



EUROPEAN COMMISSION

Brussels, 03.06.2021
C(2021) 4103 final

PUBLIC VERSION

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Subject: State Aid SA.59448 (2020/N) – Hungary – Support for rail freight transport (single wagon scheme)

Excellency,

1. PROCEDURE

- (1) By electronic notification of 11 November 2020, the Hungarian authorities notified to the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU” or “Treaty”), an aid scheme supporting single wagon transport in Hungary (“scheme” or “measure”).
- (2) On 30 November 2020, 3 February 2021 and 19 February 2021, 15 April 2021 and 16 April 2021, the Commission sent requests for information and received replies from Hungary on 10 December 2020, 8 February 2021, 22 February 2021, 15 April 2021 and 16 April 2021, respectively. Additionally, on 10 February 2021, the Commission held a video conference with the Hungarian authorities.

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- (3) Hungary exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958¹ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

2.1. Objective and main characteristics

- (4) As part of the National Clean Development Strategy² and National Air Pollution Reduction Program³, Hungary intends to promote the modal shift and assure the improvement of the competitiveness of the rail freight sector with a view to increase the share of vehicles with low or zero emissions. Increasing the market share of domestic rail freight transport will significantly contribute to the achievement of the CO₂ and other emission reduction targets of Hungary, while also significantly reducing the freight load in the road system.
- (5) Hungary considers that the scheme will also contribute to the European Union's ("EU") climate neutrality targets and will support the Green Deal⁴ and the European Climate Regulation⁵.
- (6) In Hungary, almost one-fifth (10 to 12 million tons) of goods transported by railway are transported in the single wagonload transport ("SWT")⁶. The services provided by railway undertakings allow more than 700 businesses (among them small and medium-sized undertakings) to dispatch and/or receive railway consignments in wagonload quantities. Railway undertakings active in that segment face not only fierce competition by road transport but also high costs, due also to the complexity of the transport chain making it less easy to obtain economy of scales especially on last mile and marshalling operations. The current system and regulatory environment do not ensure the long-term sustainability of this segment, as the railway undertakings that offer this type of service have been continuously suffering significant losses (according to Hungary, several billion HUF) each year.

¹ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

² Communication on the energy and climate policy directions, objectives and activities of the Government of Hungary, the Sustainable Development Committee of Parliament, 21 January 2019, Budapest.

³ Government Resolution No. 1231/2020. (V.15.) on the National Air Pollution Reduction Program.

⁴ Online: https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en.

⁵ Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law), 04.03.2020 COM(2020) 80 final 2020/0036 (COD).

⁶ Consignments dispatched in a wagon are considered as being transported by SWT if they run in more than one train path during their transportation in a way that the distance covered by the route in the first and/or the last train path does not exceed 80 kilometres and the normal hauled load of the train does not exceed 2,000 tons.

- (7) The aim of the measure is to relieve those undertakings that are active in SWT⁷ of (part of) the costs incurred in relation to SWT and thus ensure the competitiveness of the sector.

2.2. National legal basis

- (8) The national legal basis for the scheme is the “Government Decision 1414/2020 (VII.16.) on the establishment of an aid scheme for single wagonload transport and the development of the related transport sector” (“governmental decision”). The Hungarian authorities explained that such governmental decision required the Minister of Innovation and Technology to define the conditions of the scheme, to be notified to the Commission for its approval. The governmental decision provides also that the Minister of Innovation and Technology will subsequently adopt a ministerial decree, following the Commission’s approval.⁸

2.3. Beneficiaries

- (9) The beneficiaries under the scheme are railway undertakings offering or planning to offer SWT services in Hungary. The scheme is open to both domestic companies registered in Hungary and companies registered in any other European Economic Area (“EEA”) State, i.e. both domestic and EEA based undertakings have access to the aid under the same conditions and without discrimination.
- (10) Hungary estimates that the number of beneficiaries will range between 5 to 15 undertakings.
- (11) The beneficiaries have to fulfil the following cumulative conditions:
- (a) have to have a valid operating licence for providing rail freight transport and traction services issued by the railway authority⁹;
 - (b) have obtained part A of the safety certificate under Directive (EU) 2016/798¹⁰;
 - (c) have at least applied for part B of the safety certificate under Directive (EU) 2016/798;

