

INCEPTION IMPACT ASSESSMENT

Inception Impact Assessments aim to inform citizens and stakeholders about the Commission's plans in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Citizens and stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options.

TITLE OF THE INITIATIVE	<i>Revision of the Community Guidelines on State aid for railway undertakings</i>
LEAD DG (RESPONSIBLE UNIT)	<i>Directorate-General for Competition – Unit F2, State aid Transport</i>
LIKELY TYPE OF INITIATIVE	<i>Commission autonomous act – Commission Communication</i>
INDICATIVE PLANNING	<i>Q4 2023</i>
ADDITIONAL INFORMATION	https://ec.europa.eu/competition/sectors/transport/legislation_rail_road_state_aid.html

The Inception Impact Assessment is provided for information purposes only. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by the Inception impact assessment, including its timing, are subject to change.

A. Context, Problem definition and Subsidiarity Check

Context

The [2008 Community Guidelines on State aid for railway undertakings](#) (the “Railway Guidelines”) set out the conditions under which aid to railway undertakings may be considered compatible with the internal market pursuant to Article 93 TFEU. As the guidelines have now been adopted more than 12 years ago, the Commission, with this initiative, is launching their revision process.

The Railway guidelines will be revised based on the results of the [Fitness Check](#), performed by the Commission in 2019/2020., [on the](#) Commission practise and support study(ies).

The Railway Guidelines are planned to be reviewed by Q4 2023 to keep up with the main regulatory and market developments in the rail sector but also to allow the rail sector embrace the green and digital transitions. The revision of the Railway Guidelines will be carried out in an integrated approach with the [Sustainable and Smart Mobility Strategy](#) (see in particular Flagship 4 Greening of Freight Transport, action 25 and Flagship 8, action 57).

Problem the initiative aims to tackle

The Fitness check concluded that the Railway Guidelines (RGL) are outdated for two main reasons.

- (1) First, they are not adapted anymore to keep up with the major regulatory and market developments such as the opening to competition of the rail markets. In this respect, the following main problems were identified that the current initiative should address:
 - (i) there remain barriers to entry for new market operators, in particular as regards access to passenger rolling stock;
 - (ii) there is still limited transparency of financial flows and transactions within vertically integrated rail companies, resulting in risk of cross-subsidisation between the commercial activities and those subject to public service obligations;
 - (iii) the level of indebtedness of railway undertakings remains high, while the horizontal Rescue and Restructuring Guidelines are difficult to apply to rail undertakings, as they do not cater for the specificities of the rail sector;
 - (iv) the scope of the Block-Exemption Regulation 1370/2007 does not cover all rail public services, especially in the freight segment.
- (2) Second, the EU policy priorities set out in the Green Deal Agenda and in the Sustainable and Smart Mobility Strategy have increased the importance of modal shift to transport modes less polluting than road such as rail and inland waterways to meet the emissions reduction target by 2050 and

urged a significant update to help the rail sector embrace the green and digital transitions. In this respect, the following main problems were identified that the current initiative should address:

- (i) the scope of the Railway Guidelines is limited: it applies only to railway undertakings and does not include key land transport operators in the intermodal chain that similarly contribute to the modal shift of freight from road to less polluting transport modes; at the same time, it provides a limited toolbox of aid measures supporting more sustainable transport modes;
- (ii) the rules on aid for the coordination of transport that support the modal shift and more sustainable transport solutions entail avoidable administrative burdens.

Basis for EU intervention (legal basis and subsidiarity check)

Articles 93, 107, 108 and 109 TFEU. Competition policy is exclusive competence of the European Union, pursuant to Article 3 TFEU ("*The Union shall have exclusive competence in the following areas: [...] (b) the establishing of the competition rules necessary for the functioning of the internal market*").

B. Objectives and Policy options

The general objective is to ensure effective and efficient State aid control within a framework of streamlined and simplified provisions that help the rail sector increase its competitiveness through fair competition, whilst shifting the balance between the different modes of transport.

