

Funding guidelines of the Federal Ministry of Transport and Digital Infrastructure to promote the procurement of new freight wagons or the conversion of existing freight wagons whose noise emission is below the pass-by noise limit stipulated in the TSI Rolling Stock – Noise ("TSI Noise+" Funding Guidelines)

of 6 July 2017

Preamble

The forecast growth in levels of rail freight makes it necessary to upgrade existing and construct new railway infrastructure in Germany. Acceptance of the upgrading and construction of railway infrastructure also depends on the noise nuisance caused to people living near railway lines being lastingly reduced. By taking action to reduce noise at the source – i.e. the freight wagon – it will be possible to achieve an area-wide and significant reduction in the noise emitted by rail freight.

The Technical Specification for Interoperability relating to the subsystem rolling stock — noise (TSI Noise) lays down a limit for the sound output of pass-by noise. Since 2006, proof has had to be furnished in the approval process that new freight wagons comply with this limit. For existing freight wagons, some of which will be in operation for decades to come, the Funding Guidelines for a Noise-Differentiated Track Access Charging System created a financial incentive for their (technically not necessary) retrofitting with quieter braking systems, especially LL brake blocks. In this way, retrofitted freight wagons can meet the same emission limits as freight wagons approved under TSI Noise since 2006.

As sound engineering practice, the Technical Specifications for Interoperability stipulate, among other things, limits that have to be complied with. Following the stipulation of these limits, advances in technological development make it possible, in some cases, for values lying below these minimum standards to be achieved. The procurement of new freight wagons with noise levels below the minimum standards laid down in the TSI Noise will result in a further reduction in noise emitted by rail freight going beyond the statutorily required level. In addition, procurement patterns supported by financial assistance will shorten the cycles of innovation, thereby incentivizing the development of new and the evolution of existing technologies, which can boost the capabilities and competitiveness of rail-borne vehicles in terms of energy efficiency and environmental protection.

1 Funding objective and purpose of grants

1.1 Purpose of grants

Grants provided under these Guidelines will create a financial incentive for wagon keepers to procure freight wagons whose sound emission is even lower than the values permissible under TSI Noise. The purpose of this is to create a situation in which the objective set out in the Coalition Agreement of 16 December 2013 of halving the noise emitted by rail freight against 2008 levels is achieved before 2020, or in which the noise is possibly more than halved. The procurement of freight wagons that are quieter than required by the current TSI Noise will promote the use of already familiar noise reduction technology for rolling stock that has hitherto not been deployed because of the extra costs compared with the costs of a conventionally designed freight wagon that is eligible for approval. With rolling stock that complies with the criteria of the TSI Noise+ Funding Guidelines, it will be possible to operate modern and more future-proof freight wagons and to keep them in operation even after the lowering of TSI Noise levels that is likely in the future.

1.2 Legal basis

Grants shall be provided on the basis of sections 23 and 24 of the Federal Budget Code and the administrative regulations adopted pursuant thereto and in accordance with these Guidelines. The provision of government funding to commercial undertakings is deemed to be state aid within the meaning of Article 107 of the TFEU (Treaty on the Functioning of the European Union, formerly Article 87 of the EC Treaty). The grants shall be provided on the basis of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (GBER), published in the Official Journal of the European Union on 26 June 2014. The financial assistance shall be notified in accordance with the GBER. Aid for environmental protection as described in Article 36 of the GBER shall be applied.

In accordance with Article 8 of the GBER, a project aided under these Guidelines must not receive other public funding if this funding constitutes aid unless, as a result of this cumulation, the applicable aid intensity or the applicable maximum amount is not exceeded or the additional funding concerns different costs.

In accordance with Article 9 of the GBER, approved grants shall be published and, in accordance with Article 12 of the GBER, may be monitored by the European Commission on a case-by-case basis.

The applicant shall not be automatically entitled to receive the grant. Rather, the grant-awarding authority shall take its decisions according to its own best judgement within the limits of the available appropriations.

2 Subject of the funding

In accordance with these Guidelines, the Federal Government shall provide financial assistance for the replacement of existing noisy freight wagons through the procurement of new wagons and the conversion of existing noisy wagons into freight wagons whose noise emission is at least 5 dB(A) (in the case of new wagons) and at least 3 dB(A) (in the case of converted wagons) below the limit for pass-by noise stipulated in the version of TSI Noise valid at the time the application is submitted. For the purpose of these Guidelines, "noisy freight wagons" shall mean freight wagons placed in service before the entry into force of TSI Noise and whose emission values exceed the limits stipulated in the version of TSI Noise valid at the time the application is submitted.

3 Beneficiaries

Parties eligible to apply shall be wagon keepers as operators of rail services within the meaning of sections 31 and 32 of the General Railways Act.

The submission of applications by small and medium-sized enterprises (SMEs) within the meaning of the provisions in Annex I to the GBER shall be particularly welcome.

