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Subject: **State Aid SA.46341 (2016/N) – Germany**
Scheme on funding for transshipment facilities for combined
transport of non-federal companies (*Richtlinie zur Förderung von*
Umschlaganlagen des Kombinierten Verkehrs nicht bundeseigener
***Unternehmen*)**

Sir,

1. PROCEDURE:

- (1) By electronic notification dated 31 August 2016 Germany notified the scheme on funding for transshipment facilities for combined transport of non-federal companies (*Richtlinie zur Förderung von Umschlaganlagen des Kombinierten Verkehrs nicht bundeseigener Unternehmen*), hereinafter the aid scheme. The aid scheme was registered on the same day under SA.46341 (2016/N).
- (2) By letter of 28 October 2016 the Commission sent a request for information to the German authorities. As a reply to this request, Germany submitted additional clarifications to the Commission on 4 November 2016.

2. DETAILED DESCRIPTION OF THE AID MEASURE:

2.1. Objective

- (3) The present aid scheme for the period 2017-2021 is a prolongation of the aid schemes already approved by the Commission for the periods 2002-2005¹, 2006-2008², 2009-2011³, 2012-2015⁴ and 2016⁵.

¹ Commission decision of 2.10.2002 in State aid case N 406/2002, OJ C 292 of 27.11.2002, p.5.

² Commission decision of 22.2.2006 in State aid case N 397/2005, OJ C 283 of 21.11.2006, p. 9.

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- (4) The objective of the scheme is to develop combined transport in order to achieve a traffic shift of freight from road transport to other modes of transport (i.e. rail and inland waterways) and thereby help to achieve the national and EU targets of reduction of emissions. The aid scheme subsidizes the construction or extension of private intermodal terminals.

2.2. Changes with respect to the predecessor aid scheme 2011-2015

- (5) The predecessor aid scheme was subject to a spending review (*Haushaltsanalyse*) carried out by the Federal Ministry of Transport and Digital Infrastructure together with the Ministry of Finance. Taking into account the results of this spending review, the German authorities have adapted the present aid scheme compared to the predecessor scheme in order to achieve a more efficient funding. The following changes have been introduced:
- a) Introduction of a quantified funding objective: the specific aim of the Federal aid is to expand the technical transshipment capacity in Germany overall by an average of 9 000 loading units per million euros of aid.
 - b) Distinction is made between terminals near sea ports and other terminals with regard to the upper limit of the funding intensity⁶ in the future: the average transshipment costs can be reduced by no more than EUR 33 per loading unit as a result of the funding, and by no more than EUR 15 per loading unit in the case of combined transport transshipment facilities located near sea ports. Previously the funding intensity was capped at EUR 33 per loading unit for all terminals.
 - c) No aid shall be granted if the value of the overall economic benefit is expected to be lower than the funding. The overall economic benefit to be achieved during the first 10 years by the terminal investment project should be at least four times the value of the funding.
 - d) The combined transport transshipment facility is to be expanded or built on land owned by the beneficiary. If the beneficiary has a heritable building right (*Erbbaurecht*) or long-term lease hold over the property for the duration of the operating period, this shall be deemed equivalent to ownership.
 - e) In order to ensure that the terminals are accessible by all users in a non-discriminatory way, any changes in the ownership structures shall be notified to the granting authority. In that context, the beneficiary cannot acquire more than 50% of the shares in the operator of the facility, and the operator of the facility cannot acquire more than 50% of the shares in the beneficiary. If the current operator nevertheless acquires a controlling stake in the beneficiary, the operation of the facility shall be re-tendered.

³ Commission decision of 27.2.2009 in State aid case N 304/2008, OJ C 106 of 8.5.2009, p. 17.

⁴ Commission decision of 23.11.2011 in State aid case SA.33486 (2011/N), OJ C 306 of 22.10.2013, p. 4.

⁵ Commission decision of 14.12.2015 in State aid case SA.43008 (2015/N), OJ C 46 of 5.2.2016, p. 1.

⁶ The funding intensity is the amount by which the capital costs per transshipment of a loading unit are reduced as a result of the funding of a terminal investment.