⁷ The aid scheme covers single wagonload transport, however, if the unaccompanied combined transport qualifies as single wagonload transport then it can be also supported by the measure. In the case of unaccompanied combined transport, it is not the forwarded goods themselves that are reloaded but rather the intermodal transportation unit (container, swap body, semi-trailer or mobiler), the majority of the transport distance is covered by rail, the initial or final road section is as short as possible and the intermodal transportation unit is not accompanied by a driver.

⁸ Hungary has submitted that the national legal basis and the implementing rules will be published on the website of the State Aid Monitoring Office.

⁹ An operating license issued pursuant to Directive (EU) 2012/34 in another EEA Member State shall be deemed equivalent to an operating license issued in Hungary. Termination, withdrawal or suspension of the operating license will also result in termination or suspension of eligibility for the aid granted.

¹⁰ Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety, OJ L 138, 26.5.2016, p. 102–149.

- (d) undertake to perform SWT as a railway undertaking ordering a train path in Hungary.
- (12) The aid cannot be granted to undertakings in difficulty.
- (13) The Hungarian authorities confirm that the financing of specific SWT activities will not start before the granting of the aid.

2.4. Duration and budget

- (14) The scheme will cover the period from 1 June 2021 to 31 December 2025.
- (15) The overall budget is HUF 29.33 billion (around EUR 82.1 million¹¹), with a yearly budget of maximum HUF 6.4 billion (around EUR 17.9 million). For 2021, Hungary has estimated a budget of HUF 3.73 billion. (around EUR 10.6 million) The scheme is financed through the Hungarian State budget.

2.5. Form, eligible costs and aid intensity

- (16) The aid takes the form of non-refundable grants and includes two sub-measures, namely aid for reducing external costs and aid for rail infrastructure use.
- (17) First, in relation to aid for reducing external costs the eligible costs are the part of the external costs that rail freight transport makes it possible to avoid compared to road freight transport. Second, in relation to aid for rail infrastructure use, the eligible costs are the additional costs for infrastructure use paid by rail transport but not by a more polluting competing transport mode.
- (18) Hungary calculated the eligible costs based on a study performed by the research and consulting company KTI Institute for Transport Sciences Non Profit Ltd. (“KTI study”)¹². To this end, average door-to-door costs for both road and rail were calculated. Hungary confirms that it has based its methodology on the Commission’s Handbook on the external costs¹³ (“Commission’s Handbook”) and the KTI study will be made publicly available. Furthermore, the Hungarian authorities confirm that the figures concerning external costs for Hungary in the KTI study and in the Commission’s Handbook are identical (apart from a minor rounding difference due to the conversion from EUR to HUF and vice versa).
- (19) Based on the KTI study, the eligible costs related to external costs are calculated as the difference between the total external cost of road freight and the total external cost of rail freight (SWT segment), i.e. HUF 9.59/net ton-kilometres (“tonkm”), as shown in Table 1.

¹¹ 1 EUR = 357.129 HUF (exchange rate of 20 January 2021, used hereinafter for calculations).

¹² KTI Institute for Transport Sciences Non Profit Ltd. Calculation of eligible costs for single wagonload transport, final report, Budapest, July 2020. Online: <https://www.mavcsopot.hu/palyavasut/vasuti-egyves-kocsi-teherfuvarozas>.

¹³ Handbook on the external costs of transport, Version 2019, ISBN: 978-92-79-96917-1; Delft, CE Delft, January 2019. Online: https://ec.europa.eu/transport/themes/sustainable/studies/sustainable_en.

- (20) In the KTI study, the values used by Hungary for SWT in Table 1 were calculated by combining the values presented in the Commission's Handbook for electric traction (in amount of 89%) and diesel traction (in amount of 11%), reflecting the split between those traction types, and converting the results from EUR to HUF¹⁴. Therefore, the Hungarian authorities consider that the values presented in the KTI study are in line with the values in the Commission's Handbook.

