



EUROPEAN COMMISSION

Brussels 7.12.2021  
C(2021) 9161 final

PUBLIC VERSION

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**Subject: State Aid SA.100464 (2021/N) – Sweden  
COVID-19: Reduction of infrastructure access charges for transport  
services by rail**

Excellency,

## **1. PROCEDURE**

- (1) Following pre-notification contacts<sup>1</sup>, by electronic notification of 3 December 2021, Sweden notified an aid scheme (“the scheme” or “the measure”) concerning the reduction of the charges due to access railway infrastructure in Sweden (“the infrastructure access charges”) by providers of rail freight transport services and rail passenger transport services.
- (2) Sweden exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958<sup>2</sup> and to have this Decision adopted and notified in English.

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<sup>1</sup> Sweden first contacted the Commission services on 20 August 2021 and submitted information on 11 and 26 October, on 18, 22 and 30 November, and on 2 December 2021. The Commission services and the Swedish authorities held a telephone call on 3 September 2021.

<sup>2</sup> Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

Utrikesminister Ann Linde  
Utrikesdepartementet  
Arvfurstens palats  
Gustav Adolfs torg 1  
SE - 103 23 Stockholm  
SVERIGE

## **2. DESCRIPTION OF THE MEASURE**

### **2.1. Objective**

- (3) In line with the objective of Regulation (EU) 2020/1429<sup>3</sup>, the measure aims to mitigate the impact of the COVID-19 pandemic on the rail transport sector in Sweden. To that end, the measure will authorise the rail infrastructure manager (Swedish Transport Administration) to reduce the infrastructure access charges due by providers of rail freight transport services and rail passenger transport services over the period between 1 March 2020 and 30 September 2021.
- (4) According to Sweden, in the period between September and December 2020, the COVID-19 pandemic and the related containment measures adopted by the Swedish Government led to a sharp decline in demand for both rail freight transport services and rail passenger transport services. This, in turn, has led to major losses and a strained financial situation for the providers of such services.
- (5) The Swedish authorities submitted that the scheme aims to counteract the risk of a loss of market share of rail transport providers and preserve their mid- to long-term ability to compete with providers of other, less environmentally sustainable modes of transport. In Sweden's view, the reduction of infrastructure access charges will alleviate the downwards pressure on profitability and the negative effects on the rail providers' investment capacity and thereby strengthen or at least stabilise the modal shift from road to rail.

### **2.2. National legal basis**

- (6) The legal basis for the scheme will be an ordinance to be issued by the Swedish Government, together with a proposed amendment to the Swedish Railway Act<sup>4</sup>. The Swedish authorities submitted a draft of both acts to the Commission and confirmed that those acts will not be adopted, nor will the scheme be put into effect, before the notification of the Commission's final approval.

### **2.3. Duration and budget**

- (7) The reduction of infrastructure access charges concerns the period between 1 March 2020 and 30 September 2021. For the purpose of all calculations described in the present decision, two sub-periods are considered: 1 March to 31 December 2020 ("period 1") and 1 January to 30 September 2021 ("period 2").

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<sup>3</sup> Regulation (EU) 2020/1429 of the European Parliament and of the Council of 7 October 2020 establishing measures for a sustainable rail market in view of the COVID-19 outbreak, OJ L 333, 12.10.2020, p. 1, as amended by Commission Delegated Regulation (EU) 2020/2180 of 18 December 2020 extending the reference period of Regulation (EU) 2020/1429 of the European Parliament and of the Council establishing measures for a sustainable rail market in view of the COVID-19 outbreak, OJ L 433, 22.12.2020, p. 37, and by Commission Delegated Regulation (EU) 2021/1061 of 28 June 2021 extending the reference period of Regulation (EU) 2020/1429 of the European Parliament and of the Council establishing measures for a sustainable rail market in view of the COVID-19 outbreak, OJ L 229, 29.6.2021, p. 1.

<sup>4</sup> *Järnvägslag* (2004:519), available in its current version at [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/jarnvagslag-2004519\\_sfs-2004-519](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/jarnvagslag-2004519_sfs-2004-519).

- (8) The measure is financed out of the Swedish State budget. The estimated budget of the measure is SEK 1 370 million (approx. EUR 132.8 million<sup>5</sup>).
- (9) The Swedish authorities estimate that the overall budget will be allocated as follows:
- (a) approx. SEK 740 million (ca. EUR 71.7 million) is estimated to cover infrastructure access charges due for rail freight services, of which SEK 370 million (ca. EUR 35.9 million) for period 1 and SEK 370 million (ca. EUR 35.9 million) for period 2; and
  - (b) approx. SEK 630 million (ca. EUR 61.1 million) is estimated to cover infrastructure access charges due for rail passenger services, of which SEK 301 million (ca. EUR 29.2 million) for period 1 and SEK 328 million (ca. EUR 31.8 million) for period 2.

