



Brussels, 13.12.2017
C(2017) 8846 final

PUBLIC VERSION

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**Subject: State aid SA.48972 (2017/N) – Germany –
Prolongation of the Funding Guidelines for noise reduction measures
on freight wagons**

Sir,

1. PROCEDURE

- (1) On 22 August 2017, the German authorities notified to the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (TFEU), their intention to prolong an existing aid scheme which aims at better protection of residents living adjacent to existing rail track from noise caused by freight wagons. The Commission has approved the existing scheme on 19 December 2012 ("the 2012 Decision")¹.
- (2) By letter dated 26 October 2017, the Commission requested the agreement of the German authorities to an extension of the original period of two months within which the Commission is required to adopt a decision on the case. By letter dated 30 October 2017, the German authorities agreed to the Commission's request.

2. DESCRIPTION OF THE MEASURE

2.1. Main features and objective of the aid measure

- (3) The measure covers a State aid scheme of the German Federal Government supporting the retrofitting of existing railway freight wagons with less noisy,

¹ Commission Decision of 19.12.2012 in State aid case SA.34156, OJ C 43 of 15.02.2013, p. 12.

Seiner Exzellenz Herrn Sigmar GABRIEL
Bundesminister des Auswärtigen
Werderscher Markt 1
D - 10117 Berlin

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) On 19 December 2012, the scheme was approved for five years (i.e. from 9 December 2012 until 8 December 2017). The notification being the subject of this assessment concerns the prolongation of the scheme for three additional years, i.e. until the end of the network timetable 2019/2020 in December 2020 (with the last payments foreseen in 2021).
- (5) A detailed description of the scheme's objective is set out in recitals (3) to (6) of the 2012 Decision. This objective remains unaltered.

2.2. Form of the aid, eligible costs and aid intensity

- (6) The aid takes the form of a non-refundable grant from the Federal budget. The grant is mileage-differentiated and its amount depends on a retrofitted wagon's mileage in Germany. The wagon owners are allowed to apply for a grant every year for the duration of the scheme by providing data on the wagons' mileage in a given year. The sum of annual grants for a wagon is paid to the wagon owner every consecutive year until reaching a limit equal to 50% of the eligible investment costs.
- (7) A detailed description of the eligible costs and aid intensity is provided in recitals (7) to (10) of the 2012 Decision.

2.3. Beneficiaries

- (8) 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 Federal Railway Authority (EBA);
 - operate their retrofitted wagons on the tracks of the State infrastructure operator in Germany within the scope of the General Railway Act (*Allgemeines Eisenbahngesetz*);
 - apply for the grant.

2.4. Budget and Duration

- (9) The duration of the scheme covers in total a period of 8 years, from December 2012 to December 2020, with payments from 2013 to 2021. This notification covers the last three years of the scheme's duration.
- (10) It was planned that in the whole period of 8 years, no more than EUR 152 million would be disbursed under the scheme. Out of this total amount EUR 109 million have not yet been disbursed and this is the budget of the scheme for the last three years of its duration.

- (11) It is expected that together with the aid committed for the previous five-year period, to be paid in 2017 and 2018, the aid disbursement under the scheme will be as follows: EUR15 million in 2017, EUR 24 million in 2018, EUR 32 million in 2019, EUR 38 million in 2020 and EUR 39 million in 2021.

2.5. Procedure and control measures

- (12) A detailed description of the procedure and the control measures is provided in recitals (14) to (19) of the 2012 Decision. This description is still valid apart from the description of the entity responsible for the implementation of the scheme.
- (13) The only amendment compared to the 2012 Decision relates to the authority responsible for the implementation of the scheme (see recital (14) of the 2012 Decision): instead of DB Netz AG, the Federal Railway Authority (EBA) will be tasked with the practical implementation of the scheme and thus is appointed as the awarding authority. Consequently, the retrofitting register referred to in recital (16) of the 2012 Decision was established at the Federal Railway Authority.

2.6. National Legal basis

- (14) The legal basis for the scheme has been amended to implement the replacement of DB Netz AG by the Federal Railway Authority (EBA) as the entity responsible for the implementation of the scheme.
- (15) The current national legal basis for the scheme are *the Guidelines 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 (TPS funding guidelines of 17 October 2013*²).

2.7. Cumulation

- (16) Aid shall not be cumulated with aid received from other local, regional, national or Union schemes to cover the same eligible expenses³.

2.8. Commitments

- (17) Germany confirms that no aid will be granted to companies in difficulties and to companies with outstanding recovery orders.