An undertaking that is subject to an outstanding recovery order following a previous Commission decision declaring aid illegal and incompatible with the internal market (Article 1(4)(a) of the GBER) and an undertaking in difficulty (Article 1(4)(c) of the GBER) cannot be granted any aid. When an application is submitted, a declaration shall be made that the applicant has not in the past violated the obligation set out in Article 1(4)(a) of the GBER and that the undertaking is not in difficulty within the meaning of Article 1(4)(c) of the GBER.

Undertakings against whose assets insolvency or comparable proceedings have been filed or opened or against which compulsory execution measures have been initiated or are being levied shall not be eligible to receive grants. The same shall apply to undertakings – and, if the company is a legal entity, the owner of the legal entity – if the latter is obliged to disclose or has disclosed its assets under section 807 of the Code of Civil Procedure or section 284 of the Fiscal Code.

4 Special conditions for the provision of grants

4.1 General prerequisites

The prerequisites for the approval of grants set out in the administrative regulations on section 44 of the Federal Budget Code shall apply. The General Incidental Provisions for Grants to Fund Projects shall be observed.

4.2 Specific prerequisites

In addition, the following prerequisites shall apply to the approval of grants under these Guidelines:

The procurement of new freight wagons to replace old wagons and the conversion of existing freight wagons shall be eligible for funding. The rolling stock to which financial assistance is provided must not, at the time of their type approval, have exceeded the lowered limit for pass-by noise stipulated in (2) of these Guidelines compared with the TSI Noise valid at the time the application is submitted.

At least one half of the mileage of the rolling stock to which financial assistance is provided must, within the first eight years after being placed in service, be on railway infrastructure in Germany.

The grant shall be disbursed upon application:

1. in the case of procurement to replace old rolling stock:
 - a. 80 percent of the grant amount after the placing into service of the freight wagon to which financial assistance is provided and the simultaneous decommissioning of a comparable freight wagon that does not comply with TSI Noise.
 - b. 20 percent of the grant amount after the decommissioned freight wagon has been scrapped.

Proof of the decommissioning and scrapping shall be furnished before the funding is disbursed.

2. in the case of the conversion of an existing noisy freight wagon, 100 percent of the grant amount when the converted freight wagon is placed in service.

When the beneficiary submits an application for a grant, it must state which freight wagon has been decommissioned and scrapped. If an application is submitted for conversion, the freight wagon to be converted shall be named. When submitting its application, the beneficiary shall undertake to furnish to the competent authorities, if requested to do so, proof documenting the

mileage and area of operation of the freight wagon to which financial assistance has been provided.

If a very quiet freight wagon is procured to replace an existing wagon and the existing wagon is decommissioned and scrapped, the proceeds of scrapping shall not be deemed to be income within the meaning of point 1.2 of the General Incidental Provisions for Grants to Fund Projects.

5 Nature and scope, level of the grant

5.1 Nature of the grant, type of funding

The nature of the grant shall be project funding. It shall be awarded as pro rata funding in the form of a one-off conditionally repayable subsidy.

5.2 Level of the grant, basis of assessment

If a new freight wagon is procured to replace an existing wagon, the 40 percent of the extra expenditure incurred in comparison with the expenditure on the procurement of a freight wagon that is comparable in terms of type and other parameters and that only complies with the limits for pass-by noise stipulated in the TSI Rolling Stock – Noise shall be eligible. The maximum amount of grant per freight wagon shall be limited to 25,000 euros.

If an existing freight wagon is converted into a freight wagon whose noise emission is at least 3 dB(A) below the limit for pass-by noise stipulated in the TSI Rolling Stock – Noise in the version of the TSI Noise valid at the time the application is submitted, 40 percent of the expenditure shall be eligible. The expenditure shall comprise the expenditure on conversion plus one percent of the expenditure on engineering planning and design approval. The maximum amount of grant per freight wagon shall be limited to 20,000 euros.

5.3 Grant period

The grant shall be awarded for freight wagons placed in service in the period from 2017 to 2021. Disbursement of the grant must be completed by financial year 2021 at the latest.

6 Other conditions for the award of grants

6.1 Recovery of the grant and partial recovery in the event of low mileage

The portion of the grant disbursed when proof of scrapping is furnished shall not be disbursed if proof of scrapping has not been furnished by 31 October 2021.

The grant shall be recovered on a pro rata basis if, during the eight-year monitoring period, at least one half of the wagon's mileage has not been in Germany.

In the case of mileage in Germany as a proportion of the total mileage of the freight wagon, the rate of recovery shall be:

in the case of less than fifty percent to forty percent –
ten percent of the funds granted;

in the case of less than forty percent to thirty percent –
thirty-five percent of the funds granted;

in the case of less than thirty percent to twenty percent –
sixty-five percent of the funds granted;

in the case of less than twenty percent to five percent –
ninety percent of the funds granted;

in the case of less than five percent –
one hundred percent of the funds granted.

