



EUROPEAN COMMISSION

Brussels, 20.03.2023
C(2023) 1899 final

PUBLIC VERSION

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Subject: **State Aid SA.104723 (2023/N) – Spain**
RRF: Amendments to the existing scheme SA.100486 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) Following pre-notification contacts ⁽¹⁾, by electronic notification of 7 February 2023, Spain notified amendments (the “notified amendments”) to the State aid scheme to support freight transport by rail (the “existing aid scheme”) initially approved by the Commission on 21 March 2022 (the “Initial Decision”) ⁽²⁾.
- (2) Spain 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 ⁽³⁾ and to have this Decision adopted and notified in English.

⁽¹⁾ Spain first contacted the Commission Services on 14 October 2022. The Spanish authorities submitted information on 2 November 2022, 7 December 2022, 27 January 2023, 1 February 2023, 2 February 2023 and 7 February 2023.

⁽²⁾ Commission Decision of 21 March 2022 in case SA.100486 RRF Spain – TRTEL: Support Programme for Sustainable and Digital Transport – co-incentive to boost rail freight transport based on environmental and socio-economic merit, OJ C 337, 02.09.2022, p. 3.

⁽³⁾ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

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

2. DESCRIPTION OF THE NOTIFIED AMENDMENTS

2.1. Objective

- (3) The objective and main characteristics of the existing aid scheme are described in recitals (4) to (7) of the Initial Decision. Its primary objective is to encourage the modal shift of transport of goods from road to rail, by supporting rail transport 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.
- (4) As described in recital (6) of the Initial Decision, the Spanish “Strategy of a Connected, Sustainable and Safe Mobility”⁽⁴⁾ focusses, 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”⁽⁵⁾, *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 submit that the objective of the amended aid scheme remains unaltered and is in line with the objectives enshrined in the national Recovery and Resilience Plan⁽⁶⁾.
- (5) In its notification in the context of the Initial Decision, Spain had estimated that the existing aid scheme would lead to an increase in the use of the rail freight transport per beneficiary ranging from 8% to 12%⁽⁷⁾.
- (6) To achieve those objectives, Spain had allocated an overall budget amounting to EUR 120 million to the existing aid scheme with a duration until 30 June 2026, as described in recitals (13) and (14) of the Initial Decision. In particular, Spain had planned to allocate to the scheme a maximum overall amount of EUR 40 million on a yearly basis.
- (7) However, following the adoption of the Initial Decision, various factors negatively affected the rail freight sector in Spain. Notably, between May 2022 and August 2022, rail freight traffic only grew by 3.0% on average, compared to the same period of the previous year (as measured in tonne-kilometre “tkm”). According to the Spanish authorities, this was due to the steep increase in energy prices and general consumer price inflation, as a consequence of the war in Ukraine. Spain submits that this led to an unexpected decline in demand for rail freight services in several key sectors (e.g. steel production, car manufacturing). In addition, railway undertakings in Spain have been facing problems related to

⁽⁴⁾ Available at: <https://esmovilidad.mitma.es/ejes-estrategicos>.

⁽⁵⁾ 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>.

⁽⁶⁾ 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>.

⁽⁷⁾ In terms of gross tonne-kilometres (“tkm”).

works on the rail network, which continuously affect freight activities by interrupting the flow of traffic for long periods of time ⁽⁸⁾.

- (8) As set out in recital (24) of the Initial Decision the aid amount per beneficiary depends on the increase of freight rail traffic achieved by the beneficiary compared to the preceding year. To illustrate the impact of the factors described in recital (7) on the objectives to be achieved by the existing aid scheme, Spain submits that in 2022 five out of twelve operators, which together represent 87% of the rail freight market in Spain, achieved significantly lower than expected volumes of freight rail traffic (as measured in tkm). Spain calculates that based on the existing aid schemes' current design, rail freight operators would only receive a total amount of EUR 3.5 million based on observed volumes in 2022, whereas Spain had initially estimated to disburse aid within a range of EUR 18 million to EUR 26 million per year.
- (9) Against this background, the Spanish authorities submit that it is necessary to amend the existing aid scheme in order to provide levels of support to rail freight operators in line with the objectives as defined by the Initial Decision.