#### **2.4. Beneficiaries**

- (10) Beneficiaries of the scheme are providers of rail freight transport services or rail passenger transport services in Sweden, to the extent that they have been charged by the Swedish Transport Administration for services performed or organised during the period 1 March 2020 to 30 September 2021.

#### **2.5. Form of the aid, eligible costs and aid intensity**

- (11) The aid is granted by the Swedish Transport Administration in the form of a reduction of infrastructure access charges. Sweden will authorise the rail infrastructure manager, the Swedish Transport Administration, to reduce the amounts of infrastructure access charges due by the beneficiaries for the period from 1 March 2020 to 30 September 2021<sup>6</sup>. This includes charges for the minimum access package and for access to infrastructure connecting service facilities<sup>7</sup>, as well as reservation charges<sup>8</sup>. The Swedish Transport Administration will issue credit notes to the beneficiaries for an amount corresponding to the size of the reduction of charges, which will be proportional to the available budget (recital (8)).

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<sup>5</sup> Based on the Euro foreign exchange reference rate reported by the European Central Bank on 3.12.2021, equal to SEK 1 = EUR 0.09691, available at [https://www.ecb.europa.eu/stats/policy\\_and\\_exchange\\_rates/euro\\_reference\\_exchange\\_rates/html/eurofxref-graph-sek.en.html](https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-sek.en.html). This exchange rate is used for all conversions to SEK to EUR throughout the present decision.

<sup>6</sup> The Swedish authorities will cover the financial loss suffered by the Swedish Transport Administration as a result of the reduction of charges.

<sup>7</sup> As defined in points 1 and 2 in Annex II of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, OJ L 343, 14.12.2012, p. 32.

<sup>8</sup> Within the meaning of Article 36 of Directive 2012/34/EU. Reservation charges will be waived (reduced to zero) for all beneficiaries during the entire period 1 March 2020-30 September 2021.

- (12) The Swedish authorities notified the measure as aid for reducing external costs, as defined in point 98(b) of the Railway Guidelines<sup>9</sup>. Pursuant to point 103 of the Railway Guidelines, the eligible costs are the part of the external costs which rail transport makes it possible to avoid compared with competing transport modes.
- (13) The Swedish authorities referred to the figures in Annex D of the study “State of play of Internalisation in the European Transport Sector” (“the Commission’s study”)<sup>10</sup>, which is publicly available.
- (14) According to the Commission’s study, in Sweden, the average external costs generated by road freight transport are EUR 27.92 per 1 000 tonne-kilometres, while those generated by rail freight transport are EUR 10.35 per 1 000 tonne-kilometres. Therefore, regarding rail freight transport, the eligible costs (as per definition referred to in recital (12)) amount to EUR 17.57 per 1 000 tonne-kilometres.
- (15) In relation to passenger transport, the Commission’s study estimates, for Sweden, average external costs in the amount of EUR 60.84 per 1 000 passenger-kilometres and EUR 19.69 per 1 000 passenger-kilometres for road passenger transport and rail passenger transport, respectively. For rail passenger transport, the eligible costs therefore amount to EUR 41.15 per 1 000 passenger-kilometres.
- (16) Sweden further submitted that, based on data collected by the Swedish Transport Administration, the total cost of rail transport in Sweden amounts to EUR 24.23 per 1 000 tonne-kilometres for rail freight transport and EUR 83.34 per 1 000 passenger-kilometres for rail passenger transport. The Swedish authorities committed to publish their calculations of the total cost of rail transport by the end of 2021.
- (17) Having regard to the duration and budget of the measure (section 2.3) and the total transport performance over the relevant periods, Sweden calculated that the following aid amounts will be granted under the scheme: (a) for rail freight transport, EUR 1.96 per 1 000 tonne-kilometres during period 1 and EUR 2.13 per 1 000 tonne-kilometres during period 2<sup>11</sup>; and (b) for rail passenger transport, EUR

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<sup>9</sup> Communication from the Commission - Community guidelines on State aid for railway undertakings, OJ C 184, 22.7.2008, p. 13.