2.9. Evaluation

- (18) The German authorities' objective at the outset of the scheme was to retrofit with composite brake blocks more than 80% of the approximately 180 000 freight wagons operating on the tracks of the State infrastructure operator in Germany.
- (19) At present, there are about 163 000 freight wagons operated by 45 companies from nine countries in the EBA's retrofitting register. This represents over 90% of all freight wagons operated on the tracks of the State infrastructure operator in

² Published in Transport Gazette 2013, p. 1030 et seq.

³ Resources under EU programmes that are not considered to be State aid fall outside the rules on cumulation.

Germany and shows the degree of interest in this aid instrument on the part of wagon owners.

- (20) The current programme has shown that retrofitting is not distributed evenly over the funding period, but is concentrated in the second half. The retrofitting plans of wagon owners show that the number of retrofits has increased sharply over the course of the programme and will reach its highpoint in the second half of the period (2017-2020) now being assessed.
- (21) Given that funding applications for retrofitting over 163 000 freight wagons have already been submitted and decided on, it can be assumed that almost all freight wagons have been registered for retrofitting. The purpose of extending the Funding Guidelines is therefore not so much to approve new applications, but to grant the subsidies agreed and thus comply with the aid commitments already made by the German Federal Ministry of Transport and Digital Infrastructure.

3. ASSESSMENT OF THE MEASURE

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

- (22) The Commission notes that all elements of the scheme to be prolonged, except for the authority tasked with its practical implementation a set out in recital (13), remain unchanged compared to its initial form.
- (23) The replacement of DB Netz AG by the Federal Railway Authority in the role of authority responsible for practical implementation of the scheme, does not change the Commission's assessment, presented in recital (24) of the 2012 Decision, that the scheme is financed from State resources neither does it change any other conclusions on the existence of aid.
- (24) In the 2012 Decision the Commission concluded that the scheme constitutes State aid within the meaning of Article 107(1) TFEU⁴. Nothing alters this assessment as regards the prolongation of the scheme.

3.2. Compatibility of the aid

- (25) Article 93 TFEU provides that “aids shall be compatible with the Treaties if they meet the needs of coordination of transport [...]”.
- (26) After the entry into force of Regulation (EC) No 1370/2007⁵, 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, Communication from the Commission — Community guidelines on State aid for railway undertakings, "the Railway Guidelines"⁶). 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.

⁴ See recitals (22) to (28) of the 2012 Decision.

⁵ 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.

⁶ OJ C 184, 22.7.2008 p.13-31.

- (27) 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 coordination 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.
- (28) 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.
- (29) 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
- (30) Point 97 of the Railway Guidelines stipulates that in view of the rapid development of the transport sector the Commission has to re-examine the aid and the intended renewal in the light of the results obtained by the existing aid scheme.
- (31) 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 are similar, the Commission will follow the lay-out of the Railway Guidelines below for both railway undertakings and wagon keepers, unless otherwise noted.
- (32) The Commission considers that the reasoning set out in recitals (35) – (38) of the 2012 Decision, according to which the reduction of noise pollution in the rail transport sector is an objective of common interest and the retrofitting of the fleet of freight wagons with composite brake blocks is an appropriate way to pursue this objective is still valid.
- (33) Moreover, the Commission notes the same opinion is presented in the Commission staff working document on rail freight noise reduction⁷, published on 22 December 2015. National programmes supporting the retrofitting of freight wagons with composite brake blocks that are limited in time and comply with State aid rules are identified in this document as one element of the optimal policy mix as regards the

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abatement of environmental noise pollution of which railways are the second most dominant source.

- (34) In view of the data provided by the German authorities, presented in section 2.9 above, the Commission also notes that the existing scheme has effectively helped retrofitting freight wagons with composite brake blocks and intensifying its usage on the tracks in Germany. The Commission considers that in case of a prolongation at least the latter effect will continue since the aid payments are based on the wagons' mileage run in a given year and for a large part of the wagons, already retrofitted under the scheme, the allowed aid intensity has not been reached yet. Therefore the Commission concludes that a prolongation of the scheme for additional three-year period is necessary to fully exploit the positive effects of the measure and therefore in line with Point (97) of the Railway Guidelines.
- (35) Moreover, the Commission considers that the reasoning on proportionality and necessity of aid and its non-discriminatory application presented in recitals (39) to (44) of the 2012 Decision is still valid.
- (36) Given that the 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, the aid does not lead to distortions of competition contrary to the common interest.
- (37) For the reasons set out above and as demonstrated in recitals (29) to (48) of the 2012 Decision which remain relevant for the assessment of the notified prolongation, the Commission considers that the prolongation of the aid scheme is compatible with the internal market based on Article 93 TFEU.

4. DECISION

The Commission has accordingly decided not to raise objections to the prolongation of the aid scheme on the grounds that it is compatible with the Treaties as it meets the needs of coordination of transport 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