respected.

2.8. Evaluation of the scheme

- (13) The Federal Ministry of Transport and Digital Infrastructure commissioned the evaluation of the scheme. The evaluation report dating from 5 August 2016 analysed the effects of the aid scheme since 2005. It also presented a forecast on further development of rail freight transport until 2030.
- (14) The evaluation of the scheme suggests that the objectives pursued in recent years have been achieved to a large extent. The scheme contributes to the modal shift from road to rail, and by that also to reduce CO₂ emissions and other air pollutants.
- (15) As transport of goods will further grow in the coming years, it is necessary to increase efficiency of the entire transport system and to improve the interaction between all modes of transport. Significant capacity increases of the overall system and the strengthening of combined transport is to be achieved. The evaluation report shows that rail freight transport will also further grow, and within that certain structural changes will take place. Besides the traditional goods, also an increase in the transport of light goods⁶ is expected. Therefore, the German authorities consider that is necessary to continue with the scheme to increase the number of private sidings.
- (16) The German authorities plan to carry out another evaluation of the scheme before its expiry, in order to assess its effects and to determine whether the continuation of funding under the scheme remains necessary.

⁵ For the list of eligible costs, see table under paragraph 26 of N 170/2004.

⁶ An exhaustive definition of light or lighter goods does not exist. With the term light goods the German authorities refer to goods - which by making full use of the load compartment of a transport mean - do not reach the maximum permissible total weight.

2.9. Amendment of the predecessor aid scheme

- (17) Taking into account the results of the evaluation report, in order to enhance the efficiency of the funding, certain modifications have been introduced compared to the predecessor scheme:
- (a) The general objective of the scheme remains the same, i.e. to promote a modal shift for freight transport from road to rail. In addition, a specific objective will be included in the scheme, which is to avoid with each million euro of aid granted 31 000 truck journeys.
 - (b) The funding rate was set in proportion to the targeted additional rail freight transport volume to € 8 per tonne or to € 32 per 1000 tonne-kilometres of rail freight transport performance per year. With the amendment the scheme will also cover tonne-kilometres performed on foreign European sections. Such distances will be taken into account with 50% weight when calculating the aid. This enhancement of the measure should allow aid also for such sidings, where a significant part of the transport is performed outside of Germany, and where therefore no aid could be granted under the previous scheme, because the calculations solely on the basis of the German transport distance did not justify it economically. The German authorities consider the transport of goods across the borders to provide benefits (also in terms of CO2 reduction).
 - (c) When including freight transport also of light goods, the funding rate calculation needs to be adjusted. Therefore, in addition to the existing calculation basis and the amendment raised in the point above, the following limits for the funding rate calculations have been introduced for light goods: EUR 220 per wagon of rail freight transported (Transportaufkommen) and EUR 90 for 100 wagon-kilometres of rail freight transport performance (Transportleistung). For light goods evidence regarding the number of freight wagons or freight wagon-kilometre is to be provided⁷.
 - (d) The scheme requires the beneficiary to secure its potential repayment obligations. In this respect according to the predecessor scheme a bank guarantee or an equivalent guarantee of repayment were the only options for the beneficiaries. The revised version of the scheme introduces an additional possibility by allowing the beneficiary to secure the grant on the basis of its land (Grundschuld).
- (18) The other conditions of the predecessor aid scheme remain the same.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of State aid

- (19) The Commission established in its decision authorising the predecessor scheme and in its subsequent prolongations in cases N 184/2009 and SA.35363 that the

⁷ As under the previous scheme, the beneficiary must provide evidence that it has reached the required new or extended quantity of freight/freight distance when using the railway siding. The period for which this proof must be provided is maximum ten years. During this period, the beneficiary must demonstrate that during five selected years it has reached the required transport volumes.

measure constitutes State aid. The reasons set out in those decisions remain valid for the notified measure, thus the re-introduced scheme also constitutes State aid.

3.2. Legality of the aid

- (20) By notifying the awarding of the aid subject to Commission approval before putting the re-introduction of the scheme and the amendment described in paragraph (17) into effect, the German authorities have respected their obligations under Article 108(3) TFEU.