<sup>10</sup> European Commission, “State of play of internalisation in the European transport sector”, Luxembourg: Publications Office of the European Union, May 2019. The study is part of the project ‘Sustainable Transport Infrastructure Charging and Internalisation of Transport Externalities’ and is available at <https://op.europa.eu/en/publication-detail/-/publication/696d402f-a45a-11e9-9d01-01aa75ed71a1>, while its annexes are available at [https://transport.ec.europa.eu/document/download/a9dd34f0-f37b-400b-9078-50c86c07c6d2\\_en](https://transport.ec.europa.eu/document/download/a9dd34f0-f37b-400b-9078-50c86c07c6d2_en).

<sup>11</sup> Those values are obtained by dividing the estimated aid amounts in absolute figures (ca. EUR 35.9 million for each of periods 1 and 2) by the total transport performance over the respective periods (18 327 million and 16 868 million tonne-kilometres, respectively), and multiplying the result by 1 000. The transport performance for March 2020 is assumed to represent one third of that recorded for Q1 2020 (1 January to 31 March 2020). Further, since actual data are not yet available for Q3 2021 (1 July to 30 September 2021), it is assumed that over that period the transport performance was the same as in Q3 2020.

4.94 per 1 000 passenger-kilometres during period 1 and EUR 4.88 per 1 000 passenger-kilometres during period 2<sup>12</sup>.

## 2.6. Cumulation and avoidance of overcompensation

- (18) The Swedish authorities confirmed that the cumulation rules in section 8.1 of the Railway Guidelines will be respected.
- (19) With regard to rail freight transport, the Swedish authorities put forward that, even when combined with aid under the existing measures assessed and approved by the Commission in cases SA.57886, SA.60383 and SA.62800<sup>13</sup>, aid under the scheme at issue will comply with the relevant aid ceilings in the Railway Guidelines. Those existing measures concern the same eligible costs covered by the scheme at issue, i.e. the share of external costs that rail transport makes it possible to avoid compared with competing modes of transport (recital (12)). For period 1 (1 March to 31 December 2020), the Swedish authorities calculated that the cumulation of aid under the scheme at issue (EUR 1.96 per 1 000 tonne-kilometres<sup>14</sup>) and aid approved in case SA.57886 (EUR 1.77 per 1 000 tonne-kilometres<sup>15</sup>) leads to an overall level of aid of EUR 3.73 per 1 000 tonne-kilometres. For period 2 (1 January to 30 September 2021), the overall level of aid is up to EUR 5.54 per 1 000 tonne-kilometres, which results from the cumulation of aid under the scheme at issue (EUR 2.13 per 1 000 tonne-kilometres<sup>16</sup>) and aid approved in cases SA.60383 and SA.62800 (up to EUR 3.41 per 1 000 tonne-kilometres)<sup>17</sup>.
- (20) Furthermore, the Swedish authorities confirmed that support under the scheme is excluded for any costs associated with infrastructure access charges that are not

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<sup>12</sup> Those values are obtained by dividing the estimated aid amounts in absolute figures (ca. EUR 29.2 million for period 1 and ca. EUR 31.8 million for period 2) by the total transport performance over the respective periods (5 912 million and 6 517 million passenger-kilometres, respectively), and multiplying the result by 1 000. The transport performance for March 2020 is assumed to represent one third of that recorded for Q1 2020 (1 January to 31 March 2020). Further, since actual data are not yet available for Q3 2021 (1 July to 30 September 2021), it is assumed that over that period the transport performance was the same as in Q3 2019. Sweden explained that, for rail passenger transport, using the transport performance during Q3 2020 as a proxy for the transport performance during Q3 2021 would underestimate the transport performance for Q3 2021 since there were heavy restrictions on passenger travel during Q3 2020.

<sup>13</sup> Commission Decision of 12 October 2020 in case SA.57886 - Environmental compensation for rail freight transport, OJ C 17, 15.1.2021, p. 1; Commission Decision of 15 February 2021 in case SA.60383 - Prolongation and amendments to the scheme on environmental compensation for rail freight transport, OJ C 77, 5.3.2021, p. 1; and Commission Decision of 22 July 2021 in case SA.62800 - Prolongation of the Swedish scheme on environmental compensation for rail freight transport (SA.60383), OJ C 355, 3.9.2021, p. 1.

<sup>14</sup> Recital (17).

<sup>15</sup> Commission Decision of 12 October 2020 in case SA.57886, recital 14.

<sup>16</sup> Recital (17).

