COMMISSION DECISION (EU) 2025/1167

of 29 November 2024

on State aid SA.50952 (2022/C) (ex 2018/FC) implemented by Germany for DB Cargo

(notified under document C(2024) 8610)

(Only the English text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 108(2), first subparagraph, thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1), point (a), thereof,

Having regard to the decision by which the Commission decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, in respect of the measures identified in case SA.50952 (2022/C) (ex 2018/FC) ([1]),

Having called on interested parties to submit their comments pursuant to the provisions cited above ([2]) and having regard to their comments,

Whereas:

1. PROCEDURE

(1) On 19 April 2018, the Commission received a complaint concerning alleged State aid granted to DB Cargo Aktiengesellschaft ('DB Cargo') ([3]).

(2) By letter of 31 January 2022 (the 'Opening Decision'), after various submissions from the complainant and Germany described therein, notably after having transmitted the complaint with a first request for information on 20 September 2018, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (TFEU) in respect of four measures granted in favour of DB Cargo.

(3) The Opening Decision was published in the *Official Journal of the European Union* on 19 August 2022 ([4]). The Commission called on the German authorities and interested partie+s to submit their comments on the Opening Decision within one month.

(4) The German authorities submitted to the Commission their observations on the Opening Decision by letter dated 21 April 2022. In addition, Germany sent further observations and information on 17 May, 8 June, 25 July, 28 August, 26 September and 23 October 2023. In 2024, Germany filed additional information on 13 March, 10 June and 1 July.

([1]) Commission Decision C(2022) 639 final of 31 January 2022 in case SA.50952 (2022/C) (ex 2018/FC) – Germany Alleged State aid measures in favour of DB Cargo.
([2]) OJ C 316, 19.8.2022, p. 20.
([3]) The identity of the complainant is confidential.
([4]) Cf. footnote 1.

(5) On 19 September 2022, the Commission received comments from the European Rail Freight association (ERFA), a European organisation representing the interests of private and independent rail freight companies, and from the complainant. On 18 November 2022, the Commission sent the comments of the interested parties to the German authorities inviting the latter to submit their observations, which they did by letter dated 18 January 2023.

(6) The Commission requested further information and clarifications from Germany by letter of 26 July 2022, to which Germany replied by letter of 26 September 2022. The Commission requested additional information from Germany by letters of 1 August and 27 September 2023 (to which Germany replied by letters of 31 October and 9 November 2023). The Commission also made requests by letters of 15 May 2024, 5 September 2024 and 17 November 2024, to which Germany replied by letters of 10 June, 5 and 27 September, 1 and 21, 22, 23 and 25 November 2024.

(7) The Commission services met the German authorities, including on the following dates in 2023: 24 February, 19 April, 12 May, 30 June, 28 July, 18 August, 29 August, 21 September, 21 November and 20 December, and on the following dates in 2024: 13 March, 30 April, 13 June, 5 July, 11 July, 12, 19 September and 19 and 25 November.

(8) By letter of 21 November 2024, the Government of the Federal Republic of Germany agreed exceptionally to waive its rights deriving from Art. 342 TFEU in conjunction with Article 3 of the EC Regulation 1/1958 and to have the present Decision adopted and notified pursuant to Article 297 of the Treaty in the English language.

2. DETAILED DESCRIPTION OF THE MEASURES

2.1. DB Cargo: corporate history, structure and corporate rules

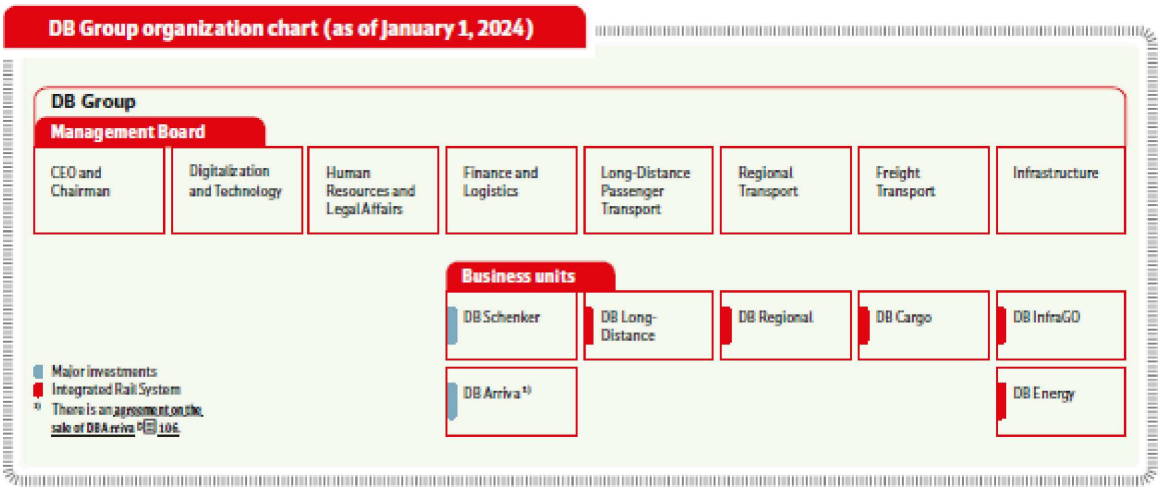
(9) DB Cargo is a rail freight service operator headquartered in Mainz, Germany. It provides rail freight services in 17 countries, including Member States. DB Cargo itself operates within the internal market through domestic subsidiaries, such as TFG Transfracht GmbH, as well as international subsidiaries including in other Member States, such as DB Cargo Belgium BV, DB Cargo Scandinavia A/S, DB Cargo France SAS, DB Cargo Nederland N.V., DB Cargo Polska S.A., or Transfesa Logistics, S.A. (Spain) (all together hereinafter 'DB Cargo Group') ([5]).

(10) DB Cargo is a subsidiary of Deutsche Bahn Aktiengesellschaft ('DB AG'). DB AG is a holding company and parent of a number of domestic and international subsidiaries, including DB Cargo (DB AG and the entirety of the companies owned by DB AG are hereinafter referred to as 'DB group'). The DB group operates in the field of national and international freight and passenger transport, logistics and ancillary services in rail transport. Figure 1 shows a simplified depiction of DB group's various operations.

([5]) Concerning Measure 1 (see Section 39), according to information provided by Germany, the calculation basis for the profit or loss transfer is the '*Ergebnis nach Steuern*' (profit after tax) of DB Cargo AG. The profit after tax of DB Cargo AG also includes the profit after tax of the domestic subsidiaries. Apart from DB Cargo AG, the following domestic subsidiaries are considered:
— RBH Logistics GmbH
— Mitteldeutsche Eisenbahn GmbH
— DB Cargo Vermögensverwaltungs AG
— DB Cargo Logistics GmbH
— DB Cargo BTT GmbH
— TFG Transfracht GmbH
— DB Intermodal Services GmbH
— DB Cargo Eurasia GmbH.

Figure 1

DB group business organisation



Source: *Deutsche Bahn integrated annual report 2023*.

(11) Since its creation in 1994, DB AG has been fully owned by the German Federal State ('Bund'). DB AG has been controlling, among other business lines, the rail freight business of the DB group. Over the years, DB AG had a shareholding in the company that was operating the rail freight business, which varied between 92 % and 100 %; since 2011, DB AG holds 100 % of the company operating the rail freight business. The corporate organisation and location of the rail freight business within the structure of DB group has changed over time.

(12) In the period under investigation (as from 1 January 2012 for Measure 1 and as from 20 September 2008 for Measures 2 to 4), as described in Section 2.3, DB AG's rail freight business has been operated by several entities. For ease of reference, unless stated otherwise, the term 'DB Cargo' designates the entity belonging to DB group and operating that group's rail freight business:

(a) From 1 September 2003 until 15 February 2009, the entity operating rail freight business was registered under the company name Railion Deutschland AG.

(b) From 16 February 2009 until 29 October 2012, the entity operating rail freight business was registered under the company name DB Schenker Rail Deutschland AG.

(c) On 30 October 2012, the company name was changed to DB Schenker Rail AG.

(d) Since 1 March 2016, the rail freight business has been operated under the company name DB Cargo.

(13) DB Cargo has been a direct, 100 %-owned subsidiary of DB AG since 2016. Prior to that, as of 1 January 2012, DB Cargo was a direct subsidiary of DB Mobility Logistics AG ('DB ML'). Before 2012, since 2003, DB Cargo was an indirect subsidiary of DB ML. DB ML was directly 100 %-owned by DB AG, while, as described in recital 11, the shareholding in the rail freight operating company was at minimum 92 %. Thus, since 2011 DB Cargo was fully indirectly held by DB AG, while prior to 2011 DB AG had had at minimum a 92 % indirect stake in DB Cargo.

(14) Until 31 December 2015, DB ML was in charge of various services offered by DB group, in particular DB group's rail transport activities (passenger and freight). DB Cargo (which until 29 February 2016 was registered as DB Schenker Rail AG) was a 100 %-owned subsidiary of DB ML, along with other subsidiaries such as the two rail passenger transport subsidiaries DB Regio AG and DB Fernverkehr AG. On 26 August 2016, DB ML was merged into DB AG. As a result, DB Cargo, DB Regio AG and DB Fernverkehr AG became direct subsidiaries of DB AG. The merger agreement was signed between DB AG and DB ML and consequently approved by the respective General Assemblies of the two companies on 15 July 2016. The merger agreement had a retroactive effect as of 1 January 2016.

(15) DB AG, since its creation in 1994 and DB Cargo since 2009 are incorporated as *Aktiengesellschaften* ('AG'), i.e. stock companies under German company law. The same held true for DB ML for the duration of its existence. *Aktiengesellschaften* are, in particular, governed by the German Law on public limited companies (*Aktiengesetz* – AktG). In an AG, the shareholders are represented in the General Assembly (*Hauptversammlung*). The General Assembly elects the shareholder representatives to the Supervisory Board (*Aufsichtsrat*). Employee representatives are elected in accordance with the German co-determination act (*Mitbestimmungsgesetz* – MitbestG). The Supervisory Board elects the members of the Board of Directors (*Vorstand*), responsible for managing the AG. Whilst the members of the Board of Directors are elected by the Supervisory Board, according to the legislation governing *Aktiengesellschaften* the Board of Directors in an *Aktiengesellschaft* is independent from the Supervisory Board as well as from the General Assembly in the sense that the latter, in principle, cannot issue instructions to the Board of Directors ([6]).

(16) Table 1 shows the revenues of DB group, as well as of DB Cargo group and of DB Cargo taken individually, for the period under investigation.

Table 1

Revenue of DB group and DB Cargo 2012 to 2023 ([7])

(in EUR million)

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
DB group	39 296	39 107	39 728	40 403	40 557	42 693	44 065	44 430	39 901	47 075	52 085	45 191
DB Cargo group	4 926	4 843	4 863	4 767	4 560	4 528	4 460	4 449	4 119	4 487	5 244	5 582
DB Cargo	3 413	3 368	3 428	3 368	3 440	3 455	3 384	3 360	3 183	3 348	3 474	3 794

Source: DB group's integrated reports and DB Cargo's annual financial statements.

(17) Concerning the decision-making process within DB group, the rules of procedure ('*Geschäftsordnung*') of DB AG's Board of Directors reserve for its Board of Directors the decisions concerning the short-term, as well as the medium-term planning and the long-term strategic targets. Furthermore, the Board of Directors also decides on the issuance, amendment and repeal of group guidelines. With regard to specific, individual measures, decisions by the Board of Directors are also required, even if they concern subsidiaries or associated companies, for ([8]):

(a) Starting and discontinuing key areas of activity, fundamental changes to the company organisation, and concluding, amending and cancelling company agreements ([9]).

(b) The establishment of companies; acquisition, sale and change of shareholdings (including conversion and capital measures) with a value of EUR 10 million or more, with the exception of measures within the group.

(c) The acquisition, sale, encumbrance and other disposal of real estate and other property rights with a value of EUR 10 million or more, whereby the granting of land mortgages is excluded.

(d) The issuance of securities, taking out loans and granting of loans: not including borrowing outside the group with a term of less than one year and the granting and taking out of loans within the group.

([6]) This follows from § 76(1) *Aktiengesetz*.

([7]) The figures for DB group and DB Cargo group are based on IFRS accounting standards. Meanwhile DB Cargo's individual revenue is based on the accounting standards laid down in the German Commercial Code (*Handelsgesetzbuch – HGB*). Therefore, those figures are not fully comparable.

([8]) The list of individual measures for which Board of Directors approval is required has not changed since 2010, before that version the monetary thresholds under points (b), (c), (e) and (f) had been lower.

([9]) 'Company agreements' ('*Unternehmensverträge*') refers to agreements governed by § 291 et seq. AktG, which includes control agreements and profit transfer agreements.

(e) The acceptance and granting of guarantees and securities outside of the normal business; acceptance and granting of guarantees and securities within the framework of the normal business with a volume of EUR 10 million or more.

(f) The approval of investment, expenditure, rental, and leasing projects included in the corporate planning with a volume of EUR 250 million or more; approval of projects included in the corporate planning whose total value / total value forecast or equity requirement exceeds the planning by EUR 10 million or more; further approval of projects not included in the corporate planning with a volume of EUR 10 million or more.

(g) Changes in the composition of board, management and other leading positions, insofar as they belong to the Group Management Circle.

(h) The appointment and dismissal of general representatives of the company as well as granting and revocation of powers of attorney for the company.

(18) According to the rules of procedure, decisions within the Board of Directors of DB AG are made unanimously. If no consensus can be reached, the decision must be approved by a two-thirds majority of the members participating in the decision-making process in order to be valid.

(19) Concerning relations with the Supervisory Board of DB AG, the Board of Directors of DB AG submits to the Supervisory Board annually in writing a short- and medium-term corporate plan covering all of the company's key areas of activity.

(20) Moreover, some individual measures, even if they concern subsidiaries or associated companies, necessitate approval by the Supervisory Board of DB AG. According to the catalogue of business transactions requiring such an approval by the Supervisory Board of DB AG, such measures include notably the following ([10]):

(a) Initiation of significant new fields of activity or abandonment of existing significant fields of activity;

(b) Fundamental changes in the company and group organisation;

(c) Changes in the distribution of business of the board and changes in the company's general representatives;

(d) Establishment, takeover or dissolution of companies and acquisition and sale of company shareholdings, including changes in the shareholding ratio and participation in a capital increase against contributions, in each case with the exception of intra-group transactions if the value of the individual measure exceeds EUR 25 million;

(e) Measures relating to group companies and shareholdings that are of fundamental or prejudicial importance for the company or the group or have significant financial implications;

(f) Acquisition, sale and encumbrance of real estate and property rights as well as other disposals thereof if the value of the individual measure exceeds EUR 25 million;

(g) The issuing of bonds or other borrowings with a term of more than one year, with the exception of borrowings from subsidiaries or associated companies;

(h) The assumption of guarantees and the provision of promises of debt, and other securities outside of the normal business, if the value of the individual measure exceeds EUR 5 million;

(i) The granting of loans outside of the normal business if the value of the individual measure exceeds EUR 5 million, with the exception of loans to subsidiaries or associated companies;

([10]) There has been no change in the list of those measures in the various versions of the rules of procedure applicable between 2008 and the date of this Decision.

(j) Cooperation agreements that go beyond the scope of the normal business and are of essential importance to the company;

(k) Investment projects not already included in the short- and medium-term corporate planning if their amount exceeds EUR 10 million in individual cases;

(21) According to DB AG's Articles of Association, DB AG's Supervisory Board consists of 20 members. 10 members are shareholder representatives and 10 members are employee representatives. Concerning the 10 shareholder representatives, 7 of those representatives are elected by the general assembly, while the Federal Government has the right to directly second 3 members to the Supervisory Board. According to the rules of procedure for DB AG's Supervisory Board, decisions of the Supervisory Board require a majority of the votes cast, unless a different majority is required by law or in the Articles of Association of DB AG. If a vote results in a tie, the Chairman has two votes in a further vote on the same matter.

(22) DB Cargo's rules of procedure for the Board of Directors provide that its Management Board collegially decides on all matters of fundamental or material importance for the company, as well as on matters assigned to it for joint decision by law, the company's Articles of Association or its rules of procedure. Decisions are taken unanimously or, failing that, by qualified majority, in the same vein as described in recital 18 for DB AG's Management Board. The rules of procedure of DB Cargo's Board of Directors are supplemented by a compulsory catalogue of business transactions that need the approval of DB Cargo's direct parent. Those measures are ([11]):

(a) All matters of fundamental and material importance;

(b) Initiating and abandoning key areas of activity, fundamental changes to the company organisation, and concluding, amending and terminating company contracts;

(c) Establishment of companies;

(d) Acquisition, sale and change (including conversion and capital measures) of shareholdings, with the exception of measures (i) in which only companies are involved that are – directly or indirectly – solely owned by DB AG or (ii) whose object is a shareholding that is not fully consolidated and whose value is less than EUR 10 million;

(e) Acquisition and sale of operations or parts of operations, with the exception of measures (i) in which only companies are involved that are – directly or indirectly – solely owned by DB AG; or (ii) whose value is less than EUR 10 million;

(f) Acquisition, sale, encumbrance and other disposal of real estate and other property rights with a value of EUR 10 million or more, whereby the granting of land mortgages is excluded;

(g) Issuance of securities, taking out loans and granting of loans; not including borrowings outside the group with a term of less than one year or the granting and taking out of loans to DB AG and DB Finance B.V.;

(h) Assumption and granting of guarantees and securities outside of the normal business; Assumption and granting of guarantees and securities within the framework of the normal business with a volume of EUR 10 million or more;

(i) Approval of investment, expenditure, rental, and leasing projects included in the corporate planning with a volume of EUR 250 million or more; Approval and release of projects included in the corporate planning whose total value or equity requirement exceeds the planning by EUR 10 million or more; furthermore, approval and release of projects not included in the corporate planning with a volume of EUR 10 million or more;

(j) Changes in the composition of management boards and other executive positions.

([11]) As is the case of the individual measures described in recital 17, older versions of the years 2009 and 2011 refer to lower monetary thresholds. Also, the version of 2011 refers in point (f) additionally to DB ML not only to DB AG and DB Finance B.V.

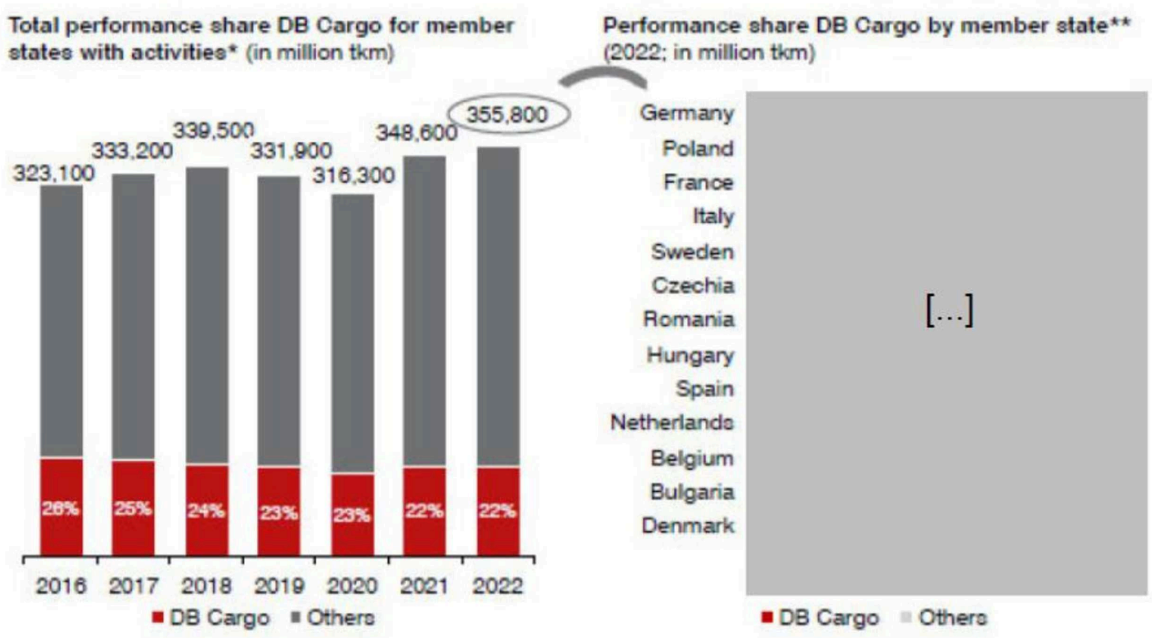
2.2. Activities of DB Cargo and position on various service markets

(23) Germany indicates that DB Cargo is one of Europe's leading rail freight operators, playing a pivotal role in transporting goods across the Union. Germany explains that DB Cargo's mission is to provide sustainable domestic and cross-border rail freight services, with a focus on reducing carbon emissions and offering reliable logistics solutions across various industries.

(24) Germany further indicates that DB Cargo operates a vast network across Europe, moving millions of tons of freight annually, including raw materials, industrial goods, and consumer products and that DB Cargo leverages its extensive European rail network to deliver integrated, cross-border logistics, aligning with the EU's sustainability goals. In that context, Germany explains that DB Cargo is active in 13 Member States, with shares in total rail freight performance (measured in tonne-kilometre or tkm) ([12]) over […] % on a national level in Belgium, Denmark, France, Germany, The Netherlands and Romania (Table 2). Overall, in 2022, across the Member States in which DB Cargo is active, DB Cargo had a share of about […] % of the rail freight sector. Figure 2 shows DB Cargo's market share in total in the internal market limited to the Member States in which DB Cargo is active. The Figure shows that between 2016 and 2022 DB Cargo has lost market shares in respect of volume of works, i.e. tonnes-kilometres.

Figure 2

DB Cargo market share in total in Member States with DB Cargo activity



Source: SCI/Verkehr study dated 6 September 2023 as submitted by Germany, page 9.

(25) Germany indicates that, due to the growing integration of the European rail freight market, DB Cargo's subsidiaries contribute to facilitating cross-border transport for DB Cargo's customers within Europe and towards Asia as around […] % of the rail freight activities in 2022 in Germany were fulfilled through cross-border transports.

([12]) Tonne-kilometre or tkm means the unit of measure of goods transport which represents the transport of one tonne (1 000 kilograms) of goods by rail over a distance of one kilometre. This unit (tkm) is crucial for assessing rail freight transport in the Union, as it provides a standardised measure of the weight and distance goods are transported by rail. This helps evaluating operator performance, track freight volume changes, and support sustainability goals by promoting rail as a lower-emission alternative to road transport. Through the Rail Market Monitoring Scheme (RMMS), tkm data enables comparisons across the internal market, guiding policy and investment to enhance rail competitiveness and progress toward emission reduction targets.

(26) Germany further explains that, in Germany, DB Cargo accounted for 43 % of all rail freight activities in 2022, with DB Cargo's share continuously decreasing and competitors gaining larger shares in the German rail freight sector. Germany indicates that while DB Cargo still provided a share of 54 % of German rail freight traffic in 2016, its share declined by 11 percentage points (or 20 %) over the seven following years.

(27) In Denmark and the Netherlands, DB Cargo is acting as the incumbent (after integrating other players) with respectively […] % and […] % share of the local market.

Table 2

Position of DB Cargo on rail freight markets in various Member States

Member State	DB entity	Market Share 2022 (in tkm[e])
BE	DB Cargo Belgium	[…]
BG	DB Cargo Bulgaria	
CZ	DB Cargo Czechia	
DK	DB Cargo Scandinavia	
FR	DB Cargo France	
DE	DB Cargo	
HU	DB Cargo Hungaria	
IT	DB Cargo Italia	
NL	DB Cargo Nederland	
PL	DB Cargo Polska	
RO	DB Cargo Romania	
ES	Transfesa	
SE	DB Cargo Scandinavia	

Source: SCI/Verkehr study dated 6 September 2023 as submitted by Germany, page 8.

(28) Within the wider rail freight transport market, Germany explains that DB Cargo is active in three main sub-segments: (i) the single-wagon load segment; (ii) the block-train segment; and (iii) the combined transport segment.

(29) In the single-wagon load (SWL) segment, DB Cargo provides flexible freight services for smaller shipments. It collects individual wagons from multiple customers, consolidates them into full trains at marshalling yards, and transports them across Europe. This service is essential for industries that need to transport smaller quantities of goods that do not fill entire trains.

(30) In the block train segment, DB Cargo offers dedicated trains for large-volume customers, enabling direct, point-to-point transportation of goods without intermediate stops. This service is ideal for bulk goods such as coal, steel and chemicals, as well as for large container shipments. Block trains help industries ensure faster and more cost-efficient logistics, with high reliability over long distances.

(31) DB Cargo also operates in combined transport, where goods are moved using multiple modes of transport (e.g. rail, road, sea). In this model, containers, swap bodies, and semi-trailers are transported by rail for the long-haul portion of the journey and then transferred to trucks or ships for the final leg. This service supports the shift from road to rail, reducing CO_2 emissions and enhancing intermodal logistics solutions across Europe.

(32) Against that background, Germany argues that the European rail freight sector can generally be considered as competitive and that a recent study from 2022 commissioned by ERFA concludes on the competitive dynamics in the European rail freight sector as follows: 'There is presently a high level of rivalry between rail freight actors. The foreign operations of incumbents and international challengers (former new entrants) are expanding their international activities, focusing mainly *on* long-haul international services. Consequently, shippers, forwarding and logistics companies, and intermodal operators can choose between several capable rail freight operators within one country or along international corridors'. Germany further argues that the same study also concludes with respect to the competitiveness of the German rail freight sector as follows: 'As a result, the passenger and freight rail market in Germany became very competitive and new entrants were challenging Deutsche Bahn in all business segments. Today challengers have captured more the 50 % of the rail freight market in Germany.'

(33) With regard to the German rail freight sector, Germany submits that, when considering the different business segments of the rail freight sector as described above, DB Cargo was by far the most important provider of single-wagon transport within Germany in 2022 with about […] % of all single-wagon transport volumes. Germany submits that the lack of large competitors in that business segment can be explained by the fact that the single-wagon transport segment has been systematically loss-making for several years and therefore not attractive for new entrants without subsidies.

(34) In that respect, Germany submits while DB Cargo will transform its business segment to improve efficiency and product quality, as from 2023, Germany is in the process of increasing State support for single-wagon transport.

(35) With respect to combined transport, Germany further explains that DB Cargo lacks an integrated transport production system and that, while DB Cargo had a share of about […] % of the traffic in Germany in 2022, it is facing an increasingly strong and diversified competition from, among others, Metrans, HUPAC, TX Logistik and SBB Cargo International.

(36) In the block train segment, Germany indicates that DB Cargo had a share of […] % to […] % in the rail freight volumes in Germany in 2022 and considers it to be a modest market share when taking DB Cargo's background as the incumbent rail freight undertaking into account. In that segment, DB Cargo faces strong competition from Captrain Deutschland (part of the SNCF group), TX Logistik (a pan-European, independent logistic firm) and a large number of smaller competitors.

(37) Table 3 provides an overview of DB Cargo's share in the rail freight volumes in those Member States where it is active (as of 2022).

Table 3

Position DB Cargo per activity in various Member States

Member State	DB Cargo share Total rail freight sector	DB cargo share SWL transport	DB cargo share Intermodal	DB cargo share Block train
Belgium	[…]			
Bulgaria				
Czechia				
Denmark				
France				
Germany				
Hungary				
Italy				
Netherlands				
Poland				
Romania				
Spain				
Sweden				

Source: SCI Verkehr

Source: Germany's submission of 31 October 2023, page 28.

(38) Germany indicates that DB Cargo provides only small shares of total transport volume in most of the relevant Member States. In this regard, Germany underlines that DB Cargo exceeds a share of […] % only in Denmark ([13]), Germany and the Netherlands ([14]) and that, in most Member States, DB Cargo supplies even less than […] % of rail freight services.

2.3. **The measures subject to the investigation**

(39) The Opening Decision identified the four following measures granted in favour of DB Cargo. They are described in this section taking into account the factual clarifications provided by Germany and by interested parties in the course of the investigation procedure.

2.3.1. *Compensation of annual losses of DB Cargo under the profit and loss transfer agreement ('Measure 1')*

(40) DB Cargo has been transferring its losses to its parent company on the basis of a control and profit and loss transfer agreement which has been applied since 1 January 2012 (the 'PLTA' or the 'profit and loss transfer agreement').

(41) The PLTA was concluded on 25 October 2012 between DB Cargo (at the time named DB Schenker Rail Deutschland AG) and its parent company (at the time DB ML, itself 100 % owned by DB AG) as part of a contract which was designated as an agreement for the control and transfer of profits (*Beherrschungs- und Gewinnabführungsvertrag)* ([15]). Pursuant to the PLTA, DB Cargo's parent company (until 2016 DB ML, and, since the latter's absorption in 2016, DB AG) has undertaken to automatically cover DB Cargo's losses at the end of each financial year. In turn, if DB Cargo makes profits at the end of a financial year, DB Cargo commits to automatically transfer those profits to its parent.

(42) As the PLTA was designed as *Beherrschungs- und Gewinnabführungsvertrag* it has also implications for the management of the subsidiary that was controlled ('*beherrscht*') by the parent company under the agreement. According to the PLTA, DB Cargo put the management of its company's business affairs under the control of DB ML. Accordingly, the Board of Directors of DB ML was entitled to instruct the Board of Directors of DB Cargo as to the management of the company's business affairs. However, the business management and representation remained with the Board of Directors of DB Cargo. Moreover, DB ML's right to instruct the Board of Directors of DB Cargo excluded the possibility to instruct the Board of Directors of DB Cargo concerning amending, maintaining or terminating the PLTA.

(43) The PLTA also established a fiscal unity between DB Cargo and DB AG. This includes both a fiscal unity for income tax purposes and a fiscal unity for VAT purposes. The income tax unity linked to the PLTA allows profits and losses of different group companies to be offset against each other instead of paying income taxes for each individual subsidiary. The fiscal unity for VAT purposes derives from the PLTA establishing the control of DB ML (and later DB AG) over DB Cargo. The fiscal unity for VAT purposes results in internal flows not being subject to VAT.

([13]) With respect to DB Cargo's share of the rail freight market in Denmark, Germany submits that it is not appropriate to consider Denmark as a geographic rail freight market but rather as a transit country and that, in this context, DB Cargo took over the national incumbent in 2001 and provides rail freight services to connect Germany as the largest European economy with Scandinavia.

([14]) With respect to DB Cargo's share of the rail freight market in The Netherlands, Germany submits that, similar to Denmark, the Dutch rail freight volume is comparably low (about 5 % of the German volume) and that, as in Denmark, DB Cargo acquired the national incumbent, in 2001 for cross-country transit and connectivity reasons such as connecting the Dutch and Belgian ports to Genoa via Germany and connecting the North Sea to the Mediterranean Sea via Belgium and France. Germany consequently submits that it is not appropriate to consider The Netherlands as a geographic rail freight market independent from the rail freight sectors of its neighbouring countries.

([15]) A *Beherrschungs- und Gewinnabführungsvertrag* is a type of agreement governed by § 291 and §§ 293 et seq. *Aktiengesetz*. According to § 293(1) AktG, agreements governed by §§ 291 et seq. only become effective with the approval of the general assembly. The resolution requires a majority of at least three quarters of the share capital represented when the resolution is passed. The articles of association can provide for a larger capital majority and other requirements.

(44) The PLTA was signed between DB ML as parent company and DB Cargo on 25 October 2012 ([16]). The PLTA was approved by the respective General Assemblies of DB ML and DB Cargo on 26 October 2012. The agreement provided for its retroactive application as of 1 January 2012 ([17]).

(45) At the time the PLTA was signed between DB ML and DB Cargo, there was also a profit and loss transfer agreement in force between DB AG and DB ML ([18]). Pursuant to that agreement, DB AG undertook to automatically cover DB ML's losses at the end of each financial year as long as the agreement was in place. In turn, DB ML committed to automatically transfer its profits to DB AG at the end of each financial year. Thus, any impact on DB ML's financial situation due to the PLTA of 2012 between DB ML and DB Cargo could have a direct impact on the budget of DB AG. That profit and loss transfer agreement between DB AG and DB ML continued to be in force until the merger between the two companies in 2016.

(46) On 26 August 2016, as part of the merger between DB AG and DB ML, the PLTA concluded between DB ML and DB Cargo was transferred to DB AG. DB AG, as the new parent company, entered into the rights and obligations of DB ML regarding DB Cargo. At the same time, the profit and loss transfer agreement concluded in 2003 between DB AG and DB ML became devoid of purpose.

(47) Germany submits that a chain of PLTAs (with different levels of sub-holdings) was always in place in the period between 31 December 1999 and the transfer of the PLTA in 2016 from DB ML to DB AG that had DB Cargo as the ultimately affected subsidiary and DB AG as the ultimately affected parent. Between 1 June 1999 and 31 December 1999, a direct PLTA between DB AG and DB Cargo was in place.

(48) According to its terms, the PLTA had an initial duration of five years (i.e. from 1 January 2012 until 31 December 2016), during which it could only be terminated for important reasons (*'wichtige Gründe'*). The PLTA provides that DB ML is in particular entitled to terminate it for important reasons in case that it ceases to hold the majority of voting rights in DB Cargo.

(49) Germany further explains that the German tax authorities take the view that only very exceptional circumstances can justify extraordinary termination of a PLTA during the minimum five-year-term. In this regard, Germany refers to the German tax authorities' corporate tax guidelines (*'Körperschaftsteuerrichtlinien'* – KStR), which state that if a PLTA, which has not yet been in force for five consecutive years, is terminated by notice of termination or by mutual agreement, the agreement remains effective for the years for which it has been implemented for tax purposes if the termination is based on important reasons. Important reasons may be deemed to exist in particular in the event of a sale or contribution of the participation by the parent company, a merger, demerger or liquidation of the parent company or the subsidiary company. If it was already clear at the time of the conclusion of the agreement that the PLTA would be terminated before the end of the first five years, important reasons are not to be assumed. If important reasons do not exist, the PLTA is to be regarded as ineffective under tax law from the outset ([19]).

(50) According to Germany, based on the German tax authorities' guidelines, only such transactions which are comparable to a sale or any other fundamental restructuring measures which leads to a change in ownership and/or control would have justified an early termination. There were no comparable trigger events during the initial five-year-minimum period, which would have justified the termination of the PLTA. The only changes of the corporate structure which took place during the period from 1999 until today only involved internal reorganisation measures and clearly did not qualify as important reasons.

([16]) The agreement was signed by two Members of DB ML's Board of Directors ('Vorstand') and two members of DB Schenker Rail Deutschland AG's Board of Directors.

([17]) The PLTA was published in the commercial register for DB Cargo – a requirement for the agreement's validity – on 18 December 2012.

([18]) That PLTA was concluded in 2003.