2.2. Legal basis

- (10) The national legal basis for the measure is the Ministerial Order of the Ministry of Transport, Mobility and Urban Agenda of 21 April 2022 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, and publishing the call for applications for 2022 (the "Initial Ministerial Order") ⁽⁹⁾, as amended by the Ministerial Order of 12 December 2022 ⁽¹⁰⁾ (the "Amending Ministerial Order").
- (11) The Amending Ministerial Order contains a standstill clause whereby the existing aid scheme, as amended, will not be put into effect before the notification of the Commission's decision approving the notified amendments ⁽¹¹⁾.

⁽⁸⁾ Based on information available from RENFE (Red Nacional de los Ferrocarriles Españoles, the Spanish rail incumbent), Spain explains that the executed works on the Spanish rail network have resulted in a 1% reduction in the overall rail freight traffic in 2022 (in terms of tkms), as compared to 2021.

⁽⁹⁾ *Orden TMA/371/2022, de 21 de abril, por la que se aprueban las bases reguladoras para la concesión de subvenciones en concurrencia no competitiva del eco-incentivo para el impulso del transporte ferroviario de mercancías basado en el mérito ambiental y socioeconómico, en el marco del Plan de Recuperación, Transformación y Resiliencia, y se aprueba y publica la convocatoria correspondiente al periodo de elegibilidad 2022*, published in the Official Journal BOE n.102 of 29 April 2022, p.58431-58464, available at <https://www.boe.es/eli/es/o/2022/04/21/tma371>.

⁽¹⁰⁾ *Orden TMA/1234/2022, de 12 de diciembre, por la que se modifica la Orden TMA/371/2022, de 21 de abril, por la que se aprueban las bases reguladoras para la concesión de subvenciones en concurrencia no competitiva del eco-incentivo para el impulso del transporte ferroviario de mercancías basado en el mérito ambiental y socioeconómico, en el marco del Plan de Recuperación, Transformación y Resiliencia, y se aprueba y publica la convocatoria correspondiente al periodo de elegibilidad 2022*, published in the Official Journal BOE n.300 of 15 December 2022, p. 173989-173994, available at <https://www.boe.es/eli/es/o/2022/12/12/tma1234>.

⁽¹¹⁾ Article 3.3.

2.3. Beneficiaries

- (12) The scope of beneficiaries of the amended scheme remains unaltered (see recitals (10) to (12) of the Initial Decision).

2.4. Budget and duration

- (13) The budget and duration of the existing aid scheme also remains unaltered (see recitals (13) to (14) of the Initial Decision).
- (14) The Spanish authorities have confirmed that no aid will be granted under the existing aid scheme as modified by the notified amendments prior to the notification of the Commission's approval of the notified decision.

2.5. Administration of the measure

- (15) The conditions and authorities in charge of the administration and granting of the measure remain unchanged (see recitals (16) and (17) of the Initial Decision) ⁽¹²⁾.
- (16) In addition, Spain submits that if the total aid amount requested by all eligible beneficiaries were to be higher than the available funds in a given year, the aid will be distributed proportionally among all eligible beneficiaries.

2.6. Form of aid, eligible costs and aid intensity

- (17) As described in recitals (18) to (20) of the Initial Decision, the measure takes the form of direct non-refundable grants for reducing external costs. In particular, 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 (19) of the Initial Decision).
- (18) The notified amendments comprise (i) a refined calculation of the eligible costs across different subcategories of rail freight transport in terms of fuel type and load efficiency, and (ii) a revised methodology to calculate the aid amounts for those different subcategories of rail freight transport depending on the increase of rail freight traffic achieved by beneficiaries. The objective of the notified amendments is to increase the maximum aid amounts for different subcategories of rail freight transport and, therefore, the associated aid intensity of the support given to eligible beneficiaries. In any event, the Spanish authorities submit that the aid intensities will remain below 50% of the eligible costs.
- (19) Spain calculated the eligible costs based on the Commission's Handbook on the external costs of transport ⁽¹³⁾ (the "Commission's Handbook"). The eligible costs are calculated as the difference between the external costs of road freight

⁽¹²⁾ All the information relation 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>

⁽¹³⁾ 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>.

