



Brussels, 21.03.2022
C(2022) 1808 final

PUBLIC VERSION

This document is made available for
information purposes only.

Subject: State Aid SA.100486 (2022/N) – RRF Spain – TRTEL: Support Programme for Sustainable and Digital Transport – co-incentive to boost rail freight transport based on environmental and socio-economic merit

Excellency,

1. PROCEDURE

- (1) By electronic notification of 27 January 2022, Spain notified to the European Commission (“Commission”) an aid scheme to support freight transport by rail (the “scheme” or the “notified measure”), in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU” or “Treaty”).
- (2) On 7 March the Commission requested further information. The Spanish authorities submitted their replies on 8 March 2022.
- (3) Spain 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 of the measure

- (4) In Spain, the volume of goods transported by rail is below 30 million tonnes per year. The share of rail freight transport in national freight transport is below 5%, far from the Union average of 17%. This places Spain at the bottom of the

¹ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 16.10.1958, p. 385.

Excmo. Sr. José Manuel Albares Bueno
Ministro de Asuntos Exteriores y de Cooperación
Plaza de la Provincia 1
28012 MADRID

Member States with railway tradition in the Union. Road transport is dominating the market in Spain and has been increasing its share to 74.5% in 2019, continuing a growing trend since 2014.

- (5) The primary objective of the scheme is to encourage the modal shift of transport of goods from road to rail, by supporting rail as a more environmentally friendly mode of transport. The secondary objective is to improve the environmental performance of rail transport, by modulating the aid intensity according to the type of traction and the degree of use of the railway network.
- (6) In line with the objectives of the Commission’s Communication on a “Sustainable and Smart Mobility Strategy – putting European transport on track for the future”², the Spanish “Strategy of a Connected, Sustainable and Safe Mobility”³ focusses, inter alia, at the decarbonisation of the Union freight transport market and a continuing modal shift from road to more sustainable transport modes. The Spanish authorities further submit that the objective of the scheme is in line with the objectives enshrined in the national Recovery and Resilience Plan⁴.
- (7) Spain estimates that the scheme will lead to around 8% up to 12% increase in rail freight transport per beneficiary.

2.2. Legal basis

- (8) The national legal basis for the aid will be an order of the Ministry of Transport, Mobility and Urban Agenda approving the regulatory bases for the award of subsidies for the promotion of rail freight transport based on environmental and socio-economic merit, in the framework of the Recovery, Transformation and Resilience Plan – financed by the Union – the NextGenerationEU, and approving and publishing the call for applications for the period 2022-2024 (“Ministerial Order”).
- (9) The Ministerial Order will be adopted only after the Commission’s approval of the notified measure. As a part of the notification, the Spanish authorities have submitted a draft of the said Ministerial Order.

2.3. Beneficiaries

- (10) The beneficiaries under the scheme are all railway undertakings established in a Member State carrying out freight transport by rail. Such undertakings must hold a license for railway undertakings and a single safety certificate for transport services in the General Interest Railway Network.

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Sustainable and Smart Mobility Strategy – putting European transport on track for the future, COM/2020/789 final of 9.12.2020. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0789>.

³ Available at: <https://esmovilidad.mitma.es/ejes-estrategicos>.

⁴ Recovery and Resilience Plan for the Spanish economy. Measure 5 of investment 4 of component 6. Endorsed by the Commission 16.06.2021. Available at: <https://www.lamoncloa.gob.es/presidente/actividades/Paginas/2020/espana-puede.aspx>

- (11) According to Spain's estimations, the number of eligible beneficiaries will be around 10.
- (12) Undertakings in difficulty⁵ are not eligible for aid under the scheme; nor are undertakings that have not fully reimbursed an unlawful and incompatible aid subject to an earlier recovery decision by the Commission.

2.4. Budget and duration

- (13) The overall budget is EUR 120 million with an estimated maximum amount of EUR 40 million per annum. The entire budget is made available through the Recovery and Resilience Facility⁶ ("RRF").
- (14) The scheme has a duration until 30 June 2026 or until the available budget has been exhausted, whichever is earlier. The application of the scheme begins upon entry into force of the Ministerial Order, which will constitute the national legal basis for the scheme (see recital (8)).
- (15) The Spanish authorities have confirmed that no aid will be granted under the scheme prior to the notification of the Commission's decision, as the measure will be put into effect only after the notification on the adoption of the Commission's decision.