Interest shall be charged in accordance with the statutory provisions on the grants recovered.

6.2 Taking out of service within the eight-year period

If a freight wagon is taken out of service before the end of the eight-year monitoring period, the funds awarded shall be repaid at a rate of one eighth of the grant amount for each year (or part thereof) of the early taking out of service. This shall be without prejudice to any other recovery under 6.1.

6.3 Proof of proper use, mid-term proof

After the expiry of one half of the monitoring period, mid-term proof documenting the wagon's mileage and the proportion of this mileage on the German rail network shall be furnished. This proof shall be furnished to the Federal Railway Authority, without being requested to do so, by 30 June of the year following the expiry of the fourth year of the eight-year monitoring period.

Proof of the mileage shall be furnished by 30 June of the year following the expiry of the eight-year monitoring period. If the freight wagon is taken out of service before the end of the monitoring period, proof of the mileage shall be furnished by 30 June of the year following the year in which the freight wagon was taken out of service.

If proof is not furnished or is not furnished within the specified period, the grant-awarding authority may reclaim the grant in part or in whole.

7 Procedure

The following information shall be included in the preliminary notice of award:

which freight wagon, or alternatively from which class of freight wagons a freight wagon will be decommissioned after the freight wagon to which financial assistance is provided has been placed in service. In the case of conversion, the freight wagon to be converted is to be included in the notice of award in the same manner.

how, and over what period, the proof of scrapping is to be furnished;

how, and at what intervals, proof is to be furnished that at least one half of the mileage of the freight wagon has been on railway infrastructure in Germany.

In all other respects, reference is made to the provisions of the administrative regulations on section 44 of the Federal Budget Code and the General Incidental Provisions for Grants to Fund Projects.

7.1 Grant-awarding authority, procedure

The Federal Railway Authority shall be responsible for conducting the funding procedure, including the review of applications and the verification of proper use.

The beneficiary shall apply for the grant before procuring the new freight wagon; in the case of conversion, before commissioning conversion. The application may also be submitted for more than one freight wagon.

After the review, the grant-awarding authority shall issue a notice stating that the grant will be awarded if the prerequisites for the award of the grant have been met by the applicant.

When the new freight wagon that has been procured is placed in service, the applicant shall submit an application for disbursement of the funding. When doing so, it shall state which freight wagon has been or will be decommissioned for the freight wagon to which financial assistance has been provided. It shall furnish proof, by 31 October 2021, that the decommissioned freight wagon has been scrapped.

7.2 Other provisions to be observed

Approval, disbursement and settlement of the grant, proof and verification of its use, withdrawal of the notification of award of grant (if necessary) and recovery of the grant provided shall be governed by sections 48 to 49a of the Administrative Procedures Act, sections 23 and 44 of the Federal Budget Code and the General Administrative Regulations adopted pursuant thereto, unless the present Funding Guidelines allow derogations from the General Administrative Regulations. The Federal Audit Office shall be authorized to conduct audits under sections 91 and 100 of the Federal Budget Code.

7.3 Reporting obligations of the Federal Railway Authority

By 30 June of each year, the Federal Railway Authority shall, as part of its performance monitoring, report to the Federal Ministry of Transport and Digital Infrastructure the number of very quiet freight wagons procured or converted in the previous year. The last report shall be prepared for submission by 30 June 2022. The Federal Railway Authority shall report, by 30 June 2031, the mileage in Germany of the wagons to which financial assistance has been provided.

7.4 Rights of the Federal Railway Authority

The Federal Railway Authority may adopt provisions for implementation of the Guidelines. In particular, it may stipulate deadlines, the size of the application file and application channels, including the participation of other bodies and the reimbursement of their costs.

7.5 Subsidy relevance

All facts significant to the approval, award, recovery, renewal or continuation of the grant shall constitute facts relevant to the granting of a subsidy within the meaning of section 264 of the Penal Code in conjunction with section 2 of the Subsidies Act. Facts relevant to the granting of a subsidy shall be the information provided in the grant application, in the proof of proper use and in the documents submitted.

In accordance with the first sentence of section 3(1) of the Subsidies Act, a beneficiary shall be obliged to inform, without delay, the Federal Railway Authority, which is acting for the subsidy provider, of all facts that are incompatible with the approval, award, renewal or continuation of the grant or relevant to the recovery of the grant.

Before approving the grant, the Federal Railway Authority shall inform the applicant of all facts relevant to the granting of a subsidy; the applicant shall confirm in writing that it has been informed. Confirmation that it has been informed may also be provided with the submission of the application.

8 Period of validity

These Guidelines shall enter into force on the day following their publication in the Federal Ministry of Transport Gazette. They shall expire at midnight on 31 December 2021.

Notes

Re the third sentence of the first paragraph of 1.2.

The total amount shall be limited to 15 million euros per beneficiary.

Re the second paragraph of 5.2.

"Costs of approval " means the costs of preparing reports and proof to be furnished and the procedural costs of approval.