

Rail Delivery Group

Response to:

**BIS/DECC Consultation on Eligibility for EMR CfD exemption & RO FiT
compensation**

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Rail Delivery Group Response to DECC/ BIS Consultation on Eligibility for EMR CfD exemption & RO FiT compensation

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Introduction: The Rail Delivery Group (RDG) was established in May 2011 to lead the industry in delivering a higher performing, more cost effective and sustainable rail network for Britain's rail users and taxpayers. The RDG brings together the chief executives of passenger and freight operator owning groups with Network Rail (NR). RDG develops policies, strategies and plans for the coherent management of the rail industry and advances the provision of a safe, efficient, high quality rail service for users and taxpayers.

RDG's member companies consume around 3.5 TWh of electricity for traction purposes annually.

Our response addresses Question 1 only.

Question 1: Do you agree with the approach to eligibility?

1. The Consultation states that eligibility for compensation/exemption will follow the definitions set out in the European Commission's EEAG. The consultation clearly states these definitions limit those industries that meet a minimum threshold of electricity and trade intensity. We recognise that the rail industry does not meet the minimum threshold under these definitions.
2. However, we wish to highlight an important section of the EEAG which has been omitted from this consultation:

"1.1. Scope of application

(13) These Guidelines apply to State aid granted for environmental protection or energy objectives in all sectors governed by the Treaty in so far as measures are covered by Section 1.2. They therefore also apply to those sectors that are subject to specific Union rules on State aid (transport⁽¹⁰⁾, coal, agriculture, forestry, and fisheries and aquaculture) unless such specific rules provide otherwise."

*[Footnote (10)] "In particular, these Guidelines are without prejudice to the Community Guidelines on State aid for railway undertakings (OJ C 184, 22.7.2008, p. 13)¹. **The Railway Guidelines allow for different forms of aid, including aid for reducing external costs of rail transport.** Such aid is covered by Section 6.3 of the Railway Guidelines and aims at accounting for the fact that rail transport makes it possible to avoid external costs compared*

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2008:184:TOC>

with competing transport modes. Provided all the conditions of Section 6.3 of the Railway Guidelines are fulfilled and provided the aid is granted without discrimination, Member States can grant aid for reducing external costs.”

3. The EEAG makes explicit reference to the Railway Guidelines, which permits State Aid to railway undertakings, independent of the qualification criteria referenced in this consultation. Leaving aside the conditions of Section 6.3 of the Railway Guidelines themselves, of which interpretation and evidence are beyond the scope of this consultation, it is clear that electrified rail transport incurs the costs of CfD, RO and FiT, whereas competing transport modes do not (other than the negligible fleet of electric vehicles). Since this is the case, we are confident that these guidelines are legally supportive of potential exemption/ compensation for the rail industry - providing an evidence case is put forward that meets the conditions of Section 6.3.
4. We therefore feel that instances where EII's are highlighted as being eligible for exemption/compensation, there should also be reference to the fact that there are a separate set of guidelines that can, in principle, grant exemption/compensation for railway undertakings.
5. We are concerned that if the conditions applying to the rail sector are not explicitly recognised by UK Government documentation as they are in the EU Guidelines, there could be potential roadblocks to advancement of this case. We believe that including reference to the Railway Guidelines would provide greater clarity with any future cross-department Government engagement on this issue, which may ultimately involve DfT, BIS, DECC, HMT and others, therefore expediting this process.
6. RDG intends to work with member companies in the coming months to develop an evidence base that will assess the impact of renewable energy policy costs with respect to the conditions of Section 6.3 of the Railway Guidelines, with a view to seeking exemption/ compensation from these costs for railway undertakings. As a secondary outcome from this consultation, it would be desirable for close liaison with BIS/ DECC in developing a clear set of eligibility criteria specific to the UK rail sector, in accordance with these Guidelines.
7. RDG requests that BIS/ DECC note the comments above, and we would also request a follow up meeting to discuss the implications and next steps.
8. Please acknowledge receipt of this consultation response.

For enquiries regarding this consultation response, please contact:

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