2.5. Administration of the measure

- (16) The Ministry of Transport, Mobility and Urban Agenda is responsible for the granting and administration of the aid. The Secretary of State of Transport, Mobility and Urban Agenda is responsible for monitoring the award procedure. The Spanish authorities submit that all the information relating to the scheme, including the call for aid applications, will be published online and will be available to the general public⁷.
- (17) The applications for aid under the scheme must be submitted individually for each year and must be accompanied by documents providing evidence of compliance with the requirements for the granting of the aid. The application period for each year is from 1 January to 31 March. The aid will be granted on a "first come, first served basis". The payment of the aid will be *ex post*, taking into account each beneficiary's data of the year preceding the application (see recital (24)).

2.6. Form of aid, eligible costs and aid intensity

- (18) The aid takes the form of direct non-refundable grants for reducing external costs.

⁵ As defined in section 2.2 of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.07.14, p. 1.

⁶ Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57, 18.02.2021, p. 17.

⁷ All the information relating to the scheme will be published on the website of the Ministry of Transport, Mobility and Urban Agenda. Available at: <https://www.mitma.gob.es/ministerio/proyectos-singulares/prtr/transporte/convocatorias-ayudas-transporte-movilidad>. The public call will be published on the website of BDNS (National Subsidy Database). Available at: <https://www.pap.hacienda.gob.es/bdnstrans/ge/es/convocatorias>.

- (19) The eligible costs under the scheme correspond to the part of external costs which rail transport makes it possible to avoid compared with road transport (see recital (21)).
- (20) Spain calculated the eligible costs based on the Commission’s Handbook on the external costs of transport⁸ (“Commission’s Handbook”). The eligible costs are calculated as the difference between the external costs of road freight transport and the external costs of rail freight transport in Spain, based on the following external costs’ elements: environmental (climate change, equivalent to carbon dioxide, CO₂ emissions; air pollution) and socio-economic (congestion, accidents and noise).
- (21) According to Spain, the difference between external costs of road freight transport and the external costs of rail freight transport is EUR 0.0136 per tkm, taking into consideration the relevant cost elements in the Commission’s Handbook (see recital (20)).
- (22) According to the Spanish Rail Observatory, the total costs of rail transport per tkm is EUR 0.026⁹.
- (23) The maximum aid amounts per tkm depend on the type of fuel used (i.e. drive type¹⁰, such as Diesel 1, Diesel 2 or Electric) and load efficiency (see Table 1).
- for Diesel 1 with a load efficiency from 30 to 40% EUR 0.0017 per tkm and with a load efficiency equal to or more than 40% EUR 0.0028 per tkm.
 - for Diesel 2 with a load efficiency from 30 to 40% EUR 0.0027 per tkm and with a load efficiency equal to or more than 40% EUR 0.0035 per tkm.
 - for Electric with a load efficiency from 30 to 40% EUR 0.0048 per tkm and with a load efficiency equal to or more than 40% EUR 0.0051 per tkm.

Table 1: Maximum aid amounts (in EUR/tkm)

Load efficiency (net ton/gross towed ton)	Drive type		
	Diesel 1	Diesel 2	Electric
< 30%	-	-	-
30-40%	0.0017	0.0027	0.0048

⁸ European Commission, “Sustainable Transport Infrastructure Charging and Internalisation of Transport Externalities”, Luxembourg: Publications Office of the European Union, May 2019; Handbook on the external costs of transport, Version 2019 – 1.1. Available at: <https://op.europa.eu/en/publication-detail/-/publication/9781f65f-8448-11ea-bf12-01aa75ed71a1>.

⁹ CNMC. Annual Report of Rail Sector in 2019, 14 January 2021. Available at: https://www.cnmc.es/sites/default/files/3336867_11.pdf.

¹⁰ The Diesel type is specified according to emission factors, namely Diesel 1 locomotives certified according to limit values set in Directive 97/68/EC, now repealed (Annex I, Ap.4.1.2.4; Stage III); Diesel 2 locomotives certified according to limit values set in Regulation (EU) 2016/1628 (Annex II, Table II.7; Stage V); Diesel 2 is considered the same as Diesel 1 in terms of energy consumption.