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).

- (20) According to Spain, the external costs savings per tkm depend on the type of fuel used (i.e. drive type, such as Diesel 1, Diesel 2 or Electric) and the load efficiency of rail freight, taking into consideration the relevant cost elements in the Commission's Handbook (see recital (19))⁽¹⁴⁾. Table 1 provides an overview of the external costs savings per tkm for different subcategories of rail freight transport in terms of fuel type and load efficiency.

Table 1 External costs savings (in EUR/tkm)

Load efficiency (net ton/gross towed ton)	Drive type		
	Diesel 1	Diesel 2	Electric
20%	-	0.0034	0.0137
30%	0.0056	0.0090	0.0158
40%	0.0093	0.0118	0.0169
50%	0.0114	0.0134	0.0175

Source: Spain

- (21) For each of those subcategories of rail freight, Spain establishes the maximum aid amount at 50% of the associated eligible costs, as presented in Table 2.

Table 2 Maximum aid amounts based on external cost savings (in EUR/tkm)

Load efficiency (net ton/gross towed ton)	Drive type		
	Diesel 1	Diesel 2	Electric
<20%	-	-	-
20-30%	-	0.0017 ⁽¹⁵⁾	0.0069
30-40%	0.0028	0.0045	0.0078
≥40%	0.0046	0.0059	0.0078

Source: Spain

- (22) Based on the methodology presented above, Spain submits that aid amounts granted under the scheme will not exceed EUR 0.0078 per tkm and will thus remain below 30% of the total cost of rail transport, which was calculated at EUR 0.026 per tkm⁽¹⁶⁾.

⁽¹⁴⁾ Previously, Spain had calculated the difference between the external costs of road freight transport and the external costs of rail freight transport to amount to EUR 0.0136 per tkm without further distinguishing between different subcategories of rail freight transport. See recital (21) of the Initial Decision.

⁽¹⁵⁾ For instance, Spain establishes the maximum aid amount for the subcategory of rail freight transport using a load efficiency between 20% and 30% and relying on a Diesel 2 traction system at 50% of the associated eligible costs, in terms of external cost savings *vis-à-vis* road transport, for the lower bound of the load efficiency range (i.e. 0.0034 EUR/tkm).

⁽¹⁶⁾ According to the Spanish Rail Observatory, the total cost of rail transport amounts to EUR 0.026 per tkm. See CNMC, "Annual Report of Rail Sector in 2019", 14 January 2021. Available at: https://www.cnmc.es/sites/default/files/3336867_11.pdf.

- (23) The aid amounts per beneficiary will depend on the freight rail traffic increase declared by the applicants based on the following methodology. The aid amounts are calculated by reference to the rail freight traffic carried out by the beneficiary in the two years preceding the year of the application for aid (as measured in tkm). If there has been no traffic increase compared to the average traffic of the two previous years, the beneficiary will only receive 50% 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 average traffic of the two previous years. In case the increase in rail freight traffic ranges from 0% to 8%, the aid amount will be computed based on a linear approximation between the minimum and maximum values of the aid amounts.
- (24) Aid amounts will be calculated and paid out on an ex post basis. For instance, for the first call for aid applications, the first payment of aid will be made in 2023, taking into account the traffic increase achieved by a beneficiary in 2022 and comparing it to its average traffic for the years 2020 and 2021 (see recital (23)).
- (25) In case the total aid requested by all beneficiaries were to be higher than the available funds in a given year, the aid will be distributed proportionally among all eligible candidates (see recital (16)).
- (26) In future calls for aid applications, the freight rail traffic increase targets that aid beneficiaries would need to achieve (see recital (23)) may be adjusted, in case of sudden changes in market conditions, if deemed necessary to guarantee the effectiveness and efficiency of the aid scheme and ultimately maintain and increase modal shift in the rail sector. In that case, Spain will notify such an amendment to the existing aid scheme before putting it into effect.
- (27) The Spanish authorities submit that in order to achieve an increase of rail freight traffic, and consequently, a lasting modal shift, railway undertakings will 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

- (28) The transparency, monitoring and repayment mechanism remains unaltered (see recitals (27) to (29) of the Initial Decision).