([19]) Original wording in the KStR R14.5 paragraph (6): *'Wird der GAV, der noch nicht fünf aufeinanderfolgende Jahre durchgeführt worden ist, durch Kündigung oder im gegenseitigen Einvernehmen beendet, bleibt der Vertrag für die Jahre, für die er durchgeführt worden ist, steuerrechtlich wirksam, wenn die Beendigung auf einem wichtigen Grund beruht. Ein wichtiger Grund kann insbesondere in der Veräußerung oder Einbringung der Organbeteiligung durch den Organträger, der Verschmelzung, Spaltung oder Liquidation des Organträgers oder der Organgesellschaft gesehen werden. Stand bereits im Zeitpunkt des Vertragsabschlusses fest, dass der GAV vor Ablauf der ersten fünf Jahre beendet werden wird, ist ein wichtiger Grund nicht anzunehmen. Liegt ein wichtiger Grund nicht vor, ist der GAV von Anfang an als steuerrechtlich unwirksam anzusehen.'*

(51) The PLTA further provides that, following the initial five-year duration, it is automatically prolonged at the end of each financial year for one additional year, unless one of the two parties decide to terminate it. For the termination of the PLTA, the respective party needs to give a three-month notice, i.e. for the termination to take effect in the following financial year of DB Cargo, the party must give notice of the termination of the PLTA at least three months before the end of DB Cargo's current financial year.

(52) At the moment of the adoption of the Opening Decision, the PLTA was still in force and its termination was not envisaged. However, in the course of the formal investigation procedure, Germany informed the Commission that the PLTA between DB AG and DB Cargo has been terminated with effect as of the end of 2024.

(53) Since the current PLTA has entered into force, no profits have been transferred from DB Cargo to DB AG (or before 2016, to DB ML). Based on the PLTA concluded in 2012, the losses of DB Cargo have been covered by its parent (DB ML and subsequently DB AG). As all losses generated have been transferred, DB Cargo has been shielded from having its losses affect its balance sheet, and hence from any negative financial impact of the accumulated losses. Table 4 shows the development of DB Cargo's subscribed capital and total equity and its generated annual losses, according to DB Cargo's annual financial statement ([20]), up until 31 December 2023.

Table 4

DB Cargo's equity and annual losses (EBT) covered by parent company based on the 2012 PLTA until 31 December 2023

(EUR million)

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Subscribed capital	256	256	256	256	256	256	256	256	256	256	256	256
Total equity	540	540	540	540	540	561 ([1])	666 ([2])	666	666	666	666	666
Annual losses	31	69	128	242	229	257	341	488	867	351	858	583

([1]) This year-on-year increase by EUR 21 million corresponds to an increase in the capital reserve due to the transfer of all shares in DB Cargo Logistics GmbH, previously held by Schenker AG to DB Cargo AG.

([2]) The subscribed capital was increased by EUR 6 000 in connection with the contribution (*Einlage*) of six participations (*Beteiligungen*). The value of the contribution of the six participations exceeding the increase in subscribed capital was transferred to the capital reserve in the value of EUR 105 million.

Source: Cargo's financial statements 2012 to 2023.

(54) The basis for DB Cargo's corporate management is mid-term strategic plans of DB Cargo ('mid-term plans'). Every year, those mid-term plans are finalised in October and presented to DB Cargo's Supervisory Board for approval around November/December. The mid-term plans of DB Cargo are coordinated annually with DB AG and become part of the group-wide mid-term planning. In addition, the measures and concepts included in the mid-term plans are also included in DB AG's decision-making process (unless the strategies have already been coordinated separately with DB AG).

([20]) Prepared in accordance with the provisions of the German Commercial Code (*Handelsgesetzbuch* – HGB) and the Aktiengesetz.

(55) According to Germany, the preparation of the annual mid-term plans of DB Cargo is subject to an extensive process lasting several months in which the strategy and controlling departments of DB Cargo and DB AG are involved. Volume and price planning is based on analyses by official statistics and established economic forecasting institutes (e.g. Oxford Economics, Eurostat, National Statistical Offices) of economic market and competitive developments. Such statistics are taken together with internal data, the data produced by the official statistics and economic forecasting institutes is compiled by the strategy departments of DB Cargo and DB AG to produce transport market forecasts for freight transport. The assumptions for cost development of domestic entities are centrally regulated for all business units of DB AG and are based on the above-mentioned independent data sources. Key cost categories include, e.g. wages/salaries, fuel/energy and track access charges. In addition, effects from ongoing strategy and efficiency programmes are taken into account. Furthermore, detailed investment and project planning is carried out by DB Cargo's asset management in order to be able to meet the volume planning operationally.

(56) The mid-term plans concern a five-year planning horizon, for example the mid-term plan presented to DB Cargo's Supervisory Board on 9 December 2016 concerned the planning period 2017 to 2021. The mid-term plans are around 40 pages up to 159 pages (the mid-term plan of 2015 which includes a rather comprehensive section on the 'Zukunft Bahn' project). For each year, the mid-term plans contain (inter alia) performance and financial projections for the following five years. For DB Cargo group, as well as DB Cargo, those plans contain income statement and balance sheet data. For other subsidiaries, selected indicators are included. The main profitability indicators used are Earnings Before Interest and Taxes (EBIT)-margin and Return on Capital Employed (ROCE) for which also target levels are set out ([21]). All the mid-term plans produced during the period under investigation forecast profits before tax at the end of the planning period as a minimum. Table 5 shows Operating income after interest ([22]), EBIT-margin, and ROCE for all mid-term plans ([23]) produced between 2011 and 2021. The figures shown in Table 5 concern DB Cargo AG.

Table 5

Mid-term plans 2011 to 2021

(EBT in EUR million)

		1st planning year	2nd planning year	3rd planning year	4th planning year	5th planning year
2011	Operating income after interest ([1])	[…]	[…]	[…]	[…]	[…]
	EBIT	[…]	[…]	[…]	[…]	[…]
	EBIT-margin ([2])	[…]	[…]	[…]	[…]	[…]
	EBIT-margin target	[…]	[…]	[…]	[…]	[…]
	ROCE ([3])	-	-	-	-	-
	ROCE target	-	-	-	-	-

([21]) ROCE is used as indicator with a target level since the mid-term plan of 2015. Before that year only EBIT-margin seemed to be used for a target performance indication.

([22]) Used in this Decision as a proxy for Earnings before Tax (EBT) if EBT is not explicitly included in the relevant mid-term plan.

([23]) While the basis for the calculation of the profits and losses to be transferred under the PLTA is DB Cargo AG's (including domestic subsidiaries) earnings after tax ('*Ergebnis nach Steuern*') calculated according to the accounting principles of the HGB, the mid-term plans follow the International Financial Reporting Standards (IFRS). Until the mid-term plan 2018, the forecasts only include the operating income after interest as the final result of the profit and loss forecast.

(EBT in EUR million)

		1st planning year	2nd planning year	3rd planning year	4th planning year	5th planning year
2012	Operating income after interest ([4])	[…]	[…]	[…]	[…]	[…]
	EBIT	[…]	[…]	[…]	[…]	[…]
	EBIT-margin	[…]	[…]	[…]	[…]	[…]
	EBIT-margin target	[…]	[…]	[…]	[…]	[…]
	ROCE	-	-	-	-	-
	ROCE target	-	-	-	-	-
2013	Operating income after interest	[…]	[…]	[…]	[…]	[…]
	EBIT	[…]	[…]	[…]	[…]	[…]
	EBIT-margin	[…]	[…]	[…]	[…]	[…]
	EBIT-margin target	[…]	[…]	[…]	[…]	[…]
	ROCE	-	-	-	-	-
	ROCE target	-	-	-	-	-
2014	Operating income after interest	[…]	[…]	[…]	[…]	[…]
	EBIT	[…]	[…]	[…]	[…]	[…]
	EBIT-margin	[…]	[…]	[…]	[…]	[…]
	EBIT-margin target					
	ROCE	-	-	-	-	-
	ROCE target	-	-	-	-	-
2015	Operating income after interest	[…]	[…]	[…]	[…]	[…]
	EBIT	[…]	[…]	[…]	[…]	[…]
	EBIT-margin	[…]	[…]	[…]	[…]	[…]
	EBIT-margin target	-	-	-	-	[…]
	ROCE	[…]	[…]	[…]	[…]	[…]
	ROCE target	-	-	-	-	13.0 %
2016	Operating income after interest	[…]	[…]	[…]	[…]	[…]
	EBIT	[…]	[…]	[…]	[…]	[…]
	EBIT-margin	[…]	[…]	[…]	[…]	[…]
	EBIT-margin target	[…]	[…]	[…]	[…]	[…]
	ROCE ([5])	[…]	[…]	[…]	[…]	[…]
	ROCE target	[…]	[…]	[…]	[…]	[…]

(EBT in EUR million)

		1st planning year	2nd planning year	3rd planning year	4th planning year	5th planning year
2017	Operating income after interest	[…]	[…]	[…]	[…]	[…]
	EBIT	[…]	[…]	[…]	[…]	[…]
	EBIT-margin	[…]	[…]	[…]	[…]	[…]
	EBIT-margin target	[…]	[…]	[…]	[…]	[…]
	ROCE ([5])	[…]	[…]	[…]	[…]	[…]
	ROCE target	[…]	[…]	[…]	[…]	[…]
2018	Operating income after interest	[…]	[…]	[…]	[…]	[…]
	EBIT	[…]	[…]	[…]	[…]	[…]
	EBIT-margin	[…]	[…]	[…]	[…]	[…]
	EBIT-margin target	-	-	-	-	-
	ROCE	[…]	[…]	[…]	[…]	[…]
	ROCE target	[…]	[…]	[…]	[…]	[…]
2019	Operating income after interest	[…]	[…]	[…]	[…]	[…]
	EBIT	[…]	[…]	[…]	[…]	[…]
	EBIT-margin	[…]	[…]	[…]	[…]	[…]
	EBIT-margin target	-	-	-	-	-
	ROCE	[…]	[…]	[…]	[…]	[…]
	ROCE target	[…]	[…]	[…]	[…]	[…]
2020	EBT	[…]	[…]	[…]	[…]	[…]
	EBIT	[…]	[…]	[…]	[…]	[…]
	EBIT-margin	[…]	[…]	[…]	[…]	[…]
	EBIT-margin target	[…]	[…]	[…]	[…]	[…]
	ROCE ([5])	[…]	[…]	[…]	[…]	[…]
	ROCE target	[…]	[…]	[…]	[…]	[…]
2021	EBT	[…]	[…]	[…]	[…]	[…]
	EBIT	[…]	[…]	[…]	[…]	[…]
	EBIT-margin	[…]	[…]	[…]	[…]	[…]
	EBIT-margin target	-	-	-	-	-
	ROCE ([5])	[…]	[…]	[…]	[…]	[…]
	ROCE target	[…]	[…]	[…]	[…]	[…]

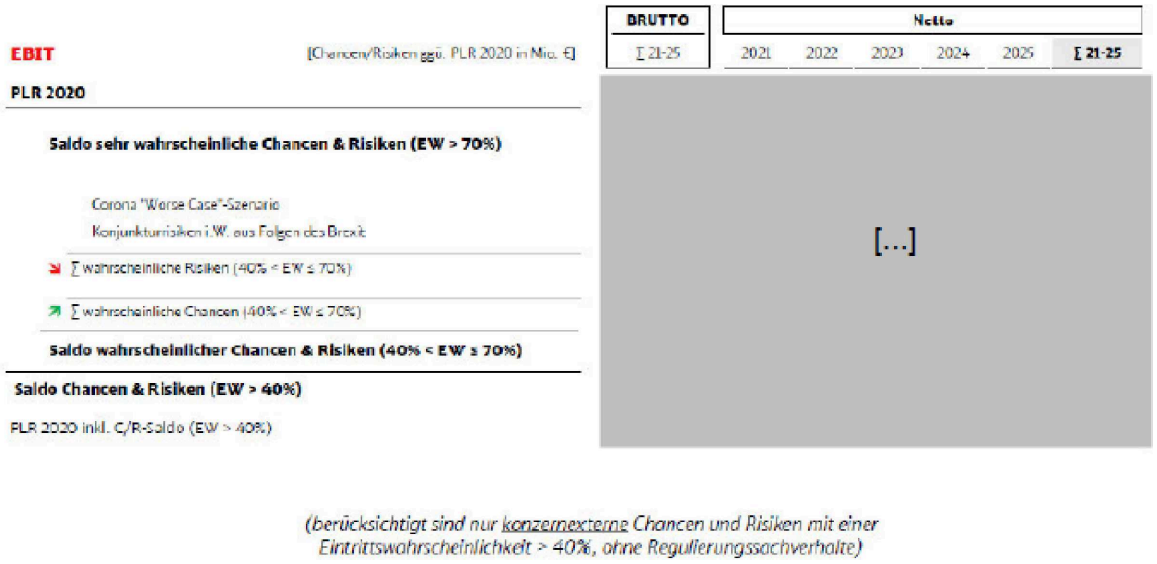
([1]) The plan refers to operating income II (‘*Betriebsergebnis II*’), which the Commission understands to be the same as Operating income after interest.
([2]) In % of revenue.
([3]) While ROCE is not used as a performance indicator prior to 2015, the mid-term plans include capital employed.
([4]) Operating income after interest (‘*operatives Ergebnis nach Zinsen*’).
([5]) ROCE forecasts only available for DB Cargo group.
Source: Cargo mid-term plans submitted by Germany.

(57) Besides the financial planning, the mid-term plans include extensive analyses of current and envisaged market developments including their impact on performance, and, from 2016 onward, a description and assessment of strategies and measures taken to improve DB Cargo's performance, including a description and assessment of measures to be taken within DB Cargo in the context of DB group-wide restructuring initiatives such as '*Zukunft Bahn*' or '*Starke Schiene*' (strong rail, with 'Starke Cargo' – strong cargo as the DB Cargo-specific complementary initiative). Moreover, comparisons of previous mid-term plans with explanations for deviations from previous planning are also included in the plans.

(58) Furthermore, since the mid-term plan 2015, the plans also include a forecast of risks and opportunities, which may impact EBIT and that have a materialisation likelihood of above 40 %, but which are not included in the baseline scenario of the planning. In the plans of the years 2017, 2019, and 2020 only additional risks in that category had been identified. Additional opportunities were not identified. Those additional risks can be significant as is clear in the plan of 2020 for the period 2021 to 2025, as shown in Figure 3: Risks and opportunities mid-term plan for 2021-2025 ([24]).

Figure 3

Risks and opportunities mid-term plan for 2021-2025



Source: *mid-term plan 2020 submitted by Germany* ([25]).

([24]) In this case, the major risk, not included in the baseline scenario, was a reduced growth of the market.

([25]) *Translation of the German original:*
First row: Gross-Net
Second row: opportunities/risks vis-à-vis PLR 2020 in EUR million
Fourth row: balance very likely opportunities & risks (expectation > 70 %)
Fifth row: Corona 'Worse Case' scenario
Sixth row: economic cycle risks in a broader sense as a consequence of Brexit
Seventh row: likely risks (40 % < expectation ≤ 70 %)
Eighth row: likely opportunities (40 % < expectation ≤ 70 %)
Ninth row: balance likely opportunities & risks (40 % < expectation ≤ 70 %)
Tenth row: balance opportunities & risks (expectation > 40 %)
Eleventh row: PLR 2020 including opportunities/risks balance (expectation > 40 %)
Brackets: (included solely group external opportunities and risks with an expectation value of > 40 % excluding regulation cases).

(59) In addition to the mid-term plans, occasion-related documents concerning business strategies are also produced on a non-regular basis for example for extraordinary Supervisory Board meetings of DB Cargo, such as the meeting of January 2017 concerning the Zukunft Bahn project and DB Cargo's strategies discussed therein ([26]). For specialised ad-hoc analyses and market reports in the freight transport market, specialised external providers such as SCI Verkehr are used. Detailed traffic reports are prepared by internal departments.

(60) According to Germany, in the period from 2012 to around 2019, the single-wagon load (SWL) segment was the main driver of DB Cargo's losses. From 2019/2020 onwards, it is no longer possible to discern a clear separation of those effects, contrary to what had been the case in the prior period. Table 6 shows that none of the segments (SWL, block train (BT), combined transport (CT)) could achieve profitability in that period which was marked by the COVID-19 pandemic. Nevertheless, the losses in the SWL segment, which made about 30 % of DB Cargo's turnover in the period 2020-2022, accounted for more than half of the entire losses in the same period.

Table 6

Segmentation of EBIT 2012-2022

(EUR million)

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
SWL	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
BT	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
CT	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Germany's submission of 9 November 2023.

(61) In 2019, DB AG commissioned a study by Oliver Wyman, SCI Verkehr and CK Rail&Logistics concerning the SWL sector (Studie '*Strategischer Review des Einzelwagenverkehrs*' – Strategic review of Single Wagon Load; 'the SWL-study'). The SWL-study was dated October 2019 and was slightly amended in January 2020 without any impact on the conclusion of the study. It included a description and assessment of the SWL market as a whole in Germany and in Europe, a description and assessment of the SWL segment of DB Cargo, as well as possible ways forward for the SWL segment of DB Cargo.

(62) The alternative ways forward identified in the SWL-study were the following:

(1) Further development of the segment with additional relief and State support: The SWL segment would be further developed with a targeted optimisation of the business model and a growth and innovation programme. Transport performance and area coverage would be increased. The operation of the SWL would need to be supported by targeted relief. Investments in modernisation and thus in the long-term increase in efficiency would be promoted.

(2) Further development without additional State support: The SWL segment would be developed in such a way that it supports the shift of freight traffic from road to rail. A similar optimisation of the business model (as in the further development with relief and State support option) as well as a growth and innovation programme would be implemented. However, due to limited investment capacity due to a lack of government support, investments in innovations and growth would be addressed selectively and deferred.

([26]) Between 2009 and 2015, in the context of the 'strategic management process' within DB group, the various business segments presented their strategies to the group's management. This regular process was discontinued in 2016.

(3) Focusing on core customers: In this scenario, the SWL segment would be downsized to focus on an economic core. The aim of the focusing approach was to align the offer to 'anchor customers' ([27]) with large and stable traffic. Freight transport stations that could not be operated cost-effectively ('*eigenwirtschaftlich*') would be reviewed together with customers, with the aim of achieving cost-covering pricing. If a cost-covering solution could not be found with the customers, service to the freight transport station would be discontinued. Only freight transport stations with a wagon volume of one or more wagons per working day would be regularly served at no extra charge.

(4) Closing down the segment: this scenario concerns an orderly exit from SWL.

(63) The SWL-study considered the following contributions of the SWL segment to DB Cargo's earnings in 2023 and 2030 under the four considered scenarios:

Table 7

Contribution of each scenario to DB Cargo's earnings in 2023 and 2030

(EUR million)

	Development with State support	Development without State support	Focus	Exit
Year 2023	[…]	[…]	[…]	[…]
Year 2030	[…]	[…]	[…]	[…]

Source: SWL-study as submitted by Germany.

(64) The four scenarios were assessed by using six criteria:

(1) Benefits to the national economy ('*volkswirtschaftlicher Nutzen*'): assesses the impact on Germany as industrial location;

(2) Ecological benefits ('*ökologischer Nutzen*'): assesses the impact on the sustainability of freight transport in Germany;

(3) Strategic positioning of DB Cargo ('*Strategische Positionierung DB Cargo*'): assesses the impact on DB Cargo's business model;

(4) DB Cargo's finances ('*Finanzen DB Cargo*'): assesses the impact on DB Cargo's finances by use of key performance indicators. The focus is on the earnings effect of the SWL segment for DB Cargo and the extent to which the earnings gap can be closed;

(5) DB Cargo's personnel ('*Personal DB Cargo*'): assesses the impact on the employment situation. It takes into account a 'special responsibility', as a State-owned company, for over 17 000 employees in Germany in 2018;

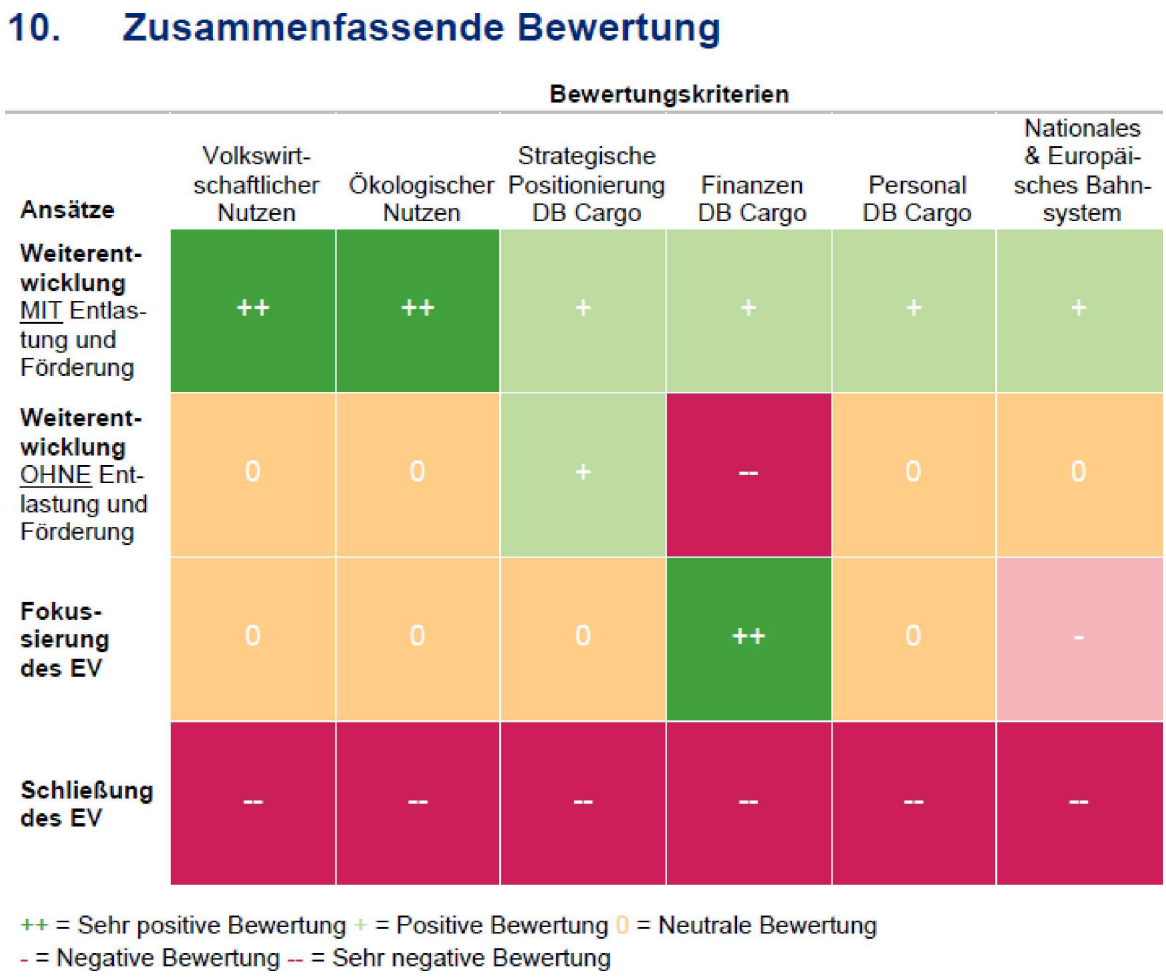
(6) Domestic and European rail system ('*Nationales & Europäisches Bahnsystem*'): An indicator for assessing the impact on the European rail system is the share of cross-border transport in the SWL segment. Furthermore, it is assessed how flexibly the resulting network can be scaled in Germany and Europe in order to respond to changing market dynamics.

(65) According to those criteria, the SWL-study ranked the scenario of further developing the SWL segment with additional relief and State support as the most advantageous scenario in general, while focussing on anchor customers would have the largest positive effect on DB Cargo's finances. Figure 4 shows the conclusion matrix as depicted in the SWL-study.

([27]) 'Anchor customers' were to be determined on the basis of quantitative and qualitative factors:
Quantitative factors: freight revenues, wagon volume, tariff tonne-kilometres;
Qualitative factors: stability and predictability of traffic, customer dependence on SWL transport, willingness to pay, long-term business potential of the customer.

Figure 4

Concluding assessment of SWL scenarios



Source: SWL-study as submitted by Germany ([28]).

([28]) *Translation of the German original:*

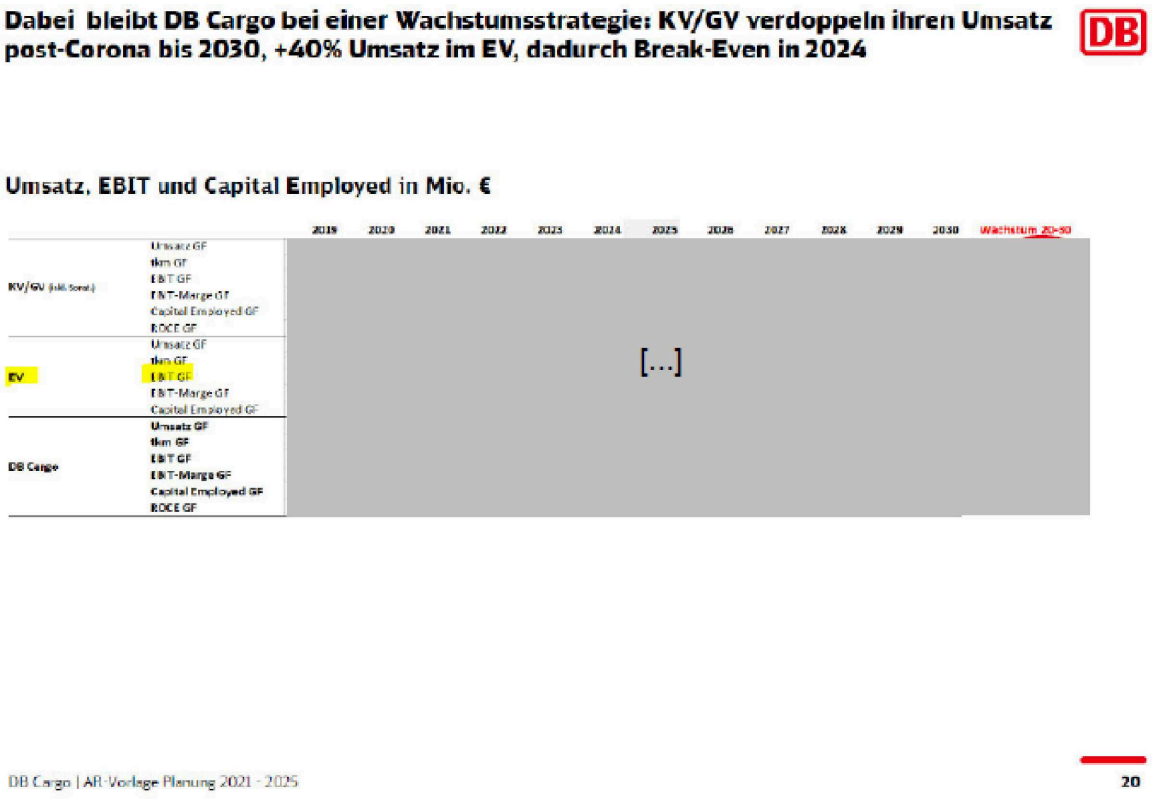
Assessment criteria						
Approach	Benefits to the national economy	Ecological benefits	Strategic positioning of DB Cargo	DB Cargo's finances	DB Cargo's personnel	Domestic and European rail system
Further development of the segment with additional relief and State support						
Further development without additional State support						
Focusing on core customers						
Closing down the segment						

++ = very positive mark + = positive mark 0 = neutral mark
- = negative mark -- = very negative mark.

(66) In 2020, DB Cargo installed a new management team as well as a new business strategy ('Strong Cargo' – '*Starke Cargo*'). The SWL-study's conclusions were not directly implemented into DB Cargo's overall business strategy but formed an important basis for creating the 'Starke Cargo' strategy. The new business strategy was in essence a growth strategy and envisioned a strategy for the SWL segment which had parallels with the 'further development of the segment with additional relief and State support' option of the SWL-study. This was based on two grounds: (i) the expectation of State support due to the political will to further enhance a modal shift from road to rail; (ii) the risks of negative network effects in a downsizing scenario were considered high. According to the mid-term plan of 2020, the SWL segment would still remain operationally loss-making (in terms of EBIT) for the long-term (see Figure 5).

Figure 5

DB Cargo indicators mid-term plan 2020 by business segment



Source: *mid-term plan 2020 as submitted by Germany* ([29]).

(67) At the time of the implementation of the 'Starke Cargo' strategy, the State support '*Trassenkostenentlastung*' (reduction of track access charges) with a volume of EUR 350 million per year for the sector as a whole was already in effect as of 1 July 2018 until 30 June 2023 (later, it was further extended beyond 2023) ([30]). Furthermore, as of the mid-term plan 2020, DB Cargo additionally anticipated State support '*Anlagenpreisförderung*' (support of train composition) with a volume of EUR 200 million in total from 2021 to 2025 (actual introduction in 2020 by the Federal Ministry for Digital and Transport) ([31]).

([29]) *Translation of the German original* (only highlighted part):
SWL EBIT GF.

([30]) Approved by Commission Decision C(2018) 8744 final of 10 December 2018 in case SA.51956 – Aid scheme for the promotion of rail freight transport (OJ C 14, 11.1.2019, p. 1), amended and prolonged by Commission Decision C(2023) 9130 final of 19 December 2023 in case SA.109540 (2023/N) – Prolongation and amendment of aid scheme for the promotion of rail freight transport via a partial funding of track access charges (OJ C, C/2024/800, 16.1.2024, ELI: http://data.europa.eu/eli/C/2024/800/oj).

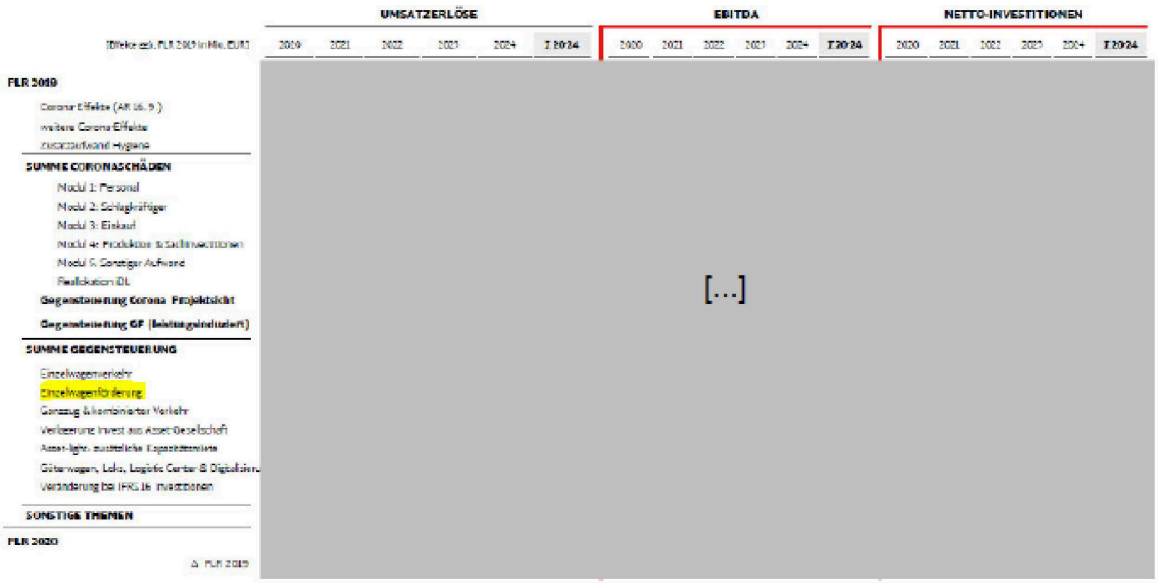
([31]) Approved by Commission Decision C(2020) 7533 final of 4 November 2020 in case SA.58046 (2020/N) – Support for rail freight transport (single wagon) (OJ C 421, 4.12.2020, p. 1).

(68) In the same vein as the mid-term plan 2020, the mid-term plans 2021 and 2022 also include State aid to DB Cargo's SWL segment as shown in Figure 6: mid-term plan 2020 SWL State support.

(69) However, the plans 2021 and 2022 do not only include support for train composition ('*Anlagenpreisförderung*' – APS) but additional support for the SWL. In that regard, the mid-term plan 2022 mentions the need for an additional EUR 198 million beyond the EUR 102 million included in the federal budget.

Figure 6

Mid-term plan 2020 SWL State support

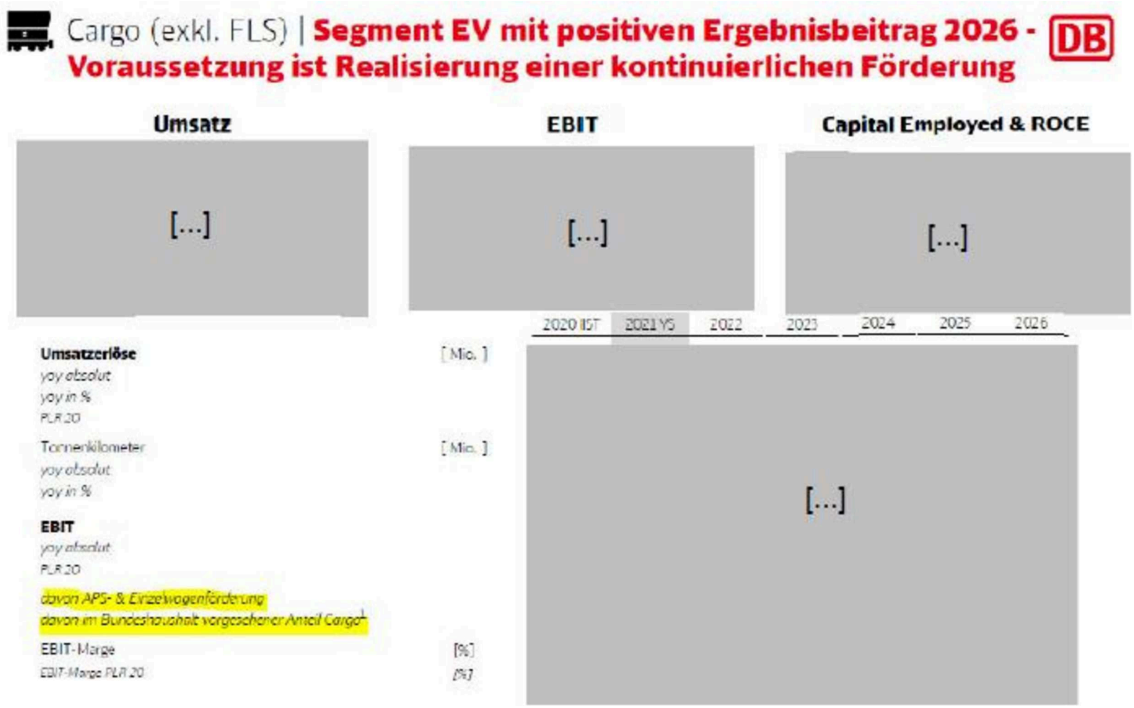


Source: *DB Cargo mid-term plan 2020 as submitted by Germany* ([32]).