Table 1: External costs of freight transport, HUF/net tonkm based on 2018 study (Source: KTI study)

	Road	SWT	Difference (road external costs surplus to SWT)
Accidents	3.51	0.48	3.03
Air pollution	2.82	0.23	2.60
Environment change	1.82	0.09	1.73
Noise	1.47	0.52	0.95
Congestion (additional time)	0.70	0.00	0.70
Energy production	0.66	0.37	0.29
Environmental degradation	0.96	0.67	0.28
Total	11.94	2.35	9.59

- (21) According to the KTI study, for the calculation of the total cost of rail transport and the use of infrastructure costs for both rail and road freight transport, Hungary created a standard cost model in order to assess the results required for the comparison. The KTI study took into account various expenses for rail transport (such as fee of access to network / use of railway; traction fees; shunting / arranging charges; wagon park and service expenses etc.) and for road transport (such as tolls; vehicle related taxes insurance fees; other expenses related to the operating of the vehicles etc.). As the result of the cost calculation, the unit cost of rail transport in tonkm was obtained (see Table 2 for the results).

Table 2: The calculation of maximum allowed aid amounts (in HUF, costs refer to 2018)

Single wagon load train	Forwarding capacity (million net tonkm)	Total cost of railway transport (million net tonkm) / forwarding capacity (HUF/net tonkm)	30% of total cost of railway transport (HUF million)	Infrastructure use cost difference 100% (HUF/net tonkm) (a)	External cost difference 100% (HUF/net tonkm)	External cost difference 50% (HUF/net tonkm) (b)	Max aid amount, (HUF/net tonkm) (a+b)
Domestic	450.1	50.93*	6 877.9	3.58	9.59	4.8	8.38
Import+ Export	1 050.1	34.36**	10 824.9	0.15	9.59	4.8	4.95

* The value for domestic total cost of railway transport without taking into account the forwarding capacity is HUF 22 926.3 million.

** The value for import+export total cost of railway transport without taking into account the forwarding capacity is HUF 36 083.1 million.

¹⁴ In the KTI study, an exchange rate of 318.87 EUR/HUF was used. For example, in case of the value of external costs for noise, the following calculation was used: $(0.89 \cdot 0.0015 + 0.11 \cdot 0.0026) \cdot 318.87 = (0.01335 + 0.000268) \cdot 318.87 = 0.516888 \rightarrow$ with rounding 0.52.

- (22) The aid amount will be determined on the basis of the net tonkm performed on the Hungarian open access railway infrastructure network in the single wagonload traffic. The maximum aid amount will be different for domestic SWT traffic and export/import SWT traffic, as specified in Table 3.

Table 3: Aid amounts available for SWT on the Hungarian open access railway infrastructure (Source: KTI study)

Type of traffic	Aid amount (HUF/net tonkm, EUR/net tonkm*)
Domestic	8.38 / 0.02294
Import/Export	4.95 / 0,01355

** the aid is disbursed in HUF. The EUR amounts are based on the official medium exchange rate of the National Bank of Hungary on 24 September 2020 (HUF 365.33/EUR) and are for information purposes only.*

- (23) On the basis of the above, Hungary submits that the measure respects the following maximum aid intensities:
- (a) 100% of the eligible costs for aid for rail infrastructure use as shown in Table 2; and
 - (b) 50% of the eligible costs for aid reducing external costs as shown in Table 2.

2.6. Procedure for granting the aid

- (24) The granting authority is the Ministry of Innovation and Technology.
- (25) The call for applications will be published on the website of the Hungarian State Railways (“MÁV”), the national railway infrastructure and passenger transport company of Hungary. The public call for applications will be open to any beneficiary that fulfils the eligibility criteria. The call for applications will contain all information, conditions, forms necessary and deadlines to be respected for participating in the procedure. Applications will be evaluated by MÁV. Hungary has confirmed that MÁV is not a potential beneficiary of the scheme, as it is not active in the freight transportation, but merely responsible for the operation of the railway infrastructure and passenger transport.
- (26) According to Hungary, beneficiaries will undertake an obligation to inform their clients about the aid received and the amount thereof. The beneficiaries shall publish the relevant information relating to the granting of the aid on their websites. Additionally, the beneficiaries undertake an obligation to disclose to MÁV the data regarding the actual performance of the eligible services and making it possible to audit such activities.