2.8. Cumulation

- (29) The rules on cumulation remain unaltered (see recital (30) of the Initial Decision).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (30) As noted in recital (11), the existing aid scheme, as amended, will not be put into effect before the Commission's approval. Spain further confirmed that the granting authority has not granted any aid (see recital (14) above).

- (31) By notifying the notified amendments to the existing aid scheme before putting them into effect, the Spanish authorities have respected the standstill obligation under Article 108(3) TFEU.

3.2. Existence of State aid

- (32) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and be liable to affect trade between Member States.
- (33) The Commission notes that all of the elements of the existing aid scheme remain unchanged, except for the introduction of a refined methodology to calculate the eligible costs for different subcategories of rail freight transport in terms of fuel type and load efficiency, the maximum aid amounts for those subcategories and the associated aid intensity for the support depending on the freight rail traffic increase achieved by the beneficiaries, as described in recitals (17) to (27).
- (34) The Commission concluded that the existing aid scheme constituted State aid within the meaning of Article 107(1) TFEU for the reasons set out in recitals (33) to (45) of the Initial Decision. The notified amendments do not affect that conclusion. The Commission therefore refers to the respective assessment of the Initial Decision and concludes that the amended aid scheme constitutes State aid within the meaning of Article 107(1) TFEU.

3.3. Compatibility

- (35) In the Initial Decision, having assessed the appropriateness, necessity and proportionality of the existing aid scheme in view of the Railway Guidelines⁽¹⁷⁾, the Commission found it to be compatible with the internal market under Article 93 TFEU (see section 3.3, recitals (46) to (80) of the Initial Decision).
- (36) The Commission notes that the notified amendments to the existing aid scheme entail the introduction of a refined methodology to calculate the eligible costs for different subcategories of rail freight transport in terms of fuel type and load efficiency and to the maximum aid amounts for those subcategories, as well as an increase in the aid intensity of the measure depending on the freight rail traffic increase achieved by the beneficiaries to reflect the changed market context (see recitals (7) to (9)). The Commission will therefore assess the notified amendments to establish whether they are appropriate, necessary and proportionate.
- (37) 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.

⁽¹⁷⁾ Communication from the Commission - Community guidelines on State aid for railway undertakings, OJ C 184, 22.7.2008, p. 13.

- (38) In its Communication on “The European Green Deal”⁽¹⁸⁾, 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”⁽¹⁹⁾, 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.
- (39) The Commission observes that, as explained in recital (3), the existing aid scheme, as modified by the notified amendments, aims at improving the modal shift from road to rail in Spain by supporting rail freight transport.
- (40) Therefore, the Commission considers that the notified amendments to the existing aid scheme contribute to the development of the transport sector and contribute to the transport coordination. As for the existing aid scheme, the notified amendments fall within the scope of Article 93 TFEU, 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”).
- (41) 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.
- (42) 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, 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*

- (43) As described in recitals (52) to (57) of the Initial Decision, the transport sector entails major negative externalities, as a result, there may be disparities between the different modes of transport, for which it may be appropriate to correct by way of public support, especially for those modes of transport that give rise to the lowest external costs.
- (44) 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.”

⁽¹⁸⁾ COM (2019) 640 final of 11.12.2019. Available at: https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en.

⁽¹⁹⁾ COM (2020) 789 final of 9.12.2020. Available at: https://ec.europa.eu/transport/themes/mobilitystrategy_en.