([32]) *Translation of the German original* (only highlighted part): SWL subsidies.

Figure 7

Mid-term plan 2021 SWL State support

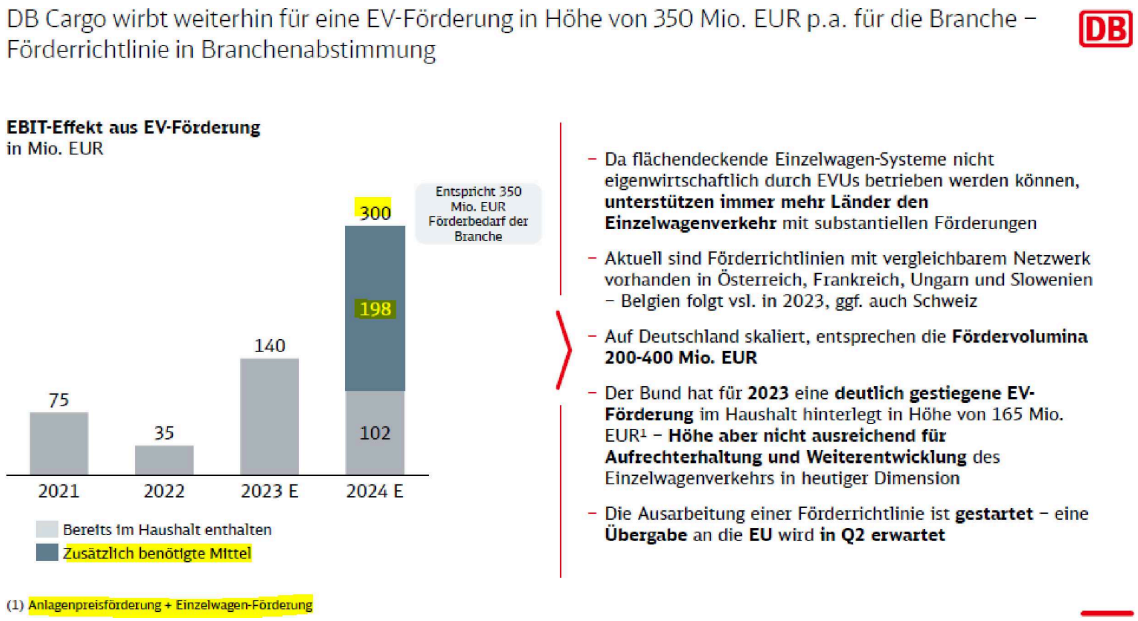


Source: *DB Cargo mid-term plan 2021 as submitted by Germany* ([33]).

([33]) *Translation of the German original* (only highlighted part):
Of which support of train composition and SWL subsidies
Of which DB Cargo part envisaged in the Federal Budget.

Figure 8

Mid-term plan 2022 SWL State support



Source: DB Cargo mid-term plan 2022 as submitted by Germany ([34]).

2.3.2. *Pricing of intra-group services ('Measure 2')*

(70) DB AG provides various services and support functions to the companies of the DB group, including DB Cargo, on the basis of intra-group agreements.

(71) The Commission identified the following intra-group services provided to DB Cargo: (i) analytics (big data analysis, forecasts, traffic models); (ii) accounting; (iii) real estate; (iv) IT services; (v) personnel service; (vi) training (recital 26 of the Opening Decision).

(72) The costs of the intra-group services are charged to DB Cargo on the basis of intra-group agreements. However, the Commission's understanding in the Opening Decision was that the intra-group services provided to DB Cargo might not be limited to the intra-group services identified in recital 71: according to information published by DB AG (see for example the DB AG integrated report of 2016 ([35])), the cost for some of those services, such as marketing, human resources, communication and legal affairs services, were not transferred to DB Cargo but were borne by DB AG (recitals 27 and 28 of the Opening Decision).

([34]) *Translation of the German original* (only highlighted part):
Additional necessary funds
(1) support of train composition and SWL subsidies.

([35]) DB AG integrated report of 2016, p. 75, https://ir.deutschebahn.com/fileadmin/Englisch/2016e/Berichte/IB_2016_dbkonzern_en_pdf.pdf (visited on 3 December 2021): 'The costs for Group functions are not transferred to the business units (no "Group charges"). In order to prevent distortions or arbitrary demands for payment, the costs of services rendered are borne by the holding company itself and not passed on. This means that Group companies pay no Group charges for these services'.

2.3.3. *Advantageous financing conditions of loans by DB Treasury ('Measure 3')*

(73) DB Cargo is granted short- and long-term loans by DB Treasury. DB Treasury is the unit within DB AG responsible for the management of cash and the financing of the group.

(74) Intra-group loans in favour of 100 %-owned subsidiaries of DB AG, such as DB Cargo, are not collateralised, given that DB AG, as the only shareholder of DB Cargo, operates both as an equity provider and as a lender. Consequently, DB Cargo has been able to sign loans without using its assets as collateral.

(75) Germany also acknowledged the existence of short-term loans, and confirmed that, since 2013, the following outstanding long-term loans had been granted to DB Cargo by DB Treasury:

Table 8

Outstanding long-term loans (situation at 24 June 2020)

	Nominal volume (EUR)	Residual value at 20.3.2020 (EUR)	Signing Date	Start date	End date	Interest rate
1	[…]	[…]	[…]	[…]	[…]	[…]
2	[…]	[…]	[…]	[…]	[…]	[…]
3	[…]	[…]	[…]	[…]	[…]	[…]
4	[…]	[…]	[…]	[…]	[…]	[…]
5	[…]	[…]	[…]	[…]	[…]	[…]
6	[…]	[…]	[…]	[…]	[…]	[…]
7	[…]	[…]	[…]	[…]	[…]	[…]
8	[…]	[…]	[…]	[…]	[…]	[…]

Source: *Opening Decision*.

2.3.4. *Partial coverage by BEV of the remuneration of civil servants employed by DB Cargo ('Measure 4')*

(76) Measure 4 concerns the partial coverage by the State of the of the remuneration of railway officials (i.e. public officials who had formerly been working for the national railway company, Deutsche Bundesbahn, before it was converted into a commercial company and became DB AG) that are provided to DB Cargo's workforce from BEV.

(77) As part of the liberalisation process of the German railway sector ([36]), which involved the transformation of the German national railways into a company incorporated as *Aktiengesellschaften* as of 1994 (see recitals 11 and 15), Germany founded and financed from its own resources a Federal Railway Fund (*Bundeseisenbahnvermögen*, 'BEV'). One of the Fund's objectives was to take over the railway officials formerly employed by Deutsche Bundesbahn and support their allocation to the workforce of DB AG (and, *in fine*, to subsidiaries of the DB group such as DB Cargo), to the extent that they were not assigned elsewhere. BEV is a formal employer of railway officials, it is also responsible for handling the pensions of the retired officials and manages the railway officials' health insurance fund. Given that, as a matter of law, State officials cannot be assigned to work in a private undertaking without a specific legal basis, the allocation of railway officials by BEV was enabled by the introduction, to the Grundgesetz für die Bundesrepublik Deutschland (Basic Law for the Federal Republic of Germany), of Article 143(a)(1), which created a legal basis for the assignment system. It is also established that BEV has been assigning railway officials to private undertakings, such as DB AG's competitors, and to some State agencies. These assignments, of limited scale, are based exclusively on § 29 of the Bundesbeamtengesetz (Federal Civil Servants Act, 'BBG') ([37]) which requires consent of the relevant official.

(78) The transformation process of German railways was organised by an act on the founding of Deutsche Bahn AG (*Deutsche Bahn Gründungsgesetz* 'DBGrG') which, among other issues, sets out the relationships between BEV and DB AG. The rule of allocation of railway officials from BEV to DB AG is laid down in §12 DBGrG. Pursuant to §12(3) and (3) DBGrG, railway officials assigned to DB AG maintain their legal status of civil servants. §12 DBGrG is supplemented by §§21 and 23 of DBGrG which create an obligation for DB AG to reimburse BEV the costs of the allocated workers pursuant to the 'als-ob-Kosten-Prinzip" ('costs, as if principle'). In accordance with §21(1) DBGrG, DB AG 'makes payments to BEV for the officials assigned to it in accordance with §12(2) and (3) DBGrG in an amount equal to the expenditure which it incurs or is required to pay for the work of comparable workers to be newly hired by the company, including the employers shares in statutory social security and additional occupational pension services' ([38]).

(79) An agreement concluded between BEV and DB AG on the basis of § 21(8) DBGrG regulates the details of the reimbursements system. The costs to be reimbursed are calculated separately for each individual official, added together and reimbursed to BEV on a monthly basis. DB AG pays also to BEV pro rata staff administration costs. Under § 13 DBGrG, BEV has the power to check the correctness of the classification of railway officials assigned in the relevant pay group which determines greatly the personnel costs to be reimbursed. In addition, the annual statement for reimbursement of staff costs is drawn up and certified by an independent auditor.

(80) The allocation is made to DB AG as a group and not to one of its subsidiaries. Accordingly, the reimbursement of staff costs for officials assigned to DB AG is made by DB AG to the BEV. There is no direct payment of staff costs from DB Cargo to BEV.

([36]) Starting in 1991, the Union developed legislation to open railways up to competition, with the aim to help them regain modal share from road and air transport. Following the Commission successive proposals, the Union legislator adopted four sets of legislation, known as four railway packages (https://transport.ec.europa.eu/transport-modes/rail/railway-packages_en). It is the second railway package, composed of different acts adopted in 2004, that is considered instrumental for the liberalisation of rail freight services by fully opening the rail freight market to competition. With regard to the rail freight sector it is the date of 1 January 2007 which is considered as the date of full liberalisation, as starting from that date, by virtue of Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004, amending Council Directive 91/440/EEC on the development of the Community's railways (OJ L 164, 30.4.2004, p. 164, ELI: http://data.europa.eu/eli/dir/2004/51/oj), licensed rail freight operators were granted, on equitable conditions, access to the infrastructure in all Member States for the purpose of operating all types of rail freight services.

([37]) In line with this provision, State officials may, with their consent, temporarily carry out an activity corresponding to their duties in a public body or in other bodies, where the public interest so requires.

([38]) The provisions of § 21 DBGrG remained unchanged since 1994 with respect to the very als-ob-Kosten rule. Limited modifications introduced to § 21 DBGrG in May 2021 created an obligation for DB AG to continue to reimburse the personnel costs even if an assigned railway worker was made redundant following the implementation of rationalisation measures.

(81) In situations where BEV assigns railway officials to private undertakings other than DB AG, BEV concludes an agreement with the relevant railway undertaking for the reimbursement of the costs of hiring out staff. The provisions of such agreements correspond to the provisions of § 21 DBGrG, establishing the 'als-ob-Kosten' principle.

(82) Measure 4 only concerns the pool of railway officials existing at the time of transformation of Deutsche Bundesbahn in 1994; no new railway official has been employed since 1993. Measure 4 thus concerns a steadily decreasing group of officials, which shrinks rapidly given the age structure of that group (more than 60 % of the workers concerned will retire before 2032). As of 2023, the measure only concerned around 8 % of DB Cargo's total workforce.

2.4. **Grounds for initiating the procedure**

(83) According to the Commission's preliminary assessment presented in the Opening Decision, the four measures investigated constituted State aid within the meaning of Article 107(1) TFEU.

(84) With regard to the *PLTA*, considering its duration and absence of any ceiling as to the loss-coverage of that agreement and the continuous losses ever since the PLTA was concluded, the Commission raised doubts as to whether the continued coverage by DB ML and DB AG of DB Cargo's repeated losses without having assessed whether to terminate the PLTA so as to save the remaining part of the capital, could have involved an undue and selective advantage to DB Cargo within the meaning of Article 107(1) TFEU. Given that doubt, the Commission sought further clarification of the legal setting and corporate structure, as well as the contractual arrangements within the DB AG group by which the parent company absorbs over the years the losses of DB Cargo. Further, the Commission noted that the PLTA was imputable to the German State mainly based on the full ownership of DB Cargo and its parent company DB AG by the German State, involving a possibility of appointing members of the Supervisory Boards of those entities, as well as on the statutory requirement of a formal approval of a profit and loss transfer agreement by the shareholder. The Commission acknowledged that DB AG and DB Cargo are incorporated as *Aktiengesellschaften* under private law which means that the General Assemblies of those companies cannot in principle issue instructions to their Board of Directors. The Commission also acknowledged that the Supervisory Board of DB AG was not composed of a majority of government representatives. However, in the context of the present case, taking into account the strategic importance of the rail freight business to the Federal's government transport policy, the Commission could not exclude that the State, through its presence in the Supervisory Board of DB AG, could have indirectly influenced the decisions of the Board of Directors.

(85) With regard to the *pricing of intra-group services*, the Commission noted in particular that, according to information published by DB AG, intra-group services to DB Cargo were provided free of charge or below market prices and that Germany had not provided any analysis or data to support its claim that those services were provided at arm's length basis. The Commission observed that, in the absence of sufficient elements demonstrating that the intra-group services provided to DB Cargo on the basis of agreements with DB AG were in line with normal market conditions, it could not be excluded that those services were a source of an advantage to DB Cargo within the meaning of Article 107(1) TFEU. The Commission invited Germany to provide further information and evidence about the intra-group services provided to DB Cargo, in particular as regards the terms and conditions of the agreements providing services to DB Cargo, their cost basis and other market pricing-related information. Further, the Commission could not exclude that Measure 2 was imputable to the German State. In that regard, the Commission took into account the full ownership of DB Cargo and its parent company DB AG by the German State involving a possibility to take all decisions in the General Assembly of DB AG on its own and the fact that the decision of DB AG to provide intra-group services to its subsidiaries could have a considerable impact on DB AG's budget and thus on the shareholder's interests.

(86) With regard to the *financing conditions of loans granted by DB Treasury*, the Commission noted in particular that Germany had not provided evidence to support its claim that those conditions were in line with market conditions and complied with the arm's length principle. The Commission further noted that Germany's claim did not take into account the fact that DB Cargo enjoyed better credit ratings due to the existence of the PLTA in place, whereas, in line with the relevant Union sectoral legislation, loans between legal entities of a vertically integrated undertaking may only be granted taking into account the individual risk profile of the entity concerned. In addition, the Commission took into account the absence of any collateral provided by DB Cargo for all outstanding long-term loans.

(87) Based on those elements, the Commission found that it could not be excluded that DB Cargo potentially received an advantage within the meaning of Article 107(1) TFEU in the form of financing conditions from DB's Treasury that were not in line with market conditions. The Commission invited Germany and interested parties to provide further information and evidence to establish whether the loans granted by DB Treasury to DB Cargo are in line with market terms. Furthermore, the Commission could not exclude that Measure 3 was imputable to the German State. In that regard, the Commission took into account the full ownership of DB Cargo and its parent company DB AG by the German State. The Commission preliminarily considered that the organisation of the treasury services and the pricing conditions could have a considerable impact on DB AG's budget. Thus, it could not be excluded that the decision on how to provide financing to subsidiaries, and under which conditions, was of fundamental importance to the DB group's highest management level, and also to its shareholder, the German State.

(88) With regard to the partial coverage by BEV of the remuneration of civil servants, the Commission noted that Germany did not provide evidence showing that the costs for the employment of the civil servants borne by DB Cargo actually corresponded to market prices for similarly qualified staff. The Commission could therefore not exclude the possibility that the fact that BEV covers certain costs for staff employed by DB Cargo constitutes an advantage for DB Cargo. The Commission invited Germany and interested parties to provide further information and evidence regarding the existence of a selective advantage in relation to Measure 4. Furthermore, with regard to the imputability of Measure 4 to the State, the Commission observed that the decision regarding the entity bearing the costs for the remuneration of civil servants which are assigned to DB AG was based on a statutory provision of the DBGrG, which the Federal Parliament approved, and was therefore imputable to the State.

(89) According to the Commission's preliminary assessment, the four measures under examination involved the resources of Germany because of its full ownership of DB Cargo, via DB AG and due to the public funding of BEV. The Commission also preliminarily considered that all measures concerned were liable to improve the competitive position of DB Cargo and therefore liable to distort competition and affect trade between Member States.

(90) With regard to compatibility with the internal market, the Commission had not identified any basis for compatibility of the measures concerned and noted that Germany had not put forward any arguments to support a finding of compatibility for them. The Commission invited Germany and interested parties to provide views and evidence on possible compatibility of the measures concerned.

3. **COMMENTS FROM INTERESTED PARTIES**

3.1. **ERFA**

(91) In its submission of 19 September 2022, ERFA explains that European rail freight transport is highly competitive and that, in recent years, private competitors have steadily expanded their market share in Europe up to 48 % in 2020. According to ERFA, they are likely to develop it further in the future. ERFA submits that it supports the Commission in its goal to ensure that competition in the rail freight market is not disrupted by State aid. In that regard, ERFA submits that losses which are automatically taken over by holding companies should qualify as State aid. ERFA underlines the importance of a clear governance structure of State-owned railway undertakings and submits that the long-lasting losses of DB Cargo over the past years, which have been covered systematically by DB AG, give the impression that the governance structure in this case is not clear. According to ERFA, any uncertainty in this regard removes the need for State-owned railway undertakings to operate under normal market conditions, thereby distorting competition. In addition, ERFA calls for transparency of services costs in cases when a State-owned railway undertaking receives intracompany services from the holding or sister company or when it receives any financing from a holding company. ERFA essentially submits that any financing provided must be reflective of normal market conditions for accessing financing to avoid cross-subsidisation, which would discriminate against competitors.

(92) ERFA also submits that legitimate aid, such as aid for SWL traffic or intermodal transport, must not be used as a means of financing struggling State-owned companies. ERFA also submits that such State aid intended to boost a modal shift must be reflective of the actual operational costs of the service and be limited in scope so it is not in direct competition with other market segments such as block train traffic. ERFA submits that such State aid must not be used to dump price to take over the market of new entrants, either. ERFA submits that State-owned companies that are in receipt of public support for certain operations, such as SWL, should ensure separation of accounts and organisation from other operations – especially those operating competitively with private and independent operators. ERFA submits that excessive State aid for operations which State-owned railway undertakings dominate, such as SWL, distorts competition.

3.2. **The complainant**

(93) In its submission of 19 September 2022, the complainant welcomes the Commission's preliminary assessment that the four measures concerned could constitute State aid and that there would be a doubt as to their compatibility. The complainant regrets that Germany has not effectively suspended the implementation of those measures as required by the settled case-law.

(94) The complainant submits that all the measures concerned, listed in recital 14 of the Opening Decision are State aid.

(95) First, the complainant submits that all the measures concerned involve State resources. In particular, the complaint submits, with regard to Measures 1, 2 and 3, that Germany is the sole owner of DB AG and controls the votes attached to the shares and therefore DB AG must be regarded as a public undertaking within the meaning of Commission Directive 2006/111/EC ([39]). As the sole shareholder, Germany is capable of directing the use of DB AG's resources, which is sufficient to qualify them as State resources. In addition, the complainant submits that the fact that these measures would be funded by business profits generated within the DB group, as alleged by Germany is unproven and, in any case, irrelevant. With regard to Measure 4, the complainant submits that that measure is financed by BEV which is a State entity and whose resources are State resources.

(96) Secondly, the complainant submits that the measures concerned are imputable to the German State. The complainant notes that DB AG is a public undertaking and that a measure is imputable to the State where the public authorities can be regarded as having been involved, in one way or another, in adopting the measure. The complainant recalls that the imputability of a particular measure may be inferred from a set of indicators arising from the circumstances of the case and the context in which the measure was taken, including indicators which show that it is unlikely that public authorities were not involved in the adoption of the measure. The complainant further submits:

(a) with regard to Measure 1, that the German State has specifically encouraged DB AG to adopt the PLTA as it had approved it, in its capacity as sole shareholder of DB AG. There is direct evidence of the State's involvement in that decision. The PLTA could not have effect without the approval of the shareholder of DB AG. The fact that, as argued by Germany, its approval would be merely formal is not relevant in light of the case-law ([40]). Regardless of how the power of the State as a shareholder may be exercised, the German government could have blocked the adoption of the PLTA if it had not suited it. In addition, the profit and loss transfer occurs on a yearly basis and is approved by the Supervisory Board of DB AG, representing for its majority the State's shareholding;

([39]) Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ L 318, 17.11.2006, p. 17, ELI: http://data.europa.eu/eli/dir/2006/111/oj).

([40]) By analogy, judgment of the Court of Justice of 2 February 1988, *Kwekerij Gebroeders van der Kooy v Commission*, Cases 67/85, 68/85, 70/85, ECLI:EU:C::988:38, paragraphs 34 and 36.

(b) with regard to Measures 2 and 3, the complainant observes that, while those measures were not adopted directly by the State, as was the PLTA, there is a set of indicators arising from the circumstances of the case and the context in which those measures were taken, showing the State involvement or unlikelihood of it not being involved. Those indicators, which are also relevant for the assessment of the imputability of Measure 1 are the following:

(1) contrary to its allegations, Germany controls DB Cargo and other companies belonging to DB group. This control stems from the total ownership of DB Cargo and is enhanced by the profit and loss transfer agreement in place between DB Cargo and DB AG whereby the first subordinates the management of its company to the latter. It is also confirmed by the statutory obligation for the German State to exercise an appropriate degree of influence over the companies in which it has holdings, including indirectly, if the holding is of particular political or financial significance for Germany ([41]);

(2) contrary to its allegations, Germany controls the activities of DB AG, as the State designates half of the members of DB AG's Supervisory Board which in turn appoints the Board of Directors, creating a chain of influence reflecting the 100 % shareholding of the State and its dominant influence. The members of the Supervisory Board are exempted from the general confidentiality duty, applicable in stock corporations, in the reports they submit to the State ([42]) and must take account of Germany's special interests in their duties ([43]);

(3) Germany's allegations that Measures 2 and 3 are business management decisions, not involving DB AG's shareholder (neither directly via the General Assembly nor via the Supervisory Board) are not credible, given their potential financial impact on DB AG's budget. Indeed, in line with the provisions of PCGK ([44]) transactions of fundamental importance and other Management Board decisions with a major impact on the business operations and on the assets, financial or income situation of the company require the authorisation of the Supervisory Board;

(4) the interest of German State to receive dividends from DB Group indicates that the State must have been involved in Measures 2 and 3;

(5) contrary to Germany's allegations, DB AG is not merely a private law company benefitting from highest degree of freedom and independence from its shareholders. To the contrary, under relevant provisions of BHO and PCGK the State is under a duty to actively exercise its influence over DB AG to ensure the public interest. In addition, PCGK puts on companies in which the German State has a holding several specific obligations which go beyond what could be expected from a private company (including acting in a responsible and ethically sound way, using the company's resources economically and sustainably, respecting Union State aid law). Finally, DB AG benefits from a continuous and unconditional State support and therefore does not exercise its activities in normal conditions of competition with private operators, which is an additional indication of State influence.

(c) With regard to Measure 4, the complainant submits that it stems from statutory provisions of DBGrG and is therefore imputable to the State.

([41]) § 65(1), 3 of the Bundeshaushaltsordnung (Federal budgetary regulations, 'BHO') and §§ 15 and 19 of Grundsätze guter Unternehmens- und aktiver Beteiligungsführung im Bereich des Bundes (Public Corporate Governance Codex, 'PCGK'), pp. 34 and 35.
([42]) § 394 Aktiengesetz.
([43]) § 65(1), 3 'BHO' and §§ 15 and 19 PCGK.
([44]) § 16 PCGK.

(97) Thirdly, the complainant submits that the measures concerned confer an economic advantage on DB Cargo. The complainant submits in particular:

(a) with regard to Measure 1, that Germany did not provide any relevant information or evidence demonstrating that it has acted in its capacity as shareholder of DB AG rather than in its capacity as public authority and that, in consequence, the market economy operator ('MEO') test is not applicable. Should the Commission find that the test is applicable, the complainant submits that there are not enough elements showing that a private operator, in a situation as close as possible to DB AG's would effectively enter into a PLTA with a subsidiary such as DB Cargo and under the applicable conditions. In that regard, the complainant points to the continuous losses incurred by DB Cargo under the PLTA in force between 1999 and 2012 and to the fact that, notwithstanding those losses, a new PLTA which was an unconditional agreement not limited in scope nor in amount was concluded in 2012 and then renewed automatically in 2016 and in 2018. The complainant further notes that, on the basis of the market data available in 2012 and given the yearly loss coverage, there was no perspective of making profit. Finally, the complainant points to the fact that the PLTA was adopted and maintained in force although Germany had the necessary margin of discretion not to enter into such agreement in the first place and to terminate it at any time. In addition, the complainant notes that, by claiming, in the context of Measure 3, that DB AG and DB Cargo have the same credit rating thanks to the existence of the PLTA, Germany recognised the positive effect of the PLTA on DB Cargo's rating and thus acknowledged that the PLTA confers an advantage on DB Cargo;

(b) with regard to Measure 2, that Germany's claim that intra-group services are provided at arm's length is not supported by any economic analysis and in fact is contradicted by officially published information;

(c) with regard to Measure 3, that Germany's claim that loans granted by DB Treasury to DB Cargo are based on normal market conditions is not supported by any evidence. That claim is in fact contradicted by publicly available DB AG integrated reports from which it follows that loans concerned were not intended to yield any profit to DB AG. In addition, thanks to the existence of the PLTA, DB Cargo is assigned to the same credit quality groups by rating agencies and thus it benefits from an inflated credit rating;

(d) with regard to Measure 4, that the additional costs for DB Cargo to employ civil servants compared to the costs of private sector employees do not constitute an abnormal charge upon DB Cargo that could be compensated by the State without amounting to State aid. Such additional costs do not constitute the compensation of the costs of a previous derogation from the general system (dual derogation) nor does the measure amount to the compensation of an SGEI in conformity with the *Altmark* criteria. BEV's interventions confers thus an advantage on DB Cargo.

4. COMMENTS FROM GERMANY

4.1. General preliminary observations

(98) Germany submits that the Commission did not discharge its burden of proof relating to the demonstration of the existence of aid and did not clearly identify doubts as to the compatibility of the four measures concerned with the internal market.

(99) Germany further indicates that the competitive dynamics on the German rail freight market is enough to invalidate the complainant's claim that the market is characterised by distortions of competition resulting from alleged State intervention in favour of DB Cargo. Germany points in particular to the fact that DB Cargo's competitors have steadily increased their market share in Germany going from 29 % in 2012 up to 57 % in 2022. In contrast, in other Member States, the market share of challengers is much lower: 54 % in Italy, 51 % in Sweden, 50 % in Poland, 32 % in Austria, 31 % in Switzerland and 30 % in Belgium ([45]).

([45]) Data provided by Germany come from 9th IRG-Rail Annual Market Monitoring Report, 9th IRG-Rail Annual Market Monitoring Working Document dated April 2021.

(100) Germany indicates that it seeks to increase the market share of rail in overall transport of goods, in particular with a view to the decarbonisation of transport. In this regard, several horizontal support measures for rail freight undertakings were put in place. According to Germany, the opening of the formal proceedings creates uncertainly for the whole rail freight sector undermining the objectives of the decarbonisation and green transition.

4.1.1. *Observations on the measures concerned*

(101) Germany submits that none of the measures enumerated in the Opening Decision constitutes State aid within the meaning of Article 107(1) TFEU.

(102) Concerning measures 1 to 3, Germany submits that the assessment in the Opening Decision is not in line with the concept of a single economic unit.

(103) Germany argues that all companies belonging to a group are to be treated as one undertaking for the purposes of the application of EU competition rules ([46]). Where a parent company (in this case, DB AG) exercises control over its wholly-owned subsidiaries (in this case, DB Cargo) ([47]), the entire group must be classified as an economic unit and thus as one undertaking within the meaning of Article 107(1) TFEU ([48]). In this regard, Germany refers also to the exemption of agreements restricting competition between parent companies and subsidiaries from the application of Articles 101 and 102 TFEU ([49]). Moreover, Germany refers to the definition of linked undertakings in the first subparagraph of Article 3(3) of Annex I to Commission Regulation (EU) No 651/2014 ([50]) and Article 2(2) and recital 4 of Commission Regulation (EU) No 1407/2013 ([51]).

(104) Moreover, Germany argues that no precedents support the Commission's approach to examining purely intra-group transactions under State aid law and that unlawful cross-subsidisation within integrated railway undertakings is effectively excluded by the Union's sectoral regulatory requirements (in particular Directives 2012/34/EU ([52]) and (EU) 2016/2370 ([53])) and their transposition into national law.

(105) Furthermore, Germany submits that the Commission's argument is contrary to the principle of neutrality laid down in Article 345 TFEU. This is because private undertakings are free to design their intra-group performance relationships and do not have to respect the limits set out in the Opening Decision. If, in future, the Commission were to assess all intra-group agreements and transactions (only) in the case of public undertakings in the light of State aid law and – as happened in the present case – subject to a general suspicion and obligation to justify, this would constitute a serious disadvantage for undertakings in public ownership.

([46]) For example, judgment of the General Court of 14 October 2004, T-137/02, *Pollmeier Malchow GmbH & Co. KG v Commission*, ECLI:EU:T:2004:304, paragraph 50.

([47]) Judgment of the Court of Justice of 10 September 2009, *Akzo Nobel and Others v Commission*, C-97/08 P, ECLI:EU:C:2009:536.

([48]) Judgment of the Court of Justice of 14 November 1984, *Intermills v Commission*, Case 323/82, ECLI:EU:C:1984:345, paragraphs 9 et seq.

([49]) Judgement of the Court of Justice of 24 October 1996, *Viho v Commission*, C-73/95 P, ECLI:EU:C:1996:405, paragraph 16; judgement of the Court of Justice of 16 October 2000, *Stora Kopparbergs Bergslags v Commission*, C-286/98 P, ECLI:EU:C:2000:630, paragraphs 26 et seq.; judgment of the Court of Justice of 25 October 1983, *AEG v Commission*, C107/82, ECLI:EU:C:1983:293, paragraphs 47 et seq.

([50]) 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 (OJ L 187, 26.6.2014, p. 1, ELI: http://data.europa.eu/eli/reg/2014/651/oj).

([51]) Commission Regulation (EU) 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1, ELI: http://data.europa.eu/eli/reg/2013/1407/oj). Recital 4 states that '[f]or the purposes of the rules on competition laid down in the Treaty, an undertaking is any entity, be it a natural or a legal person, engaged in an economic activity, regardless of its legal status and the way in which it is financed. The Court of Justice has ruled that all entities that are controlled (on a legal or on a de facto basis) by the same entity are to be considered as a single undertaking'.

([52]) Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ L 343, 14.12.2012, p. 32, ELI: http://data.europa.eu/eli/dir/2012/34/oj).

([53]) Directive (EU) 2016/2370 of the European Parliament and of the Council of 14 December 2016 amending Directive 2012/34/EU as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure (OJ L 352, 23.12.2016, p. 1, ELI: http://data.europa.eu/eli/dir/2016/2370/oj).

4.1.1.1. Compensation of annual losses of DB Cargo under the profit and loss transfer agreement (Measure 1)

(106) Germany submits that no State resources are involved in Measure 1, since the losses of DB Cargo are covered by business profits generated within the DB group. For private funds, such as business profits of DB group, to be qualified as State resources it is necessary to demonstrate that these funds are continuously under public control and thus at the disposal of the competent national authorities ([54]). In this regard, Germany also referred to the Court's judgment ([55]) concerning Commission Decision (EU) 2016/1208 ([56]).

(107) In addition, Germany contends that the decision to cover the losses of DB Cargo is not imputable to the State, although the State took part in the conclusion of the PLTA via the respective votes in the General Assembly that allowed the conclusion of the PLTA. According to Germany, the criteria used for the determination of imputability are not met in the present case. In this regard, Germany further elaborates on its arguments described in recital 65 of the Opening Decision:

(a) DB AG is incorporated under private law in the form of a joint stock corporation ('*Aktiengesellschaft*'), a form of business organisation that grants the management (and the Supervisory Board) freedom and independence from shareholders' instructions (the General Assembly does not have the possibility to issue instructions to the members of the Board of Directors or the members of the Supervisory Board). Accordingly, the State does not control the management decisions of DB AG, which are taken by the Board of Directors. The Board of Directors does not include any government representatives. In addition, the Supervisory Board only counts a few government representatives among its 20 members (three members both currently and at time of signing the PLTA). Furthermore, there were no government representatives in DB Cargo's Board of Directors either, and only two government representatives (one from the Federal Ministry for Digital and Transport and one from the Federal Ministry for Economic Affairs and Climate Action) in DB Cargo's Supervisory Board. The sole shareholder of DB Cargo in the General Assembly was DB AG.

(b) The conclusion of such agreements, governed by the *Aktiengesetz*, is a common practice in corporate groups incorporated under private law. DB AG followed a standard practice for corporations.

(c) While Germany accepts that the representative of the Federal Government at the General Assembly of DB AG gave his consent to the conclusion of the PLTA with DB Cargo, Germany submits that this does not justify imputing the decision to the State. By approving the conclusion of the PLTA at the general assembly, the representative of the Federal Government acted solely in the role as shareholder under the AktG, in the same way as applies to private corporations (§ 293 AktG). Moreover, the State's consent to a measure cannot in itself give rise to imputability. Otherwise, any State approval of a legal transaction would make it a 'State' measure. Imputability can be established only if the public authorities were proactively involved in the adoption of that measure or imposed it.

(d) According to Germany, the view that not all measures taken by a public undertaking in favour of a subsidiary are imputable to the State has been confirmed by the Commission in the case concerning *Empresa de Manutenção de Equipamento Ferroviário* (EMEF) ([57]). That case concerned, inter alia, capital injections, guarantees, intra-group borrowings and supply and service contracts between the Portuguese State railway Comboios de Portugal (CP) and its wholly-owned subsidiary EMEF.

([54]) Judgments of the Court of Justice of 10 December 2020, C-160/19 P, *Commune di Milano v Commission*, ECLI:EU:C:2020:1012, paragraph 30, and of 28 March 2019, *Germany v Commission*, C-405/16, ECLI:EU:C:2019:268 paragraph 58.

([55]) Judgment of the Court of Justice of 2 March 2021, *Commission v Italy and Others*, C-425/19 P, ECLI:EU:C:2021:154.

([56]) Commission Decision (EU) 2016/1208 of 23 December 2015 on State aid granted by Italy to the bank Tercas (Case SA.39451 (2015/C) (ex 2015/NN)) (OJ L 203, 28.7.2016, p. 1, ELI: http://data.europa.eu/eli/dec/2016/1208/oj).

([57]) Commission Decision (EU) 2021/2182 of 6 March 2020, SA.41727 (2016/C) (ex 2016/NN) (ex 2015/CP) on the measures in favour of Empresa de Manutenção de Equipamento Ferroviário, S.A. (EMEF) (OJ L 444, 10.12.2021, p. 1, ELI: http://data.europa.eu/eli/dec_impl/2021/2182/oj).