2.7. Cumulation and monitoring of the scheme

- (27) Hungary commits to respect the rules on cumulation. The beneficiaries will be required to disclose and attach to the application the data associated with any other claimed or aid already granted. Withholding such data may result in exclusion from the aid.

- (28) Additionally, the granting authority will commit to draft annual reports to monitor and evaluate the granted aid amounts.
- (29) The spending under the scheme will be supervised according to the rules of EU harmonized Act CXCV of 2011 on Public Finances¹⁵, which provides for supervision by various public bodies, in particular, the Hungarian State Treasury, the State Audit Office, the Government Audit Office, the National Tax Office and the Customs Office.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid

- (30) Pursuant to Article 107 (1) TFEU "*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the internal market*".
- (31) The criteria laid down in Article 107(1) TFEU are cumulative. Therefore, for a measure to constitute State aid within the meaning of Article 107(1) TFEU all of the following conditions need to be fulfilled. The measure must:
- (a) be granted by the State or through State resources;
 - (b) confer a selective advantage to its beneficiaries;
 - (c) distort or threaten to distort competition; and
 - (d) affect trade between Member States.

3.1.1. Economic activity and notion of undertaking

- (32) The concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed¹⁶. Any activity consisting in offering goods and services on a given market is an economic activity¹⁷.
- (33) As the scheme aims at supporting railway undertakings that meet the conditions mentioned in recital (11), the beneficiaries in question are undertakings.

¹⁵ Available at: <https://net.jogtar.hu/jogszabaly?docid=a1100195.tv>.

¹⁶ Judgment of the Court of Justice of 18 June 1998, *Commission v Italy*, C-35/96, ECLI:EU:C:1998:303, paragraph 36; Judgment of the Court of Justice of 23 April 1991, *Klaus Höfner and Fritz Elser v Macrotron GmbH*, C-41/90, ECLI:EU:C:1991:161, paragraph 21; Judgment of the Court of Justice of 16 November 1995, *FFSA and Others*, C-244/94, ECLI:EU:C:1995:392, paragraph 14; Judgment of the Court of Justice of 11 December 1997, *Job Centre Coop. arl*, C-55/96, ECLI:EU:C:1997:603, paragraph 21.

¹⁷ Judgment of the Court of Justice of 16 June 1987, *Commission v Italy*, 118/85 ECLI:EU:C:1987:283, paragraph 7.

3.1.2. *Selective advantage*

- (34) The notified scheme grants an advantage to railway undertakings compared to undertakings providing other modes of freight transport - such as road freight. Furthermore, the advantage is granted only to railway undertakings engaging in SWT activities as mentioned in recital (7).
- (35) As the advantage is confined to certain segments of the transportation market (rail freight transport and, more specifically, SWT), it is of a selective nature.

3.1.3. *State resources and imputability*

- (36) The aid is granted through State resources, as it is financed out of the Hungarian State budget¹⁸. It is imputable to the State, as it is granted by the Ministry of Innovation and Technology.

3.1.4. *Distortion of competition and effect on trade between the Member States*

- (37) In accordance with settled case law¹⁹, for a measure to distort competition, it is sufficient that the recipient of the aid competes with other undertakings on liberalised markets.
- (38) The Commission notes that 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 aid.
- (39) Since the scheme concerns markets that have been liberalised (namely, the rail freight services market), the Commission considers that the measure is liable to distort competition and to have an effect on intra-Union trade.

3.1.5. *Conclusion on the existence of aid*

- (40) For the reasons stated above, the Commission considers that the notified measure constitutes State aid.

3.2. Lawfulness of the aid

- (41) By notifying the measure before implementing it (see recitals (8) and (13)), the Hungarian authorities have fulfilled their obligations under Article 108(3) TFEU.