≥ 40%	0.0028	0.0035	0.0051
-------	--------	--------	--------

- (24) The concrete aid amounts per beneficiary will depend on the freight rail traffic increase declared by the applicants based on the following system. The aid amounts are calculated by reference to the rail freight traffic carried out by the beneficiary in the preceding year. If there is no traffic increase compared to the previous year, the beneficiary will only receive 25% of the maximum aid amount. If the rail traffic has decreased, no aid will be granted. By contrast, the maximum aid amount will be obtained if at least an 8% rail traffic increase has been achieved compared to the previous year. Between a traffic growth of 0% and 8%, the aid amount will be computed following a lineal proportion between the minimum and maximum values.
- (25) As aid amounts will be calculated and paid out *ex post* (see recital (17)), the first payment of aid will be made in 2023, taking into account the traffic increase achieved in 2022.
- (26) The Spanish authorities submit that in order to achieve an increase of rail traffic, and consequently, a lasting modal shift, railways undertakings have to reflect the aid either in the price or by better service conditions in general, thus incentivising the customers to choose rail over other means of transport.

2.7. Transparency, monitoring and repayment mechanism

- (27) The Spanish authorities will submit annually to the Commission the reports provided for by Article 26 of Council Regulation (EU) 2015/1589¹¹. The Spanish authorities will maintain, for at least 10 years from the date of award of the aid, detailed records containing the information and supporting documentation necessary to establish that all compatibility conditions of the present scheme set out in recitals (10), (12), (24), (26) and (30) are met, and provide such information, on written request, to the Commission within a period of 20 working days or a longer period as may be stipulated in the request.
- (28) The Secretary of State of Transport, Mobility and Urban Agenda will monitor and supervise the aid granted. To this end, the Spanish authorities are entitled to ask the beneficiaries for any documents necessary to check compliance with the provisions of the Ministerial Order that will constitute the national legal basis for the scheme.
- (29) Failure to comply with any of the obligations identified in the legal basis or in the call of applications will constitute sufficient grounds to refuse the payment of aid or to obligate the beneficiary to pay the aid back, including interest.

¹¹ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.09.2015, p. 9).

2.8. Cumulation

- (30) Spain commits to respect the rules on cumulation laid down in point 124 of the Railway Guidelines¹². The beneficiaries will be required to disclose and attach to the application the data concerning any other aid already granted.

3. ASSESSMENT OF THE MEASURE

3.1. Lawfulness of the aid scheme

- (31) As noted in recitals (8) and (9), the draft Ministerial Order has not yet been adopted.
- (32) By notifying the aid scheme before putting it into effect, the Spanish authorities have respected the standstill obligation under Article 108(3) TFEU.

3.2. Existence of aid

- (33) By virtue of 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 shall, in so far as it affects trade between Member States, be incompatible with the internal market.*”
- (34) 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.

3.2.1. Economic activity and notion of undertaking

- (35) 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 financed¹³. Any activity consisting in offering goods and services on a given market is an economic activity¹⁴.

¹² OJ C 184 of 22.7.2008, p. 13.

¹³ 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.

¹⁴ Judgment of the Court of Justice of 16 June 1987, *Commission v Italy*, 118/85 ECLI:EU:C:1987:283, paragraph 7.

- (36) The beneficiaries under the scheme are railway undertakings, which fulfil the criteria set out in recital (35), as they offer services on a given market.

3.2.2. *State resources and imputability*

- (37) In order for a measure to be found as being granted by a Member State or through State resources in any form whatsoever, it must (i) be granted directly or indirectly through State resources and (ii) be imputable to the State.
- (38) In this case, since the aid takes the form of a grant to the beneficiaries and is financed through the resources made available through the RRF, while being granted by the Ministry of Transport, Mobility and Urban Agenda, such grant is financed from the State budget and imputable to Spain.

3.2.3. *Selective advantage*

- (39) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit, which an undertaking would not have obtained under normal market conditions, that is to say in the absence of State intervention. Article 107(1) TFEU also requires that a measure, in order to constitute State aid, is selective in the sense that it favours “*certain undertakings or the production of certain goods*”.
- (40) By supporting rail freight transport through a non-repayable grant, which is a form of financing not available on the market, an economic advantage is conferred on the aid beneficiaries.
- (41) The notified measure is selective insofar as only rail freight undertakings as set out in recital (10) are eligible.