(e) Moreover, imputability to the State based on the resolution of the general assembly would require the State to have been able to prevent the measure by reason of a lack of approval ([58]), which is not the case. Even in the absence of a PLTA, DB AG could have transferred profits and losses. Profits could be transferred to DB AG on the basis of a simple shareholder decision by DB Cargo. Losses of DB Cargo could, at any time, be compensated by DB AG with further equity injections, for example by contributing to the capital reserve. Such measures by DB AG would not involve the State but would be purely intra-group measures. This applies a fortiori to individual loss compensations on the basis of the PLTA. This is because they took place without any involvement of the State. They were automatically carried out in accordance with the legal requirements of § 302 AktG and independently of any individual decisions.

(f) The legal obligation set out in § 65(2), in conjunction with § 65 (3), of the Federal Budget Code ('*Bundeshaushaltsordnung*' – BHO) (see recital […]), on the basis of which the State had to agree to the conclusion of the PLTA is also no indication of imputability, as the provisions in the BHO concern a 'change in the influence of the Federal Government' ('*Änderung des Einflusses des Bundes*') and hence solely the control part of the agreement and not the part concerning the automatic transfer of profits and losses. In that context, Germany further explains that, while often combined into one agreement, as in the case of DB Cargo, control agreements and profit and loss transfer agreements are two different kinds of agreements. In any case, the requirement is not a legally binding independent State approval requirement for the State-owned undertaking, in this case DB AG.

(g) The way DB AG is supervised by the State does not amount to a degree of supervision of public authorities over DB AG that would be relevant as an indicator of imputability. None of the public authorities have administrative supervision over the management of DB AG and its subsidiaries, in particular:

(a) The activity of the Federal Railways Office ('*Eisenbahn-Bundesamt*' – EBA) relate to specific tasks of planning approval, vehicle approval and safety-related tasks. Moreover, the EBA's activities covers also private railway companies.

(b) The activity of the Federal Network Agency ('Bundesnetzagentur' – BNetzA), as the competent regulatory authority, monitors compliance with railway regulatory requirements by both federal and non-federal railway infrastructure companies.

(c) The activities of the Federal Court of Auditors ('Bundesrechnungshof') relate to the Federal Government and its budgetary and economic management (including its actions in the case of shareholdings held by the Federal Government in companies established under private law).

(d) The Federal Ministry for Digital and Transport does not exercise administrative supervision over the 'business governance' of DB AG and its subsidiaries. The Ministry directs, and is responsible for, the work of the specialised department responsible for transport policy within the Federal Government. The Federal Government acts in its capacity as shareholder through the management of shareholdings in the Federal Ministry for Digital and Transport. This includes the exercise of the rights and obligations as a (private) shareholder.

(e) The Bundestag, as a legislative body, does not exercise administrative supervision over DB AG. Its monitoring relates to the actions of the Federal Government, as does the work of its committees.

(108) Furthermore, the 'strategic importance' of the rail freight business for 'transport policy' does not justify a finding of imputability, as the conclusion of the PLTA did not serve to implement policy objectives or to implement a law. Nor can the economic importance of the PLTA justify such a finding.

(109) Finally, not allowing DB AG as State-owned company to use an instrument that private companies also widely use would discriminate against publicly-owned companies in comparison with privately-owned companies, and it is against the principle of neutrality as enshrined in Article 345 TFEU.

([58]) Judgment of the Court of Justice of 2 February 1988, *Van der Kooy and Others v Commission*, C-67/85, C-68/85 and C-70/85, ECLI:EU:C:1988:38, paragraph 36.

(110) Moreover, Germany submits that there is no economic advantage present in the PLTA.

(111) PLTAs are a common structural element in groups. The conclusion of PLTAs and their implementation constitute normal market conduct. PLTAs are a common means of design by groups of companies, particularly private companies, in Germany to establish a *Vertragskonzern* ([59]). According to Germany, PLTAs are regularly used by the companies represented in the German stock index (*Deutscher Aktienindex* DAX). The official corporate tax statistics also show that PLTAs are common and widely used in Germany. According to official statistics, groups ([60]) accounted for almost 50 % of total corporate tax revenue for the 2017 tax period. Moreover, Germany points to the tax effects of PLTAs (see recital 43).

(112) Furthermore, Germany reiterates that the economic effects of the PLTA could also be achieved, i.e. the transfer of profits and losses, without the PLTA.

(113) In addition, Germany refers to the annual financial planning (the mid-term plans are part of that planning) within DB group. DB AG's expected results for the group companies are defined as part of the planning rounds. DB AG's specific profitability expectations vis-à-vis the group companies – and thus also vis-à-vis DB Cargo – can be seen, for example, as follows:

(a) DB AG sets a return target for all new investments by the group companies above the market capital costs.

(b) The level of remuneration of the members of the Board of Directors of the group companies depends on the results of the company in question. Those results include both short-term and long-term performance.

(c) If the group companies do not meet the profitability targets expected by DB AG, DB AG can also use the possibility of replacing those in top management positions.

(d) The implementation of that strategy is made possible precisely by the control element of the PLTA.

(114) Germany also asserts that any alleged failure to terminate the PLTA does not constitute aid as a non-termination does not constitute an action and hence there is no 'measure actually implemented' ([61]). For that reason, the assessment of the aid nature of the PLTA must be based on the conclusion of the PLTA.

(115) In view of the expectations of a significant improvement in the earnings situation, Germany argues that a private shareholder acting in its long-term interest would also have accepted losses in the interim by DB Cargo. Germany points to a previous case where the Commission did not see an economic advantage for the company concerned in a case of multi-year loss compensation by its parent company on the basis of a PLTA ([62]).

(116) In addition, account must be taken of the fact that the DB Group had in the past injected capital into DB Cargo or received profits from DB Cargo. A private shareholder who has already invested in a company will make its risk assessment differently than an investor without an existing shareholding. The fact that the parent company has previously been economically involved in DB Cargo must therefore be taken into account in the application of the market economy operator test.

([59]) In a *Vertragskonzern*, meaning a group based on agreements, a control agreement establishes the right of the controlling company to issue directives to the controlled one.

([60]) Groups (*Organschaften*) as defined by German tax law.

([61]) See judgment of the Court of Justice of 6 June 2012, *EDF v Commission*, C-124/10, ECLI:EU:C:2012:318, paragraph 83.

([62]) Commission Decision (EU) 2015/506 of 20 February 2014 on the measures taken by Germany with regard to Flughafen Berlin-Schönefeld GmbH and various airlines – SA.15376 (C 27/2007, ex NN 29/2007) (OJ L 89, 1.4.2015, p. 1, ELI: http://data.europa.eu/eli/dec/2015/506/oj).

(117) Furthermore, according to Germany, a private operator would also have compensated the losses incurred by DB Cargo. This is because the forecasts of results contained in the mid-term planning have in each case made it possible to expect DB Cargo to return to profitability in the medium to long term (see recital 55). The forecasts are always based on valid and well-founded assessments of market and business developments (see recital 55). In addition, DB Cargo had made profits of more than half a billion euro in 2006, 2007 and 2008 alone and transferred them to DB AG.

(118) According to Germany, there are several reasons why the economic situation has not yet improved as expected, among others:

(a) Since 2010, market growth in the rail freight market has been significantly lower than in the previous decade, contrary to the initial expectations of DB Cargo and external experts.

(b) At the same time, market developments were significantly more volatile.

(c) In the 2010s, the freight structure effect accelerated further. As a result, clients from the industries that had traditionally been a source of profit for the rail freight transport (coal, ores, mineral oil, steel) accounted for a gradually smaller share of the product mix.

(d) As DB Cargo's factor costs increased significantly over the same period, not least because of strong trade union wage demands.

(e) In addition to competitively induced volume losses, DB Cargo also lost or failed to obtain quantities because the production quality was not sufficient.

(119) Moreover, DB Cargo embarked on numerous programmes in recent years to achieve a sustainable improvement in profitability (some of those programmes are mentioned in recital 57).

(120) Germany further submits that the fact that the profit expectations of the mid-term plans did not materialise within the expected period or scope is, in principle, irrelevant, as the only decisive factor for the test is an *ex ante* assessment on the basis of the available information and foreseeable developments at the time when the measure in question was adopted.

(121) Concerning *ex ante* profitability analyses, Germany submits that it is unusual to prepare a profitability analysis or a business plan in relation to PLTAs. Rather, the continuous coordination processes between DB AG and DB Cargo aim at ensuring a profitable business.

(122) Moreover, Germany submits that no requirement for profitability analyses or business plans arise from the EDF case-law, since (i) the EDF case related to an injection of capital; and (ii) it concerns the question of whether the implemented measure falls to be ascribed to the State acting as shareholder ([63]).

(123) In addition, during the formal investigation, Germany provided two economic reports concerning the conformity of the PLTA with the conduct of a private market operator. The reports, submitted on 8 June 2023 ('the first E.CA report') and 28 August 2023 ('the second E.CA report') were produced by an independent economic advisor, E.CA Economics. Both reports took an *ex ante* perspective, even though they were prepared for the purposes of the proceedings after the time period under investigation.

([63]) See judgment of the Court of Justice of 6 June 2012, *EDF v Commission*, C-124/10, ECLI:EU:C:2012:318, paragraph 81.

(124) The first E.CA report consists of a qualitative assessment of the evidence provided by Germany during the investigation. It recounts the (i) ubiquity of PLTAs; (ii) the advantage of such agreements (control, fiscal unity); (iii) the existence of group-wide financial planning including performance targets for DB Cargo; (iv) the mid-term plans as a planning tool showing profit expectations (including a detailed description of the content of the plans); (v) examples of reasons for deviations between the planned profits and the actual incurred losses; and (vi) a reference to potential losses in a counterfactual scenario (reference is made to exit losses when discontinuing the SWL business). Overall, the report concludes that the evidence Germany provided during the investigation demonstrated that DB Cargo has acted as a market economy operator would act.

(125) The second E.CA report contains:

(a) An *ex post* quantitative assessment for the period from 2017 to the COVID-19 pandemic. The assessment is based on a counterfactual comparison from an *ex ante* perspective from 2017; comparing DB Cargo's mid-term forecast (2018-2022) with an alternative scenario for the closure of the loss-making SWL segment. The assumptions regarding the alternative scenario are based on the SWL-study. For the test, the financial data of the 2017 mid-term plan and the exit scenario modelled in the SWL-study were converted into cash flows.

(b) For the period from the pandemic year 2020 until the development of the transformation plan (see recitals 175 et seq.), a qualitative analysis of the conformity of the behaviour of DB AG and DB Cargo (in the context of changing market conditions) with that of a comparably-situated private market operator.

(126) For the comparison of the base scenario (mid-term plan 2017) and the counterfactual (exit from the SWL segment), Free Cash Flows to the Firm (FCFF) to DB AG after tax were used. The recognised tax effects are based on the EBT result, in accordance with IFRS and are subject to the assumption that losses of 50 % can be recognised as a loss carry-forward at a tax rate of 30 %, and positive results due to the loss carry-forward with an effective tax rate of approximately 12 % in the respective financial year. Concerning the counterfactual based on the SWL-study, as the study was commissioned in 2019, the scenario had to be brought forward by two years, i.e. to 2017. Moreover, as the SWL-study was based on net earnings, the financial impact was transformed into FCFF.

(127) In order to compare the two scenarios, cash flows were discounted to 2017 using a WACC rate of 6,0 % after tax (as shown in DB's consolidated annual report 2017) as Table 9 Comparison portrays.

Table 9

Comparison of the financial results of the base scenario and the alternative scenarios (in FCFF)

(EUR million)

	2018-2022	From 2023	From 2018
Base scenario	[…]	[…]	[…]
Alternative scenario	[…]	[…]	[…]
Delta	[…]	[…]	[…]
WACC	[…]		
Growth rate	[…]		

Source: second E.CA report as submitted by Germany.

(128) Based on the result of the comparison, the report concludes that the behaviour of DB AG and DB Cargo with regard to the continuation of the SWL according to the mid-term planning and under the assumptions of the alternative scenario can be classified as being in line with that of a comparably situated private market operator. The report also includes four sensitivities (i) a variation of the timing of the trend reversal in the base scenario; (ii) a reduction of economies of scope between the SWL and other segments; (iii) reduction of anticipated price increases; and (iv) a variation in the placement period of the staff to be laid off. In none of the sensitivity scenarios would the alternative scenario be economically more advantageous than the base case.

(129) With regard to the qualitative assessment of the (post) COVID-19 pandemic period (i.e. beginning with the year 2020), the report recalls the changes to DB Cargo's management and strategy in 2020 (the growth strategy of 'Strong Cargo'). It also recalls the failure of the strategy. Moreover, the report explains that, while in its 2021 mid-term plan DB Cargo already assumed a probability of more than 70 % for the following key risks of a (i) decline in demand associated to meet punctuality requirements; (ii) demand decline due to pandemic-related increased semiconductor shortage; and (iii) long-term effects of strikes on customer loyalty to occur, no serious strategic change of direction was initially made in 2021. However, the report argues that this behaviour was in line with what a comparably situated private market operator would have done, due to the high degree of planning uncertainty with the management reacting on the negative business development in 2022 by commissioning the transformation plan.

(130) Germany also submitted arguments concerning the reasons why DB Cargo did not downsize the SWL segment but was counting on further State aid for the SWL operations. According to Germany, the coalition agreement of the German Government ('*Koalitionsvertrag*') from 2018 explicitly stated the ambitions to strengthen overall the competitiveness of rail freight compared to road transport and to foster the viability of single-wagon load traffic. In addition, factual development shows that the expectation of increasing State support for SWL was justified, as Germany in 2023 decided to introduce a specific SWL State aid scheme ([64]).

4.1.1.2. Pricing of intra-group services ('Measure 2')

(131) Germany points out that Measure 2 is not clearly defined as the term 'intra-group services' is ambiguous in so far as it could include all intra-group services provided within the DB group, including to and by other companies than DB Cargo.

(132) For the same reasons as set out in recital 106, Germany asserts that there are no State resources involved, since the provision of intra-group services is an internal process within DB AG and is financed with DB AG's own business resources.

(133) Moreover, the decision to set up and execute the services is not imputable to the State. No State representatives were involved in setting up the services, as it was an organisational act by DB AG's Board of Directors, which was purely internal to the company.

(134) Furthermore, Germany submits that no State representatives are involved in the concrete decisions on the execution of the intra-group services. In that respect, a distinction must also be made between service functions and group functions:

(a) In the DB group, depending on the financial volume of the agreement in question, decisions are taken solely by the competent hierarchical levels in the respective companies (including the definition of the terms and conditions). The intra-group service agreements are therefore based on management decisions. DB AG's shareholder does not participate in those decisions, either directly through the general assembly or via the Supervisory Board.

([64]) Approved by Commission Decision C(2024) 3488 final of 21 May 2024 in case SA.108800 (2024/N) – Support for rail freight transport (single wagon load and wagon group transport trains) (OJ C, C/2024/3976, 25.6.2024, ELI: http://data.europa.eu/eli/C/2024/3976/oj).

(b) As regards the performance of the group functions, there are no service level agreements from the outset. Therefore, there is also no specific connecting factor for the involvement of State representatives in any company decisions on the performance of group functions. The absence of corresponding service level agreements clarifies the nature of the group functions. They are primarily for the management of the group, but not for the group companies.

(135) In addition, Germany points to the arguments set out in recital 107 concerning the imputability of Measure 1 to the State to further argue that Measure 2 is not imputable to the State.

(136) Germany also submits that the provision of the intra-group services does not economically favour DB Cargo. As Germany distinguishes between service functions and group functions, Germany also provides separate arguments concerning the non-existence of an economic advantage. However, as a preliminary remark, Germany explains that the establishment and execution of service and group functions are normal market behaviour. The centralisation of those functions at holding level creates significant synergies, enhances process quality, and supports unified corporate governance.

(137) With regard to the specific conditions for the performance of the service and group functions within DB group for DB Cargo, Germany submits:

(a) The service functions are invoiced to the group companies on the basis of service level agreements on market terms. With regard to the service functions, the DB Group explicitly commits itself to acting in line with market conditions arm's length principle) in its Integrated Report. There is no indication in DB's integrated report that DB AG provides services other than on market terms. Moreover, given the large number of transactions, it would hardly be possible, or at least disproportionate in the absence of any evidence of non-market pricing, to explain in detail the market conformity of all individual intra-group service relationships.

(b) For group functions, Germany explains that a distinction should be made, as to a large extent, the group functions only serve the group. To that extent, the group functions do not provide any service to group companies. To the extent that some of the group functions also serve group companies, the group does not, however, impose separate pricing vis-à-vis the group companies. However, any cost savings of the group companies are included in the group's profit expectations for each company.

4.1.1.3. Advantageous financing conditions of loans by DB Treasury ('Measure 3')

(138) With regard to Measure 3, Germany submits that for the same reasons as set out in recital 85, no State resources are involved in the provision of loans by DB AG's Treasury to DB Cargo.

(139) Furthermore, according to Germany, the decision to set up DB AG's Treasury and the individual decisions on granting the individual loans are not imputable to the State, as:

(a) No State representatives were involved in the establishment of DB AG's Treasury. On the contrary, it was an organisational act by DB AG's Board of Directors, which was purely internal to the company. The establishment and management of a central treasury is a management task.

(b) State officials are also not involved in the individual decisions on loans granted by DB AG's Treasury. According to the rules of the DB Group, only the Head of Finance and Treasury in DB AG's financial department decides on intra-group borrowing.

(140) In addition, Germany points to the arguments set out in recital 107 concerning the imputability of Measure 1 to the State to further argue that neither the establishment of DB AG's Treasury, nor the decisions on the individual loans are imputable to the State.

(141) Germany further argues that the granting of individual loans by DB AG's Treasury to DB Cargo does not provide DB Cargo with an economic advantage for the following reasons:

(a) Having a treasury centre corresponds to normal market conduct in groups. Treasury centres, for example, are used by almost all companies from industry and commerce represented in the German stock index DAX. The specific design of DB AG's Treasury is also normal for the market. Other groups also pool in a central treasury centre, for example, the possibilities of short-term credit lines that can be drawn as part of cash pooling and/or fixed short-term lending, as well as the granting of long-term loans to the group companies.

(b) The specific loan terms of the loan agreements concluded between DB AG and DB Cargo are set at arm's length depending on the market, the maturity, and risk. In particular:

(1) Market-dependent means that interest rates contracted on the capital market at the relevant time are the basis for the calculation of interest rates. Current interest rates are obtained from information service providers such as Refinitiv or Bloomberg.

(2) Maturity-dependent means that with the help of a yield curve (e.g. EUR swap curve), each repayment is included in the calculation of the weighted average interest rate at the interest rate of its respective term.

(3) Risk-dependent means that the premiums on the interest rates of the yield curve are differentiated according to creditworthiness. The premiums are generally set monthly and after major market movements and are derived from the 'credit curves' (i.e. the financing conditions of companies with identical ratings) of the information service providers.

(142) Concerning the risk premium, the creditworthiness premium for the infrastructure companies of the DB group corresponds essentially to DB AG's credit margins on the money and capital market (i.e. including taking into account the ownership of the Federal Government). Credit margins for non-infrastructure corporates are higher, reflecting a ratio-based credit assessment and the credit margins quoted in the capital market. For example, only the infrastructure sector benefits from the rating improvement by the State ownership (the so-called Government Uplift).

(143) DB Cargo does not benefit from that credit rating improvement. It is at best priced at its 'stand-alone Credit Profile' ('SACP', Standard & Poor's) or 'baseline credit assessment' ('BCA', Moody's) where the ownership structure is irrelevant. As is customary in groups, companies are grouped into creditworthiness classes. If there is a PLTA in place, they are assigned to the creditworthiness class of the SACP or BCA of the group. A bank would also take into account the creditworthiness of the parent company in its credit assessment in the case of an existing PLTA.

(144) It is in line with normal market practice in groups that DB Cargo's loans are not collateralised. DB AG, as a shareholder, operates here both as an equity provider and as a lender. Collateralising the loans would only provide DB AG with a formal, but no additional, material security. Any meaningful sale of assets would need the prior approval of DB AG.

(145) Another aspect which speaks against collateralisation within groups concerns the standing of shareholder loans in the event of insolvency as shareholder loans are subordinated to all other categories of claims, i.e. the rank the lowest even in the group of subordinated claims.

(146) Moreover, the application of the market economy operator test must take into account the fact that the loan is a transaction between two companies belonging to the same group and that there are therefore particular strategic considerations and synergy effects.

4.1.1.4. Partial coverage by BEV of the remuneration of civil servants employed by DB Cargo ('Measure 4')

(147) With regard to Measure 4, the submissions of Germany focus on the condition of the selective advantage.

(148) Germany submits that, from the outset, the purpose of the Measure 4 was to relieve DB AG, a private company, from the burden of staff expenses arising from the specific structure and level of remuneration of civil servants. Germany further submits that, as a result of the 'als-ob-Kosten' principle set out in § 21(1) and § 23 of DBGrG, DB AG pays to BEV costs equal to the costs that DB AG would incur if it were to recruit its employees on the labour market instead of assigned officials. Germany submits that DB Cargo made all the payments to DB AG for the workers allocated to it on time ([65]) and provides several examples of the practical implementation of the 'als-ob-Kosten' principle within DB Cargo, as well as independent auditor' reports on the expenditure incurred by DB AG demonstrating that the level of expenditure on contractual worker in a concrete professional situation (age, qualifications, pay group) corresponds to the level of costs to be reimbursed to BEV for assigned officials in a similar professional situation ([66]).

(149) Germany further submits that the measure is limited both in time and in scope and applies to a steadily shrinking population of workers workforce and concludes that the measure is not State aid because it does not relieve DB Cargo from charges that an undertaking normally has to bear. To the contrary, the measure relieves DB Cargo from exorbitant costs that other private railway undertakings do not have to bear. This is confirmed by the fact that officials employed by BEV are posted not only to DB AG but also to other undertakings competing with subsidiaries of DB AG. In such a situation, BEV takes over the above-market-price costs of posted officials on the basis of an individual agreement incorporating the 'als-ob-Kosten' principle.

(150) Finally, Germany submits that the staff regime adopted by Germany after the transformation of German railways is also compliant with the market economy operator principle. The Federal Government acted in the same way as would act a market economy operator by setting a scheme within which the trained railway civil servants that became redundant were hired out to the market for a market price. The scheme allowed the State to share the burden of remunerations and pensions of those highly qualified workers and limit the pressure on State assets (in this case, the Federal budget).

(151) In alternative, Germany submits that Measure 4 is an existing aid and that it is, in any case, compatible with the internal market.

4.1.1.5. Measures concerned as *existing aid*

(152) By letters of 17 May and 26 September 2023, Germany submits an alternative argumentation according to which, if the measures referred to in the Opening Decision were to be finally considered as State aid, they should be qualified as existing aid within the meaning of Article 1, point (b), of Council Regulation (EU) 2015/1589 ([67]) ('the Procedural Regulation').

([65]) These payments were made to DB AG which then were transferring the money to BEV. As clarified by the German authorities, the allocation of staff is made to DB AG which acts as intermediary. Accordingly, the reimbursement of staff costs for officials assigned to DB AG is made by DB AG to the BEV and there are no direct payments of staff costs from DB Cargo to BEV (see recital 80).

([66]) Submission of Germany of 23 October 2023.

([67]) 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, 24.9.2015, p. 9, ELI: http://data.europa.eu/eli/reg/2015/1589/oj).

(153) Germany insists that this applies in particular to the PLTA. For the application of the concept of 'amendment to an existing aid' in the context of Article 1(b)(v) of the Procedural Regulation, the principle of substance over form should be applied, meaning that only far-reaching changes to the content of an existing measure could result in a requalification of a measure as a new aid. Germany refers in that regard to the practice of EFTA Surveillance Authority ([68]) and of the Commission ([69]) and submits that, since 1999, there has been an uninterrupted chain of identical profit and loss transfer agreements linking DB AG to DB Cargo directly or indirectly – through one or two additional subsidiaries (DB ML and Railion ([70])). Germany adds that the principles of allocation of profits and losses similar to those which underpin the PLTA were applicable already during the period going from 1994, that is from the creation of DB AG, to 1999, when different business units of DB AG were incorporated into separate subsidiaries and tied to the parent company with the agreements providing for a transfer of profits and losses.

(154) According to Germany, technical adjustments made in the PLTA in 2012 and 2016 in the context of the reorganisation of the DB Group did not influence the content of that agreement and are thus irrelevant under Article 108(1) TFEU. This is the more so because all the companies involved in the reorganisation were 100 % controlled by DB AG and were therefore part of the same undertaking.

(155) Germany further submits that the exception provided for in the second sentence of Article 1(b)(v) of the Procedural Regulation ([71]) is not applicable in the present case for two reasons. First, the main element of the PLTA, that is the absorption of losses of DB Cargo by the parent company existed at the earliest since 1994, whereas it is accepted that that exception does not apply retroactively to situations existing prior to the entry into force of that regulation in 1999 ([72]). Secondly, Germany submits that that exception cannot go beyond the provisions of Article 108 TFEU and create additional categories of cases for 'new aid'. In this sense, it is doubtful that Article 1(b)(v), second sentence of the Procedural Regulation is in any way compatible with primary law. Moreover, Germany submits that the case-law would restrict that exception only to cases in which it was foreseeable that, once the market is liberalised, the measure would become aid. In addition, that provision would apply only in cases in which an activity is opened up to competition by Union law on a specific cut-off date that can be determined in advance. It would therefore be inapplicable in the case of the liberalisation of the freight market where a large number of different measures at national and European level contributed to the market opening over a long period of time (from 2003 to 2007).

(156) According to Germany, the consequence of qualifying the PLTA as an existing aid would be that the Commission should close the formal investigation procedure. Indeed, as the PLTA is an individual aid and not a scheme, the Commission would not be in the position to propose and enforce appropriate measures pursuant to Chapter VI of the Procedural Regulation governing the procedure regarding existing aid schemes.

([68]) EFTA Surveillance Authority, Decision No 082/23/COL of 31 May 2023 to initiate the formal investigation procedure relating to PSO contracts for railway passengers in Norway, paragraphs 182 et seq. and paragraph 250 et seq.

([69]) Germany refers in particular to the Commission decisions of 20 October 2014 in case SA.30481 – Illegal state aid in favour of Agence France-Press (AFP) (OJ C 20, 19.1.2018, p. 1); of 24 April 2007 in case SA.18957 – Financing of public service broadcasters in Germany, recital 196 (OJ C 185, 8.8.2007, p. 1); of 27 February 2008 in case SA.21395 –Financing of VRT, recital 118 (OJ C 143, 10.6.2008, p. 1).

([70]) Germany explains that Railion was created as a vehicle for opening DB Cargo to European partner railways.

([71]) Pursuant to Article 1(b)(v) of the Procedural Regulation 'existing aid' means aid which is deemed to be an existing aid because it can be established that at the time it was put into effect it did not constitute aid, and subsequently became aid due to the evolution of the internal market and without having been altered by the Member State. Where certain measures become aid following the liberalisation of an activity by Union law, such measures are not to be considered as existing aid after the date fixed for liberalisation.

([72]) Germany refers to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1, ELI: http://data.europa.eu/eli/reg/1999/659/oj).

4.1.2. *Observations on the comments from interested parties*

4.1.2.1. Germany's observations on ERFA's comments

(157) Germany submits that ERFA observations confirm that the German rail freight sector is highly competitive and that, in recent years, private challengers have steadily expanded their market shares. Those observations invalidate the complainant's allegations relating to the anticompetitive effects of the measures concerned. Germany adds that it follows from Article 345 TFEU, which prohibits discrimination against undertakings based on the criterion of ownership (public versus private), that the implementation of State aid rules cannot result in a de facto ban on instruments of organisation of intra-group relations (profit and loss transfer agreements, provision of intra-group services or loans) that would apply only to public undertakings.

4.1.2.2. Germany's observation on the complainant's comments

(158) Germany follows the structure of the complainant's observations and submits, with regard to the condition of *use of the State resources*, that Measures 1 to 3 involve the use of business revenues of DB group which are not State resources. The qualification of business revenues of a commercial undertaking established under private law as State resources cannot be based only on the position of the State as shareholder. What must be demonstrated is that the State, by exercising its dominant influence, is in a position to control the use of the funds ([73]). Germany reiterates its argument based on Article 345 TFEU (see recital 105).

(159) With regard to imputability, Germany acknowledges that the setting up of the PLTA was approved by a representative of the Federal Government in the general assembly of DB AG. However, State consent to a measure is not sufficient to establish imputability under Article 107 TFEU ([74]), as the case-law requires it to be demonstrated that public authorities were actively involved in the adoption of the measure or that they imposed the measure on the undertaking or instructed it to act in a specific way ([75]). In addition, imputability cannot be established on the basis of the approval of DB AG annual and consolidated annual statements by the Supervisory Board, given that (i) such approval does not entail any agreement to offset losses; and (ii) the representation of the government in the Supervisory Board is too small to influence effectively the decisions of that body.

(160) With regard to Measures 2 and 3, Germany reiterates that the imputability of those measures to the State cannot be based only on the fact that the State has a 100 % shareholding in DB AG. Germany submits that no State representative was involved in the adoption of those measures. In particular, under DB AG's articles of associations and DB AG's Supervisory Board's Rules of Procedure, measures such as Measures 2 and 3 do not have to be approved and, in fact, were not approved by the Supervisory Board.

(161) Germany adds that the imputability of Measures 2 and 3 cannot be inferred from factors enumerated by the complainant. First, the alleged purely financial interest of the German State to receive dividends from DB group does not indicate the involvement of the State in the two Measures. The financial interest of the shareholder has never appeared in the case-law as a criterion relevant for imputability and rightly so, as it would mean that any decision taken by the corporate bodies would be imputable to the State because any decision can have an impact on the financial interest of the shareholder.

([73]) Judgments of the Court of Justice of 16 May 2002, *France v Commission (Stardust)*, C-482/99, ECLI:EU:C:2002:294, of 29 April 2004, *Greece v Commission*, C-278/00, ECLI:EU:C:2004:239 and of 8 May 2003, *Italy and SIM 2 Multimedia v Commission*, C-328/00 and C-399/00, ECLI:EU:C:2003:252.

([74]) Judgments of the Court of Justice of 2 March 2021, *Commission v Italy and Others*, C-425/19 P, ECLI:EU:C:2021:154 and of the General Court of 15 December 2021, *Oltchim v Commission*, T-565/19, ECLI:EU:T:2021:904.

([75]) Judgment of the Court of Justice of 13 September 2017, *ENEA*, C-329/15, ECLI:EU:C:2017:671, paragraph 20 and of the General Court of 22 September 2021, *DEI v Commission*, T-639/14 RENV, T-352/15 and T-740/17, ECLI:EU:T:2021:604. Germany invokes also Decision (EU) 2021/2182 .

(162) Germany further submits that the imputability of Measures 2 and 3 also cannot be inferred from the provisions of § 65 BHO or from those of the PCGK, as those acts simply complement the statutory provisions relating to the management and supervision of companies with federal shareholding and create no requirements for approval of operations that go beyond the common rules of company law.

(163) Finally, Germany considers that other factors of imputability relied on by the complainant are irrelevant or incomprehensible.

(164) With regard to the condition of advantage, Germany submits that the Commission bears the burden of proving whether or not the conditions for the application of the private investor in a market economy test have been satisfied. If the Commission does not have the necessary evidence on which to ascertain if a private investor would have taken the measures in question, that cannot be to the detriment of the Member State ([76]). It is only in cases where the applicability of the market economy operator test is disputed that the Member State must establish on the basis of objective and verifiable evidence that it took the measure at issue in its capacity as shareholder and not as public authority.

(165) In addition, Germany alleges that the complainant is referring to case-law regarding capital injections, which are operations for which profitability analyses or business plans are occasionally carried out also in the private sector. In contrast, a priori profitability analyses are not carried out, and make no sense, in case of instruments such as PLTA, which are a neutral, structural element of the group. The absence of a profitability analysis made before the adoption of the PLTA is therefore irrelevant in assessing if the behaviour of the State was in line with the conduct of a private market operator. Finally, Germany notes that it provided to the Commission the relevant mid-term plans which are contemporaneous to the facts under examination, and which include in-depth analyses of the developments of profitability of DB Cargo in the years to come.

(166) More specifically with regard to Measure 1, Germany considers that the complainant wrongly focuses its comments on the fact that the PLTA was renewed in 2012 notwithstanding the constant losses and alleged lack of prospect for profits. Doing so, the complainant fails to take into account that (i) from 2006 to 2008 DB Cargo transferred to DB AG profits going beyond EUR 500 million; (ii) the losses in 2009 were a direct result of the financial crisis and in the following years DB Cargo managed to limit them (2010: EUR – 148 million, 2011: EUR – 100 million, 2012: EUR – 31 million); (iii) the 2012 PLTA was concluded in the expectation of the return to profits, which were expected also in the mid-term plans; (iv) the PLTA must not be regarded in isolation but as an instrument allowing for the establishment of fiscal unity by which the losses of one subsidiary can be off-set on the level of the entire group.

(167) With regard to Measure 2, Germany refers to its observations relating to the ambiguity of the concept of 'intra-group services' and reiterates its arguments made in its observations on the Opening Decision relating to the distinctions between, and the pricing of, the service functions and the group functions.

(168) With regard to Measure 3, Germany claims that the complainant's allegations are incorrect. Germany claims that loan agreements between DB AG and DB Cargo were concluded on market terms and reiterates in that regard its arguments made in its observations on the Opening Decision. In addition, Germany contends that the fact that DB Cargo is State-owned does not influence the terms of the loans DB Cargo has contracted.

(169) With regard to Measure 4, Germany reiterates the arguments relating to the implementation of the 'als-ob-Kosten' principle it made in its observations on the Opening Decision. In addition, Germany claims that the present case differs from Case C-211/15 P *Orange/France Télécom v Commission*. In particular, unlike DB AG in the present case, France Télécom was paying lower social security contributions than its competitors.

([76]) Germany refers to the opinion of Advocate General Kokott in case *Commune di Milano v Commission*, C-160/19 P, ECLI:EU:C:2020:591, paragraph 98.

(170) Germany also disputes the complainant's arguments relating to procedural issues. Germany claims that there is no need to suspend the contested four measures as they do not involve State aid. In the alternative, Germany claims that the measures are existing aid and reiterates the arguments presented in that regard in its letters of 17 May and 26 September 2023.

4.1.3. *Compatibility with the internal market*

(171) Germany submits that the measures concerned do not constitute State aid and therefore the question of their compatibility does not arise. In the alternative, Germany argues that the four contested measures are existing aid and any issues relating to their compatibility should be examined within the framework set out in Chapter VI of the Procedural Regulation.

(172) As a subsidiary argument, Germany and DB AG/DB Cargo decided to subject DB Cargo to an economic transformation plan which at the same time, in Germany's view, meets the requirements of a restructuring plan within the meaning of the Commission's Rescue and Restructuring Guidelines ([77]) (the 'R&R Guidelines').