3.3. Compatibility of the aid

- (42) Article 93 TFEU states that "*aids shall be compatible with the Treaties if they meet the needs of coordination of transport or if they represent reimbursement of the discharge of certain obligations inherent in the concept of a public service*". In this regard, the Commission notes that measures of coordination of transport

¹⁸ See recital (15).

¹⁹ Judgment of the General Court of 30 April 1998, *Het Vlaamse Gewest v Commission*, T-214/95, ECLI:EU:T:1998:77, paragraph 50.

may be needed when certain modes of transport do not bear the costs of the negative externalities that they impose on society.

- (43) As expressed in the Commission's White Paper on Transport Policy,²⁰ the fundamental charging principle for infrastructure use is that charges must cover not only infrastructure costs, but also external costs, namely costs connected to accidents, air pollution, noise and congestion. This approach reflects also the fact that, in view of Article 3 TEU and Articles 6 and 191 TFEU, the environmental objectives of the Treaty have to be pursued inter alia through the Common Transport Policy. Rail transport generates lower negative externalities than road transport in terms of accident and pollution costs, noise, climate or congestion costs. In general, this transport mode also has considerable spare capacity and can therefore play a role in shifting traffic away from the congested parts of the road networks. At the same time, wider socioeconomic benefits and positive externalities justify some level of public funding through correct and consistent monetary incentives also to transport operators. Moreover, a European Strategy for Low-Emission Mobility adopted by the Commission on 20 July 2016 reiterates the necessity of incentivising a shift towards lower emission transport modes such as rail and inland navigation transport, which are energy efficient and contribute to the goals of the low carbon economy, set out in the EU's Transport Policy White Paper. Finally, the European Green Deal proposed by the European Commission²¹ considers rail transport an overarching priority and underlines its growing role in the EU strategy to accelerate the shift to sustainable mobility by boosting multimodal transport and by internalising the environmental and health cost of transport.
- (44) The Commission observes that, as explained in recitals (4) to (7), the notified scheme aims at supporting the coordination of transport and further improving the modal shift in Hungary. It promotes the modal shift in favour of the SWT and serves the objective of achieving a modal shift from road to rail. By supporting SWT, the notified scheme will allow the development of the transport sector by contributing to transport coordination in Hungary and at the same time contributing to climate targets set by Hungary.
- (45) Therefore, the Commission considers that the notified measure contributes to the development of the transport sector and contributes to the transport coordination. Thus, the measure falls within the scope of Article 93 TFEU. Rules for the interpretation of Article 93 TFEU (aid for the coordination of transport) have been set out in section 6 of the Railway Guidelines²² (Aid for coordination of transport). The compatibility assessment of the notified measure will therefore be carried out on the basis of Article 93 TFEU (aid for the coordination of transport), as interpreted by Section 6 of the Railway Guidelines, in particular its sub-section

²⁰ Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system, COM(2011)144 of 28.03.2011.

²¹ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions “The European Green Deal”, COM(2019) 640 final of 11.12.2019, paragraph 2.1.5.

²² Communication from the Commission – Community guidelines on State aid for railway undertakings, OJ C 184 of 22.7.2008, p. 13.

6.3 (Criteria for aid for rail infrastructure use, reducing external costs and interoperability).

- (46) According to point 95 of the Railway Guidelines, in principle aid that meets the needs of transport coordination is 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, it 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 European Union. According to point 98 of the Railway Guidelines, aid for the needs of transport coordination can take several forms, among them aid for reducing external costs, that is designed to encourage a modal shift to rail because it generates lower external costs than other modes such as road transport, and aid for infrastructure use.