- (45) 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.
- (46) The Commission notes that, for the notified amendments to the existing aid scheme, Spain calculated the eligible costs, as defined in point 103 of the Railway Guidelines, based on the Commission's Handbook (see recitals (19) and (20)). As in the Initial Decision (see recitals (20) and (21) of the Initial Decision), the external costs generated by the rail freight sector were compared to those generated by road freight transport. Since the highest cost differential is that between road transport and rail transport ⁽²⁰⁾, the Commission finds this approach reasonable.
- (47) Furthermore, the Commission notes that for the notified amendments to the existing aid scheme, Spain based the methodology of its external costs calculations per subcategory of rail freight in terms of fuel type and load efficiency on the Commission's Handbook (see recitals (18) to (20)). The external costs analysis is therefore based on a sound and precise 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 are publicly available, in line with point 105 of the Railway Guidelines.
- (48) 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 amendments to the existing aid scheme are based on a transparent, reasoned and quantified comparative cost analysis, and the methodology used and calculations performed are publicly available. The notified amendments to the existing aid scheme therefore comply with point 105 of the Railway Guidelines.

3.3.2. *Necessity and proportionality of the aid*

- (49) 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.
- (50) 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.

⁽²⁰⁾ In this sense, in addition to the Commission's Handbook, see also the more recent Comparative analysis of transshipment technologies for intermodal transport and their costs, PWC, KombiConsult 2022, available at https://transport.ec.europa.eu/news/study-analyses-transshipment-options-more-competitive-intermodal-transport-and-terminal-capacity-ten-2022-05-05_en, at page 61: “[t]he amount of negative externalities inflicted upon others depends on the involved modes of transport, with road transport causing higher external costs per transported ton than rail, IWW or SSS.”

- (51) 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 (46), the Commission deems it appropriate to assume that the highest cost differential is that between rail and road transport.
- (52) The Commission observes that, for the notified amendments to the existing aid scheme, Spain based its calculations for eligible costs in the form of external cost savings between road transport and the different subcategories of rail freight transport 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 (20) and (22).
- (53) According to the Commission's Handbook, as described in recitals (19) and (20), the external costs savings per tkm depend on the type of fuel used (i.e. drive type, such as Diesel 1, Diesel 2 or Electric) and load efficiency. Under the notified amendments, as described in recitals (19) to (21) and Table 1 and Table 2 above, the maximum aid amounts and associated aid intensities per subcategory of rail freight in terms of fuel type and load efficiency are amended as follows:
- (a) For Diesel 1 with a load efficiency ranging from 30 to 40%, the maximum aid amounts are EUR 0.0028 per tkm, which correspond to an aid intensity ranging from approximately 30% to 50% of the eligible costs ⁽²¹⁾;
 - (b) For Diesel 1 with a load efficiency equal to or more than 40%, the maximum aid amounts are EUR 0.0046 per tkm, which corresponds to an aid intensity of 50% of the eligible costs;
 - (c) For Diesel 2 with a load efficiency ranging from 20 to 30%, the maximum aid amounts are EUR 0.0017 per tkm, which correspond to an aid intensity ranging from approximately 19% to 50% of the eligible costs;
 - (d) For Diesel 2 with a load efficiency ranging from 30 to 40%, the maximum aid amounts are EUR 0.0045 per tkm, which correspond to an aid intensity ranging from approximately 38% to 50% of the eligible costs;
 - (e) For Diesel 2 with a load efficiency equal to or more than 40%, the maximum aid amounts are EUR 0.0059 per tkm, which correspond to an aid intensity ranging from approximately 44% to 50% of the eligible costs;
 - (f) For Electric with a load efficiency ranging from 20 to 30%, the maximum aid amounts are EUR 0.0069 per tkm, which correspond to an aid intensity ranging from approximately 44% to 50% of the eligible costs;

⁽²¹⁾ For the subcategory of rail freight transport characterized by a Diesel 1 fuel type and a load efficiency of 30%, the maximum aid amount of EUR 0.0028 per tkm represents an aid intensity of 50% as this corresponds to 50% of the corresponding external cost savings as shown in Table 1 (i.e. EUR 0.0056 per tkm). Alternatively, for the subcategory of rail freight transport characterized by a Diesel 1 fuel type and a load efficiency of 40%, the maximum aid amount of EUR 0.0028 per tkm represents an aid intensity of 30% as this corresponds to 30% of the corresponding external cost savings as shown in Table 1 (i.e. EUR 0.0093 per tkm). All aid intensities listed under (b) to (h) are calculated following the same methodology.