4.1.4. *The restructuring plan of DB Cargo*

4.1.4.1. Description of the restructuring plan and supporting restructuring aid

(173) In July 2022 the Management Board of DB Cargo AG and the Management Board of DB AG took the decision to launch the process that eventually ended in the transformation plan by hiring a consultant company to develop a transformation strategy for the three business segments of DB Cargo (block train transport, single wagon load transport and combined transport) to put the company on a sound economic footing over a period of three years. In September 2022 Roland Berger were selected as consultants to develop the transformation strategy by the Management Board of DB Cargo AG and the Management Board of DB AG. The launch by DB Cargo of the Transformation Plan was a necessary response to the significant challenges facing the company.

(174) On 30 October 2023, and thereafter through various updates, Germany submitted that plan already in the course of implementation to the Commission in the context of the present procedure in order for it to be assessed as a restructuring plan within the meaning of the R&R Guidelines.

4.1.4.1.1. DB Cargo's Restructuring Plan

4.1.4.1.1.1. Overview of DB Cargo's Transformation Plan

(175) Germany explains that DB Cargo's Transformation Plan aims at strengthening DB Cargo's position in the long term so that it can make the necessary contribution to achieving DB AG's corporate goals. The action plan is designed in line with the slogan 'Europe needs a strong rail logistics provider. For the climate and for a sustainable economy.' In that way, Germany expects DB Cargo to contribute significantly to increasing the modal share of rail in the German and European transport market, while also improving its own economic sustainability.

(176) In order to achieve profitability and competitiveness, Germany explains that DB Cargo will transform its business model. Transformation is required as the highly complex joint production system has been unable to respond flexibly to customer requirements within the framework of the current infrastructure. The result is shrinking productivity and heavy additional financial burdens, which have a drastic impact on profits. Germany further submits that DB Cargo must transform itself in order to become profitable and competitive again. In order to enable DB Cargo to respond more quickly to those challenges and customer requests, Germany explains that DB Cargo will adapt its business model so that smaller, more focused business areas will emerge. That customisation is based on business sectors/customer groups. In that context, the single-wagon load segment will continue to carry out a close exchange of services with all such business sectors/customer groups.

([77]) Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

(177) Germany indicates that those more focused business areas will receive comprehensive autonomy, responsibility and all the resources for their business. That way of operating is expected to drastically reduce the complexity of the production model, which should significantly reduce costs and improve competitiveness.

(178) In the area of rail logistics, to strengthen its market presence as a rail logistics service provider, Germany indicates that DB Cargo now systematically offers its customers industry-specific services in its customers' supply chains. They are logistics solutions that essentially include a rail service and supplement it with additional modules (for example road transport, warehousing and other individual logistics services).

(179) The area of single wagon transport, which is a key component of today's rail freight transport in Germany and Europe, cannot be operated on a purely commercial basis as a full-coverage network given the current general framework. As a result, and with the implementation of DB Cargo's Transformation Plan, Germany expects that single-wagon transport will be further developed into a supply-oriented, standardised and resilient network of flexible freight options, taking into account the funding provided for in the 2024 federal budget, and it is expected to be organised in a significantly more cost-efficient manner. Germany further submits that, in the medium and long term, the efficiency of the system will also increase with new technologies such as digital automatic coupling (DAC).

(180) Germany further explains that combined transport is the market of the future in rail freight transport. In order to be able to offer a competitive service, Germany indicates that DB Cargo also intends to implement structural measures in future.

(181) In addition, as part of its Transformation Plan, Germany explains that DB Cargo will invest in modern multisystem locomotives and new car technologies. Due to the progress made in digitalisation and automation, Germany expects that DB Cargo will also be able to carry out processes in rail transport, i.e. train formation, car treatment and maintenance, much more effectively and quickly, thereby increasing its competitiveness.

(182) Germany indicates that, thanks to modern transport equipment that meets customer requirements, DB Cargo aims at being able to integrate itself deeper into customers' logistics chains. Germany explains that DB Cargo is therefore intensively advancing the development of its freight cars.

(183) Germany explains that by focusing on digitalisation, cost optimisation and sustainability, DB Cargo seeks both to recover from its current difficulties and to secure its future as a leading player in the European rail freight market. Germany therefore submits that the strategic initiatives outlined in the Transformation Plan provide a clear path towards a return to viability through long-term stability and growth.

4.1.4.1.1.2. DB Cargo's Restructuring Plan measures

(184) Germany explains that DB Cargo has initiated a Restructuring Plan characterised by radical changes within the production system, dissolution of interlinkages between segments, portfolio optimisation measures, partner cooperation instead of inhouse operations, and fundamentally adjusted resource requirements.

(185) Germany further indicates that the individual measures of the Restructuring Plan have been developed on a segment-specific basis for single-wagon, block-train and the respective maritime, continental and carrier divisions of the combined-transport segment. Furthermore, additional overarching restructuring measures have been designed to target the European subsidiary companies as well as the administrative and production-related overhead structures and the Control Tower ([78]).

([78]) For a description of DB Cargo's Control Tower, see recitals 237 et seq.

(186) In that context, Germany explains that DB Cargo has completed the legally required negotiations for a reconciliation of interests with the labour representatives with regard to reductions in personnel costs, which still amount to more than EUR 100 million annually after pay rises that have taken effect in the meantime. On 2 October 2024, the reconciliation committee achieved a joint result and agreed on a workforce reduction of 4 582 full-time employees (ca. 25 % of workforce) until 31 December 2026 when compared to December 2023, and an additional reduction of 361 full-time employees until December 2029, resulting in a total reduction of 4 943 full-time employees (ca. 27 % of workforce). Germany further indicates that DB Cargo put the initial focus on combined transport, administration and production-related overhead and Control Tower overhead and explains that DB Cargo will put further focus, in line with the outlined measures of its Restructuring Plan in the following sections, especially on -wagon and block-train transport including with workforce reduction implications.

Table 10

Results of Reconciliation Committee, 2 October 2024: Reduction of FTE DB Cargo AG

FTE	YE 2023	YE 2024	YE 2025	YE 2026	YE 2027	YE 2028	YE 2029
Operational staff (Train drivers, Shunters, etc.)	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Maintenance	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Production related Overhead incl. Control Tower	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Admin Overhead (incl. IT)	[…]	[…]	[…]	[…]	[…]	[…]	[…]
DB Cargo AG	[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Germany's submission of 22 November 2024 (Final Restructuring Plan), page 29.

4.1.4.1.1.3. Restructuring Plan measures in the single wagon segment

(187) Germany explains that single wagon transport at DB Cargo involves nationwide collection and delivery of individual wagons and wagon groups from different consignors. After collection, the wagons are bundled into long-haul trains through multiple stages. Subsequently, the long-haul trains have to be dispatched back to single wagons or feeder trains prior to final delivery. The highly complex bundling process requires extensive infrastructural resources as well as manual operations and management capacity for planning and dispatching.

(188) Germany further indicates that single-wagon transport is seen as a more sustainable alternative to its direct competition for small and medium-sized shipments via road transport by truck. The restructuring of its production and business model is necessary, as well as having State aid schemes to overcome the systemic disadvantage of single-wagon transport operations versus truck transports and ensure a more environmentally friendly transport via rail instead of road. Germany submits, therefore, that the planned Restructuring Plan measures of DB Cargo in single wagon transport aim at fulfilling requirements for long-term viability and increasing the competitiveness of single-wagon transport.

4.1.4.1.1.3.1. Restructuring Plan measure 1: Single Wagon segment network optimisation through design review

(189) Germany explains that the overall objective of the re-design of the single wagon network is the (a) radical simplification and enhancement of the robustness of the production; and (b) the consequent standardisation of the commercial offering.

(190) For the future production model, Germany submits that personnel and equipment will be dedicated to the single wagon segment, which constitutes a radical change when compared to today's integrated production of single wagon, block trains and combined transport. Germany expects that this restructuring measure will result in a higher robustness/resilience, increase quality and allow cost savings that outperform the synergies of an integrated production, i.e. decrease cancellation fees and increase resource efficiency (e.g. lower number of locomotives required). In addition, Germany submits that the future design of DB Cargo's network will focus on increasing frequencies on long runs, consolidate shorter connections and allow for more flexibility routing of wagons, i.e. better distribution of fixed cost and reduction of number of destinations.

(191) Germany further indicates that the commercial offering will be increasingly standardised, minimising individual, customer-specific requests. Germany further submits that eliminating the need for customer-specific prioritisation is expected to increase the throughput of shunting facilities as well as drastically decreasing the complexity of planning and dispatching, i.e. increasing overhead efficiency.

(192) Germany indicates that the ramp-up of the revised network is expected to start from 2025.

4.1.4.1.1.3.2. Restructuring Plan measure 2: Single Wagon segment overall production optimisation measures

(193) Germany indicates that, along with the DB Cargo network design, the Restructuring Plan envisages two overarching production optimisation measures to improve the cost of single wagon operations:

(a) Revision of the current feeder and distribution services for single wagons, i.e. currently uneconomical services will be rearranged, downscaled or eliminated. Germany indicates that the measure is already being rolled out with first effects expected immediately.

(b) Energy cost savings by using dual-mode locomotives instead of less fuel-efficient diesel-powered alternatives. Germany indicates that positive effects from that measure are expected to be realised from 2026 onwards.

4.1.4.1.1.3.3. Restructuring Plan measure 3: Single Wagon segment quality improvement and base price adjustment measures

(194) Germany indicates that those improvements in the production model will lead to quality improvements in the service for the customer (e.g. increase in robustness/resilience). Consistent with those quality improvements, Germany explains that price adjustments are negotiated by DB Cargo with the aim of (i) better covering the current increase of transport costs; and (ii) better capturing customers' willingness to pay for single wagon services. Germany specifies that the respective price adjustments will be actual base price increases on top of factor cost compensations and will take effect already in 2024.

4.1.4.1.1.3.4. Effects of the Single Wagon segment measures of the Restructuring Plan on DB Cargo's EBIT projections

Table 11

Effects of the Single Wagon segment measures of the Restructuring Plan on DB Cargo's EBIT projections

		EBIT effects (€ in million)				
Segment type	Transformation measure	2024	2025	2026	2027	2028
Single Wagon	Network optimisation through design review	[…]	[…]	[…]	[…]	[…]
	Overall production optimisation measures with effects on single wagon transport	[…]	[…]	[…]	[…]	[…]
	Quality improvement and base price adjustment	[…]	[…]	[…]	[…]	[…]

Source: Germany's submission of 22 November 2024 (Final Restructuring Plan), page 30.

4.1.4.1.1.4. Restructuring Plan measures in the Block Train segment

(195) Germany explains that block train transports are characterised by directly connecting volumes from rail siding/loading points to rail siding/unloading points without changing the train composition. Consequently, the key performance driver for block trains is a sufficient capacity utilisation in long-distance transportation. In the block train segment, Germany indicates that DB Cargo focuses on a broad network coverage with different forms of transport including more complex logistics solutions. The major Restructuring Plan measures for the block train segment are described below and focus on the transition towards operating as a smart logistics provider.

4.1.4.1.1.4.1. Restructuring Plan measure 4: Block Train segment logistics solutions and portfolio optimisation

(196) Germany submits that DB Cargo's Restructuring Plan will focus on smart logistics solutions with regard to block train transport (e.g. customised solutions or complex/cross-border traffic) and will perform a structured portfolio review along two key elements:

(a) Changes in production concepts to increase both efficiency and quality where DB Cargo can offer a unique selling point.

(b) Price differentiation with adjusted prices for customers with a higher willingness to pay and strong reliance on rail services. In that context, selected routes and customers with simpler needs (e.g. point-to-point traffic) might be discontinued in order to use freed resources for more complex/smart logistics solutions (potentially with partners) resulting in higher-margin business. Germany submits that, in general, only traffic with positive expected economic development perspective will be continued by DB Cargo. Germany further indicates that the portfolio optimisation will be implemented immediately with effects starting in 2024.

4.1.4.1.1.4.2. Restructuring Plan measure 5: Block Train segment production robustness increase

(197) Germany explains that, currently, DB Cargo's block trains are produced from an integrated production system with other block trains, combined transport and single wagon traffic. Germany further indicates that the potential synergies from an integrated production at DB Cargo are often not realised (e.g. due to unpredictable incidents such as infrastructure construction works at short notice, technical issues, resource availability) and therefore lead to higher actual production costs.

(198) Germany explains that this Restructuring Plan measure foresees the future operation of block trains to be encapsulated with dedicated resource allocations (similar to the corresponding measure in single wagon) to minimise dependencies and increase production quality. Likewise, Germany indicates that clear and consistent ownership for industries, customers and products will be established as part of the present Restructuring Plan measure.

(199) Germany further explains that increased robustness ([79]) in production will be further accelerated through the implementation of new collective bargaining agreements to increase flexibility in shift models. In the collective bargaining round of 2023, DB AG and DB Cargo achieved a large contribution from the union EVG to support the transformation of DB Cargo as that union established an option of extended locomotive drivers' shift models, thereby increasing the flexibility for DB Cargo (in those models, locomotive drivers are (voluntarily) scheduled to work in multi-day work cycles with several rest periods away from home (incentivised monetarily) and longer rest periods at home. Germany indicates that it leads to increased productivity due to reduced personnel changes as well as the possibility to deploy train drivers independently of the original location. Germany foresees the ramp-up of the revised DB Cargo production system to start at the latest in 2025.

4.1.4.1.1.4.3. Restructuring Plan measure 6: Block Train segment quality improvements and related base price adjustments

(200) Germany submits that quality improvements in the services for the DB Cargo customers (e.g. increase in robustness) will justify price adjustments which are negotiated with the aim of (i) better covering current increases in transport costs; and (ii) better capturing customers' willingness to pay for more qualitative block train services. Germany explains that the respective DB Cargo price adjustments will be actual base price increases on top of factor cost compensations and will already take effect in 2024.

4.1.4.1.1.4.4. Effects of Block Train segment measures of the Restructuring Plan on DB Cargo's EBIT projections

Table 12

Effects of the Block Train segment measures of the Restructuring Plan on DB Cargo's EBIT projections

		EBIT effects (€ in million)				
Segment type	Transformation measure	2024	2025	2026	2027	2028ff
Block Train	Logistics solutions and portfolio optimisation	[…]	[…]	[…]	[…]	[…]
	Robustness increase in production (incl. new collective bargaining agreements)	[…]	[…]	[…]	[…]	[…]
	Quality improvement and base price adjustment	[…]	[…]	[…]	[…]	[…]

Source: Germany's submission of 22 November 2024 (Final Restructuring Plan), page 31.

([79]) Germany explains that DB Cargo's plan is to make the output and forecasts of its production model increasingly consistently accurate even if one or more of the input variables or assumptions would need to be changed due to unforeseen circumstances.

4.1.4.1.1.5. Restructuring Plan measures in the Combined Transport segment

(201) Germany explains that the combined transport is characterised by multimodal transportation, using trucks for first and last mile towards terminals or ports while using rail on the long-haul segments in-between. A segment is divided into three sub-segments: (i) maritime combined transport covers the transportation of containers between ports and the respective hinterland; (ii) continental combined transport covers the transportation of bulk-containers, semi-trailers and swap bodies from terminal to terminal; and (iii) carriers sales, which covers pure traction services for third party rail carriers or freight forwarders.

(202) In the first two segments, Germany indicates that players either cover an individual value chain element (traction, terminal operations, operator) or offer all services along the value chain as an integrated operator. Germany further explains that DB Cargo takes the position of both an operator in the maritime segment with its subsidiary TFG and a traction provider (namely, DB Cargo itself). In the continental segment, Germany indicates that DB Cargo is again a provider of traction and, in addition to that, owns shares (but has no majority control) of the operator Kombiverkehr GmbH & Co. KG. In carriers sales, Germany indicates that DB Cargo offers pure traction.

(203) The following section sets out the main Restructuring Plan measures for each of those three individual sub-segments.

4.1.4.1.1.5.1. Restructuring Plan measure 7: Maritime Combined Transport sub-segment change of production

(204) Germany explains that, currently, combined transport trains are produced from an integrated production system with single wagon and block train operations. The synergies from that integrated production are smaller than the resulting complexity, leading to disruption-related quality issues and an increased resource requirement in comparison to those of direct competitors (e.g. defence or coal cargo of the single wagon or block train business with higher prioritisation compared to intermodal cargo causing delays for maritime combined transport). Germany further indicates that the Restructuring Plan therefore includes two measures that DB Cargo will implement:

(a) Dedicated resources (train drivers, locomotives and freight wagons) will be assigned to the maritime transport segment to improve production quality and allow to produce trains that have previously been cancelled due to production unavailability.

(b) On 2 October 2024, the Reconciliation Committee reached an agreement to modify the existing labour regulations of the company with respect to Maritime Combined Transport. As a result, the same amount of productivity increase will be reached as in an alternative transformation option relying on decreasing traction provision by DB Cargo and transfer of traction provision to traction subsidiary companies with more flexibility in their labour agreements, which will lead to higher productivity of train drivers (e.g. layover in outstation, special travel time compensation). Germany further explains that by reaching this agreement in October 2024, DB Cargo will now be able to reduce own train drivers, production-related overhead and Control Tower staff due to the new labour regulations which will allow increased productivity. Therefore, DB Cargo will not need to shift operations to traction subsidiary companies.

4.1.4.1.1.5.2. Restructuring Plan measure 8: Maritime Combined Transport sub-segment network redesign

(205) Germany explains that, in DB Cargo's current network model, the maritime operator TFG uses shunting concepts to distribute traffic between the German seaports and the hinterland, while competitors use combined transport terminals. Germany submits that, as part of the Restructuring Plan, routing for TFG will over time be switched to combined transport hub terminals accordingly instead of shunting yard operations to allow for increased train utilisation, increased capacity on trains, and more cost-efficient transfer of containers. Germany further indicates that DB Cargo plans the rollout of the new production model to be implemented by 2026 due to the required access to the hub terminals and transition of schedules.

4.1.4.1.1.5.3. Restructuring Plan measure 9: Maritime Combined Transport sub-segment terminals integration

(206) Germany explains that the container terminal is an important part of the value chain in combined transport and that operators that integrate terminal operations in the traction chain are able to achieve profitability. Germany further indicates that DB Cargo's Restructuring Plan includes the extension of its terminal operations by better cooperation with the terminal provider DUSS (Deutsche Umschlaggesellschaft Schiene Straße) in order for DB Cargo to be able to offer a more integrated product range (e.g. included container storage), optimise its production (e.g. better alignment of track and terminal slots) and realise synergies at locations where it already operates depots and DUSS has their terminal operation next to DB Cargo's facilities.

4.1.4.1.1.5.4. Restructuring Plan measure 10: Maritime Combined Transport sub-segment portfolio optimisation

(207) Germany indicates that DB Cargo's Restructuring Plan foresees that the maritime traffic route portfolio will be optimised, especially with regard to low demand and low profitability routes, with an effect of that measure appearing in 2024.

4.1.4.1.1.5.5. Restructuring Plan measure 11: Maritime Combined Transport sub-segment partnership options evaluation

(208) Germany indicates that, within the maritime market segment, liner shipping carriers as well as terminal operators pursue vertical integration strategies to increase their customer stickiness, safeguard transport capacity and internalise margins. Germany further submits that, for DB Cargo's maritime operator TFG, such strategic developments by its competitors constitute a risk of volume losses in the event that their key customers i.e. liner shippers, relocate their volume to competitors they engage with in the context of e.g. the aforementioned vertical integration. At the same time, Germany considers that an investment of a partner could allow TFG to secure volumes and gain direct end customer access. Germany further explains that, as part of the DB Cargo Restructuring Plan, it is currently evaluating partnership options in that respect.

4.1.4.1.1.5.6. Restructuring Plan measure 12: Continental Combined Transport sub-segment re-dimensioning of Kombiverkehr

(209) Germany indicates that DB Cargo owns shares (but has no majority control) in Kombiverkehr GmbH & Co. KG ('KVG'), one of the two leading European operators (50 % of the shares are owned by DB Cargo and the remaining 50 % by over 200 freight forwarders). Germany considers that changes to the current business model, in which DB Cargo is only a supplier for pure traction services, are necessary in order to achieve long-term competitiveness. Germany further explains that joint discussions towards a new partnership-based business model to achieve profitability started in August 2023 but did not lead to a successful result.

(210) In that context, Germany further explains that there will be a phasing out of relations that do not generate the required margins, by January 2025 at the latest. Since the third quarter of 2024, KVG has begun to switch large parts of their train programme to third-party traction service providers so that freight forwarders requesting combined transport services will continue to have access to most of KVG's route network in the future. All DB Cargo services with KVG which do not provide an economically viable perspective for DB Cargo have meanwhile been phased out to stop further losses.

4.1.4.1.1.5.7. Restructuring Plan measure 13: Continental Combined Transport sub-segment production change

(211) Germany explains that, currently, combined transport trains are produced from an integrated production system with single wagon and block train operations but that the synergies from an integrated production are smaller than the resulting complexity leading to disruption-related quality issues and an increased resource requirement when compared to that of DB Cargo's direct competitors. Germany therefore submits that two measures will be implemented as part of the Restructuring Plan:

(a) Dedicated resources will be assigned to the continental combined transport segment to improve production quality and allow for the production of trains that have previously been cancelled due to production unavailability.

(b) In the reconciliation of interest, which was completed on 2 October 2024, the parties reached an agreement to modify the existing labour regulations of the company with respect to continental combined transport. As a result, the same productivity increase is achieved now as in the alternative of outsourcing the traction services to traction subsidiary companies with more flexibility in their labour agreements and therefore higher productivity of train drivers (e.g. layover in outstation, special travel time compensation), which was initially sought. Germany further indicates that having reached this agreement in October 2024, DB Cargo will now be able to reduce train drivers, production-related overhead and Control Tower staff due to the new labour regulations which will allow increased productivity from 2025 onwards. Therefore, DB Cargo will not need to shift operations to traction subsidiary companies.

4.1.4.1.1.5.8. Restructuring Plan measure 14: Carrier Sales sub-segment portfolio optimisation

(212) Germany explains that portfolio optimisation has already been initiated as part of DB Cargo's Restructuring Plan in 2023 for those operations that currently do not yield the required margin and that do not provide an economically viable perspective. Low-margin traffic that cannot fulfil the required operating margin ambition and/or where customers do not accept necessary price adjustments will be removed from the portfolio. Germany further explains that customer reactions to price adjustments are currently estimated based on the experience of the DB Cargo sales team and the adaptations are planned accordingly. Germany expects that the volume will be reduced by approximately […] % in 2024 and approximately […] % in 2025 compared to the 2023 volumes and that, in the event of more DB Cargo customers not accepting price adjustments, the degree of reduction will be adjusted.

4.1.4.1.1.5.9. Effects of Combined Transport segment measures of the Restructuring Plan on DB Cargo's EBIT projections

Table 13

Effects of the Combined Transport segment measures of the Restructuring Plan on DB Cargo's EBIT projections

		EBIT effects (in EUR million)				
Segment type	Transformation measure	2024	2025	2026	2027	2028ff
Maritime Combined Transport	Production model/Terminal hub Maschen	[…]	[…]	[…]	[…]	[…]
	Encapsulated production and network redesign	[…]	[…]	[…]	[…]	[…]
	Reduction of administration overhead in all Maritime CT companies (DB Cargo AG, TFG, DBIS)	[…]	[…]	[…]	[…]	[…]
	Portfolio optimisation and price increase	[…]	[…]	[…]	[…]	[…]

Segment type	Transformation measure	*EBIT effects (in EUR million)* 2024	2025	2026	2027	2028ff
Continental Combined Transport and Carrier Sales	Encapsulated production	[…]	[…]	[…]	[…]	[…]
	Reduction of administration overhead in Continental CT	[…]	[…]	[…]	[…]	[…]
	Redimensioning of Kombiverkehr`s network (portfolio optimisation) and price increase	[…]	[…]	[…]	[…]	[…]

Source: Germany's submission of 22 November 2024 (Final Restructuring Plan), page 33.

4.1.4.1.1.6. Restructuring Plan measures in DB Cargo's European Subsidiaries

(213) Germany explains that DB Cargo has foreign subsidiaries in 13 countries: The Netherlands, France, Denmark, Italy, Switzerland, Belgium, the United Kingdom, Spain, Poland and the four EEC (European Eastern Corridor) companies, Czechia, Bulgaria, Romania and Hungary. The subsidiaries largely operate as production cost centres that offer rail services as an extension of railway operations across Europe. Germany submits that the aim of DB Cargo's European network is to offer end-to-end cross-border logistics solutions across the continent with origins and destinations in and outside Germany, and Germany as a transit or shipping/receiving country.

(214) Germany explains that DB Cargo's European subsidiaries account for approximately one-third of its overall employees. They are consequently significant for the economic performance of the company. Germany further submits that those subsidiaries are a crucial part of DB Cargo's Restructuring Plan and have been investigated for cost-saving potentials. Consequently, Germany submits that three overarching cost optimisation levers will be implemented.

4.1.4.1.1.6.1. Restructuring Plan measure 15: European Subsidiaries portfolio optimisation

(215) First, there will be portfolio optimisation through the review of transport operations for profitability and subsequent definition of efficiency measures along the three segments of single wagon transport, block train transport, and combined transport. Germany explains that unprofitable transports will be optimised through a combination of price adjustments, frequency reductions and bundling of origins and destinations, or they will be discontinued by DB Cargo. Germany further explains that this measure is closely aligned with the strategies across all three segments.

4.1.4.1.1.6.2. Restructuring Plan measure 16: European Subsidiaries cost reductions

(216) Second, there will be cost reductions by consolidating depots, e.g. between Germany and The Netherlands or Germany and Switzerland, or reducing office space as part of the DB Cargo Restructuring Plan. Furthermore, Germany submits that DB Cargo production and administrative overhead will be decreased by, for instance, centralising customer service tasks to Control Tower or reduction of external hires.

4.1.4.1.1.6.3. Restructuring Plan measure 17: European Subsidiaries' operational efficiency

(217) Third, operational efficiency increase measures will be implemented as part of the DB Cargo Restructuring Plan through the optimisation of cross-border driver utilisation (e.g. between Germany and The Netherlands or Germany, Switzerland and Italy) and the increase in asset productivity as well as the implementation of a standardised IT infrastructure at DB Cargo.

4.1.4.1.1.6.4. Effects of DB Cargo's European Subsidiaries measures of the Restructuring Plan on DB Cargo's EBIT projections

Table 14

Effects of the European Subsidiaries segment measures of the Restructuring Plan on DB Cargo's EBIT projections

		EBIT effects (€ in million)				
Segment type	Transformation measure	2024	2025	2026	2027	2028ff
European Subsidiaries	Portfolio optimisation	[…]	[…]	[…]	[…]	[…]
	Cost reduction	[…]	[…]	[…]	[…]	[…]
	Operational efficiency	[…]	[…]	[…]	[…]	[…]

Source: Germany's submission of 22 November 2024 (Final Restructuring Plan), page 34.

4.1.4.1.1.7. Restructuring Plan measures in DB Cargo's administration

(218) Germany explains that, in DB Cargo's cross-divisional function, the administration department provides important services for DB Cargo. Germany submits that its Restructuring Plan will address and eliminate inefficiencies arising from redundant processes, overcapacity and services with limited value added.

(219) Germany explains that the reduction in complexity in the various DB Cargo business units is expected to reduce the required administrative capacities and that the measures should lead to an overall reduction of more than 80 full-time employee equivalents as compared to the headcount in July 2023 (ca. 17 % of considered departments) starting as of 2024.

(220) Germany explains that the following DB Cargo cost centres have been analysed in a detailed manner: IT department, (rental) building costs, CEO department, CFO department, offer management department, administrative costs of the domestic subsidiaries and other administrative costs as well as management structures.

4.1.4.1.1.7.1. Restructuring Plan measure 18: Administration's IT standardisation

(221) Germany submits that high running costs result from a high legacy in the IT landscape and sourcing of DB Cargo. Germany explains that, as part of the DB Cargo Restructuring Plan, running costs will be reduced by the optimisation of service level agreements, cloud solutions and modernisation of current applications as well as the shutdown of outdated applications. Additionally, Germany indicates that the IT project portfolio will be significantly reduced and personnel staffing through an external service provider will be decreased.

4.1.4.1.1.7.2. Restructuring Plan measure 19: Administration's office space reduction

(222) Germany explains that DB Cargo currently leases many properties in Germany (approx. 760). Due to increased remote working, Germany submits that DB Cargo will terminate rental agreements and therefore save approx. 25 % of rental costs at its main locations (Mainz, Duisburg, Mannheim, Munich, Berlin and Leipzig) in 2024. Starting in 2025, Germany indicates that DB Cargo will also reduce office space in all other locations across Germany following the reduction of production-related staff in all DB Cargo Management Regions.

4.1.4.1.1.7.3. Restructuring Plan measure 20: Administration's marketing and strategic activities with DB AG reduction

(223) Germany explains that, in DB Cargo' strategy and policy/regulation areas, the duplication of tasks will be eliminated leading to reduced resource requirements. Additionally, Germany submits that the relatively high marketing budget of DB Cargo will be revised downwards as with fewer marketing campaigns and projects DB Cargo's need for marketing operations will be reduced.

4.1.4.1.1.7.4. Restructuring Plan measure 21: Administration's manual finance processes digitalisation and automation

(224) Germany explains that DB Cargo's CFO department comprises the main organisational units Accounting & Billing, Entity Controlling, and Product Controlling & Steering Logic. Germany explains that the currently high number of manual administrative processes in all areas will be digitised or automated, in particular in the area of billing and reporting processes, which will comprehensively reduce administrative overheads.

4.1.4.1.1.7.5. Restructuring Plan measure 22: Administration's offer management and service design departments rightsizing

(225) Germany explains that the duplications of tasks and responsibilities in DB Cargo's offer management and service design departments have led to the development of oversized structures with considerable potential for optimisation. As part of DB Cargo's Restructuring Plan, the numbers of personnel in those areas will be reduced.

4.1.4.1.1.7.6. Restructuring Plan measure 23: Administration's structure and domestic sales subsidiaries' harmonisation

(226) Germany explains that the separation of tasks and responsibilities of DB Cargo's internal sales departments and sales subsidiaries is unclear. Germany submits that DB Cargo plans to achieve savings in administrative overhead through the consolidation of duplicate functions.

4.1.4.1.1.7.7. Restructuring Plan measure 24: Administration's management structure rightsizing

(227) Germany submits that, due to the historical development of parallel structures within DB Cargo, there is an above-average number of executives, which leads to inefficiencies and high personnel costs, such as the duplication of tasks between the individual DB Cargo departments and the domestic and foreign subsidiaries. Germany further submits that organisational complexity also increases the administrative and management effort. Germany indicates that the Restructuring Plan provides for a reduction of executive positions in administrative departments by e.g. merging teams or outsourcing activities.

4.1.4.1.1.7.8. Restructuring Plan measure 25: Administration's other costs reduction

(228) Germany explains that other administrative costs to be reduced as part of the Restructuring Plan costs savings measures include employee benefits and an oversized catering offering (given the increased use of remote working).

4.1.4.1.1.7.9. Effects of DB Cargo's Administration measures of the Restructuring Plan on DB Cargo's EBIT projections

Table 15

Effects of the Administrations measures of the Restructuring Plan on DB Cargo's EBIT projections

		EBIT effects (€ in million)				
Segment type	Transformation measure	2024	2025	2026	2027	2028ff
Administration Overhead	Review of IT landscape towards more standard- ization	[…]	[…]	[…]	[…]	[…]
	Reduction of office spaces with comparatively high ancillary costs	[…]	[…]	[…]	[…]	[…]
	Scale-down of marketing and strategic activities with DB AG	[…]	[…]	[…]	[…]	[…]
	Digitalization and automation of manual finance processes	[…]	[…]	[…]	[…]	[…]
	Rightsizing of offer management and service design departments	[…]	[…]	[…]	[…]	[…]
	Harmonization of structures of DB Cargo and domestic sales subsidiaries	[…]	[…]	[…]	[…]	[…]
	Rightsizing of management structures	[…]	[…]	[…]	[…]	[…]
	Reduction of other administrative costs	[…]	[…]	[…]	[…]	[…]

Source: Germany' submission of 22 November 2024 (Final Restructuring Plan), Page 36.

4.1.4.1.1.8. Restructuring Plan measures in DB Cargo's production-related and Control Tower overhead

(229) Germany explains that, in the production-related and Control Tower overhead, DB Cargo's Restructuring Plan will focus on complexity reduction in planning, resources availability and steering, in particular reducing the service catalogue and simplifying the processes in order to lower the resource required to perform the respective tasks.

(230) In that context, Germany submits that the measures simplifying the production models in each DB Cargo segment, e.g. the move from an integrated production towards dedicated segment-specific production systems, will lead to simplified processes in the production-related overhead and in the Control Tower. As a direct result of the more robust network, Germany explains that less DB Cargo capacity is required for, e.g. planning and scheduling trains and for steering production facilities. Germany further submits that similar effects will be realised through significantly lower interfaces and alignment needs between the planning/dispatching of the different DB Cargo segments.

(231) Germany explains that DB Cargo plans that the introduction of process simplification will lead to significant reductions in staff required for planning and dispatch, maintenance, in the Control Tower and the encapsulation of combined transport. For planning and dispatch, Germany submits that the main DB Cargo approach is to merge functions to increase synergies, increase automation and reduce non-essential process steps, which should lead to a reduction of required personnel by more than 50 full-time employee equivalents as compared to July 2023. The following measures to that effect are included in the Restructuring Plan.

4.1.4.1.1.8.1. Restructuring Plan measure 26: Production-related and Control Tower's integration of asset steering and personnel scheduling

(232) Germany explains that integrating the DB Cargo functions of asset management (the scheduling of train marshalling yards (ZBA)) and personnel scheduling results in unified oversight through the planning staff. The planning staff's 'role is limited to defining the immediate timeframe (from Thursday to the Sunday of the subsequent week). Germany further explains that any shift modifications made subsequent to the commencement of the planning are managed by the ZBA scheduling, which factors in the consequences of downstream scheduling for the following week (such as employee rest intervals). Germany considers that this cultivation of mutual consideration in planning and execution aspects leads to a diminished requirement for DB Cargo personnel dispatchers, consequently enabling a reduction in DB Cargo staff.

4.1.4.1.1.8.2. Restructuring Plan measure 27: Production-related and Control Tower's detailed planning reduction

(233) Germany explains that by streamlining the DB Cargo planning procedures, it becomes possible to achieve a noteworthy reduction in essential tasks, leading to a decrease in the workforce required for asset planning. More particularly, Germany submits that, in the forthcoming scheduling of DB Cargo train marshalling yards (ZBA) and interchange stations (Kbf), the focus will be on conducting only annual preliminary planning. This planning will be constrained to fulfilling minimum shift requisites and will not involve modifications throughout the year. Additionally, collaborative planning will be developed for the DB Cargo ground personnel of shunters (AB) and wagon masters (TWB).

4.1.4.1.1.8.3. Restructuring Plan measure 28: Production-related and Control Tower's crew dispatching functions consolidation

(234) Germany explains that, to decrease the number of DB Cargo regional train dispatchers and regional network managers, in the future, the DB Cargo area controller will also assume the responsibilities of the local area dispatcher. Germany submits that dispatching will occur either from the central control centre or directly on-site, and that this process will be executed in close collaboration with the network managers stationed in the control tower.