- f) In situation when the beneficiary is obliged to repay the aid granted (including interest), the interest shall be charged on the amount repayable at an annual rate of five percentage points over the basic rate as per section 247 of the Civil Code (*Bürgerliches Gesetzbuch, BGB*). In the predecessor scheme a bank guarantee was the only option for the beneficiaries of the scheme to secure potential repayment obligations for example in the case of bankruptcy⁷. The revised version of the scheme includes the additional possibility to secure the potential repayment obligations for an identical secured amount, in the form of guarantee on land (mortgage).
 - g) Introduction of two new cost categories to the list of eligible expenditure (i.e. automated exit barriers and passenger car parking spaces for employees and customers) in order to facilitate more efficient and quicker transshipment operations.
 - h) For the purposes of determining the overall economic benefit for the operating period, the beneficiaries must present, in their application for funding, data concerning the total transport distance to the destination/point of origin of the loading units when these units are routed in combined transport (i.e. when they are shifted to the rail or inland waterways modes). The length of the inland (i.e. German) and foreign (i.e. non-German⁸) sections of the transport route/journey, which include shift effects, should be separately disclosed. In the revised scheme, the inland sections as well as 50% of the foreign sections of the transport route/journey with shift effects will be taken into account in the calculation of the funding. In the predecessor scheme, only transport routes/journeys with shift effects on the German territory were taken into account.
 - i) The duration of the aid scheme is extended to five years for the purposes of reliable evaluation of the efficiency of the funding.
- (6) The other conditions of the predecessor aid scheme remain the same. Reference is made here to decision SA.33486 (2011/N), due to the fact that the later decision SA.43008 (2015/N) concerned only one-year prolongation and budget increase of the scheme SA.33486 (2011/N) without any material alterations.

2.3. Budget

- (7) The foreseen budget is EUR 463.5 million in total.

2.4. Duration

- (8) The scheduled duration of the measure is five years (from 1.1.2017 to 31.12.2021).

⁷ No such case was reported in the entire funding period of the scheme.

⁸ Non-German sections means sections in foreign European countries (i.e. other EU Member States and Switzerland).

2.5. Beneficiaries

- (9) The beneficiaries are private companies. Between 30 and 40 beneficiaries are expected in the funding period. Railway infrastructure companies of the Federal Republic of Germany are excluded.

2.6. Cumulation

- (10) In case of cumulation with national or Union subsidies the maximum aid levels established by each measure will be respected.

3. ASSESSMENT OF THE AID MEASURE:

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

- (11) Article 107(1) of the Treaty on the Functioning of the European Union (TFEU) states: *"Save as otherwise provided in this Treaty, 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 common market"*.
- (12) Therefore, in order to determine whether the measures at stake do contain state aid elements within the meaning of Article 107(1) TFEU, it must be established:
 - i) whether the measures confer an economic advantage to the undertakings concerned, ii) whether this advantage has been financed through State resources, iii) whether this advantage distorts or threatens to distort competition and, finally, iv) whether the measures affect trade between Member State.
- (13) The Commission considers that the notified aid scheme allows the beneficiaries to be relieved, by means of State resources, of a part of the costs which they would normally have to bear themselves. Consequently, the financial aid from the State strengthens their position in relation to competing infrastructure in the Union and therefore has potentially distorting effects on competition, as the market for the operation of intermodal terminals is open to competition, and the different types of intermodal terminals are in competition with intermodal terminals in other Member States. Therefore the aid affects trade between Member States.
- (14) The Commission therefore comes to the conclusion that the notified scheme constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Compatibility assessment

- (15) The Commission has to determine whether the aid in question can be considered to be compatible with the internal market on the basis of the derogations provided for in the TFEU.
- (16) 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.