3.3. Compatibility of the aid measures with the internal market

- (21) The Commission considers that the measure at hand can be assessed on the basis of Article 93 TFEU that provides for aid for the coordination of transport to be declared compatible with the internal market. The notified measure concerns a re-introduction of an aid scheme which has been previously authorised by the Commission. The modifications introduced compared to the scheme authorised last time by the Commission in its decision of 27 November 2012 do not affect the evaluation of the compatibility of the aid measure with the internal market and the previous compatibility reasoning remains valid.
- (22) Since the entry into force of Regulation (EC) 1370/2007⁸, Article 93 of the Treaty on the Functioning of the European Union (“TFEU”) has become 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.
- (23) Article 93 TFEU states that aid which meets the needs of coordination of transport is compatible with the Treaties. The term ‘coordination of transport’ used in that provision has a significance which goes beyond simply facilitating the development of an economic activity. It encompasses intervention by public authorities aimed at guiding the development of the transport sector in the common interest. The CJEU has ruled that this Article ‘acknowledges that aid to transport is compatible with the Treaty only in well-defined cases which do not jeopardise the general interests of the Community’⁹.
- (24) The progress made with liberalising the land transport sector has in some respects considerably reduced the need for coordination. In an efficient liberalised sector, coordination can in principle result from the action of market forces. Even after the liberalisation of the sector, there may, however, still be various market failures. These justify the intervention of the public authorities in this field.
- (25) The present scheme aims at promoting a modal shift from road transport to rail transport, which is a recognised objective of coordination of transport¹⁰.

⁸ Regulation (EC) No 1370/2007 of the European 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, 3.12.2007, p. 1.

⁹ Judgement of the Court of Justice of 12 October 1978, Case 156/77 Commission v Belgium [1978] ECR 1881, paragraph 10.

¹⁰ See decision of the Commission of 9.11.2011 in case SA.32632 (2011/N) ETGE, OJ C 82, 21.3.2012, p.2.; decision of the Commission of 15.6.2011 in case SA.32224 – Netherlands - Development of the Alblasserdam Container Transferium, C 215, 21.7.2011, p. 22.

- (26) According to a constant decisional practice, aid for the coordination of transport will be deemed compatible with the internal market under Article 93 TFEU if the following conditions are met:
- The aid must contribute to a well-defined objective of common interest;
 - The aid must be necessary and provide an incentive effect;
 - The aid must be proportionate;
 - Access to the aid in question must be open to all users on a non-discriminatory basis; and
 - The aid must not lead to distortions of competition contrary to the common interest.
- (27) It is therefore appropriate to assess whether these criteria are met in the present case, so that the aid can be authorized on the basis of Article 93 TFEU.

3.3.1. Objective of common interest

- (28) The explicit purpose of the measure is to promote and develop the use of rail transport and to achieve a modal shift from road to rail transport for freight transport. In its Communication "A European Economic Recovery Plan", the Commission noted¹¹ the need to accelerate investments in infrastructure, particularly in environmentally-friendly modes of transport such as rail.
- (29) The White Paper on Transport Policy 2011 encourages the use of rail and other environmentally friendly modes of transport as competitive alternatives to road haulage¹². The Commission states that a certain percentage of road freight should shift to other modes such as rail or waterborne transport.
- (30) The Commission further acknowledges in its White Paper on Transport Policy that rail freight is of great importance in developing a modern transport system which can offer quality service. However, the Commission notes that considerable investment is needed in order to expand or upgrade the capacity of the rail network.
- (31) The Commission recognises that it is in the first place the task of market operators to improve rail transport within markets to which access is free and where the rules of free competition and supply and demand prevail. However, to fully unleash the potential of rail transport, the willingness to take risks inherent in switching from road to alternative modes of transport may need to be stimulated.
- (32) The German authorities submitted an evaluation of the predecessor scheme, which showed that in the evaluated period (2005-2015) around 2.5 million transports by truck have been shifted away from road to rail transport. The scheme's effect was a modal shift from road to rail transport of 55 million tonnes. This allowed avoiding 1.3 million tonnes of carbon dioxide in the evaluated period.

¹¹ COM (2008) 800 final of 26.11.2008

¹² Roadmap to a Single European Transport Area—Towards a competitive and resource efficient transport system, COM(2011)144 of 28.03.11

- (33) The Commission concludes that the German scheme, which pursues an objective of encouraging the development of rail transport and of activities that contribute to reduce air pollution and road congestion, is therefore in the common interest.