4.1.4.1.1.8.4. Restructuring Plan measure 29: Production-related and Control Tower's long-distance shift planning process optimisation

(235) Germany explains that, through the implementation of the IPS (integrated planning and steering) system, DB Cargo's long-distance shift planning process is poised for optimisation and automation, yielding substantial capacity efficiencies. Germany further explains that, in the envisioned VT (days of operation) state, the amalgamation of VT, KT (calendar days), and fine-shift planning will be orchestrated through IPS, featuring both consolidation and automation. Germany submits that this unified approach assumes procedural and regional responsibility for all DB Cargo route assignments. Germany submits that the outcome is a singular, overarching shift information, encompassing both long-distance and short-distance operating personnel. Germany considers that these process enhancements bear the potential to generate noteworthy capacity savings in planning for DB Cargo.

4.1.4.1.1.8.5. Restructuring Plan measure 30: Production-related and Control Tower's maintenance digitisation

(236) Germany explains that maintenance digital solutions will be implemented to reduce the required personnel and save DB Cargo costs until 2027 by, for instance, substantially reducing the supervisory role of the MöB (local commissioning personnel) over the facilities through the seamless integration of Asset & Maintenance and leveraging digital solutions such as BISON (image-based malware detection) and WMS (workshop management system). Germany further explains that such a shift implies that not every supplementary action needs explicit approval, as the facilities will proactively operate under their own responsibility. Rather than relying heavily on stringent oversight, future control measures will pivot towards cost-effective strategies and performance-based evaluation. Germany considers that these measures should curtail excessive maintenance activities on DB Cargo freight cars. Moreover, the forthcoming adoption of (virtual) centralisation, facilitated by camera detection, promises a more streamlined management of peak workloads. Germany consequently concludes that this Restructuring Plan measure holds the potential for DB Cargo's MöB to reallocate capacities, ushering in a more efficient operational framework.

4.1.4.1.1.8.6. Restructuring Plan measure 31: Production-related and Control Tower's efficiency improvement

(237) Germany explains that DB Cargo's Control Tower is a central hub for coordinating operations with customers. Its main role is to oversee shipments across Europe, involving all partners from beginning to end. It merges the customer's perspective with production feasibility to optimise solutions for customers, focusing on efficiency and results for DB Cargo. The Control Tower manages over 650 000 trains and over 7 million shipments annually throughout Europe. It was established in 2022, originating from the former DB Cargo Customer Service and Operations Centre.

(238) Germany explains that DB Cargo's Restructuring Plan includes several initiatives to increase the efficiency of the Control Tower. On the one hand, those initiatives focus on the development and introduction of further IT processes/applications, which will make it possible to significantly reduce manual works. On the other hand, those initiatives focus on the further implementation of integrated performance management and the redesign of the customer interface – introducing standards that will replace the current large number of individual solutions while considering respective customer requirements. Germany considers that such initiatives will result in a reduction of required DB Cargo personnel by more than 200 full-time employee equivalents as compared to the number of such employees in July 2023 (ca. 18 % of considered departments excluding the share for combined transport).

(239) Germany further explains that the new strategy for each DB Cargo sub-segment in combined transport leads to further reductions of production-related and Control Tower overhead. Germany considers that, overall, a reduction of ca. 130 full-time equivalents in DB Cargo's production overhead and ca. 155 full-time equivalents in the Control Tower (both figures are additional to the figures previously highlighted in the preceding sections) should be expected. About 50 % of this personnel reduction at DB Cargo will take place at the level of the subsidiaries. On that basis, Germany considers that significant costs savings can be realized by reducing overhead and streamlining processes.

Table 16

Effects of the Production-related and Control Tower overhead measures of the Restructuring Plan on DB Cargo's EBIT projections

		EBIT effects (€ in million)				
Segment type	Transformation measure	2024	2025	2026	2027	2028ff
Production-related and Control Tower overhead measures		[…]	[…]	[…]	[…]	[…]
	Planning and dispatch					
	Maintenance	[…]	[…]	[…]	[…]	[…]
	Control Tower	[…]	[…]	[…]	[…]	[…]
	Encapsulation of combined transport	[…]	[…]	[…]	[…]	[…]

Source: Germany's submission of 22 November 2024 (Final Restructuring Plan), page 38.

4.1.4.1.1.9. Restructuring Plan measures in response to additional materialised risks

(240) Germany explains that a number of risks materialised between 2023 and 2024, which are addressed with mitigating countermeasures as part of an extended transformation and restructuring plan. Some of the risks that materialised and are addressed are reduction in federal budgets for rail freight support schemes, warning strike of train drivers, negative volume developments, personnel and factor cost increases and delays in the ramp-up of the implementation of transformation measures.

4.1.4.1.1.9.1. Restructuring Plan measure 32: Substantial headcount reduction in response to negative volume trends

(241) Germany explains that the decision of the Reconciliation Committee made on 2 October 2024 (recital 186) allows DB Cargo to offset the personnel cost increases resulting from the new collective bargaining agreements. The agreed full-time employee number reflects (i) the decision and implementation of the transformation plan's multiple restructuring measures and, in addition to that; (ii) the reduction of transport volumes; and (iii) an administrative headcount reduction programme known as 'Together Strong', initiated by DB AG to reduce administrative positions in finance, IT and HR (which programme is being executed by DB Cargo on top of the headcount reduction measures already reflected in the transformation plan).

4.1.4.1.1.9.2. Restructuring Plan measure 33: Factor cost reduction in response to negative volume trends

(242) Germany explains that DB Cargo will implement several countermeasures with a direct impact on material costs. These include (i) adapting maintenance schedules as well as retention cycles to the reduced transport volumes; (ii) cancelling all research and development projects for process and asset digitisation with amortisation periods of more than three years; and (iii) accelerating portfolio optimisation in continental combined transport and block train transport.

4.1.4.1.1.9.3. Restructuring Plan measure 34: One-off effects on net income in 2024 in response to negative volume trends

(243) Germany explains that some positive one-off effects on the operating and net income were realised in 2024. These include (i) the sale of no longer usable containers from the terminated DB Cargo business in Russia; (ii) the reduction of consulting and other services; and (iii) scrapping of […] freight wagons in the intermodal transport segment. Additionally, DB Cargo also accounted for a one-off reduction of EUR 51 million in current prices for traction energy from DB Energie in 2024.

4.1.4.1.1.9.4. Restructuring Plan measure 35: DB Cargo maintenance productive increase

(244) Germany explains DB Cargo is implementing a productivity increase programme focused on its in-house locomotive and wagon maintenance. The programme is a cost reduction plan targeting maintenance infrastructure as well as materials and staff-efficiency and is expected to deliver EUR 25 million of cost reductions by 2026 and EUR 100 million of cost reductions by 2030.

4.1.4.1.1.9.5. Restructuring Plan measure 36: DB Group internal services and traction energy costs reduction

(245) Germany explains that due to a general decrease in energy costs in Germany, the energy provider of DB Group, DB Energie, is able to lower its market sales prices for traction energy during the period 2025 to 2030. In addition, the prices of DB AG`s internal IT service provider (DB Systel) will be reduced. The use of artificial intelligence in the creation of digital services is expected to result in substantial increase in productivity.

4.1.4.1.1.9.6. Restructuring Plan measure 37: Depreciation and investment reduction

(246) DB Cargo reviewed the investment budgets for the years up to 2030 and reduced them to the minimum. The reduced investment expenditure will result in a reduction of DB Cargo's depreciation charges. The useful life assumptions for locomotives and wagons will be adjusted with regard to depreciation to the current useful life of the vehicle fleet.

4.1.4.1.1.9.7. Restructuring Plan measure 38: Sale and lease back of locomotives

(247) Germany explains that DB Cargo will sell and lease back […] locomotives which will generate ca. EUR […] in hidden reserves per locomotive.

4.1.4.1.1.9.8. Restructuring Plan measure 39: Locomotives purchase-to-lease conversion

(248) Germany submits that instead of making straight purchases of […] locomotives, DB Cargo will lease them in order to save cash upfront and make the business model more flexible by spreading the leasing costs of such locomotives over time.

4.1.4.1.1.9.9. Restructuring Plan measure 40: Improvements in working capital

(249) Germany explains that DB Cargo will sell EUR […] in receivables by the end of 2024 to increase total cash and limit debt.

4.1.4.1.1.9.10. Restructuring Plan measure 41: Single wagon segment price increases

(250) Germany explains that DB Cargo will develop additional willingness to pay among its customers in the single wagon segment from 2026. It will also pass on the effects of reduced track access and shunting system subsidies which affect the whole rail freight sector in Germany from 2027.

4.1.4.1.1.10. Overall effect of the Restructuring Plan measures on DB Cargo's EBIT projections

(251) Table 17 shows the expected financial effects of the key measures set out in the Transformation Plan on DB Cargo's EBIT projections for the periods indicated.

Table 17

Overall effect of the measures of the Restructuring Plan on DB Cargo's EBIT projections

		EBIT effects (€ in million)				
Segment type	Transformation measure	2024	2025	2026	2027	2028ff
Single Wagon	Network optimization through design review	[…]	[…]	[…]	[…]	[…]
	Overall production optimization measures with effects on single wagon transport	[…]	[…]	[…]	[…]	[…]
	Quality improvement and base price adjustment	[…]	[…]	[…]	[…]	[…]
Block Train	Logistics solutions and portfolio optimization	[…]	[…]	[…]	[…]	[…]
	Robustness increase in production (incl. new collective works agreements)	[…]	[…]	[…]	[…]	[…]
	Quality improvement and base price adjustment	[…]	[…]	[…]	[…]	[…]
Maritime Combined Transport	Production Model/Terminal hub Maschen	[…]	[…]	[…]	[…]	[…]
	Encapsulated production and network redesign	[…]	[…]	[…]	[…]	[…]
	Reduction of admin overhead in all Maritime CT companies (DB Cargo AG, TFG, DBIS)	[…]	[…]	[…]	[…]	[…]
	Portfolio optimization and price increase	[…]	[…]	[…]	[…]	[…]

Segment type	Transformation measure	*EBIT effects (€ in million)* 2024	2025	2026	2027	2028ff
Continental Combined Transport and Carrier Sales	Encapsulated production	[…]	[…]	[…]	[…]	[…]
	Reduction of admin overhead in Continental CT	[…]	[…]	[…]	[…]	[…]
	Redimensioning of Kombiverkehr's network (portfolio optimization) and price increase	[…]	[…]	[…]	[…]	[…]
European Subsidiaries	Portfolio optimization	[…]	[…]	[…]	[…]	[…]
	Cost reduction	[…]	[…]	[…]	[…]	[…]
	Operational efficiency	[…]	[…]	[…]	[…]	[…]
Administration Overhead	Review of IT landscape towards more standardization	[…]	[…]	[…]	[…]	[…]
	Reduction of office spaces with comparatively high ancillary costs	[…]	[…]	[…]	[…]	[…]
	Scale-down of marketing and strategic activities with DB AG	[…]	[…]	[…]	[…]	[…]
	Digitalization and automation of manual finance processes	[…]	[…]	[…]	[…]	[…]
	Rightsizing of offer management and service design departments	[…]	[…]	[…]	[…]	[…]
	Harmonization of structures of DB Cargo and domestic sales subsidiaries	[…]	[…]	[…]	[…]	[…]
	Rightsizing of management structures	[…]	[…]	[…]	[…]	[…]
	Reduction of other administrative costs	[…]	[…]	[…]	[…]	[…]
Production Overhead	Planning and dispatch	[…]	[…]	[…]	[…]	[…]
	Maintenance	[…]	[…]	[…]	[…]	[…]
	Control Tower	[…]	[…]	[…]	[…]	[…]
	Encapsulation of combined transport	[…]	[…]	[…]	[…]	[…]
Total		[…]	[…]	[…]	[…]	[…]

Source: Germany's submission of 22 November 2024 (Final Restructuring Plan), pages 38 and 39.

(252) The following table shows the expected financial effects of the further measures under evaluation for DB Cargo due to risks that materialised in 2023 and 2024 (see recital 240).

Table 18

Overall effect of the countermeasures of the Restructuring Plan on DB Cargo's Base Scenario EBIT projections

	EBIT effect of countermeasures included in base scenario	2025	2026	2027	2028	2029	2030
	EBIT Base Case 2023	[…]	[…]	[…]	[…]	[…]	[…]
	Δ Total materialised risks	[…]	[…]	[…]	[…]	[…]	[…]
	Total of countermeasures	[…]	[…]	[…]	[…]	[…]	[…]
1)	Countermeasures to negative volume trend	[…]	[…]	[…]	[…]	[…]	[…]
	— Headcount below former base case	[…]	[…]	[…]	[…]	[…]	[…]
	— Countermeasures material costs	[…]	[…]	[…]	[…]	[…]	[…]
	— Maintenance productivity increase	[…]	[…]	[…]	[…]	[…]	[…]
	— Further cost optimisation of the single wagon network starting in 2029	[…]	[…]	[…]	[…]	[…]	[…]
	— Reduction of Group contribution, prices for traction energy and prices for IT services	[…]	[…]	[…]	[…]	[…]	[…]
2)	Reduction of depreciation by reduction of investments and consideration of actual useful lives of locos and wagons	[…]	[…]	[…]	[…]	[…]	[…]
3)	Specific price increase single wagon transport in 2026 and passing on the price-effect or reduced federal budgets for support schemes starting as of 2027	[…]	[…]	[…]	[…]	[…]	[…]
4)	Increase in share of subcontracting in block train transport incl. sale of […] locomotives in 2025/2026	[…]	[…]	[…]	[…]	[…]	[…]
5)	Sale and lease back of […] locomotives	[…]	[…]	[…]	[…]	[…]	[…]
6)	Conversion from purchase to lease for […] locomotives	[…]	[…]	[…]	[…]	[…]	[…]
7)	Working capital improvements	[…]	[…]	[…]	[…]	[…]	[…]

Source: Germany's submission of 22 November 2024 (Final Restructuring Plan), page 44.

4.1.4.2. Financing of the restructuring plan

(253) The financing of the Restructuring Plan, and its associated costs, consists primarily of financing stemming from private sources (own contribution) and only partly from financing stemming from State aid.

(254) The restructuring costs and their above-mentioned financing sources are described in the following sections.

4.1.4.2.1. Restructuring costs

(255) DB Cargo's restructuring costs would be totalling EUR 4 187 million, summarised in Table 19, consisting of the following:

(a) Operating losses: Germany indicates that DB Cargo's operating losses between 2022 and 2024 of EUR 858 million in 2022, EUR 584 million in 2023 and EUR 472 million expected in 2024 ([80]) constitute approximately half of the restructuring costs.

(b) Other restructuring costs: during the restructuring period, DB Cargo will also incur other costs related to the restructuring or operating costs that will not be covered by expected revenues in the course of implementation of the restructuring plan and that are necessary for its successful completion, such as :

(a) advisors' costs, labour and staff-related payments of DB Cargo subsidiaries, and costs related to the shift of business to DB Cargo' subsidiaries, as well as

(b) other capital expenses in the investment plan despite its planned reduction in amount, working capital, refinancing costs for loans maturing and operating expenses.

4.1.4.2.2. Sources of financing of the restructuring measures

4.1.4.2.2.1. Restructuring aid

(256) Germany identifies the amounts provided to DB Cargo under the PLTA to cover its operating losses of 2022, 2023 and 2024 as the sources of aid financing of the restructuring costs i.e. EUR 858 million in 2022, EUR 584 million in 2023 and EUR 472 million expected in 2024 ([81]) for a total of EUR 1 914 million.

4.1.4.2.2.2. Own contribution from the beneficiary

(257) Germany identifies the following main sources of DB Cargo's contribution to the restructuring costs and indicates that the financial instruments used as sources of intra-group financing of the restructuring costs are all expected to be issued at market terms, to DB Cargo AG and will all be provided within the restructuring period so as to contribute to the effective financing of the restructuring plan ([82]):

(a) EUR 842 million of subordinated convertible loans available from 15 November 2024 until 31 December 2026 included ([83]), consisting of:

(a) On 15 November 2024, subordinated convertible loans for a total of EUR 218 million until 31 December 2031,

(b) On 1 April 2025, subordinated convertible loans for a total of EUR 110 million until 31 December 2031,

(c) In 2025, subordinated convertible loans for a total of EUR 83 million until 31 December 2031,

(d) On 1 December 2026, subordinated convertible loans for a total of EUR 315 million until 31 December 2031,

(e) In 2026, subordinated convertible loans for a total of EUR 116 million until 31 December 2031.

([80]) Forecast as of 22 November 2024.

([81]) The amount of losses expected to be transferred for 2024 (forecast as of 22 November 2024) includes, without effect on EBITDA and EBT as forecasted, a deferred tax liability estimated to EUR 18 million. The loss transferred by DB Cargo to DB AG thus increases over what would otherwise be transferred without termination of the PLTA.

([82]) Table 29: Loans, credit line facilities, temporary credit lines and Mezzanine Capital (subordinated convertible loans) DB Cargo AG 2025-2029 as provided by Germany in the 'DB Cargo State Aid Restructuring Plan' submitted on 31 October 2024, as updated.

([83]) From §2(1) of the 'Mezzanine loan agreement about a financing framework of EUR [842].000.00' (English translation).

Those loans may be used exclusively for the refinancing of existing loan agreements between the contracting parties ([84]).

The interest rate for disbursed tranches is to be equal to ([85]): (i) EUR swap rate for five years (2,275 % as of mid-November 2024) ([86]); (ii) plus the spread determined according to the market conditions for refinancing of the lender (in September 2024, the spread was […] % per annum for drawings in EUR) and the determined creditworthiness of the borrower (the borrower is currently rated '[…]' by the lender). Ratings are usually reviewed and adjusted annually; and (iii) plus a margin of […] % per year to reflect the subordination of the loans. Such margin was derived from comparing the market valuation of the DB Group's subordinated bond due in 2029 with the maturity comparisons of senior cash bonds of the DB Group. Consequently, the applicable interest rate amounts to […] % on annual basis at present.

In addition, the loans can only be used by DB Cargo if the execution of the restructuring plan is respected at the time of the request. This means, in particular, DB Cargo achieving the following financial ratios ([87]):

[…]	[…]	[…]
[…]	[…]	[…]
[…]	[…]	[…]
[…]	[…]	[…]

Under those loan agreements, the lender (DB AG) is entitled, at any time, to convert one or more outstanding tranche(s) or amounts of outstanding tranches into equity by means of the allocation of DB Cargo's capital reserve provided that DB Cargo has generated a positive annual surplus for at least two consecutive calendar years, up to twice the accumulated annual surplus since 1 January 2025, wherefrom amounts already converted into equity must be deducted ([88]).

Finally, the borrower is not entitled to provide credit or other financial services to third parties (with the exception of the lender and Deutsche Bahn Finance GmbH) ([89]).

(f) EUR 325 million of credit line facility already provided and signed by DB AG available from 1 August 2024 until 31 December 2026 included ([90]). The applicable interest rate for the individual drawdown is calculated on the basis of the interbank lending rate (for instance Euribor 6 months of 2,743 % as of mid-November 2024, on annual basis) ([91]) applicable to the agreed interest period at the time of the loan application (the Reuters market data) plus a margin determined according to the market conditions (currently standing at […] % per annum for drawings in EUR) for the refinancing of the lender and the determined creditworthiness of the borrower. The borrower is currently rated '[…]' by the lender. Ratings are usually reviewed and adjusted on an annual basis. Consequently, the applicable interest rate for e.g. a 6-month period amounts to […] % on annual basis at present.

([84]) From §1(3) of the 'Mezzanine loan agreement about a financing framework of EUR [842].000.00' (English translation).
([85]) From §5(1) and (2) of the 'Mezzanine loan agreement about a financing framework of EUR [842].000.00' (English translation).
([86]) As calculated from publicly available sources such as www.investing.com (https://www.investing.com/rates-bonds/eur-5-years-irs-interest-rate-swap-historical-data) .
([87]) From §2(3) of the 'Mezzanine loan agreement about a financing framework of EUR [842].000.00' (English translation).
([88]) From Section 7(a) of the 'Mezzanine loan agreement about a financing framework of EUR [842].000.00' (English translation).
([89]) From §12 of the 'Mezzanine loan agreement about a financing framework of EUR [842].000.00' (English translation).
([90]) From §1(1) and (2) of the 'A framework contract about a credit line in the amount of EUR 325 000 000,00' (English translation).
([91]) As publicly available from sources such as www.euribor-rates.eu (https://www.euribor-rates.eu/en/).

Under that loan agreement, DB Cargo is not entitled to provide credit or other financial services to third parties (with the exception of the lender and Deutsche Bahn Finance GmbH) ([92]).

In addition, DB Cargo undertakes to obtain the prior approval of the DB AG credit committees for the following commercial policy decisions ([93]):

(a) provided that DB Cargo has made use of the credit line of EUR 250 million or less at the relevant time: (i) investment and divestment projects, which are not part of the current medium-term business planning, totalling more than EUR 10 million per project; and (ii) entering into other future commitments, which are not part of the current medium-term business planning, totalling more than EUR 10 million per project;

(b) provided that DB Cargo has made use of the credit line of more than EUR 250 million at the relevant time: (i) investment and divestment projects with a total volume of more than EUR 5 million per project; and (ii) entering into other future commitments exceeding EUR 5 million per project;

(c) in the case of Sale & Lease Back Projects, DB Cargo commits to having the market conditions checked by the lender.

Finally, the provision of the credit line facility is subject to DB Cargo undertaking to ensure that the following financial ratios are complied with and, if necessary, to take remedial action to prevent the ratio from being overrun. If the ratio is exceeded, the creditor has the right to terminate the credit agreement ([94]).

[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]

(b) EUR 434 million of temporary credit line already provided and signed by DB AG available from 1 August 2024 until 31 March 2025 included ([95]) at market terms. The applicable interest rate is calculated on the basis of the interbank interest rate applicable for the agreed interest period (for instance Euribor 6 months of 2,743 % as of mid-November 2024, on annual basis) ([96]) at the time of the loan application (on the basis of real time market data from Reuters) plus a margin determined according to the market conditions (currently standing at […] % per annum for drawings in EUR) for the refinancing of the lender and the determined creditworthiness of the borrower ([97]). The borrower is currently rated '[…]'. Ratings are usually reviewed and adjusted on an annual basis. Consequently, the applicable interest rate for e.g. a 6-month period amounts to […] % on annual basis at the time of the Commission's decision.

([92]) From §12(1) of the 'A framework contract about a credit line in the amount of EUR 325 000 000,00' (English translation).
([93]) From §12(2) of the 'A framework contract about a credit line in the amount of EUR 325 000 000,00' (English translation).
([94]) From §12(3) of the 'A framework contract about a credit line in the amount of EUR 325 000 000,00' (English translation).
([95]) From §1(1) and (2) of the 'A framework contract about a bridging credit line ("bridge finance") in the amount of EUR 434 000 000,00' (English translation).
([96]) As publicly available from sources such as www.euribor-rates.eu (https://www.euribor-rates.eu/en/).
([97]) From §5(1) of the 'A framework contract about a bridging credit line ("bridge finance") in the amount of EUR 434 000 000,00' (English translation).

Until the full repayment of all amounts of credit outstanding under those credit lines, DB Cargo undertakes not to provide any security to other creditors, in particular in the form of encumbrances in respect of its present or future assets, unless the lender has given its prior written consent to the granting of such guarantees ([98]).

(c) EUR [460-560] million of divestments to be executed until 2026 (as described in recitals 305(a) and 318), consisting of:

(a) the expected asset (locomotives) sale due to an increased share of subcontracting in block train transport for approximately EUR […] million in 2025 to 2026;

(b) the planned sale of surplus locomotives in combined transport for approximately EUR […] million in 2025 to 2026;

(c) the planned sale of surplus locomotives from the German-French corridor for approximately EUR […] million in 2025 to 2026;

(d) the divestiture of selected subsidiary shareholdings ([…]) for approximately EUR […] million in 2025; and

(e) the expected sale of a substantial share in DB Cargo's […] in 2025 to 2026.

(f) Factoring by […] EUR [100-140] million of receivables held by DB Cargo, which have an advantageous credit profile and consequently lower financing costs.

(g) Takeover by DB JobService GmbH of wage and redundancy payments for DB Cargo employees totalling EUR [100-140] million that are triggered by the restructuring plan, in application of collective labour agreements and DB AG group regulations applied within. DB JobService GmbH acts as the group employment and placement agency, which DB AG has interest in centralising in an 'in-house' job market, because of the synergies and cost savings in terms of skill-matching or amount of severance payments compared to outsourcing the agency to third party providers.

(258) The beneficiary's own contribution to restructuring costs resulting from the various sources of finance put forward by the German authorities as summarised in Table 19 would amount to a total of EUR 2 291 million, 54 % of the EUR 4 205 million restructuring costs, as resulting from the estimation.

Table 19

Summary of the restructuring costs and sources of their financing

(EUR million)

RESTRUCTURING COSTS	MEUR	SOURCES OF FINANCE	MEUR
Actual operating losses (2022 to 2023)	1 442	**Own contribution**, of which	**2 291**
Expected operating losses (2024)	472	Subordinated convertible loans DB AG	842
Expected operating losses (2025)	[…]	Credit line facility DB AG	325
Personnel related expenses (JobService GmbH)	[…]	Temporary credit line DB AG	434
Other costs of shifting business to DB Cargo subsidiaries	[…]	Divestitures	4 […]
Refinancing of loans maturing, CAPEX, OPEX, working capital	2 020	Factoring of receivables	[…]
		Contribution from JobService GmbH	[…]
Total Restructuring Costs	**4 205**		
		Restructuring aid, of which	**1 914**
		Actual PLTA Coverage (2022-2023)	1 442
		Expected PLTA Coverage (2024)	472

([98]) From §14(2) of the 'A framework contract about a bridging credit line ("bridge finance") in the amount of EUR 434 000 000,00' (English translation).

4.1.4.2.3. Financial projections in baseline and pessimistic scenario

(259) Germany explains that the assumptions under which DB Cargo currently implements a comprehensive Restructuring Plan all aim at regaining profitability for the company. DB Cargo developed its Restructuring Plan in close collaboration with external consultants as advisers. Germany indicates that the Restructuring Plan is already under implementation and that the legally required consultations with workers' representatives of DB Cargo with regard to personnel measures have been initiated.

(260) Germany explains that the underlying cost assumptions between 2025 and 2029 are based on DB group's projections, except for the cost development for locomotives and freight wagons, which are subject to the general inflation development expectations. Between 2025 and 2029 the projected development of costs is as follows:

Table 20

Cost assumptions 2025-2029

Cost categories (YoY development)	2025	2026	2027	2028	2029	CAGR 2025-2029
Energy	[…]	[…]	[…]	[…]	[…]	[…]
Route	[…]	[…]	[…]	[…]	[…]	[…]
DB network facilities	[…]	[…]	[…]	[…]	[…]	[…]
Service purchase int.	[…]	[…]	[…]	[…]	[…]	[…]
Service purchase nat.	[…]	[…]	[…]	[…]	[…]	[…]
Service exchange int.	[…]	[…]	[…]	[…]	[…]	[…]
Service exchange nat.	[…]	[…]	[…]	[…]	[…]	[…]
Operational personnel	[…]	[…]	[…]	[…]	[…]	[…]
Overhead personnel	[…]	[…]	[…]	[…]	[…]	[…]
Other Costs	[…]	[…]	[…]	[…]	[…]	[…]

Source: Germany's submission of 22 November 2024 (Final Restructuring Plan), page 57.

(261) Germany submits that the assumptions of the baseline scenario of the Restructuring Plan affect all of DB Cargo's business segments (single wagon transport, block train transport, combined transport) and stand on four main pillars.

(262) First, a radical change of the production system is proposed, dissolving interlinkages between business segments and strengthening management incentives for separate business lines. This change will reduce complexity of operations and, hence, increase the robustness and quality of production of DB Cargo's output across all segments. The change in the production system will also allow the reduction of overhead.

(263) Second, by prioritising profitability over growth, DB Cargo focuses on those segments and customers for which DB Cargo holds, or will achieve after the implementation of the Restructuring Plan, a competitive market position, i.e. where it can produce at lowest costs or offers a unique product portfolio.

(264) Third, DB Cargo is open for and actively exploring opportunities to flexibilise the business and team up with third-party partners in order to implement subcontracting agreements or to create joint ventures in markets with future growth opportunities if and when such opportunities would materialise in the future.

(265) Finally, the Restructuring Plan entails a substantial change in how single wagon transportation is organised. Germany submits that, together with a public funding scheme for single wagon transport, this measure should allow to bring this structurally disadvantaged segment back to profitability.

(266) As a result of the Restructuring Plan, Germany indicates that, under the baseline scenario, DB Cargo is expected to achieve profitability in 2026 and maintain profitability on a lasting basis (with a positive EBIT target of EUR 251 million in 2028 and EUR 268 million in 2030). This implies an EBIT margin of 6.3 % in 2028 and also in 2030, which Germany indicates would be in line with current industry benchmarks.

(267) The baseline scenario takes into account the fact that, while the overall market position of DB Cargo in the German rail freight sector will, as in earlier years, most likely further decline, DB Cargo expects a relatively stable absolute production output in the coming years for single wagon and block train transport (as opposed to a decline in combined transport), thereby contributing to the competitiveness of rail freight and, hence, an increased modal share of rail.

(268) Germany further submits that the Restructuring Plan assumes significant contributions from DB Cargo's workforce with respect to increased flexibility and the implementation of new, optional (but rewarded) shift models with longer operating times for train drivers. On 2 October 2024, DB Cargo's Reconciliation Committee agreed on a workforce reduction of 4 582 full-time employees by the end of December 2026 (approximately 25 % of workforce when compared to December 2023) which will be increased to 4 943 full-time employees (approximately 27 % of workforce) by the end of December 2029.

(269) Given the current economic environment, characterised by a lack of skilled workers, the increasing private-sector demand for sustainable modes of transport and the financial support of the single wagon segment, Germany considers that the Restructuring Plan will benefit from positive external conditions and that the return to viability will be achieved within the restructuring period.

(270) On the basis of the above considerations, Germany submits that the baseline scenario of DB Cargo's Restructuring Plan will enable the company to return to viability by the end of the restructuring period (31 December 2026) when it is expected to show a positive net income of EUR 95 million.

(271) Germany explains that such a financial performance is expected to be delivered thanks to the generation of a positive EBIT already by 2026 (with EUR 188 million) resulting from a moderate growth of the revenues ([…]) relative to the cost base, which is expected to remain essentially flat over the restructuring period ([…]) combined with a substantial restructuring of the workforce ([…]) and a productivity increase by making the business more flexible (costs of materials and other operating expenses […]).

(272) Germany submits that the moderate growth of the revenues in the baseline scenario results essentially from the various Restructuring Plan measures outlined above under Section 4.1.4. (4.1.4.1.1.2.) and in particular the following ones:

(a) Single wagon load segment: the resulting product quality improvements will allow for base price adjustments and the expected federal single wagon transport subsidy is expected to contribute to the single wagon load segment being operationally positive in 2026 and return to a reasonable profitability on net income level from 2027 onwards. The price development reflects a pass-through of factor cost increases. As a result,

between 2025 and 2030 the single wagon segment is projected to experience a moderate volume increase with a compounded annual growth rate ('CAGR') of […] % while prices are expected to steadily rise at a CAGR of […] %. Germany however underlines that, without the federal single wagon support and despite the applicable Restructuring Plan measures, this segment would continue to be loss making.

(a) Block train segment: based on gains in productivity and quality, DB Cargo expects to be able to moderately increase prices at a projected compounded annual growth rate CAGR ([99]) of ca. […] % in the market. Furthermore, an additional revenue potential from freight structure effect due to the changed global political situation (e.g. favouring energy and defence) is expected. As a result, between 2025 and 2030, the block train segment is projected to experience a marginal volume increase with a CAGR of […] % while prices are expected to steadily rise at a CAGR of […] %. The price development reflects a pass-through of factor cost increases.

(b) Combined transport segment: partnership options are explored in market segments with future growth opportunities, i.e. in the maritime combined transport segment. Between 2025 and 2030 the maritime combined transport segment is projected to experience a moderate volume increase with a CAGR of […] % while prices are expected to steadily rise at a CAGR of […] %. The price development reflects a pass-through of factor cost increases.

(273) On the other hand, Germany explains that the reduction of the costs in the baseline scenario results primarily from the various Restructuring Plan measures outlined above under Section 4.1.4. (4.1.4.1.1.2.) and in particular the following ones:

(a) Single wagon load segment: the radical change of the production system (encapsulation) and a fundamental revision and re-design of DB Cargo's single-wagon network through, among others, the increase of the travel frequencies on long runs, a revision of feeder and distribution services as well as a standardisation of the commercial offering.

(b) Block train segment: the transition towards becoming a smart logistics provider through (i) a customer portfolio optimisation towards complex and innovative rail transport solutions and the implementation of a dedicated shuttle services for important customers; and (ii) the increase of the robustness and quality of production, inter alia by separating block train production from single wagon transport and productivity gain through more flexible labour agreements with longer operating times for train drivers (on a voluntary basis) and the use of external service providers.

(c) Combined transport segment: the encapsulation of the production and the build-up of standalone businesses with dedicated resources, which DB Cargo expects will strengthen management incentives (based on end-to-end ownership) and, hence, efficiency. Key measures are the optimisation of the portfolio by phasing-out non-profitable transports (e.g. reduction of ca. […] % of volume in carrier sales), changing the offered network for continental combined transport and implementing a revised production model which gradually eliminates the present model of shunting all maritime wagons in a single hub in Maschen (close to the port of Hamburg). In addition, processes will be streamlined to specific business needs. Moreover, the Reconciliation Committee agreed, on 2 October 2024, to modify the existing labour regulations of DB Cargo with respect to combined transport. Germany explains that this leads to a substantial simplification of the DB Cargo business model for combined transport which will deliver the same amount of productivity increase as was delivered by the proposal made previously of decreasing traction provision by DB Cargo and transferring that to traction subsidiary companies with more flexibility in their labour agreements and therefore higher productivity of train drivers (e.g. layover in outstation, special travel time compensation). Germany further explains that having reached this agreement in October 2024 will enable DB Cargo to reduce own train drivers, production-related overhead and Control Tower staff due to the new labour regulations which allow increased productivity. Therefore, DB Cargo will not need to shift operations to traction subsidiary companies. The

([99]) CAGR means compound annual growth rate.

measures lead to a reduction of approximately 330 full-time equivalents train drivers, approximately 130 full-time equivalents in production planning and steering overhead employees as well as approximately 155 Control Tower full-time equivalent positions when compared to the actual number of such positions in July 2023. On that basis, Germany considers that significant costs savings can be realised by DB Cargo in that segment as well.