- (17) Since the entry into force of Regulation (EC) 1370/2007⁹, Article 93 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.
- (18) Article 93 TFEU provides for compatibility of aid which meets the needs of coordination of transport. The Court of Justice 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"*¹⁰.
- (19) The concept of "coordination of transport" used in Article 93 TFEU has a significance which goes beyond the simple fact of facilitating the development of an economic activity. It implies an intervention by public authorities, which is aimed at guiding the development of the transport sector in the common interest.
- (20) 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.
- (21) The transport sector may experience "coordination" difficulties in the economic sense of the term for example in the connections between different transport networks. The Commission has on this ground already authorized State aid on the basis of Article 93 TFEU¹¹.
- (22) For a given aid measure to be considered to "meet the needs" of transport coordination, it has to be necessary and proportionate to the intended objective. Furthermore, the distortion of competition which is inherent in aid must not jeopardise the general interests of the Community.
- (23) Therefore, it has in constant decision practice¹² been considered that aid is compatible with the internal market on the basis of Article 93 TFEU, if the following conditions are met:
- The aid contributes to an objective of common interest,
 - The aid is necessary, and provides an incentive effect,
 - The aid is proportionate,
 - The access to the infrastructure in question is open to all users on a non-discriminatory basis,

⁹ 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.

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

¹¹ For example see decisions of the Commission of 20.10.2010 in case N 490/2010 (OJ C 122/2011 of 20.04.2011) or of 20.7.2010 in case C 17/2010 (OJ C 278/2010 of 15.10.2010).

¹² For example see decisions of the Commission of 6.5.2013 in case SA.36207 (2013/N) (OJ C 176 of 21.6.2013) or of 30.4.2010 in case N 678/2009 (OJ C 158 of 18.6.2010).

— The aid does not lead to distortions of competition contrary to the common interest.

- (24) It is therefore appropriate to assess whether these five criteria are met in the present case, so that the aid can be authorized on the basis of Article 93 TFEU.

Objective of common interest

- (25) The European Union has for some time pursued a policy of achieving a balanced multimodal transport system and the fostering of the competitiveness of multimodal transport vis-à-vis road usage is part of this policy. The aim of the European Union multimodal transport policy is to achieve a modal shift from road freight to other modes of transport.
- (26) European Union instruments such as Council Directive 92/106/EEC of 7 December 1992¹³ aim at fostering the development of combined transport. In addition, multimodal policy is in line with the conclusions of the European Council of Gothenburg of June 2001 which has declared that measures helping modal shift from road transport to more environmentally friendly modes are at the heart of the policy for sustainable transport. This is increasingly important in view of the objective of common interest of progressively reducing transport greenhouse gas emissions.
- (27) The White Paper on Transport Policy¹⁴ encourages the use of rail and other environmentally friendly modes of transport in order to become competitive alternatives to road haulage.
- (28) The European Strategy for Low-Emission Mobility¹⁵ stresses that transport still represents almost a quarter of Europe's greenhouse gas emissions and is the main cause of air pollution in cities. By mid-century, greenhouse gas emissions from transport will need to be at least 60% lower than in 1990¹⁶ and be firmly on the path towards zero. Emissions of air pollutants from transport that harm our health need to be drastically reduced without delay. Measures to support multimodal integration have an important role in achieving low emissions mobility by incentivising a shift towards lower emission transport modes such as inland waterways, short-sea shipping and rail.
- (29) The Commission recognises that it is in the first place the task of market operators to improve multimodal transport within markets, whose access is free and where the rules of free competition and supply and demand prevail. However, in order to fully unleash the potential of multimodal transport, the willingness to take risks inherent in switching from road to the alternative modes, may need to be stimulated.

¹³ Council directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States as amended, OJ L 368, of 17.12.1992, p. 38.

¹⁴ Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system, COM(2011)144 of 28.03.11.

¹⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – *A European strategy for low-emission mobility* (COM(2016) 501 of 20.07.2016).

¹⁶ *White Paper: Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system* (COM(2011) 144 of 28.3.2011).

- (30) German authorities showed that in the year of reference (2013) the amount of 3.52 million transports by truck (corresponding to approximately 14 000 truck journeys per transport day) have been shifted away from road to alternative means of transport. Altogether an intermodal transport of 28.4 billion tkm (kilometre-tonnes) was reached. This had the effect of avoiding 2.0 million tonnes of carbon dioxide.
- (31) The Commission concludes that the development of multimodal transport and of activities that contribute to reduce greenhouse gas emissions, air pollution and road congestion are therefore in the common interest.