3.3.2. *Necessity and proportionality of the aid*

- (34) For a given aid measure to be considered to ‘meet the needs’ of transport coordination, it must be necessary and proportionate to the intended objective. The present measure offers aid only in relation to investments related to private railway sidings. The costs for the construction, extension or reactivation of railway sidings, which undertakings using road transport do not need to bear, can prevent the desired modal shift to rail transport from occurring so that market forces alone are not sufficient to bring about such a shift. As regards the aid for the acquisition of equipment not exclusively related to transshipment of rail freight wagons, such aid is limited in proportion to its use with sidings, thus ensuring the smooth functioning of rail transport by enhancing its competitive position vis-à-vis road transport. The measure is also aimed at industrial and commercial undertakings producing and shipping their goods; federal railway infrastructure undertakings are not eligible under the measure. The measure has the effect of encouraging the modal shift from road to rail.
- (35) As regards the maximum aid intensities of 50 % of eligible investment costs and 30 % for the eligible equipment costs, the Commission notes that the same aid intensity for the predecessor scheme and similar aid intensities for other measures have been considered as necessary and proportionate to the intended objective of encouraging a modal shift to rail transport¹³.
- (36) The Commission further notes that aid is only available if the funding of the siding through private capital alone will not be profitable, potential beneficiaries bear at least 50% of the total investment costs and undertake to carry an agreed volume of goods on the siding over a certain period of time, in default of which a proportion or all of the aid may be recovered. The aid scheme lays down maximum amounts of aid per tonne of rail freight transported per year or per 1000 tonne-kilometres of rail freight transport performance per year for traditional goods. The amendment introduces an additional, similar mechanism for the calculation of the funding rate of light goods, which sets a maximum amount for light goods per wagon transported and per 100 wagon-kilometres of rail freight transport performance.

¹³ For infrastructure: Decision of the Commission of 19.09.2012 in case SA.34985 – Austria - Programme for supporting the development of connecting railways and transfer terminals 2013 – 2018, ex N 196/2006: “Intermodal Transfer Guidelines” and N 707/2006: “Guidelines on the development of private connecting railways”, OJ C 43, 15.02.2013, p.21; Commission decision of 11 December 2008, N 651/2008 – Belgium - Financiering van een terminal voor het intermodaal vervoer van continentale Containers, OJ C 60 of 14.3.2009, p. 4; Commission decision of 21 November 2008, N 352/2008 - Belgium - Aid scheme for modes of transport alternative to road transport, OJ C 7 of 13.1.2009, p. 1; Commission decision of 12 November 2008, N 195/2008 – Poland - Investment aid in combined transport in the frame of Regional Operational Programmes, OJ C 329, of 24.12.2009, p. 3; For equipment: Commission decision of 13.1.2009, N 415/2008, Austria, Special Guidelines for the Programme of Aid for Innovative Combined Transport, OJ C 53 of 6.3.2009, p 2; Commission decision of 21 November 2008, N 352/2008 – Belgium- Aid scheme for modes of transport alternative to road transport, OJ C 7 of 13.1.2009, p.1; Commission decision of 12 November 2008, N 195/2008 – Poland – Investment aid in combined transport in the frame of Regional Operational Programmes, OJ C 329, of 24.12.2009, p. 3; Commission decision of 02 July 2008, N 651/2007 – France – Prolongation et actualisation du Plan d’aide aux transporteurs de marchandises par voies navigables (N 38/2004) pour la période 2008-2012, OJ C 216/2008 of 23.08.08; Commission decision of 12 September 2007; N 76/07 – Austria – Verlängerung des ERP-Verkehrsprogramms, OJ C 282 of 24.11.2007.

The beneficiary takes an important financial risk, which ensures an engagement on the part of the private partner in the success of the project. Moreover, this condition ensures that the aid may only be retained if the beneficiary indeed continues or starts using rail transport. Therefore, the Commission considers that the aid will be kept to the minimum necessary and is thus proportionate.

3.3.3. *Non-discriminatory access*

- (37) The Commission notes that access to the notified aid measure is open to any private company. Moreover, the broad eligibility criteria allow a large number of undertakings within the logistic chain to benefit from aid under the scheme. Therefore, the aid is granted on non-discriminatory terms.

3.3.4. *Distortions of competition contrary to the common interest*

- (38) The objective of the measure is to reduce imbalances between rail transport and road transport. The Commission considers that in pursuing that objective the aid does not lead to distortions of competition to an extent contrary to the common interest and that the measure concerning the coordination of transport through the use of railway sidings should be considered compatible under Article 93 TFEU.

3.3.5. *Conclusions on the compatibility*

- (39) In light of the foregoing considerations, the Commission concludes that the aid scheme meets the needs of coordination of transport and that it is therefore compatible with the internal market in accordance with Article 93 TFEU.

4. CONCLUSION

- (40) The Commission has accordingly 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.

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Your request should be sent electronically to the following address:

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Yours faithfully
For the Commission

Margrethe VESTAGER
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