(274) Furthermore, Germany adds that the Restructuring Plan includes measures addressing the administrative and production overhead. On the one hand, Germany expects that the profit-over-growth principle and the portfolio optimisation will allow for a reduction of overhead costs, e.g. in terms of staff and all staff-related costs such as office space rental costs. On the other hand, Germany explains that the Restructuring Plan will implement several efficiency measures, including a far-reaching standardisation of IT structures, the reduction of duplicate organisational structures as well as revised planning, dispatch and Control Tower procedures and that such measures should contribute to decreasing costs and provide the ability to offer profitable services at a competitive price. These measures will sum up to a reduction of more than 400 full-time equivalents as compared to the actual number of such positions in July 2023 (in addition to the measures for combined transport, already described above).

(275) Germany further emphasises that DB Cargo's Restructuring Plan differs from past efforts to increase efficiency and profitability of the company. In particular, Germany explains that it goes beyond more gradual measures to improve operational efficiency by fundamentally changing DB Cargo's production processes, as well as its organisational structure and corporate strategy.

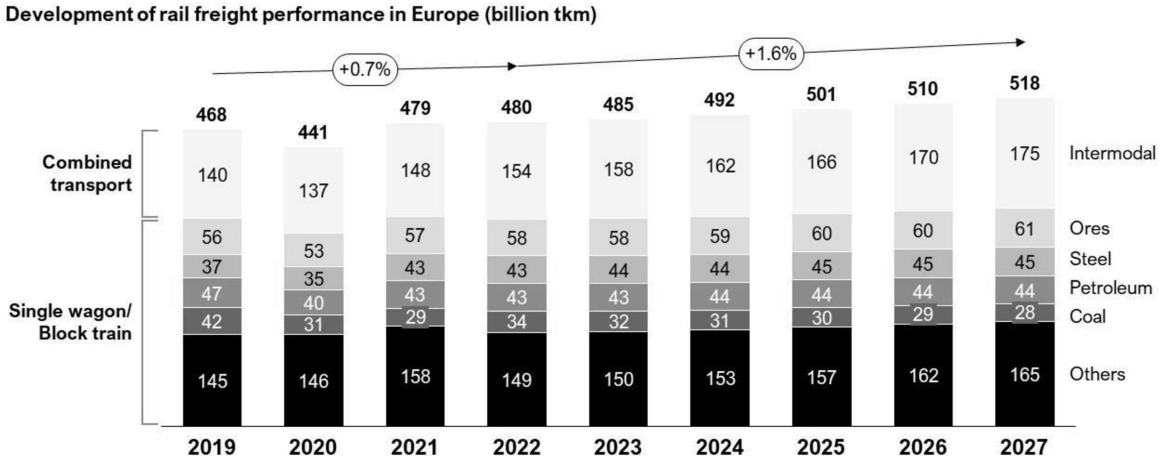
(276) Germany adds that the external conditions for a successful implementation of the Restructuring Plan would be more favourable than in the past, for the following reasons.

(a) In addition to an underlying growth of key industries, political support (such as emission trading schemes) and investments into rail infrastructure are expected to drive market growth in rail freight. Indeed, while the modal share of rail freight stagnated in the past, Germany argues that there is now a strong commitment both from the German government and the European Commission to increase the modal share of rail freight and that the higher priority they assign to decarbonising the transport sector in the context of climate protection policies will result in higher infrastructure investments in rail freight and direct financial support to compensate for existing structural disadvantages of the single wagon networks versus transportation by trucks.

(b) Moreover, Germany considers that, hand in hand with the public sector, private-sector demand for carbon-neutral transport modes is increasing and that this should lead to a higher willingness to pay for rail freight solutions by existing and future customers, which, in turn, Germany expects will contribute to strengthening rail in the intermodal competition with road transport.

(c) Finally, Germany submits that the demographics are currently rapidly changing within DB Cargo and, as such, support the implementation of the Restructuring Plan as the employees who entered the company in the large recruitment programmes during the 1980s, are now starting to retire from the company, which leads to attrition rates due to retirement of more than 3,5 % annually – a process which is going to last until the end of the 2020s. Germany argues that this process supports the Restructuring Plan of DB Cargo, as redundancies will not result in a great need for lay-offs.

(277) As a result of the above, while external circumstances such as trade conflicts and the COVID-19 pandemic have led to a reduced economic activity and therefore, slightly lower demand for rail freight in the recent past (similar development to other freight transport segments), in the coming years, the rail freight market is expected to grow again, with a CAGR of 1,6 % from 2022 to 2027.



Source: Germany's submission of 31 October 2023, p. 2024, 58, data from consulting firm SCI/Verkehr.

(278) When considering each separate business segment individually, Germany submits the following considerations with respect to volume growth:

(a) Single wagon / Block train: Germany explains that a broad variety of goods are transported in single wagons or block trains. Some of the most relevant good types are ore, steel, petroleum, coal, chemicals, automotive, waste and consumer goods. Similar to combined transport, block train and single wagon transports have been hit by macroeconomic disruptions in the past few years, leading to a 7 % decline in 2020 with a swift recovery in the following year (2021: 8,6 %).

(b) For the years from 2022 to 2027, an overall moderate rail freight volume growth of a CAGR of 0,8 % annually is expected. Germany submits that this growth is driven by the development of the underlying industries. Driven by an economic shift towards the production of semi-finished goods or the trend towards renewable energy sources, demand for some of the raw materials (especially ore and coal) is not growing across Europe. As a consequence, demand for block trains and single wagon transports is expected to remain stable or decline in these industries. Other types of products (e.g. steel, chemicals, automotive, consumer goods) are expected to generate additional demand for block trains and single wagon transports. For example, a strong growth is expected in the automotive industry (CAGR of 8,6 % between 2022 and 2027), as it recovers from past challenges e.g. supply chain disruptions. At the same time, new markets are developing that are expected to offer further growth potential for rail freight. Germany explains that examples of those business opportunities include rail pipeline solutions for green hydrogen which need railway connections to bridge gaps in the existing pipeline networks, logistic concepts for car-battery production as well as the decarbonisation of the steel industry in Europe which will lead to new circular economy solutions with scrap metals playing a much larger role in steel production in the years to come. Required transport volumes may lead to a rail freight revival as a result of those developments.

(c) Combined transport: Germany indicates that combined transport accounts for a third of the European rail freight market and is also driving growth with rates that historically have been above average, showing strong recovery after the COVID-19 pandemic at a rate of 8,6 % in 2021 and 3,2 % in 2022, resulting in a CAGR of 4,2 % annually between 2017-2022. For the years to come, Germany explains that the growth is expected to remain high at a CAGR of 2,6 % (2022-2027) mainly driven by GDP growth. Furthermore, Germany submits that combined transport will benefit due to increasing volumes especially of finished goods, rising maritime traffic at key European ports, increasing containerisation and new handling technologies for semi-trailers. At the same time, combined transport is becoming more accessible due to infrastructure investments (especially terminals) that allow to increase capacity in line with demand growth.

(279) Considering the above-mentioned market growth expectations, Germany submits that volume growth assumptions of DB Cargo are conservative and that in the short- and medium-term DB Cargo is not relying on market driven growth in single wagon transport. Germany considers that, in the block train and combined transport segments, DB Cargo's planning is below the market growth rate.

(280) Germany finally submits that the above Restructuring Plan considerations have to be assessed against the background not only of a strong intermodal competition with road transport, but also of a highly competitive rail freight market from an intramodal perspective. In that context, Germany explains that operators other than DB Cargo hold a combined share of 57 % of the rail freight transport volume in Germany (in tonne-kilometres in 2022), which is a significant share compared with other Member States in Europe. In that respect Germany indicates that, despite being the former incumbent operator, DB Cargo's share in the rail freight transport volume in Germany is the second-lowest share of any incumbent operator in their respective domestic country of all Member States in which DB Cargo is active. Germany further indicates that, for example, LINEAS holds a share of 57 % in Belgium, Groupe SNCF holds a share of 67 % in France and CD Cargo holds a share of 65 % in Czechia. At the same time, DB Cargo's share in the German rail freight transport volume has decreased by 11 percentage points since 2016.

4.1.4.2.3.1. Baseline scenario financials

(281) On the basis of the above assumptions used for the financial projections of DB Cargo's Restructuring Plan, Germany explains that the baseline scenario of the Restructuring Plan takes into account a number of developments which have taken place in 2023 and early 2024 such as train drivers strikes (between January and April of 2024), the reduction in federal budgets for support schemes, negative volume trend (without strike and including the loss of transport volumes due to price pass-through) due to economic slowdown, inflation and personnel wage increases, the increased price competition and the delay in some of DB Cargo's Restructuring Plan measures. Germany indicates that, in that context, the baseline scenario also includes countermeasures (recital 242) aimed at addressing the adverse effects of those developments so as for DB Cargo to achieve the return to viability within the restructuring period.

(282) Table 21 shows the quantified effect of the baseline scenario in the form of DB Cargo's projected income statement during the restructuring period (1 January 2022 to 31 December 2026).

Table 21

DB Cargo's Baseline Scenario Income Statement

(EUR million)

	Actual 2021	Actual 2022	Actual 2023	Forecast 2024	Plan 2025	Plan 2026	Plan 2027	Plan 2028	Plan 2029	Plan 2030
Revenue	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Other operating income	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total performance	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Cost of materials	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Personnel expenses	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Other operating expenses	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Intercompany services	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

(EUR million)

	Actual 2021	Actual 2022	Actual 2023	Forecast 2024	Plan 2025	Plan 2026	Plan 2027	Plan 2028	Plan 2029	Plan 2030
EBITDA	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Depreciation	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
EBIT	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
EBIT margin	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Net interest	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Income from investments	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Other financial income	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Extraordinary income	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
EBT	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Taxes	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
EAT	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Profit and loss transfer	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Net income	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: submission of 22 November 2024 (Final Restructuring Plan), page 16.

(283) As can be seen from Table 21, Germany expects DB Cargo to still report a loss of EUR 348 million in 2024 at EBIT level while, as of 2026, the Baseline scenario of DB Cargo's Restructuring Plan indicates positive EBIT figures, starting with EUR […] million by the end of the restructuring period (end of 2026) thanks, in general, to new production concepts allowing productivity gains and personnel cost reductions in response to the volume losses.

(284) Despite still being planned to be negative until 2025 (with EUR […]), the Net Income is also planned to turn positive by the end of the restructuring period (with EUR […]), showing a steady increase thereafter.

(285) With respect to DB Cargo's projected balance sheet metrics, as can be seen from Table 22, Germany expects DB Cargo to maintain a positive equity position throughout the restructuring period (1 January 2022 to 31 December 2026) and beyond.

Table 22

DB Cargo's Baseline Scenario Balance Sheet

(in EUR million)

	Actual 2021	Actual 2022	Actual 2023	Forecast 2024	Plan 2025	Plan 2026	Plan 2027	Plan 2028	Plan 2029	Plan 2030
Total assets	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Non-current assets	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Property, plant and equipment	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Intangible assets	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Financial assets	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Current assets	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Inventories	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Trade receivables	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Other receivables and assets	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Financial receivables	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Cash and cash equivalents	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total liabilities	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Equity	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Liabilities	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Provisions	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Financial liabilities	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Trade accounts payable	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Other liabilities	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Germany's submission of 22 November 2024 (Final Restructuring Plan), Page 17.

(286) On the basis of DB Cargo's projected financial statements, Germany indicates that DB Cargo's main financial performance ratios are expected to evolve over the restructuring period as summarised in Table 23:

Table 23

DB Cargo's Restructuring Plan Baseline Scenario

Financial Performance Ratios over the Restructuring Period and Beyond

(in EUR million)

KPIs	Actual 2023	Forecast 2024	Plan 2025	Plan 2026	Plan 2027	Plan 2028	Plan 2029	Plan 2030
Capital Employed	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Equity position (at year end)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Debt liabilities	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Cash position (at year end)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
EBITDA margin (%)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
EBIT margin (%)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
RoE (%) (excluding Profit and Loss Transfer) ([1])	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
RoCE (%) ([2])	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

([1]) RoE (Return on Equity) = Earnings after tax (EAT)/Equity.
([2]) RoCE (Return on Capital Employed) = EBIT/Capital Employed.
Source: Germany's submission of 22 November 2024 (Final Restructuring Plan), page 19.

(287) As can be drawn from the above Table 23, Germany submits that DB Cargo's Restructuring Plan Baseline scenario will result in the improvement of DB Cargo's financial performance ratios over the duration of the restructuring period and that DB Cargo's ROCE is planned to exceed DB Cargo's WACC ([100]) by the end of the restructuring period.

(288) Table 24 below shows the most recent (i.e. 2021 and 2023) profitability data of some of DB Cargo's competitors in the European Union. This comparison includes three different groups which can be distinguished with regard to product-related market coverage and that each show a different profitability profile: (i) integrators with and without single wagon business; (ii) traction providers; and (iii) integrated combined transport operators.

(289) According to the data provided by Germany, the EBIT margin in the peer group, which is composed by a mix of European rail freight operators, was on average 2 % in the period 2021-2023 (with median value of also 2 %). Based on forecasted 2025 figures, DB Cargo's EBIT margin of […] % is expected to be slightly below the industry average. However, DB Cargo expects to improve its EBIT margin to […] % by the end of the transformation period (end of December 2026). Such a level compares favourably to the subgroup of integrators without a single-wagon business which achieved on average an EBIT margin of 5 %.

([100]) Germany submits that DB Cargo's Weighted Average Cost of Capital (WACC) amounts to […] %. The WACC is the sum of multiplying the cost of debt and the cost of equity by the relevant weights. The cost of equity of 20 % is calculated using a capital asset pricing model and consists of (i) the risk-free rate of 2,5 %; and (ii) the company-specific risk premium, which is derived from the market risk premium of […] % multiplied by a Beta factor ([…]). The cost of debt is assumed to be 4,5 % based on a '[…]' internal credit rating. The weighing is based on a debt level expected at the end of the fiscal year 2024 of EUR […] million and an equity level of EUR […] million, hence a debt-to-equity ratio of 370 %. Based on those assumptions, Germany submits that DB Cargo's WACC is forecasted to be around […] %.

Table 24

Peer Group Key Indicators 2021/2023

Name	Country	Business Segment	Revenue 2023 (€ in million) (1)	EBIT margin Ø 2021-23
ČD Cargo	Czech Rep.	Integrator (BT, CT)	613	6 %
Rail Cargo Austria	Austria	Integrator (SW, BT, CT)	1 907	1 %
ZSSK Cargo	Slovakia	Integrator (SW, BT, CT)	304	2 %
PKP Cargo	Poland	Integrator (SW, BT, CT)	1 263	2 %
TX Logistik	Germany	Integrator (BT, CT)	250 (1)	4 %2)
LINEAS	Belgium	Integrator (SW, BT, CT)	463	- 24 %
Green Cargo AB	Sweden	Integrator (SW, BT, CT)	426	3 %
Fret SNCF	France	Integrator (SW, BT, CT)	730	- 3 %
RheinCargo	Germany	TOC	175 (1)	2 % (2)
Lokomotion	Germany	TOC	112 (1)	3 % (2)
Hector Rail Germany	Germany	TOC	34	- 2 %
HHLA Intermodal (Metrans) (3)	Czech Rep.	Integrated CT Operator	621	16 %
PCC Intermodal	Poland	Integrated CT Operator	136	6 %
boxXpress	Germany	Integrated CT Operator	129	2 %
Loconi	Poland	Integrated CT Operator	49 (1)	5 % (2)
Hupac	Switzerland	Integrated CT Operator	740	1 %
Naviland Cargo	France	Integrated CT Operator	167 (1)	6 %
Arithmetic mean			***508***	***2 %***
Median			***426***	***2 %***
Arithmetic mean - Integrators without SW			***432***	***5 %***

Note: SW = Single Wagon; BT = Block Train; CT = Combined Transport; TOC = Train Operating Company
(1) Most recent figure available for the year 2022.
(2) Average of EBIT-margin referring to 2021-22 due to (1), see above.
(3) Metrans is part of HHLA's intermodal segment and accounted for over 95 % of HHLA's revenues in this segment in 2023.
Source: Germany's submission of 22 November 2024 (Final Restructuring Plan), page 27.

4.1.4.2.3.2. Pessimistic scenario financials

(290) Germany explains that the pessimistic scenario of DB Cargo's Restructuring Plan is based on the baseline scenario adjusted for specific possible adverse developments.

(291) Such possible adverse developments are summarised in Table 25.

Table 25

Risks included in DB Cargo's Pessimistic Scenario

	Risks included in pessimistic scenario 2024	2025	2026	2027	2028	2029	2030
1)	Net risk of reduction of federal budgets for rail freight support schemes	[…]	[…]	[…]	[…]	[…]	[…]
2)	Reduction of single wagon funding scheme	[…]	[…]	[…]	[…]	[…]	[…]
3)	Higher operating costs due to postponement of TAF/TSI system implementation of DB InfraGO	[…]	[…]	[…]	[…]	[…]	[…]
4)	Lower volume increase than originally planned due to pass through of increased track access and shunting fa- cilities`charges to the customers as well as due to a pro- longed economic weakness in the steel industry in Ger- many (effect on EBIT after elimination of only variable costs, in particular track access and energy costs)	[…]	[…]	[…]	[…]	[…]	[…]
	Δ Total materialised risks	[…]	[…]	[…]	[…]	[…]	[…]

Source: Germany's submission of 22 November 2024 (Final Restructuring Plan), page 53.

(292) As can be seen from Table 25, Germany considers that the Pessimistic scenario should reflect risks such as, among others, further reductions in the federal support schemes and a lower volume increase than assumed in the Baseline scenario due to prolonged economic weakness in the steel industry in Germany in addition to those already included in the Baseline scenario.

(293) Germany also indicates that countermeasures that could be implemented in the event that the Pessimistic scenario would materialize have been identified. Such countermeasures (primarily further cost and personnel reductions and locomotives sales-and-lease back operations) are expected to mitigate the above-listed additional risks included in the Pessimistic scenario as indicated in the following table.

Table 26

Countermeasures included in DB Cargo's Pessimistic Scenario

	Countermeasures included in pessimistic scenario	2025	2026	2027	2028	2029	2030
	EBIT Base Case 2024	[…]	[…]	[…]	[…]	[…]	[…]
	Δ Total materialised risks	[…]	[…]	[…]	[…]	[…]	[…]
1)	Operational countermeasures	[…]	[…]	[…]	[…]	[…]	[…]

Countermeasures included in pessimistic scenario	2025	2026	2027	2028	2029	2030
2) Sale and lease back of locomotives	[…]	[…]	[…]	[…]	[…]	[…]
EBIT Pessimistic Case 2024	[…]	[…]	[…]	[…]	[…]	[…]

Source: Germany's submission of 22 November 2024 (Final Restructuring Plan), page 55.

(294) Such countermeasures should enable DB Cargo to turn profitable in 2026 (with a planned EBIT of EUR […]) and beyond despite negative EBIT levels of EUR […] in 2025 as confirmed in DB Cargo's projected Pessimistic scenario Income Statement below:

Table 27

DB Cargo's Pessimistic Scenario Income Statement

(in EUR million)

	Actual 2021	Actual 2022	Actual 2023	Forecast 2024	Plan 2025	Plan 2026	Plan 2027	Plan 2028	Plan 2029	Plan 2030
Revenue	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Other operating income	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total performance	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Cost of materials	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Personnel expenses	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Other operating expenses	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Intercompany services	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
EBITDA	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Depreciation	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
EBIT	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
EBIT margin	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Net interest	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Income from investments	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

(in EUR million)

	Actual 2021	Actual 2022	Actual 2023	Forecast 2024	Plan 2025	Plan 2026	Plan 2027	Plan 2028	Plan 2029	Plan 2030
Other financial income	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Extraordinary income	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
EBT	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Taxes	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
EAT	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Profit and loss transfer	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Net income	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Germany's submission of 22 November 2024 (Final Restructuring Plan), page 49.

(295) Despite remaining significantly negative until 2025 (with EUR […]), Germany expects DB Cargo's net income under the pessimistic scenario also to turn positive by the end of the restructuring period (with EUR […]), showing a steady increase thereafter.

(296) With respect to DB Cargo's projected balance sheet metrics under the pessimistic scenario, as can be seen from Table 28, Germany expects DB Cargo to maintain a positive equity position throughout the restructuring period and beyond.

Table 28

DB Cargo's Pessimistic Scenario Balance Sheet

(in EUR million)

	Actual 2021	Actual 2022	Actual 2023	Forecast 2024	Plan 2025	Plan 2026	Plan 2027	Plan 2028	Plan 2029	Plan 2030
Total assets	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Non-current assets	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Property, plant and equipment	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Intangible assets	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Financial assets	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Current assets	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Inventories	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

(in EUR million)

	Actual 2021	Actual 2022	Actual 2023	Forecast 2024	Plan 2025	Plan 2026	Plan 2027	Plan 2028	Plan 2029	Plan 2030
Trade receivables	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Other receivables and assets	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Financial receivables	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Cash and cash equivalents	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total liabilities	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Equity	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Liabilities	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Provisions	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Financial liabilities	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Trade accounts payable	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Other liabilities	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Germany's submission of 31 October 2024, pages 49 and 50.

(297) On the basis of DB Cargo's above projected financial statements, Germany indicates that DB Cargo's main financial performance ratios are planned to evolve over the restructuring period as summarized in the following table:

Table 29

DB Cargo's Restructuring Plan Pessimistic Scenario

Financial Performance Ratios over the Restructuring Period

KPIs (€ in million)	Actual 2023	Forecast 2024	Plan 2025	Plan 2026	Plan 2027	Plan 2028	Plan 2029	Plan 2030
Capital Employed	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Equity position (at year end)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Debt liabilities	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Cash position (at year end)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
EBITDA margin (%)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

KPIs (€ in million)	Actual 2023	Forecast 2024	Plan 2025	Plan 2026	Plan 2027	Plan 2028	Plan 2029	Plan 2030
EBIT margin (%)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
RoE (%) (excluding Profit and Loss Transfer) ([1])	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
RoCE (%) ([2])	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

([1]) RoE (Return on Equity) = Earnings after tax (EAT)/Equity.
([2]) RoCE (Return on Capital Employed) = EBIT/Capital Employed.
Source: Germany's submission of 31 October 2024, page 50.

(298) As can be drawn from the above Table 29, Germany submits that DB Cargo's Restructuring Plan Baseline scenario will result in the improvement of DB Cargo's financial performance ratios over the duration of the restructuring period and that DB Cargo's ROCE is planned to exceed DB Cargo's WACC by the end of the restructuring period.

4.1.5. *Measures limiting distortions of competition and trade*

(299) After numerous discussions with the Commission, in order to mitigate the negative effects on competition and trade resulting from the restructuring aid, Germany has proposed measures that have been added to and accompany the Transformation plan, and which would be in place until 31 December 2026, as follows:

4.1.5.1. General commitments on commercial policy

(300) Germany commits to ensure, within the possibilities that it has under its company law, that DB Cargo pursues a prudent, sound and sustainable commercial policy during the implementation of the transformation plan with the aim of restoring and maintaining long-term viability in accordance with the provisions of the transformation plan.

(301) Germany also commits to ensure that DB Cargo will not promote the granting of the aid at issue in this case or any advantage derived from it.

4.1.5.1.1. Prohibition of acquisition

(302) Germany ensures, within the limits of its possibilities under § 65 BHO that DB Cargo does not acquire any shares until the end of the restructuring period. This applies *mutatis mutandis* to the acquisition of companies by transfer of assets.

(303) Intra-group divestments and restructuring are not covered by this acquisition ban.

(304) DB Cargo may acquire shares in a company in exceptional circumstances, with the prior approval of the Commission, in particular where this is necessary to ensure DB Cargo's long-term viability or for other overriding reasons such as State security interests, such as purchases related to transports by the Bundeswehr. This is without prejudice to Article 346 TFEU.

4.1.5.1.2. Sale of shares

(305) Germany commits to ensure, within the limits of the possibilities provided for in § 65 BHO, that DB Cargo sells the shareholdings described below to an independent purchaser […]. The terms 'sale', 'divestment' and 'disposal' include not only the transfer of shares in the company but also the transfer of the assets of a company.

(a) Disposal of shareholdings in the following terminal area:

(a) […]

(b) […]

(c) […]

(d) […]

(e) […]

(f) […]

(b) Divestment of a substantial minority stake in maritime combined transport […] (including the divestment of […] locomotives).

(c) Divestment of shareholdings in logistics subsidiaries:

(a) […]

(b) […]

(c) […]

(306) The divestments are carried out on a non-discriminatory basis in accordance with economic principles and with market-based vendor guarantees ('representations and warranties').

(307) The divestments will take place as soon as possible and at the latest […]. A sale is deemed to have taken place on the date on which a legally binding purchase contract ('sales contract') is signed. In the case of a sale of parts to several purchasers, the relevant date will be the date of conclusion of the last sales contract.

(308) However, the obligation to dispose of the shares in the companies applies only if this is done under economically viable conditions and therefore does not jeopardise the success of the restructuring plan. This means that:

(a) […]

(b) […]

(c) […]

(309) In the context of the procedure laid down in § 65 BHO and as far as possible, Germany ensures that DB Cargo initiates a sale procedure at an early stage so that the relevant deadlines for the sale can be complied with.

(310) The acquirer in question must:

(a) be independent of DB AG and DB Cargo;

(b) have the financial resources, expertise and incentives necessary to maintain and develop the acquired business or assets in a competitive manner; and

(c) on the basis of the information available to the Commission, the acquisition must not *prima facie* give rise to competition concerns, nor should there be a risk of delay in the implementation of the commitments. In particular, the purchaser must be reasonably expected to obtain all necessary regulatory approvals to acquire the Divestment Business.

(311) In the event of unexpected delays, the Commission may, upon request, agree to an extension of a period for sale. Germany will submit the request in good time, but at least two weeks before the expiry of the initial time limit for implementation.

(312) If, […], it appears that the above-mentioned divestments, or parts thereof, are not possible by […], Germany and DB Cargo may propose alternative measures to limit competition distortions, of a comparable size, and submit them to the Commission for approval.

(313) Until such time as the transfer takes place, DB Cargo is to, with the diligence of an ordinary trader ('*ordentlicher Kaufmann*') ensure that the business to be divested preserves its economic viability, saleability and competitiveness and minimises the risk of it losing competitive potential. DB Cargo will in particular:

(a) do nothing that could have a significant negative impact on the value, management or competitiveness of the Divestment Business or change the nature and scope of the business, its technical or commercial strategy or investment policy;

(b) on the basis of and maintaining existing business plans, allocate or arrange for the provision of sufficient resources for the development of the assets to be divested;

(c) take all reasonable steps and, inter alia, create appropriate incentives (usual in the industry) to ensure that employees do not leave the Divestment Business or initiate the said steps and incentives and do not recruit or transfer personnel to DB Cargo's remaining business.

4.1.5.2. Measures to strengthen competition (services purchase)

(314) Germany commits to ensure that DB Cargo increasingly purchases domestic block-train long-distance transport services from external third parties. DB Cargo will therefore increase by the end of the restructuring period the share of train-kilometres provided via external providers on an annual basis in Germany […], of the block-train long-distance train-kilometres that it provides in Germany. In 2024, DB Cargo is expected to operate 27,7 million train-kilometres in Germany as a whole. Of this, DB Cargo is expected to provide 24,4 million train-kilometres with its own production resources. It is expected that 3,3 million train-kilometres are provided by external railway undertakings on behalf of DB Cargo (purchase of services).

(315) The target referred to in recital 314 is subject to the achievement of the expected volume of train-kilometres in the block-train segment in accordance with the base case in the restructuring plan. In the event of a negative business development and the resulting failure to achieve the expected train-kilometres volume, the target is to be reduced as follows: If the expected train-kilometres volume is undershot by […] % (or […] %, see recital 314) or more, there is no obligation to subcontract. There between, there is a proportional reduction in the percentage commitment to subcontract, e.g. if only […] % of the expected train-kilometres in a calendar year is achieved, at least […] % must be outsourced. This mechanism ensures that, if the annual domestic long-distance train-kilometres in the block-train segment of DB Cargo fall short, an increased 'no load running' (*'Leerlauf'*) of the existing train capacity, and thereby a further weakening of profitability, is avoided.

(316) This service purchase is implemented in a market-conform manner according to the-following basic principles:

(a) The selection of the service provider is to be based on economic principles on a non-discriminatory basis. The award of contracts with service providers is based on commercial criteria.

In particular, the service provider must meet all the quality requirements required by DB Cargo's customers.

(b) DB Cargo intends to invite suitable suppliers across the EU for larger service purchase packages and will endeavour to obtain at least two offers in a first round if there is more than one suitable supplier for the envisaged subcontracting. In order to ensure transparency, the unsuccessful tenderer(s) will be duly informed and the rejection of their offer will be duly justified. The obligations described in the preceding sentence apply only to suppliers who have submitted a tender.

(c) The service provider must be an already established or potentially efficient, independent competitor with the financial means and proven experience to be able to provide long-distance domestic block-train services. The conclusion of the contract is subject to normal market requirements, i.e. DB Cargo is entitled to refuse a request for reasons such as lack of competence, lack of reliability, lack of financial resources or compliance considerations.

(d) In the event that the service provider fails or is no longer in a position to provide the contractual services, DB Cargo will appoint a successor for the remainder of the period in accordance with the terms of this commitment. If this is also not possible, the contractual performance may also be performed by self-supply for the remainder of the term.

4.1.5.3. Output volume cap

(317) DB Cargo will not exceed the domestic volume of 2023 measured in tonne-kilometres in rail freight transport until the end of the restructuring period. In 2022, DB Cargo delivered 58,9 billion tonne-kilometres in Germany with its own production. In 2023, the volume of services decreased to 51,2 billion tonne-kilometres.

4.1.5.4. Sale of locomotives

(318) Germany ensures that DB Cargo will divest part of its locomotives to an independent purchaser subject to the following conditions:

(a) In order to ensure the implementation of the obligation to purchase services (see section 4.1.5.2), DB Cargo will divest […] locomotives from the block train sector to the service provider(s) at the request of the service provider(s). If the performance purchase target is reduced due to non-achievement of expected train-kilometre volume (see recital 315), the number of locomotives to be sold is adjusted accordingly.

(b) In the context of capping the volume of transport (see recital 317), DB Cargo will divest […] locomotives to independent purchasers. This presupposes that the promised reduction in traffic in […] is on track.

(c) The locomotives must be sold by […], but only to the extent that at least […] can be obtained under normal market conditions (determined on the basis of common valuation methods).

(d) If, during the restructuring period, it becomes apparent that the sale of the locomotives referred to above will be impossible, in whole or in part, until […], Germany and DB Cargo may propose alternative measures to limit competition distortions, of comparable size or impact and submit them to the Commission for approval.

4.1.5.5. General and final provisions applicable to the commitments

(319) Germany will not modify the key elements of the restructuring plan and the present commitments without the prior approval of the Commission.

(320) These commitments are only given by Germany to the Commission as sole addressee and only for the purposes of this procedure (SA.50952). Third parties cannot derive from these commitments any centers to specific conduct by Germany, DB AG and/or DB Cargo.

(321) Germany ensures, within its company law possibilities, that the restructuring plan, including all commitments in accordance with the indicated timetable, is fully implemented.

(322) Where no deadline is specified for certain commitments, they are to be implemented without undue delay.

(323) The Commission may, where appropriate, upon a duly justified request by Germany, grant an extension of the deadlines set out in the commitments or restructuring plan or, in exceptional circumstances, waive, amend or replace one or more of the obligations and conditions set out in those commitments or in the restructuring plan. If Germany requests an extension of a deadline, a duly substantiated request must be submitted to the Commission no later than one month before the expiry of the deadline in question.

4.1.5.6. State of advancement concerning the sale of shares and locomotives

(324) As described in recital 305(a), DB Cargo group plans to dispose of the following shareholdings in entities active in terminal areas:

(a) […];

(b) […];

(c) […];

(d) […];

(e) […].

(325) The divestment of the shareholdings in terminal areas or in […] are currently at various stages of advancement, last communicated by Germany on 21 November 2024, in particular as follows:

(a) […].

(b) Concerning the terminal area divestments, in particular:

(1) […];

(2) […];

(3) […];

(4) […];

(5) […].

(c) Concerning the logistics subsidiaries, in particular:

(1) […];

(2) […];

(3) […] ([101]), […] ([102]);

(4) […].

(326) According to the information provided by Germany, the businesses concerned by the sale of DB Cargo group's shareholdings in various Member States have proven to be on average and over time viable businesses. Table 30 shows the earnings generated by the companies concerned in 2021, 2022 and 2023, totalling no less than EUR […] before tax, predominantly based in Germany.

Table 30

Earnings generated by the individual companies

(in EUR million (rounded))

		2021	2022	2023
[…]	[…]	[…]	[…]	[…]
	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]

([101]) […].
([102]) […].

(in EUR million (rounded))

		2021	2022	2023
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…] ([1])	[…]	[…]	[…]	[…]
	[…]	[…]	[…]	[…]

([1]) […].
Source: submission by Germany.

(327) The […] locomotives to be divested (recital 318), will come from DB Cargo's existing fleet and are, according to Germany modern, valuable and maintained in accordance with the applicable guidelines. The locomotives will be grouped in three clusters: (i) standard, national electric locomotives; (ii) high performance, national electric locomotives; and (iii) modern interoperable electric locomotives.

5. ASSESSMENT OF THE MEASURES

(328) The present section assesses whether the measures investigated involve State aid within the meaning of Article 107(1) TFEU and, if so, whether they amount to new aid. It also assesses whether they are lawful, as well as whether they can be considered compatible with the internal market.

5.1. Existence of State aid

(329) According to Article 107(1) TFEU, '[s]ave as otherwise provided in the Treaties, 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'.

(330) The qualification of a measure to an undertaking as aid within the meaning of this provision therefore requires that the following cumulative conditions be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient undertaking; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.

(331) With regard to the argument raised by Germany according to which the measures in question concern internal relationships within the single economic unit headed by DB AG (see recitals 102 to 104), it must be recalled that, for the purposes of State aid law, transfers within a public group are capable of constituting State aid if, for example, resources are transferred from the parent company to its subsidiary, even if they constitute a single undertaking from an economic point of view ([103]). The fact that certain investigated measures concern internal relations within the group headed by DB AG does not thus preclude the assessment of these measures under Article 107(1) TFEU.

([103]) See Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (OJ C 262, 19.7.2016, p. 1), point 49 and case-law cited. See also judgment of the General Court of 25 June 2015, *SACE and SACE BT v Commission*, T-305/13, ECLI:EU:T:2015:435.

(332) In addition, as noted in recitals 10, 15, 23 to 38, DB Cargo is incorporated as a joint-stock company (*Aktiengesellschaft*), with assets, personnel and means to provide services of transportation of goods by rail against payment on the geographic markets on which it operates. DB Cargo manages its activities autonomously in the sense that it decides itself on its commercial, marketing and strategic policy independently of DB AG activities. DB Cargo has its own clients, which are specific to rail freight sector and different from purchasers of passenger services. In addition, DB Cargo's difficulties originate in its own activities and are specific to these activities (see recital 449 and following). In a similar situation, the Commission has already considered that a rail freight company belonging to a larger railway group was a separate undertaking for the purposes of application of the R&R Guidelines ([104]).