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

- (42) In accordance with settled case-law¹⁵, for a measure to distort competition, it is sufficient that the recipient of the aid competes with other undertakings on liberalised markets.
- (43) 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.
- (44) Since the scheme concerns a market that have been liberalised (namely, the rail freight services market, which has been liberalised since 2007), the Commission considers that the measure is liable to distort competition and to have an effect on intra-Union trade.

3.2.5. *Conclusion on the existence of aid*

- (45) In light of the above, the Commission concludes that the notified measure involves State aid within the meaning of Article 107(1) TFEU.

¹⁵ Judgment of the General Court of 30 April 1998, *Het Vlaamse Gewest v Commission*, T-214/95, ECLI:EU:T:1998:77, paragraph 50.

3.3. Compatibility of the aid

- (46) 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 for the 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.
- (47) In its Communication on "The European Green Deal"¹⁶, the Commission noted that "*as a matter of priority, a substantial part of the 75% of inland freight carried today by road should shift onto rail and inland waterways*". Similarly, in its Communication on a "Sustainable and Smart Mobility Strategy – putting European transport on track for the future"¹⁷, the Commission noted the need for "*decisive action to shift more activity towards more sustainable transport modes (notably shifting a substantial amount of freight onto rail, inland waterways, and short sea shipping)*", indicating that transport by rail should double by 2050.
- (48) The Commission observes that, as explained in recital (5), the notified scheme aims at improving the modal shift from road to rail in Spain by supporting rail freight transport.
- (49) 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 ("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").
- (50) According to point 95 of the Railway Guidelines, aid that meets the needs of transport coordination is in principle 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 97 of the Railway Guidelines the aid scheme 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.
- (51) According to point 98 of the Railway Guidelines, aid for the needs of transport coordination can take several forms including aid for reducing external costs,

¹⁶ COM (2019) 640 final of 11.12.2019. Available at: https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en.

¹⁷ COM (2020) 789 final of 9.12.2020. Available at: https://ec.europa.eu/transport/themes/mobilitystrategy_en.

designed to encourage a modal shift to rail because it generates lower external costs than other modes of transport such as road transport.

3.3.1. *External costs savings*

- (52) The transport sector entails major negative externalities, both as regards individual users (congestion, accidents) and society as a whole (pollution). 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.
- (53) 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.*”
- (54) Point 105 of the Railway Guidelines provides that 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.
- (55) The Commission notes that Spain calculated the eligible costs based on the Commission’s Handbook (see recitals (20) and (21)). Spain considers that, as rail freight transport mainly competes with road freight transport, the external costs generated by the rail freight sector have to be compared to those generated by road freight transport. Since the highest cost differential is that between road transport and rail transport, the Commission finds this approach reasonable.
- (56) Furthermore, the Commission notes that Spain based the methodology of its external costs calculations on the Commission’s Handbook, and that the external costs analysis is therefore based on a sound methodology. Thus, 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 in the Commission’s Handbook is publicly available, in line with point 105 of the Railway Guidelines.
- (57) In the light of the above, the Commission concludes that, in line with point 103 of the Railway Guidelines, the eligible costs are the part of the external costs which rail freight transport makes it possible to avoid compared to road freight transport. Further, the notified scheme is based on a transparent, reasoned and quantified comparative cost analysis, and the methodology used and calculations performed are publicly available. The scheme therefore complies with point 105 of the Railway Guidelines.

3.3.2. *Necessity and proportionality of the aid*

- (58) The Railway Guidelines state in point 109 that aid for 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.