The following specific policy objectives can be outlined to tackle the main problems identified:

- (1) In order to keep up with the major regulatory and market developments, the new rules should:
 - (i) ease the market entry / expansion of new market players;
 - (ii) ensure the modernisation of fleets and the standardisation and interoperability on the networks;
 - (iii) contribute to avoid cross-subsidisation between the commercial activities and those subject to public service obligations of vertically-integrated railway companies;
 - (iv) provide rules to cover areas not covered by Regulation (EC) 1370/2007, in particular for freight services;
 - (v) adjust the rescue and restructuring rules applicable to railway undertakings.
- (2) In order to keep up with the renewed EU priorities set out in the Green Deal Agenda, the new rules should:
 - (i) extend the scope of the Railway Guidelines, in particular to include all relevant transport operators in the intermodal chain that contribute to the modal shift of freight from road and more broadly from more polluting to less polluting and more sustainable transport modes and to improve the toolbox of aid measures supporting more sustainable transport modes; ;
 - (ii) simplify procedures for aid to coordination of transport, including by way of a block exemption, which entail limited risk of competition distortions, based on vast case practice. As the Treaty provides that the Commission can adopt block exemption regulations only relating to the categories of State aid determined by the Council, the Commission will also consider submitting a proposal to the Council for the adoption of a regulation enabling the Commission to block exempt State aid for the coordination of transport pursuant to Article 93 TFEU, as the General Block Exemption Regulation is based on Article 107 TFEU (see corresponding [Roadmap](#)).

Against these general and specific objectives, the Impact Assessment will tackle in particular the following main issues and develop policy options that explore the following possible actions:

- *aid to the coordination of transport*: extend the scope of State aid rules to support modal shift to more sustainable transport modes;
- *aid to access rolling stock and inland waterway (IWW) vessels*: clarify the rules for the financing of rail rolling stock in liberalised markets as fostering the financing of inland waterway vessels
- *public service compensation to transport services by rail*: design State aid rules regarding the compensation of public service obligations in the freight transport by rail and if necessary complement the rules applicable to passenger transport (for the measures not covered by existing rules);

- *rescue and restructuring aid to railway undertakings*: define rules that would introduce some derogations from the general rules on rescue and restructuring to take into account the specificities of the rail sector;
- *financial transparency of vertically integrated companies*: increase legal certainty regarding the interplay between existing general and sector-specific principles governing the financial flows within vertically integrated companies.

The policy objectives and the policy options will be further developed during the preparation of the impact assessment and in function of the results of the stakeholder consultations.

An option of discontinuation of the Guidelines is discarded based on the arguments in section A.

C. Preliminary Assessment of Expected Impacts

Likely economic impacts

In case of no action (baseline scenario), there would be no significant economic improvement because the mere prolongation of the RGL would not tackle the limitations to take into account the latest regulatory and market developments. In addition, the current RGL would not be able to contribute effectively to achieve the ambitious targets set out in the Green Deal Agenda and the policy objectives identified in the Sustainable and Smart Mobility Strategy would remain unattained.

On the contrary, to the extent that the revision aim to adjust the rules to the most recent regulatory and market developments in the rail sector and pursue the green and digital transitions, the overall economic impact of a revised set of RGL would be significantly higher, not only for land transport operators but for the society at large. In particular, as the new rules would support an effective implementation of the various Rail packages, in particular the 4th package, they would contribute to the achievement of the Single European Rail Area and would promote the market entry and/or the growth of new market operators, confronted with entry barriers, in particular in the case of micro, small and medium undertakings.

In addition, the positive economic impact of the new rules would be closely linked to the implementation of the green and digital transitions.

Within this context, the revised RGL would ensure that subsidies are kept to a minimum to avoid undue distortion within the rail sector, whilst supporting a shift between different transport modes and supporting more sustainable transport solutions.

The update and extension in scope of aid measures supporting more sustainable transport solutions will have a considerable multiplier effect because of the large number of economic actors involved in the logistics chain.

Finally, the overall economic impact of the new rules would be significantly enhanced if accompanied by procedural simplification to reduce the administrative burden for the public administration. Simplified procedures codifying consolidated case practice would result in increased efficiency of the aid measures as they could be implemented faster and allow for the aid to be more swiftly available to beneficiaries.