3.3.1. Eligible costs

- (47) The Commission notes that the scheme will support two types of aid: aid for rail infrastructure use and aid for reducing external costs. In order for such types of aid to be compatible, the eligible costs must be determined on the basis of the criteria laid down in section 6.3.1 of the Railway Guidelines.
- (48) The transport sector entails major negative externalities, for example between users (congestion), or in respect of society as a whole (pollution). These externalities are difficult to take into account, notably due to the inherent limits of including external costs in the pricing systems for access to transport infrastructure. As a result, there may be disparities between the different modes of transport, which it may be appropriate to correct by way of public support for those modes of transport that give rise to the lowest external costs.
- (49) The Railway Guidelines state in point 102 that “*as regards aid for rail infrastructure use, the eligible costs are the additional costs for infrastructure use paid by rail transport but not by a more polluting competing transport mode.*”
- (50) The Railway Guidelines state in point 103 that “*as regards aid for reducing external costs, the eligible costs are the part of the external costs which rail transport makes it possible to avoid compared with competing transport modes.*”
- (51) Point 105 of the Railway Guidelines provide that both for aid for rail infrastructure use and for aid for reducing external costs, Member States have to provide a transparent, reasoned and quantified comparative cost analysis between rail transport and the alternative options based on other modes of transport. The methodology used and calculations performed must be made publicly available.
- (52) To assess the eligible costs for the scheme at stake, Hungary provided the study mentioned in recital (18). Both the methodology of the study and the data used are based on the Commission’s Handbook²³.

²³ See recital (18).

- (53) Hungary has compared the external costs generated by rail to external costs generated by road. As the objective of the scheme is to support the modal shift from road to rail and since road transport generates the highest cost differential with rail, the Commission finds this approach reasonable.
- (54) The Commission notes that the KTI study is public and can be accessed via the internet²⁴. The study is based on data on both the external costs and additional costs for rail infrastructure use, which road transport does not bear.
- (55) The Commission observes that the methodology of the KTI study is based on the Commission's Handbook on the external costs of transport. As described in recital (20), Hungary used the figures of the Commission's Handbook for rail transport in Hungary, converted those values from EUR to HUF and combined the electric traction values (representing 89% of those values) and diesel traction values (representing the remaining 11%) to represent the value for SWT.²⁵ Furthermore, the values representing the total external costs for road transport in HUF correspond to the value of 0.03745 EUR reported in the Commission's Handbook²⁶. Therefore, the Commission considers the methodology used by Hungary methodically sound and valid.
- (56) In light of the above, the Commission considers that the requirements of points 102 and 103 of the Railway Guidelines are met. Furthermore, the Commission considers that the conditions laid down in point 105 of the Railway Guidelines, which require a transparent, reasoned and quantified comparative cost analysis between rail transport and the alternative modes of transport, are satisfied. The Commission further notes that the methodology used and calculations performed will be made publicly available, in line with point 105 of the Railway Guidelines.

3.3.2. *Necessity and proportionality of the aid*

- (57) There is a presumption of necessity, proportionality and absence of overcompensation, when the intensity of the aid for rail infrastructure use stays below 30% of the total cost of rail transport and does not exceed 100% of the eligible costs (point 107(a) of the Railway Guidelines).
- (58) Furthermore, there is a presumption of necessity, proportionality and absence of overcompensation when the intensity of the aid for reducing external costs stays below 30% of the total costs of rail transport and does not exceed 50% of the eligible costs (107(b) of the Railway Guidelines).
- (59) The Railway Guidelines state in point 109 that aid for both the rail infrastructure use and the reducing external costs has to be strictly limited to compensating the opportunity costs connected with the use of rail transport rather than with the use of a more polluting mode of transport.

²⁴ See footnote 12.

²⁵ See footnote 14.

²⁶ For example, in Table 1, the external costs for road transport for accidents (HUF 3.51) corresponds to 0.01100 EUR/tonkm represented in the Commission's Handbook. The said value has been multiplied with the exchange rate 318.87 EUR/HUF resulting in 3.51 HUF.

- (60) In line with point 109 of the Railway Guidelines, where there are several competing options, which cause higher levels of pollution than rail transport, the aid has to be limited to the highest cost differential among the various options. As stated in recital (53) of this Decision, the Commission deems it appropriate to assume that the highest cost differential is that between rail and road transport.