<sup>17</sup> Commission Decision of 22 July 2021 in case SA.62800, recital 15. That Decision approved an increase in the budget, maximum aid amounts and aid intensities under the scheme previously approved by Commission Decision of 15 February 2021 in case SA.60383. For the period 1 April to 31 December 2021, the aid under the amended scheme amounts to EUR 3.41 per 1 000 tonne-kilometres, whereas the amendment left unaltered the aid amount for the period 1 January to 31 March 2021, i.e. EUR 2.24 per 1 000 tonne-kilometres, as approved in case SA.60383 (recital 12 thereof). For the purpose of calculating the maximum cumulative aid amount for the year 2021, the Swedish authorities used the higher of the two aforementioned aid amounts, i.e. EUR 3.41 per 1 000 tonne-kilometres.

incurred by the transport providers, but are covered by the relevant tendering authority on the basis of a public service contract. To that purpose, the Swedish Transport Administration will require a signed declaration from the relevant undertakings and tendering authorities stating whether any costs linked to the charges referred to in recital (11) are already covered by the tendering authority under any relevant public service contract. Any amount overcompensated will be subject to recovery.

### **3. ASSESSMENT**

#### **3.1. Lawfulness of the measure**

- (21) By notifying the measure before putting it into effect, the Swedish authorities have respected their obligations under Article 108(3) TFEU.

#### **3.2. Existence of State aid**

- (22) 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".

- (23) Since the measure:

- (a) concerns undertakings engaged in an economic activity, as it supports providers of rail freight transport services and rail passenger transport services in Sweden (recital (10));
- (b) involves State resources, given that the aid is financed out of the Swedish State budget, and is imputable to the State, as it is granted by the Swedish Transport Administration based on legal acts to be adopted by the Swedish Government/Swedish Parliament (recitals (6), (8) and (11));
- (c) confers an economic advantage as it relieves the beneficiaries of part of the operating costs that they would normally have to bear, i.e. the infrastructure access charges referred to in recital (11);
- (d) the advantage it provides is selective because it is awarded only to certain segments of the transportation services market, i.e. providers of rail freight transport services and rail passenger transport services in Sweden (recital (10)); and
- (e) is liable to distort competition and affect trade between Member States since it concerns the rail freight transport market and the rail passenger transport market, which are sectors that have been liberalised;

the Commission considers that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

### 3.3. Compatibility

- (24) Article 93 TFEU provides 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"*.
- (25) In that regard, the Commission notes that measures of coordination of transport may be needed when certain modes of transport do not bear the costs of the negative externalities that they impose on society or bear less costs than other modes of transport since they do not have to pay for access to infrastructure. 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.
- (26) 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 have been set out in section 6 ("Aid for coordination of transport") of the Railway Guidelines. 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 6.3 ("Criteria for aid for rail infrastructure use, reducing external costs and interoperability").
- (27) Further, Regulation (EU) 2020/1429 of 7 October 2020 lays down measures for a sustainable rail market in view of the COVID-19 pandemic. Article 2(1) of that Regulation provides that: *"Notwithstanding Article 27 and Article 31(3) of Directive 2012/34/EU, and subject to compliance with State aid rules, Member States may authorise infrastructure managers to reduce, waive or defer the payment of charges for the minimum access package, and for access to infrastructure connecting service facilities, where appropriate according to the market segments identified in their network statements, in a transparent, objective and non-discriminatory way, where such payment has or will become due during the reference period"*. Pursuant to Article 1 of Regulation (EU) 2020/1429, the reference period runs from 1 March 2020 until 31 December 2021<sup>18</sup>.

#### 3.3.1. Eligible costs

- (28) According to point 98(b) of the Railway Guidelines, aid for the needs of transport coordination can take the form of aid to reduce external costs, which is designed to encourage a modal shift of freight and passenger transport to rail, because rail transport generates lower external costs than other modes of transport, such as road transport.
- (29) Point 103 of the Railway Guidelines states 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"*.

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<sup>18</sup> See Article 1 of Regulation (EU) 2020/1429, as modified initially by Article 1 of Commission Delegated Regulation (EU) 2020/2180 and subsequently by Article 1 of Commission Delegated Regulation (EU) 2021/1061. See footnote 3.