Likely social impacts

The social impact of the revised RGL is primarily driven by the impacts stemming from the European Green Deal and the implementation of the Sustainable and Smart Mobility Strategy. This is being analysed by the Green Deal initiatives and related impact assessments.

The revised RGL can help alleviate negative social consequences by preventing damaging distortions of competition and trade in the Single market, ensuring that efficient markets facilitate a green and well-functioning transformation and economic recovery creating green jobs, promoting cost effectiveness and directing the aid where it has the most impact. It can also contribute to creating new jobs due to the market entry of new transport operators, reducing costs for consumers as well as increasing the quality of the employment in greener segments of transport. In addition, more efficient public spending would free up resources for more investments in the coordination of transport, which would ultimately contribute to reducing the negative externalities entailed by certain transport modes at the expenses of EU citizens (health, traffic congestion, traffic fatalities).

Likely environmental impacts

The new rules will facilitate a more effective and less distortive deployment of State resources to increase the uptake of transport solutions with the lowest negative externalities, thus contributing to a more sustainable transport policy of the European Union, in line with the objectives of the European Green Deal and the Sustainable and Smart Mobility Strategy.

Likely impacts on fundamental rights

The initiative is in line with Article 37 of the Charter of Fundamental Rights, which requires that a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development. No relevant impacts on other fundamental rights are expected.

Likely impacts on simplification and/or administrative burden

State aid that meets the needs of transport coordination is subject to prior notification to the Commission pursuant to Article 93 TFEU. The Fitness Check gathered evidence on the fact that the coordination of transport is an area where the Commission has so far gained significant experience allowing for (i) the definition of general compatibility criteria and (ii) the block exemption of aid measures from the prior notification procedure. The introduction of a block exemption for State aid for the coordination of transport would significantly reduce the administrative burden on Member States, without weakening the Commission monitoring, whilst reducing the inflow of notifications of aid measures that primarily contribute to the Green Deal objectives.

D. Evidence Base, Data collection and Better Regulation Instruments

Impact assessment

An Impact Assessment will be carried out to support the review and to inform the Commission's decision. According to tentative planning, the process should be completed in Q4 2023.

Evidence base and data collection

This initiative will build upon the information already available (including the past case practice as well as stakeholders' views gathered in the Fitness Check) and gather new evidence and quantitative data, including through interviews, meetings, discussions and exchanges with granting authorities of Member States, sectorial experts and stakeholders, as well as a support study. It will continuously use internal analysis and assessment of the case practice and databases, analysis of interpretation questions received from Member States, etc. to inform, assess and validate the options, design and assessment.

Consultation of citizens and stakeholders

This initiative will build on the feedbacks gathered during the public consultation carried out in the framework of the Fitness Check but also on the additional broad consultation of a wide range of EU stakeholders. The following activities are planned during the impact assessment process:

- Four week consultation to provide feedback on this inception impact assessment (Q4/2021) and 12 week public consultation to any interested stakeholders on a questionnaire (Q4/2021). Stakeholders are invited to submit their responses directly to the questionnaire on the official public consultations page of the European Commission: <https://ec.europa.eu/info/law/better-regulation/have-your-say>.
- 8 week public consultation to any interested stakeholder on the draft revised RGL. Stakeholders will be informed of the consultation on the official public consultations page of the European Commission: <https://ec.europa.eu/info/law/better-regulation/have-your-say> and DG Competition website: <http://ec.europa.eu/competition/consultations/open.html>
- Meeting with Member States, and in particular with national and regional competent authorities involved in the granting of aid, to gather feedback on the draft revised RGL. An invitation to the meeting will be officially sent in due time to all Member States through the Permanent Representations.
- Meetings with other stakeholders, amongst others business associations, consumer organisations, companies, NGOs and environmental organisations. A consultation of EU Member States on the draft RGL during a multilateral meeting.
- Further to the above, stakeholders are also invited to provide feedback to this inception impact assessment.

Will an Implementation plan be established?

An implementation plan is not required, as State aid legislation is directly applicable and does not need national implementing acts. If a Member State plans to adopt a State aid measure on the basis of the revised Guidelines it will need to follow the notification procedure that is specific to EU State aid law.