3.3.2.1. Aid for rail infrastructure use

- (61) In relation to the aid for rail infrastructure use, Hungary used the calculations and methodology described in recital (21) of this Decision. As shown in Table 2, the aid intensity will be 100% of the eligible costs for the aid for rail infrastructure use. The eligible costs are the additional costs for infrastructure use paid by rail transport compared to road transport, as the more polluting competing mode of transport. The eligible costs amount to 3.58 HUF/net tonkm for domestic journeys and 0.15 HUF/net tonkm for import/export journeys, whereas 30% of total costs of rail transport HUF 6 877.9 million (see Table 2) for domestic journeys and HUF 10 824.9 million (see Table 2) for import/export journeys. Hence, the aid for rail infrastructure use is below the 30% of the total costs of rail transport and does not exceed 100% eligible costs and is therefore in line with point 107(a) of the Railway Guidelines. Therefore, the Commission concludes that the aid for infrastructure use meets the presumption of necessity and proportionality referred to in recital (57) of this Decision.

3.3.2.2. Aid for reducing external costs

- (62) It has been widely accepted that the SWT implies high costs and can be loss-making, i.e. there is a risk of low profit or no profit at all. Therefore, SWT is not widely used as a mode of rail freight transport and its numbers are decreasing²⁷. In the European Commission's study on SWT transport in Europe it has been stated that *"15% to 50% SWT services reported as not covering their production costs, due also to the complexity of the transport chain making less easy to obtain economy of scale especially on last mile and marshalling operations"*²⁸. Consequently, for the SWT to be profitable and in order to increase the services related to SWT and thus support the modal shift, public subsidies are needed.
- (63) In relation to the aid for reducing external costs, the Commission observes, that Hungary used the calculations and methodology described in recitals (17) to (23) of this Decision. The aid amounts for aid reducing the external costs will respect the relevant aid intensities set out in the Railway Guidelines. For domestic journeys, the maximum aid amount will be HUF 4.8, which corresponds to the aid intensity of 50% of the aid for reducing the external costs (9.59/2, see Table 2) and 30% of total cost of railway transport (see Table 2).

²⁷ European Commission: Study on Single Wagonload Traffic in Europe - challenges, prospects and policy options – Final Report, Directorate-General for Mobility and Transport, July 2015, p. 32. Online: <https://ec.europa.eu/transport/sites/transport/files/2015-07-swl-final-report.pdf>.

²⁸ European Commission: Study on Single Wagonload Traffic in Europe - challenges, prospects and policy options – Final Report, Directorate-General for Mobility and Transport, July 2015, p. 139. Online: <https://ec.europa.eu/transport/sites/transport/files/2015-07-swl-final-report.pdf>.

For import/export journeys, the maximum aid amount will be also HUF 4.8, which corresponds to the aid intensity of 50% of the aid for reducing the external costs (9.59/2, see Table 2) and 30% of total cost of railway transport (see Table 2).

- (64) The Commission notes that the aid intensity for the reduction of external costs under this scheme stays below 50% of the eligible costs for both domestic and import/export journeys and therefore in line with point 107(b) of the Railway Guidelines.

3.3.2.3. Effect of encouraging the modal shift to rail

- (65) Point 110 of the Railway Guidelines provides that: *“At any rate, where the aid recipient is a railway undertaking it must be proved that the aid really does have the effect of encouraging the modal shift to rail. In principle this will mean that the aid has to be reflected in the price demanded from the passenger or from the shipper, since it is they who make the choice between rail and the more polluting transport modes such as road”*.
- (66) The Commission notes that under the scheme beneficiaries are explicitly required to inform their customers about the aid received²⁹. Furthermore, the national legal basis will be made publicly available, as has been confirmed by Hungary³⁰. It is expected that such publicity will lead to competitive pressure.
- (67) The Commission finds it reasonable to expect that the customers of the beneficiaries will demand in commercial negotiations that part of the advantage deriving from the aid be passed on to them and will therefore be reflected in the price demanded from customers. In this respect, the Commission notes that the scheme requires the beneficiaries to provide and agree to the publication of information concerning the extent to which their prices, traffic volumes and investments developed as a result of the aid. The Commission therefore concludes that the requirements set out in point 110 of the Railway Guidelines are met.
- (68) Finally, according to point 111 of the Railway Guidelines, there must be realistic prospects of keeping the traffic transferred to rail so that the aid leads to a sustainable transfer of traffic.
- (69) The Commission notes in this regard that railway undertakings operate in a highly competitive situation. The Commission considers that as a consequence of the aid granted under the scheme to rail freight undertakings, part of the advantages will be passed on to customers which in turn may positively affect demand for freight transport services and thus contribute to maintaining a sustainable transfer of traffic from road to rail freight transport in line with point 111 of the Railway Guidelines.