- (g) For Electric with a load efficiency ranging from 30 to 40%, the maximum aid amounts are EUR 0.0078 per tkm, which correspond to an aid intensity ranging from approximately 46% to 49% of the eligible costs;
- (h) For Electric with a load efficiency equal to or more than 40%, the maximum aid amounts are EUR 0.0078 per tkm, which correspond to an aid intensity ranging from approximately 45% to 46% of the eligible costs.
- (54) Based on the assessment presented in recital (53), the Commission observes that, for each subcategory of rail freight covered by the scheme, identified in terms of fuel type and load efficiency, the maximum aid intensities do not exceed the threshold of 50% of the eligible costs.
- (55) Further, the Commission notes that the maximum aid amounts granted by Spain will stay below 30% of total cost of rail transport, which amounts to EUR 0.0078 per tkm (as the total cost of rail transport amounts to EUR 0.026 per tkm, see recital (22)) ⁽²²⁾
- (56) The Commission therefore concludes that the aid intensity under the notified amendments to the existing aid 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 methodology to calculate the aid assures that the aid intensity and hence all aid amounts are directly linked to the modal shift achieved, as it depends on the freight rail traffic achieved by each beneficiary (see recitals (23) to (24)).
- (57) 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.
- (58) Point 110 of the Railway Guidelines provides that: “[a]t 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”.
- (59) The Commission notes that for the notified amendments to the existing aid scheme, the national legal basis and the call for aid applications are publicly available (see recital (15)) and that they are necessary to ensure the effectiveness of the existing aid scheme following the unexpected and unforeseeable decrease in rail freight traffic (see recital (7)).
- (60) In addition, the Commission notes that beneficiaries have to reflect the aid either in price or in other service conditions (see recital (27)). 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.

⁽²²⁾ The Commission notes that the upper limit is only reached by the maximum aid amounts for the subcategories of rail freight transport that are listed in recitals (53) (g) and (h).

- (61) In light of the above, the lower prices or better service conditions deriving from the aid will incentivize the modal shift from road transport to rail freight transport. The Commission therefore concludes that the requirements set out in point 110 of the Railway Guidelines are met.
- (62) 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.
- (63) The Commission notes in this regard that railway undertakings providing freight services operate in highly competitive market conditions. The Commission considers that as a consequence of the aid granted to railway undertakings offering rail freight transport services under the existing aid scheme as amended, 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.
- (64) 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 sustainable transfer of traffic from road to rail.

3.3.3. *Avoidance of undue negative effects on competition*

- (65) 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.
- (66) The Commission notes that the notified amendments to the existing aid 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.
- (67) At the same time, the Commission notes that the notified amendments to the existing aid 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 (4)).
- (68) Moreover, as regards competition between different transport modes, the measure is limited to reducing imbalances between rail freight transport and road freight transport.
- (69) Therefore, the Commission finds that the notified amendments to the existing aid 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*

- (70) Aid under the notified amendments to the existing aid scheme will be granted according to a non-discriminatory procedure to beneficiaries meeting the conditions specified in recital (12). Therefore, the Commission concludes that the aid is granted on non-discriminatory terms.

3.3.5. *Cumulation*

- (71) As described in recital (29), 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 Orders that constitute the national legal bases for the scheme (see recital (28) of the Initial Decision).
- (72) 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*

- (73) The Commission concludes that the existing aid scheme as amended 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

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.

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Your request should be sent electronically to the following address:

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

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