- (30) Point 105 of the Railway Guidelines requires that Member States 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.
- (31) As explained in section 2.5 and in line with point 103 of the Railway Guidelines, the eligible costs for the measure are the part of the external costs which rail transport makes it possible to avoid compared with competing transport modes. To estimate the eligible costs, Sweden compared the external costs generated by rail transport, on the one hand, and those generated by road transport, on the other hand, separately for rail freight services and rail passenger services.
- (32) The Commission notes that Sweden's calculations are based on the Commission's study (recital (13)). That study contains a transparent, reasoned and quantified comparative costs analysis and is publicly available (footnote 10). Further, the Commission observes that the analysis of the total cost of rail transport provides an accurate estimate of such costs, as it includes specific figures for both rail freight transport and rail passenger transport. Further, the Swedish authorities committed to publish such analysis by the end of 2021 (recital (16)).
- (33) Therefore, the Commission concludes that the measure is in line with the requirements and the conditions set by point 105 of the Railway Guidelines.

#### 3.3.2. *Necessity and proportionality of the aid*

- (34) Point 109 of the Railway Guidelines states that the aid 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. Where there are several competing options, which cause higher levels of pollution than rail transport, the limit chosen corresponds to the highest cost differential among the various options.
- (35) According to points 107(b) and 109 of the Railway Guidelines, when the intensity of aid for reducing external costs stays below 50% of the eligible costs and below 30% of the total cost of rail transport, there is a presumption of necessity, proportionality and absence of overcompensation.
- (36) According to point 110: "*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*". 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.
- (37) For each of the two sectors covered by the scheme (rail freight transport and rail passenger transport), the Swedish authorities estimated the eligible costs by calculating the additional external costs generated by rail transport compared to road transport. The Swedish authorities based their analysis on the Commission's study (in particular, its Annex D).



- (38) Based on the Commission's study, in Sweden, the eligible costs amount to EUR 17.57 per 1 000 tonne-kilometres for rail freight transport and to EUR 41.15 per 1 000 passenger-kilometres for rail passenger transport (recitals (14) and (15)). Further, based on data collected by the Swedish Transport Administration, the total cost of rail transport in Sweden is EUR 24.23 per 1 000 tonne-kilometres for rail freight transport and EUR 83.34 per 1 000 passenger-kilometres for rail passenger transport (recital (16)).
- (39) In relation to both rail freight transport and rail passenger transport, the Commission notes that the notified aid remains below both aid intensity thresholds set by point 107(b) of the Railway Guidelines, i.e. 50% of the eligible costs and 30% of the total cost of rail transport. Regarding rail freight transport, the notified aid amounts of EUR 1.96 and EUR 2.13 per 1 000 tonne-kilometres for period 1 and period 2, respectively, stay below 50% of the eligible costs (EUR 8.79 per 1 000 tonne-kilometres) and 30% of the total cost of rail transport (EUR 7.27 per 1 000 tonne-kilometres). Likewise, for rail passenger transport, the notified aid amounts of EUR 4.94 and EUR 4.88 per 1 000 passenger-kilometres for period 1 and period 2, respectively, remains below 50% of the eligible costs (EUR 20.58 per 1 000 passenger-kilometres) and 30% of the total cost of rail transport (EUR 25 per 1 000 passenger-kilometres).
- (40) Given that the conditions laid down in points 107(b) and 109 of the Railway Guidelines are fulfilled, the Commission concludes that the measure is proportionate, necessary and does not lead to overcompensation.
- (41) As regards the requirements laid down in point 110 of the Railway Guidelines, the Commission notes the following. As described in section 2.1, the notified reduction of infrastructure access charges aims to preserve the competitiveness of providers of rail transport services vis-à-vis road transport providers and strengthen or at least stabilise the modal shift from road to rail. Given that all relevant information on the measure will be publicly available (recitals (13) and (16)) and due to the competitive pressure exerted by road operators in relation to both freight transport services and passenger transport services, it can be expected that the beneficiaries' customers will participate in the advantage granted to the beneficiaries through lower prices. Due to the competitive sector and the transparency of the aid, the Commission takes the view that those elements are sufficient to achieve the required price effect in order to encourage the modal shift to rail.
- (42) In relation to the condition laid down in point 111 of the Railway Guidelines, the Commission considers the following. As a consequence of the level of competition on both the rail freight transport market and the rail passenger transport market, and of the financial benefits granted under the measure to providers of rail freight transport services or rail passenger transport services in Sweden, the costs of operating such services will decrease. The reduction of those costs will likely be reflected in the pricing of rail transport services to the advantage of the shippers or passengers requesting such services. This will in turn contribute to maintaining a sustainable transfer of traffic from road to rail transport.

- (43) Based on the above elements, the Commission concludes that, in accordance with points 110 and 111 of the Railway Guidelines, the measure encourages the modal shift to rail and there are realistic prospects that the aid leads to a sustainable transfer of traffic to rail.