Necessity of the aid and incentive effect

- (32) When assessing necessity and incentive effect of the aid, the Commission took into account the following:
- The expert opinion¹⁷, which was provided by the German authorities, states that the combined transport rail-road in Germany is expected to grow from 72.1 million brutto-tonnes to 114.4 million brutto-tonnes (+59%) between the base year 2013 and 2030. For the combined transport inland waterway-road a rise from 19.3 million brutto-tonnes to 33.2 million brutto-tonnes (+72%) is forecasted for the same period.
 - This expected rise in intermodal traffic entails that capacities do not correspond to demand. Therefore, in order to meet the expected demand in the future, a capacity of additional 4.1 million loading units needs to be constructed by 2030.
 - The German authorities underlined that the nature of intermodal transport leads to a rise in transport costs. The loading and the necessary storage of containers increases the costs of intermodal transport since containers have to be loaded on average 1.5-2 times in case of combined transport road-rail, and 2-3 times in case of combined transport waterway/road. Without terminal funding these loading costs (*Umschlagkosten*) would increase further, and as a consequence lead to the deterioration of the position of combined transport vis-à-vis road transport. Eventually, it might lead to a development of shifting transport back to the road.
 - The average funding rate reached 70% of eligible investment costs during the entire funding period, whereas the maximum aid intensity was 80% during the last funding period.
- (33) The Commission considers that the German authorities have demonstrated that the required shift effect would not be achieved without the aid.

¹⁷ "Gutachten zur Evaluierung des Förderprogramms für Umschlaganlagen des Kombinierten Verkehrs", by HaCon and KombiConsult, June 2015.

Proportionality of the aid

- (34) A further reduction of the maximum aid intensity¹⁸, previously 80%, was discussed in the context of the spending review. However, such a reduction is currently not considered to be appropriate, due to the fact that the competitiveness of combined transport vis-à-vis road freight transport has significantly worsened and the combined transport is currently in a difficult position as a result of the economic events of recent years, as well as of low diesel prices. According to a detailed assessment of the German government, there is a risk that the required construction and expansion of combined transport terminals would not take place, as a result of further reduction in the funding rate, due to the lack of willingness to invest on the part of private investors. Therefore, the maximum aid intensity of 80% of eligible investment expenditure is retained. The German authorities undertook, in the next general evaluation of the funding, to carry out a new assessment as to whether the funding quota can be further reduced.
- (35) German authorities have introduced several changes with regard to the previous scheme: i) distinction was made between terminals near sea ports and inland terminals with regard to the upper limit of the funding intensity, ii) additional cost categories were added to the list of eligible expenditure, and iii) 50% of the foreign (non-German) sections of the transport route/journey with shift effects were included in the future calculation of the funding.
- (36) Several requirements were introduced in order to strengthen the economic viability of the projects and to increase the monitoring of the viability of a project through the granting authorities (related to the proof of the overall economic benefit, changes in the ownership structures, potential repayment obligations).
- (37) When assessing the proportionality of the aid, the Commission took into account the following:
- According to the notified scheme, the German authorities will monitor that the cost reduction provided to the users of the subsidised infrastructure (cost reduction possible thanks to investment aid) does not exceed EUR 33 per loading unit for inland terminals and EUR 15 per loading unit for terminals near sea ports (cost reduction needed to put combined transport on the level playing field with the road transport).
 - In order to adjust the funding to further development of logistical concepts and to increase the overall efficiency of the operation of the terminals, the German authorities included additional cost categories to the list of eligible expenditure. Under the notified scheme, automatic exit barriers (until now, only automatic entry barriers were allowed) as well as passenger car parking spaces for employees and customers will be funded. These types of costs constitute, in the Commission's view, an insignificant part of the total construction costs of a terminal whilst contributing to greater efficiency in the functioning of the given transshipment facility.
 - In the context of the present notification, the German authorities have shown that in the case of this specific scheme, not accounting for positive externalities abroad have led to insufficient financing for intermodal terminals on or close to the German borders and, consequently, an insufficient number of such terminals. Therefore, the German authorities estimated that this situation would be rectified

¹⁸ In the predecessor scheme SA.33486 the maximum funding rate was reduced from 85% to 80%.

if 50% of external cost saving abroad would be taken into account. The Commission considers that this modification is justified and proportional in order to increase cross-border transshipment possibilities as well as contribute to further reduction of transport GHG emissions in broader European context. This approach is also in line with constant case practice, in which transshipment-type operating aid schemes take into account positive effects outside national borders¹⁹.