- (59) Points 107(b) and 109 of the Railway Guidelines set out a presumption of necessity, proportionality and absence of overcompensation when the intensity of the aid for reducing external costs does not exceed 50% of the eligible costs and stays below 30% of the total cost of rail transport.
- (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 (56), the Commission deems it appropriate to assume that the highest cost differential is that between rail and road transport.
- (61) The Commission observes, that Spain based its calculations and methodology on the market data commissioned by Spanish Rail Observatory (for the total cost of rail transport) and on the Commission's Handbook (for the external costs difference), as described in recitals (21) to (22).
- (62) According to the Commission's Handbook, as described in recital (21), the difference between the external costs of road freight transport and rail freight transport is 0.0136 per tkm, of which 50% is EUR 0.0068 per tkm. Under the notified measure, as described in recitals (23) to (24) and Table 1, the maximum aid amounts are as follows. For Diesel 1 EUR 0.0028 per 1 tkm, which corresponds to an aid intensity of 20.5%; for Diesel 2 EUR 0.0035 per 1 tkm, which corresponds to an aid intensity of 25.7%; for electric EUR 0.0051 EUR, which corresponds to an aid intensity of 37.5%. Those maximum aid amounts for the three different categories are all below the 50% threshold and correspond on average to a maximum aid intensity of 27.9% of the eligible costs. Further, the maximum aid amounts granted by Spain will stay below 30% of total cost of railway transport which amount to EUR 0.0078 per tkm (as the total cost of rail transport amounts to EUR 0.026 per tkm, see recital (22)).
- (63) The Commission therefore concludes that the aid intensity under the scheme does not exceed 50% of the eligible costs and 30% of the total cost of rail transport. Further, the Commission positively notes that the method to calculate the aid chosen by Spain assures that all aid payments are directly linked to the modal shift achieved (see recital (24)).
- (64) In view of the above, the Commission concludes that the aid is proportionate and necessary and that the "no overcompensation" criterion is met, in line with points 107(b) and 109 of the Railway Guidelines.
- (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 the national legal basis together with the call for aid applications, as well as information on the aid granted and its recipients, is publicly available (see recital (16)). Further, the Commission notes that in order to achieve an increase in traffic, beneficiaries have to reflect the aid either in price or in other service conditions (see recital (26)). The Commission considers that the fact that such information is publicly available, together with the competitive

pressure deriving from other modes of transport, notably road freight transport, will lead to a better service value.

- (67) In light of the above, the lower prices or better service conditions deriving from the aid will make the shift to rail freight transport more attractive. 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 providing freight services operate in a highly competitive situation. The Commission considers that as a consequence of the aid granted under the scheme to railway undertakings offering rail freight transport services, 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 keep a sustainable transfer of traffic from road to rail freight transport in line with point 111 of the Railway Guidelines.
- (70) In view of all the above, the Commission concludes that, in accordance with points 110 and 111 of the Railway Guidelines, the aid measure encourages the modal shift to rail and there are realistic prospects that the aid leads to a start of sustainable transfer of traffic.

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.
- (72) The Commission notes that the scheme, compared to the situation without support to the rail freight transport, 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, namely undertakings providing rail freight transport services, and thus will treat undertakings active in other freight transport modes (such as road freight transport) less favourably.
- (73) At the same time, the Commission notes that the scheme will support the use of rail freight transport and thus incentivise the modal shift and, therefore, more environmentally friendly means of transportation, which is one of the objectives of the European Green Deal (see recital (6)).
- (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, the Commission finds that the scheme limits undue negative effects on competition and trade and 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. Non-discrimination and duration

- (76) Aid under the scheme will be granted according to a non-discriminatory procedure, as described in section 2.5 to beneficiaries meeting the conditions specified in recital (10). Therefore, the Commission concludes that the aid is granted on non-discriminatory terms.
- (77) 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 will cover the period until 30 June 2026 (see recital (14)), which is less than five years and thus in line with the maximum duration laid down in point 97 of the Railway Guidelines.

3.3.5. Cumulation

- (78) As described in recital (30) Spain commits to respect the rules on cumulation laid down in point 124 of the Railway Guidelines. The beneficiaries will be required to disclose and attach to the application the data associated with any other State aid they have received. Further, the Commission observes that the Secretary of State of Transport, Mobility and Urban Agenda will monitor and supervise the aid granted and to this end, the Spanish authorities are entitled to ask the beneficiaries for any documents necessary to check compliance with the provisions of the Ministerial Order that will constitute the national legal basis for the scheme (see recital (28)).
- (79) 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

- (80) 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 pursuant to Article 93 TFEU.

4. CONCLUSION

- (81) 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 TFEU.
- (82) If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