### 3.3.3. *Avoidance of undue negative effects on competition*

- (44) According to point 96 of the Railway Guidelines, the distortion of competition which is inherent in any aid must not jeopardise the general interests of the Union. This means that the negative effects on competition and trade of the measure under assessment must remain limited.
- (45) The Commission notes in this regard that, compared to a scenario without aid, the measure is liable of distorting the normal course of competition in the rail freight transport market and the rail passenger transport market, as it will support selectively one type of transport undertakings, i.e. providers of rail transport services. The measure will thus treat undertakings active in other transport modes less favourably. However, the Commission notes that the aid is limited to reducing imbalances between road transport and rail transport and is provided on a non-discriminatory basis to all eligible providers of rail freight transport services or rail passenger transport services in Sweden. Aid under the measure will facilitate the development and coordination of transport in Sweden, while at the same time supporting the modal shift to rail, a more environmentally friendly transport mode. Additionally, the aid minimises the distortions on competition and trade, as it is necessary and proportionate and avoids any overcompensation.
- (46) Therefore, the Commission finds that the aid avoids undue negative effects on competition and does not give rise to a distortion of competition to an extent contrary to the general interests of the Union, in accordance with point 96 of the Railway Guidelines.

### 3.3.4. *Duration*

- (47) According to point 97 of the Railway Guidelines, aid 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.
- (48) The 19-month duration of the scheme (recital (7)) is in line with the maximum five-year duration laid down in point 97 of the Railway Guidelines.
- (49) The Commission further notes that Regulation (EU) 2020/1429 states in its recital 2 that the possibility to reduce infrastructure access charges “should be granted for a period during which the effects of the COVID-19 pandemic on the rail market have already manifested itself and are expected to do so”. Moreover, the Regulation specifies in its recital 8 that “[D]ue to the unforeseeable and sudden nature of the COVID-19 outbreak, it was impossible to adopt relevant measures in time. For that reason, this Regulation should also cover a period before its entry into force. Given the nature of the measures provided for by this Regulation, such an approach does not result in a violation of the legitimate expectations of the persons concerned”.

- (50) The Commission notes that the Regulation applies to the period from 1 March 2020 until 31 December 2021. The duration of the measure (1 March 2020 to 30 September 2021) falls within the reference period of Regulation (EU) 2020/1429.

#### 3.3.5. *Cumulation and avoidance of overcompensation*

- (51) Pursuant to point 124 of the Railway Guidelines, “[T]he aid ceilings stipulated in these guidelines are applicable irrespective of whether the aid in question is financed wholly or in part from State resources or from Union resources. Aid authorised under these guidelines may not be combined with other forms of State aid within the meaning of Article 107(1) of the Treaty or with other forms of Union financing if such combination produces a level of aid higher than that laid down in these guidelines”. Further, according to point 125 of the Railway Guidelines, in the case of aid serving different purposes and involving the same eligible costs, the most favourable aid ceiling will apply.
- (52) As mentioned in recital (18), the cumulation rules laid down in section 8.1 (points 124 and 125) of the Railway Guidelines will be respected. Regarding rail freight transport, the Commission considers that, based on Sweden’s calculations (recital (19)), the cumulated level of aid under the scheme at issue and the existing measures under cases SA.57886, SA.60383 and SA.62800, which all cover the same eligible costs, will respect the thresholds in point 107(b) of the Railway Guidelines. Indeed, the cumulation of aid under all such measures will lead to a level of aid of EUR 3.73 per 1 000 tonne-kilometres for 2020 and up to EUR 5.54 per 1 000 tonne-kilometres for 2021. Therefore, the overall level of aid will stay below the relevant threshold values mentioned in recital (39), i.e. EUR 8.79 per 1 000 tonne-kilometres and EUR 7.27 per 1 000 tonne-kilometres.
- (53) Finally, the Commission takes note of the safeguards put in place by Sweden to exclude that aid under the scheme is granted for costs linked to infrastructure access charges which are already covered by the relevant tendering authority under any relevant public service contract (recital (20)).

#### 3.3.6. *Conclusion*

- (54) In view of all the above, the Commission concludes that the measure fulfils the criteria of section 6 of the Railway Guidelines, in particular those of its sub-section 6.3. The measure can therefore be considered to meet the needs of coordination of transport and is compatible under Article 93 TFEU.

#### 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.

The decision is based on non-confidential information and is therefore published in full on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission  
Margrethe VESTAGER  
Executive Vice-President