²⁹ See recital (26).

³⁰ See footnote 8.

3.3.2.4. Conclusion on necessity and proportionality of the aid

- (70) In view of all the above, the Commission concludes that the aid is proportionate and necessary.

3.3.3. Avoidance of undue negative effects on competition

- (71) According to point 96 of the Railway Guidelines, the distortion of competition which is inherent in any aid must not jeopardise the general interest of the European Union. This means that the negative effects on competition and trade of the measure under assessment must remain limited, so that the overall balance of the measure is positive.
- (72) The Commission notes that the scheme at stake, compared to the situation without support to the SWT, is liable of distorting the normal course of competition in the market. This is so, because it will support selectively one type of transport undertakings, in the present case, the undertakings providing rail freight transport services, and thus will treat undertakings active in other freight transport modes differently (such as road freight transport).
- (73) The Commission notes also that the scheme at stake will support the wide use of the SWT and thus incentivise the modal shift and, therefore, more environmentally friendly means of transportation.
- (74) Moreover, as regards competition between different transport modes, the measure is limited to reducing imbalances between rail freight transport and road freight transport.
- (75) Therefore, taking into consideration the reasons above, the Commission finds that the aid avoids undue negative effects on competition and therefore does not give rise to a distortion of competition to an extent contrary to the general interest according to point 96 of the Railway Guidelines.

3.3.4. Incentive effect, non-discrimination, transparency and time-limit

- (76) The Commission observes that, as described in recital (13), the aid will not be allocated to the beneficiaries for activities, which have already started. Additionally, as described in recital (6) in relation to the overall situation of the SWT in Hungary, without such aid, the beneficiaries would not engage in SWT. The Commission therefore concludes that, the aid has an incentive effect.
- (77) Hungary confirms that aid under the scheme will be granted according to a uniform and non-discriminatory procedure, as described in section 2.6, to beneficiaries meeting the conditions specified in recital (11). Therefore, the Commission concludes that the aid is granted on non-discriminatory terms.

- (78) Additionally, the Hungarian authorities confirmed that they will ensure the publication of the relevant information on the notified scheme³¹. Therefore, the notified measure can be considered as fulfilling the transparency requirements.
- (79) Finally, according to point 97 of the Railway Guidelines the aid scheme 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. The Commission observes that the duration of the scheme is limited in time, i.e. it covers the period from 1 June 2021 until 31 December 2025, which is in line with the maximum duration laid down in point 97 of the Railway Guidelines.

3.3.5. Cumulation

- (80) As described in section 2.7, Hungary will respect the rules on cumulation. The beneficiaries will be required to disclose and attach to the application the data associated with any other State aid they have received.
- (81) Furthermore, Hungary has explained that a supervisory system is in place and supervising authorities will assure that the cumulation rules are being respected, in particular the Hungarian State Treasury, the State Audit Office, the Government Audit Office, the National Tax Office and the Customs Office³². Additionally, the granting authority has committed to draft annual reports to monitor and evaluate the granted aid amounts.
- (82) The Commission therefore considers that the cumulation rules laid down in point 124 of the Railway Guidelines are respected.

3.3.6. Conclusion on compatibility of aid

- (83) The Commission concludes that the aid fulfils the criteria of section 6 of the Railway Guidelines, and in particular of section 6.3 thereof. The aid can therefore be considered to meet the needs of coordination of transport.

³¹ See recitals (25) and (26).

³² See recital (29).

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>.

Your request should be sent electronically to the following address:

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State Aid Greffe
B-1049 Brussels
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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