- As in the previous scheme two tenders are foreseen, one for the construction of the terminal and one for the operation of the terminal (in case of construction, if the aid intensity reaches more than 50% of the eligible costs). In the notified scheme an additional requirement was introduced that the operation of the terminal shall be re-tendered, should the current operator obtain a controlling stake in the beneficiary.
- (38) Taking into account the above-mentioned factors and the closer monitoring of economic viability, the Commission considers that the German authorities have demonstrated that the aid is indeed proportional.

The access to the infrastructure in question is open to all users on a non-discriminatory basis

- (39) Access to the intermodal terminals is open on a non-discriminatory basis.

The aid does not lead to distortions of competition contrary to the common interest

- (40) First of all, it has to be recalled that the aid scheme is a prolongation of a measure that has already been approved by the Commission in 2002, 2006, 2009 and 2011. Moreover, the key features of the scheme have not changed.
- (41) The German authorities underline that the measure concerns the funding of infrastructure. Infrastructure is considered the backbone of traffic and logistics industry and plays a vital role for the wider industry. The successful development of combined transport – as an alternative to road – depends on the necessary infrastructure. The German authorities stress that there is no funding for the use of infrastructure (coordination aid) nor is there aid to infrastructure for logistics activities, start-up aid or other measures linked to the operation of combined transport.
- (42) During the application procedure the possible effect on trade will be assessed by the German authorities. According to Article 2.2. of the scheme the applicant has to show in the aid application, together with the remaining requirements such as economic viability and overall economic benefit, that the required funding does not lead to distortions of competition contrary to the common interest. The applicant has to submit a business plan for a 10-year period. German authorities consider this a valid period to assess the economic effect of a project. Together with the business plan the applicant has to submit a list of documents set out in Annex 2 and 3 of the aid scheme. Inter alia, these documents have to describe and explain the situation of competing terminals, including a description of possible effects on competing terminals, which refers to terminals inside Germany and

¹⁹ For example in the case SA.38229 (2014/N) – Luxembourg – Aide à la promotion du transport combiné pour la période 2015-2018.

cross-borders (i.e. for projects close to the border, the effects on facilities in the neighbouring country should also be considered).

- (43) A brief expert report²⁰ drawn up on the question of competition with unaided terminals, Deutsche Bahn terminals and facilities close to the border, which was provided by the German authorities, concludes that the established procedure, in which the applicant has to submit a market analysis in which it is substantiated why the given future facility does not compete with existing transshipment facilities in the terminal's catchment area, has proven to be suitable for ruling out competition problems to the greatest extent possible and evaluating the economic efficiency of a facility.
- (44) In addition, the two-fold tendering procedure is another means of keeping competition as open as possible. As in the previous scheme two tenders are foreseen, one for the construction of the terminal and one for the operation of the terminal (in case of construction, if the aid intensity reaches more than 50% of the eligible costs). In the notified scheme, an additional requirement was introduced that the operation of the terminal shall be re-tendered, should the current operator obtain a dominant position in the beneficiary. These tenders contribute to limiting the aid amount to the minimum necessary.
- (45) Once the project is running, the granting authority monitors the viability of a project through on site visits (which are carried out on a case-by-case basis as part of the assessment of the proof of use) and the annual completion of a special form, the *Stammdatenblatt*. With this form the granting authority gathers information for each terminal on several factors such as the amount of loading units, a forecast of traffic expected and the development of the loading fees. This information will be then assessed for plausibility and taken into account in the assessment of new locations (i.e. during evaluation of the applications for new projects).
- (46) In the light of the foregoing, the Commission considers that the aid contributes to an objective of common interest, it is necessary and proportionate to this objective, and trade between Member States will not be affected in a way contrary to the common interest.

4. CONCLUSION

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.

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>.

²⁰ "Wettbewerbsanalyse der KV-Förderung" by Intermodal Competence SGK, March 2016.

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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