(333) It follows that DB Cargo is an undertaking for the purpose of application of Article 107(1) TFEU. If the measures under investigation are found to provide an economic advantage to DB Cargo, they favour an undertaking which is the beneficiary thereof.

5.1.1. *Engagement of the State resources*

(334) Only advantages granted directly or indirectly through State resources can constitute State aid within the meaning of Article 107(1) TFEU ([105]). State resources include all resources of the public sector ([106]), including resources of intra-State entities ([107]) and, under certain circumstances, resources of private bodies. Resources of public undertakings also constitute State resources within the meaning of Article 107(1) TFEU because the State is capable of directing the use of these resources ([108]) and also because a shortfall or a profit made by a public undertaking decreases or, increases the resources of the State.

(335) DB AG is 100 %-owned by the German State (recitals 11 to 13). DB ML was 100 %-owned by DB AG before it was merged into the latter (recital 14). Therefore, the resources of DB AG are, and the resources of DB ML were, State resources and Measures 1, 2 and 3 are thus financed by State resources. As Measure 4 is financed by the resources of a public body – BEV – (recital 77) and thus it is also financed by State resources.

(336) In the following sections, the Commission will therefore assess whether the measures under investigation are imputable to the State and, if so, whether they confer a selective advantage on DB Cargo. If these conditions are fulfilled, the Commission will assess whether the relevant measures are liable to distort or threaten to distort competition and affect trade between Member States.

5.1.2. *Imputability to the State*

(337) With a view to establishing the imputability of a measure granted through public undertakings to the State, it is necessary to determine whether the public authorities can be regarded as having been involved, in one way or another, in adopting the measure. Imputability to the State of an aid measure taken by a public undertaking may be inferred from a set of indicators arising from the circumstances of the case and the context in which that measure was taken ([109]).

([104]) Commission Decision C(2004) 3955 final of 2 March 2005 in case N 386/2004 – France Aide à la restructuration à Fret SNCF (OJ C 172, 12.7.2005, p. 3) recitals 133-135 and 146.

([105]) Judgment of the Court of Justice of 24 January 1978, *Van Tiggele*, 82/77, ECLI:EU:C:1978:10, paragraphs 25 and 26; judgment of the General Court of 12 December 1996, Air France v Commission, T-358/94, ECLI:EU:T:1996:194, paragraph 63.

([106]) Judgment of the General Court of 12 December 1996, *Air France v Commission*, T-358/94, ECLI:EU:T:1996:194, paragraph 56.

([107]) Judgment of the Court of Justice of 14 October 1987, *Germany* v *Commission*, 248/84, ECLI:EU:C:1987:437, paragraph 17; judgment of the General Court of 6 March 2002, *Territorio Histórico de Álava and Others* v *Commission*, Joined Cases T-92/00 and T-103/00, ECLI:EU:T:2002:61, paragraph 57.

([108]) Judgment of the Court of Justice of 16 May 2002, *France v Commission (Stardust)*, C-482/99, ECLI:EU:C:2002:294, paragraph 38. See also judgments of the Court of Justice of 29 April 2004, *Greece v Commission*, C-278/00, ECLI:EU:C:2004:239, paragraphs 53 and 54, of 8 May 2003, *Italy and SIM 2 Multimedia SpA v Commission*, Joined Cases C-328/99 and C-399/00, ECLI:EU:C:2003:252, paragraphs 33 and 34, and of 10 December 2020, C-160/19 P, *Comune di Milano v Commission*, ECLI:EU:C:2020:1012, paragraph 31 and 34 and case-law cited.

([109]) Judgment of the Court of Justice of 2 March 2021, *Commission v Italy and Others*, C-425/19 P, ECLI:EU:C:2021:154, paragraphs 59 and 60 and case-law cited.

(338) In that regard, it cannot be demanded that the Commission demonstrate, on the basis of a precise instruction, that the public authorities specifically incited the public undertaking to take the measure in question. Any indication of the involvement by the public authorities in the adoption of a measure or the unlikelihood of their not being involved, having regard also to the compass of the measure, its content or the conditions which it contains, or, on the other hand, the absence of those authorities' involvement in the adoption of that measure is relevant ([110]).

(339) Evidence supporting the conclusion that the measure is imputable to the State includes, in addition, the fact that the public undertaking in question could not have taken the decision at issue without taking account of the requirements of the public authorities or the directives emanating from the public authorities, the integration of the public undertaking into the structures of the public administration, the nature of its activities and the exercise of those activities on the market in normal conditions of competition with private operators, the legal status of the undertaking as well as the intensity of the supervision exercised by the public authorities ([111]).

5.1.2.1. Compensation of annual losses of DB Cargo under the profit and loss transfer agreement ('Measure 1')

(340) The Commission notes that DB AG (and, before its merger into DB AG, also DB ML) are public undertakings incorporated as *Aktiengesellschaften* under private law. The Board of Directors in an *Aktiengesellschaft* is independent of the Supervisory Board and of the General Assembly ([112]). This means that the latter cannot in principle issue instructions to the Board of Directors. However, as the Union Courts have repeatedly held, the mere fact that a public undertaking has been constituted in the form of a capital company under ordinary law cannot, having regard to the autonomy which that legal form is capable of conferring upon it, be regarded as sufficient to exclude the possibility of an aid measure taken by such a company being imputable to the State. The existence of a situation of control and the real possibilities of exercising a dominant influence, which that situation involves in practice, make it impossible to exclude from the outset any imputability to the State of a measure taken by such a company, and hence the risk of an infringement of the Treaty rules on State aid, notwithstanding the relevance, as such, of the legal form of the public undertaking as one indicator, amongst others, enabling it to be determined in a given case whether or not the State is involved ([113]). In the present context, it cannot be excluded that the State, through its presence in the Supervisory Board, of which half of the members is nominated by the shareholder, could indirectly influence the decisions of the Board of Directors. According to German legislation on *Aktiengesellschaften*, the Board of Directors is elected by the Supervisory Board, whose members are not bound by instructions from the shareholders. However, the Commission notes that there are indications that some of the members of the Supervisory Board might also be bound by a duty towards the State. This is the case when the State as shareholder appoints Members of Parliament or government representatives (such as State Secretaries and Directors from the Ministries involved) to the Supervisory Board. Those members of the Supervisory Board also have a duty, or strong incentive, to act in the interest of the government in terms of transport policy and budgetary related matters regarding DB AG (recital 96(b)(2)).

(341) Moreover, as DB AG is fully State-owned (recital 11), the Federal Republic of Germany as sole shareholder can take all decisions in the General Assembly of DB AG on its own and thus exert (exclusive) influence on the strategic orientation of DB AG. In addition, the Commission notes that, as a 100 % shareholder in the General Assembly, the Federal Republic of Germany can (exclusively) influence the election of the Supervisory Board of DB AG, which in turn elects the Board of Directors of DB AG. Germany could thus indirectly influence the management decisions taken by the Board of Directors of DB AG in relation also to the subsidiaries of DB AG, including DB Cargo and, until 2016, DB ML, even if the selected members of the Supervisory Board are not strictly speaking government representatives.

([110]) Judgment of the Court of Justice of 2 March 2021, *Commission v Italy and Others*, C-425/19 P, ECLI:EU:C:2021:154, paragraphs 60 to and 61 and case-law cited.

([111]) Judgment of the Court of Justice of 2 March 2021, *Commission v Italy and Others*, C-425/19 P, ECLI:EU:C:2021:154, paragraph 62 and case-law cited.

([112]) See § 76 (1) *Aktiengesetz*.

([113]) Judgment of the Court of Justice of 10 December 2020, C-160/19 P, *Comune di Milano v Commission*, ECLI:EU:C:2020:1012, paragraph 49 and case-law cited.

(342) The Supervisory Board of DB AG is not composed of a majority of government representatives. However, the Supervisory Board of DB AG counts three government representatives directly designated by the three Ministries involved in DB AG's supervision (namely, the Transport Ministry, Ministry for Economic Affairs, Finance Ministry) as well as two Members of the Federal Parliament.

(343) In addition, pursuant to § 293 (2) *Aktiengesetz*, the conclusion of a control and/or profit and loss transfer agreement between two *Aktiengesellschaften* requires the approval of each General Assembly with a three-quarters' majority. Germany submits that in line with this provision, the State gave its agreement to the conclusion of the profit and loss transfer agreement between DB AG and DB Cargo. In that respect, while the 2012 PLTA was not concluded directly between DB AG and DB Cargo but between DB ML and DB Cargo, it must be noted that at the moment of the conclusion of that PLTA, there was a control and profit and loss transfer agreement in place between DB AG and DB ML (see recital 45). In that regard, Germany confirms that a chain of PLTAs with different levels of sub-holdings topped by DB AG has been in place until the transfer of the PLTA in 2016 from DB ML to DB AG that had DB Cargo as the ultimately affected subsidiary and DB AG as the ultimately affected parent (recital 47). The implication of State officials in the conclusion of the PLTA is also a result of the application of the provisions of § 65(2), in conjunction with § 65(3) BHO, which requires the approval of a relevant Minister for the conclusion of control agreements in the State owned companies (recital 107). As the PLTA examined by the Commission contains a control element, the relevant Minister had to agree to the conclusion of that agreement.

(344) With regard to the PLTA concluded in 2012, the Commission notes that it had an initial minimum duration of five years. Following the initial five-year duration, it has been automatically prolonged at the end of each financial year for one additional year, unless one of the two parties decided to terminate, which happened in 2024 (see recital 51). The PLTA did not include a ceiling regarding the losses that could be covered by DB Cargo's parent. The PLTA between DB ML and DB Cargo was therefore liable to affect the budget of DB AG because of the profit and loss transfer agreement concluded between DB AG and DB ML. Following the merger of DB ML and DB AG, the exposure of DB AG to DB Cargo losses became direct.

(345) The Commission confirms the preliminary finding in the Opening Decision that the decision to conclude the PLTA is imputable to the German State. Given the impact such an unlimited agreement could imply for the budget of the State-owned DB AG, the decision to conclude the PLTA in 2012 must be regarded as strategic for DB AG, DB ML and DB Cargo. The strategic importance of the examined PLTA is also confirmed by the formal approval requirements applicable to profit and loss transfer agreements including the control aspect. It is unlikely that the German government did not exert influence on DB AG's decision-making process in relation to such strategic decisions or that the government was unaware of and did not participate in a decision that involved potentially very substantial financial burden for DB AG. This influence is exerted in particular through the Supervisory Board and the General Assembly as well as through direct contacts between high-ranking government representatives and DB AG management.

(346) In particular, German company law requires that the shareholders of the contracting parties approve the PLTA. The existence of a legally valid PLTA between DB AG and DB Cargo (and, respectively, between DB AG and DB ML) cannot be thus explained otherwise than by the direct involvement of the State representative responsible for the State shareholding in the relevant companies. Furthermore, in 2016, a State representative as sole shareholder of DB AG gave direct approval for the merger between DB AG and DB ML, as required by German corporate law. As a result of the merger between DB ML and DB AG, all rights and obligations, including PLTA of 2012 (between DB ML and DB AG) were transferred from DB ML to DB AG, rendering direct the exposure of DB AG to DB Cargo's actual and future losses. The merger was done months before the expiry of the five-year period of the 2012 PLTA, which was then automatically prolonged for an indefinite time, with the possibility of annual cancellation by DB AG or DB Cargo.

(347) According to case-law, it is conceivable, in certain circumstances, that compliance with the four conditions laid down in Article 107(1) TFEU may be assessed at a time other than that when a given measure comes into effect ([114]). In connection with the findings of the Commission relating to the existence of the economic advantage (see recitals 393 to 411), the question whether the German State was involved in the decisions concerning the conclusion and continuation of the PLTA as from 2012 or only later on can be left open. What is more relevant is that, when all conditions of the existence of State aid under Article 107(1) TFEU were met, the PLTA was still in force through what the Commission considers to have been exercise of influence by the State.

(348) In that regard, additional indicators of imputability started to appear with time. With respect to the compass of the measure, given that Germany fully owned the respective companies, the repetitive character of losses covered under the PLTA (see Table 5, recital 53), and their magnitude cannot be considered to have escaped Germany's attention, in particular starting from 2019, when the yearly losses almost doubled the losses registered respectively in 2015, 2016 and 2017, only to rise to EUR 870 million in 2020. Given the recurrence and the magnitude of losses that had to be covered under the PLTA, it is unlikely that the German State was not involved in the decisions to renew that agreement. Rather, it is likely that the German State exercised its dominant influence over DB AG to ensure that the PLTA continues supporting DB Cargo despite the growing losses that the PLTA generated for DB AG. In particular, even though the annual prolongations of the PLTA were conducted tacitly, they implied concrete and increasingly significant choices to continue supporting DB Cargo despite the accumulation of losses. The Commission considers it unlikely that DB AG's management would have been at liberty to discontinue that support, in particular given the growing volume of losses that made the PLTA all the more important for maintaining DB Cargo's financial viability.

(349) The lack of involvement of the German State in the actual decision to renew the PLTA is the more so unlikely given the nature of DB Cargo's activities and their relevance for the public authorities, keeping in mind that according to the established case-law, the nature of the activities of beneficiary is an indicator of imputability ([115]).

(350) Despite the liberalisation of the rail freight market in 2007, DB Cargo continued playing an important role in that market, and especially in its single wagon load segment where it still has a share of approximately 90 % (recital 33). As Germany acknowledges (recital 33), the SWL segment has been systematically loss-making for several years and therefore not attractive for new entrants without subsidies (see recital 466 and following with regard to the importance of the SWL segment and recitals 587 to 589 with regard to the planned public support for that sector).

(351) In that regard, the Commission notes that the rail freight business is of strategic importance to the Federal government's transport policy, since it contributes to the shift from road to rail and is important to ensure the security of supply of many goods essential for consumers and industry ([116]). In particular case of Germany, single wagon transport accounts for around a quarter of rail freight services. It is an important element of logistics chains across the country and plays a key role in connecting many important industrial sites. Further, single wagon transport has a support function for the other forms of rail freight transport, such as combined transport and block trains and therefore contributes significantly to the competitiveness of rail vis-à-vis other modes of transport, which makes it also instrumental for the decarbonisation of transport and the achievement of climate goals. These considerations pushed Germany to finance sectoral schemes for SWL sector as of 2020 ([117]).

([114]) Judgments of the General Court of 13 February 2012, *Budapesti Erőmű Zrt v Commission*, T-80/06 and T-182/09, ECLI:EU:T:201:65, paragraphs 55 and 67 and of 30 April 2014, *Dunamenti Erőmű Zrt v Commission*, T-179/09, ECLI:EU:T:2014/236, paragraph 66, the latter confirmed by the Court of Justice's judgment of 1 October 2015, *Electrabel SA and Dunamenti Erőmű Zrt v Commission*, C-357/14 P, ECLI:EU:C:2015:642.

([115]) Judgment of the Court of Justice of 16 May 2002, *France v Commission (Stardust)*, C-482/99, ECLI:EU:C:2002:294, paragraph 56.

([116]) See Bundesministerium für Verkehr und Digitale Infrastruktur, 'Masterplan Schienengüterverkehr', 23 June 2017, https://www.bmvi.de/SharedDocs/DE/Publikationen/E/masterplan-schienengueterverkehr.pdf?__blob=publicationFile (visited on 15 November 2024).

([117]) See Decision C(2020) 7533 final of 4 November 2020, recitals 3-5, and Decision C(2024) 3488 final of 21 May 2024, recitals 4-8.

(352) Despite its poor financial performance, the single wagon load sector is therefore crucial for German rail freight, as well as for German industry and key for modal shift. The role of DB Cargo for the German economic and environmental policies as one of the main drivers of the decarbonisation of transport and the country's industrial attractiveness is an additional indicator of imputability of the PLTA, as it is unlikely that the German State would not have been supporting the company's finances through the PLTA, notably as from the point in time when DB Cargo's losses – if not covered by the parent – would have put the company into difficulty and threatened the continuation of its operations ([118]).

(353) In that context, the Commission also notes that the strategic documents of DG AB (Oliver Wyman study), refer to a 'special responsibility' of DB Cargo, as a state-owned company, for over 17 000 employees in Germany (in 2018) (see also recital 397.

(354) The Commission concludes that Measure 1, i.e. the coverage of DB Cargo's losses under the PLTA, both during its initial term and following the tacit prolongations until its termination as currently scheduled for 31 December 2024, is imputable to the German State.

5.1.2.2. Pricing of intra-group services ('Measure 2') and advantageous financing conditions of loans by DB Treasury ('Measure 3')

(355) Based on the examination of the arguments and of the evidence submitted by Germany and by the interested parties, the Commission cannot confirm its preliminary finding that Measures 2 and 3 are imputable to the State.

(356) Contrary to the complainant's allegations, the full ownership of DB Cargo by DB AG and, *in fine*, by the State is not sufficient to demonstrate the imputability of Measures 2 and 3 to the German State.

(357) DB AG and DB Cargo are incorporated as *Aktiengesellschaften* under private law, which results in the Board of Directors being independent of the Supervisory Board and of the General Assembly. In contrast to strategic decisions, such as conclusion of an agreement such as the PLTA, conclusion of intra-group service agreements or provision of intra-group loans are transactions in the course of ordinary day-to-day business. It is highly unlikely that such transactions could be closely followed and influenced by the State acting as a shareholder through its representatives in the Supervisory Board, in particular, given the limited actual representation of the State in DB AG's and DB Cargo's management bodies.

(358) The rules of procedure for the Board of Directors of DB AG expressly exclude the taking out loans within the group from the scope of matters for which a decision of the Board of Directors of DB AG or an approval from the Supervisory Board of DB AG is required (recitals 17, 20 and 22). Similarly, pursuant to the rules of procedure for the Board of Directors of DB Cargo, taking out loans to DB AG and DB Finance B.V. is expressly excluded from the list of measures which require an approval of DB AG's (that is shareholder's) Board of Directors. The abovementioned rules of procedure do not refer in any way to intra-groups services agreements, leaving the determination of their terms and conditions to a lower management level. Hence, unlike signing the PLTA, the signing of internal corporate arrangements for intra-group services or loans agreements such as those under the present investigation has not required involvement either at the level of the relevant companies' shareholder, Supervisory Boards or the Boards of Directors.

([118]) To that effect, see judgment of the General Court of 13 September 2023, T-525/20, *ITD and Danske Fragtmænd v Commission*, ECLI:EU:T:2023:542, paragraphs 86-96 and 104-107.

(359) The potential financial impact of Measures 2 and 3 on the DB AG's budget, which according to the complainant, is an additional indicator of imputability, must be relativised. First, with regard to intra-group service agreements, Germany rightly submits that a number of services were provided in the interest of the whole group. Secondly, given the complainant's allegations, the Commission has assessed the importance of the loans forming Measure 3 in relation to the more pertinent indicators of relative importance for the lender and the borrower such as the overall refinancing needs of the Group and to the turnover of DB Cargo, leaving aside the much bigger amount of DB AG's budget, to which the complainant refers. The eight loans between 2013 and 2019 in total amount to around EUR 2,1 billion on 31 December 2019. In turn, the liabilities of DB Finance amounted, in 2019 only to EUR 23,3 billion, that is nine times bigger for a single year. More importantly for the importance from the point of view of the borrower, the aggregate turnover of DB Cargo between 2013 and 2019 amounted to EUR 23,8 billion, that is eleven times more than the loan amounts and internal borrowing within the DB Group is not occasional or one-off type events for the loans in question nor specific to DB Cargo among subsidiaries of DB AG.

(360) Contrary to the complainant's allegations, the financial interest of the German State to receive dividends from DB Group does not indicate either that the State must have been involved in Measures 2 and 3. The involvement of the shareholder in a concrete transaction executed in the normal course of business cannot be inferred from the general interest of a shareholder in limiting the losses of a company with the view of receiving a dividend. As Germany rightly observes, accepting general financial interest of the shareholder as a criterion relevant for imputability would mean that any decision taken by the corporate bodies would be imputable to the State because any decision can have an impact on the financial interest of the shareholder.

(361) The imputability of Measures 2 and 3 cannot be inferred either from the provisions of section § 65 BHO or from the provisions of PCGK, contrary to what has been indicated by the complainant.

(362) Section § 65 BHO ([119]) sets out rules relating to taking shares in private companies by the German Federal State, such as the requirement of prior consent of a relevant minister for transactions such as acquisition or sale of shares in a private company, transactions involving changes in nominal capital or the object of the company or, transactions involving a change in control. Section § 65(1)(3) BHO provides that the Federal State must be granted appropriate influence on the Supervisory Boards or in an equivalent supervisory body. § 65(6) provides that the responsible federal ministry should use its influence to ensure that the members of the supervisory bodies of the enterprise who have been chosen or delegated at the Federation's behest also take the special interests of the Federal State into consideration in their activities. The provisions of section §65 BHO thus create obligations of a general nature and apply only to certain strategic decisions relating to the State's shareholdings. They do not set out any rules that would require the involvement of the State in the adoption or definition of the terms of intra-group agreements and loans.

(363) PCGK provides indications relating to responsible governance of companies in which the German State has a holding several which are non-mandatory and general (footnote 47). Absent any indication, let alone evidence, produced during the investigation to the effect that the indications set out in PCGK were misused or made binding on DB Cargo or DB AG in relation to Measures 2 and 3 under investigation, due to action or influence from officials, departments or public bodies, cannot serve as an indicator of imputability of such Measures 2 and 3.

(364) The Commission concludes that the evidence gathered in the course of the formal investigation does support the preliminary indications set out in the Opening Decision nor establishes the imputability of Measures 2 and 3 to the German State for the purposes of the application of Article 107(1) TFEU.

(365) Given the cumulative nature of conditions of existence of State aid under Article 107(1) TFEU, the Commission concludes that Measures 2 and 3 do not constitute State aid within the meaning of that provision.

([119]) https://www.bundesfinanzministerium.de/Content/EN/Downloads/Resources/Laws/1969-08-19-federal-budget-code.pdf?__blob=publicationFile&v=1, consulted on 30 October 2024.

5.1.2.3. Partial coverage by BEV of the remuneration of civil servants employed by DB Cargo ('Measure 4')

(366) As clarified by Germany, the coverage of social costs by BEV relates to all railway officials assigned to DB AG, and not only the staff allocated within the DB AG group to DB Cargo.

(367) The assignments system is mandatory ([120]). The decision regarding the entity bearing the costs pertaining to the specific status of civil servants which are assigned to DB AG staff, as well as other features of the assignment system are determined by the statutory provisions ('Gesetz') – the DBGrG – and not by autonomous decisions of BEV, DB AG or DB Cargo (recital 78) ([121]). Measure 4 is therefore imputable to the State.

5.1.3. *Selective advantage*

(368) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit which an undertaking could not have obtained under normal market conditions, that is to say in the absence of State intervention ([122]). Only the effect of the measure on the undertaking is relevant, and not the cause or the objective of the State intervention ([123]). Whenever the financial situation of an undertaking is improved as a result of State intervention on terms differing from normal market conditions, an advantage is present. To assess this, the financial situation of the undertaking following the measure should be compared with its financial situation if the measure had not been taken ([124]). In that regard, the Commission recalls that the term 'State interventions' does not only refer to positive actions by the State but also covers the fact that the authorities do not take measures in certain circumstances ([125]).

(369) The Commission will assess the existence of a selective advantage solely for the measures that the Commission deemed to be imputable to the State, i.e. Measure 1 and Measure 4.

5.1.3.1. Compensation of annual losses of DB Cargo under the profit and loss transfer agreement ('Measure 1')

(370) The Commission notes that Germany claims that (i) the conclusion of the PLTA respects the MEO principle; (ii) the non-termination of the PLTA and hence the continuing annual transfers of DB Cargo's losses to DB AG do not constitute a measure of State intervention as they do not constitute an action, and thus not a 'measure actually implemented'; and (iii) in any event, the non-termination and the continuing loss transfer respects the MEO principle, so that it has procured no advantage to DB Cargo, and therefore the measure does not constitute State aid (see recitals 110 to 130).

(371) The Commission will examine whether the MEO principle is applicable to the conclusion of the PLTA, as well as the non-termination of the PLTA and the ensuing transfer of losses. Should the Commission determine that the MEO test is not applicable, it cannot apply that test.

([120]) §12(2) DBGrG provides that the State officials shall be assigned (*'sind (…)zugewiesen'*) to DB AG.
([121]) Judgment of the Court of Justice of 19 December 2019, *Arriva Italia*, C-385/18, ECLI:EU:C:2019:1121, paragraph 34.
([122]) Judgment of the Court of Justice of 11 July 1996, *SFEI and Others*, C-39/94, ECLI:EU:C:1996:285, paragraph 60; judgment of the Court of Justice of 29 April 1999, *Spain v Commission*, C-342/96, ECLI:EU:C:1999:210, paragraph 41.
([123]) Judgment of the Court of Justice of 2 July 1974, *Italy v Commission*, 173/73, ECLI:EU:C:1974:71, paragraph 13.
([124]) Ibidem.
([125]) Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (OJ C 262, 19.7.2016, p. 1), point 67 and case-law cited.

(372) The Commission recalls that the Court has considered that the applicability of the MEO test ultimately depends on a State having conferred, in its capacity as an economic operator and not in its capacity as a public authority, an economic advantage on an undertaking ([126]). Interventions by the State, which are intended to honour its obligations as a public authority cannot be compared to those of a private investor in a market economy ([127]).

(373) The Commission does not contest the applicability of the MEO principle to the conclusion of the PLTA and to its non-termination and the ensuing loss transfers under the PLTA. In this regard, the Commission notes that the PLTA itself is an instrument that is subject to the *Aktiengesetz* and not public law (see footnote 15). Furthermore, PLTAs are instruments that can and appear to be used by other groups of companies, in particular companies represented in the German stock index (see recital 111). The Commission notes that Germany does not dispute the absence of *ex ante* profitability analyses preceding the conclusion of the PLTA (see recital 121). At the same time, the Commission notes the existence of economic analyses in the form of annual mid-term plans, which represent the basis for DB AG's strategic decisions (see recital 54). The continuation of the annual loss transfer has to be seen in the framework of the PLTA. The Commission therefore concludes that the MEO principle is applicable to both, the conclusion of the PLTA, and the non-termination of the PLTA resulting in continuous transfer of DB Cargo's losses to DB AG.

(374) Concerning Germany's argument that not terminating the PLTA and hence transferring DB Cargo's losses does not constitute a measure actually implemented (see recital 114) and thus a selective advantage cannot be assessed for the loss transfers, the Commission finds no legal basis for such argument. On the contrary, failure to take steps, possibly gradual, to terminate an increasingly economically disadvantageous legal relationship must be viewed as a choice, even if implemented tacitly whether by a market investor or by a public authority or by a public undertaking alike. This is particularly the case where the initial term of a contract has expired and year after year each party can either accept a tacit prolongation of the contract for the next year or submit a termination notice. Those are specific choices that the parties to the PLTA have made each year. The legal form of those choices, i.e. the fact that the continuation of the PLTA was designed to be tacit rather than to require a formal amendment, cannot affect that assessment. Indeed, it is settled case-law that the precise form of the measure is irrelevant in establishing whether it confers an economic advantage on an undertaking. The concept of aid embraces not only positive benefits, but also measures which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which, therefore, without being subsidies in the strict sense of the word, are similar in character and have the same effect ([128]). Equally, it is clear from case-law that failure to take action can well be considered as an intervention giving rise to an advantage in cases where a private operator in a situation as close as possible to that of the State, acting under normal market conditions, would have taken action. Examples of such situations include continued forbearance with relation to the non-payment of debt ([129]) or to the use of public property without the payment of the respective rent ([130]). The Commission recalls that establishing a PLTA means to introduce an automatism that should replace the necessity to annually decide whether losses or profits are to be transferred to the parent. However, such an automatism does not preclude that the transactions, i.e. the transfer of losses/profits, may become disadvantageous to one contract party, otherwise, there would be no need for a non-conditional termination clause. In fact, a prudent market economy operator would assess whether keeping an agreement in place would be advantageous, and if not so, would terminate an agreement that became disadvantageous. Hence, the Commission is of the opinion that it is also necessary to assess the economic rationale for the loss transfers for the periods where either party could have terminated the PLTA.

([126]) In relation to investments, see judgment of the Court of 5 June 2012, *Commission* v *EDF*, C-124/10 P, ECLI:EU:C:2012:318, paragraphs 79-82 and 87.

([127]) Judgment of the General Court of 15 December 2009, *EDF* v *Commission*, T-156/04, ECLI:EU:T:2009:505, paragraph 228.

([128]) See e.g. judgment of the Court of Justice of 3 April 2014, *France v Commission*, C-559/12 P, ECLI:EU:C:2014:217, paragraph 94 and case-law cited.

([129]) See e.g. judgment of the General Court of 13 September 2010, *Greece and Others v Commission*, Joined Cases T-415/05, T-416/05 and T-423/05, ECLI:EU:T:2010:386, paragraphs 377 to 393, judgment of the Court of Justice of 12 October 2000, *Magefesa*, C-480/98, ECLI:EU:C:2000:559, paragraphs 19 and 20.

([130]) See judgment of the General Court of 7 September 2022, *JCDecaux Street Furniture Belgium v Commission*, T-642/19, ECLI:EU:T:2022:503, paragraphs 28, 49 and 65 (upheld by the judgment of the Court of Justice of 26 September 2024, *JCDecaux Street Furniture Belgium v Commission*, C-710/22 P, ECLI:EU:C:2024:787).

(375) Given that the MEO test is applicable, the Commission will now assess whether the conclusion of the PLTA in 2012, and the transfer of losses under the PLTA confers an economic advantage on DB Cargo, i.e. a benefit that DB Cargo could not have obtained under market conditions. It must therefore determine whether '[...] in similar circumstances, a private investor of a comparable size operating in normal conditions of a market economy could have been prompted to make the investment in question' ([131]). In this regard, the Commission will take due account of the fact that DB AG is the existing shareholder of DB Cargo and not a new investor.

(376) When applying the MEO test, only the benefits and obligations linked to the role of the State as an economic operator are relevant. Member States should evaluate those benefits and obligations based on the information available at the time of the intervention (i.e. on an *ex ante* basis), by relying on economic evaluations comparable to those which, in similar circumstances, a rational market economy operator would carry out. In the present case, Germany has transmitted to the Commission a considerable amount of economic and financial data compiled and examined at regular intervals and which sheds light on the profitability expectations that DB AG could examine throughout the period of application of the PLTA.

(377) One approach to verify compliance with the MEO principle is to rely on generally accepted, standard assessment methodologies. Such a methodology must be based on the available objective, verifiable and reliable data, which should be sufficiently detailed and should reflect the economic situation at the time at which the transaction was decided, taking into account the level of risk and future expectations. A widely accepted standard methodology to evaluate an investment decision is to assess the investment in terms of its net present value (NPV).

(378) To estimate the value of DB Cargo's equity, the Commission discounted the net earnings, approximated by the operating income after interest, or EBT if available, included in the mid-term plans, over the five-year period covered by the respective mid-term plan (see Table 5), as well as the terminal value, by using the pre-tax cost of equity referred to in DB group's annual reports for the freight and logistics business segment as a discount rate. The Commission employed the Gordon Shapiro growth approach to calculate the terminal value.

(379) According to the Gordon Shapiro growth method, a company's terminal value is the NPV of the profits that the company will earn in perpetuity. To calculate that net present value, the following assumptions are necessary: (i) profits will grow at a certain perpetual growth rate ('g'), starting from the profit in the last year of the business plan; and (ii) the discount rate is either the cost of equity or WACC, depending on the type of profit, relating to the equity holders or more widely to the firm. The Gordon Shapiro growth method implies that the higher the perpetual growth rate, the greater the normalised free cash flow and the lower the discount rate, the higher the terminal value will be. The Commission used a 2,0 % perpetual growth rate, as indicated in the second E.CA report (see Table 9). The Commission uses the same rate as the second E.CA report as this rate is a conservative assumption also in view of other DB Cargo internal documents that provide a lower growth rate (in this regard, the Commission notes the impairment test in the mid-term plan 2015 that uses a perpetual growth rate of 1,0 %).

(380) The Commission will assess the market conformity of the PLTA at different points in time. The points in time are (i) 2012, the year of signing the PLTA; (ii) 2016, the year when the non-termination period ended; as well as (iii) 2020, after having already implemented other measures to address the continuous loss-making by DB Cargo, i.e. by commissioning the SWL-Study, introducing the 'Starke Cargo' programme and replacing the management team (see recitals 61 and 66).

([131]) Judgment of the Court of Justice of 21 March 1990, *Belgium* v *Commission*, C-142/87, ECLI:EU:C:1990:125, paragraph 29; judgment of the Court of Justice of 21 March 1991, *Italy* v *Commission*, C-305/89, ECLI:EU:C:1991:142, paragraphs 18 and 19; and judgment of the General Court of 30 April 1998, *Cityflyer Express* v *Commission*, T-16/96, ECLI:EU:T:1998:78, paragraph 51. See also Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (OJ C 262, 19.7.2016, p. 1), paragraph 74.

(381) Concerning the database for the calculation of the NPV, the Commission relies on the annual mid-term plans available at the relevant point in time. Given the volume and nature of information contained in the mid-term plans (see recitals 55 and 58), the Commission deems that the mid-term plans were sufficiently detailed for DB AG to take decisions concerning the PLTA. As is common practice for similar organisations, the mid-term plans were prepared *ex ante* based on the data available at the relevant point in time, and sourced from internal DB Group and external reliable data sources (see recital 55).

5.1.3.1.1. Signing the PLTA in 2012

(382) Based on the methodology described in recitals 378 and 379, the Commission estimated DB Cargo's equity value in NPV terms to have been approximately EUR 2 763 million based on the mid-term plan 2011 (covering the years 2012-2016) and approximately EUR 2 973 million based on the mid-term plan 2012 (covering the years 2013-2017). The Commission notes that every mid-term plan includes not only the planning period (for example 2012-2016 in case of the mid-term plan 2011) but also an estimate for the year in which the plan is produced and the actual results of the previous year (in the case of the mid-term plan 2011, estimates for 2011 and actual results for 2010).

(383) Moreover, the Commission also notes that, while DB Cargo generated losses in the years prior to signing the PLTA in 2012, EUR 148 million in 2010 and EUR 100 million in 2011, according to DB Cargo's annual report 2011, DB Cargo had generated profits of more than EUR 500 million between 2006 and 2008 (see recital 117). Moreover, according to the annual reports of DB Cargo profits were made, and hence transferred, also in the years 2001 to 2004 ([132]). As shown in Table 5, in both mid-term plans DB Cargo was forecasted to reach its performance target (in terms of EBIT-margin) at least at the end of the planning period.

(384) In this regard, there may have been a legitimate expectation for DB Cargo to generate profits and, given the positive NPV of the returns based on the mid-term plans of the period in question, the Commission concludes that signing the PLTA in 2012 did not confer an economic advantage on DB Cargo.

5.1.3.1.2. Period until end-2016

(385) The next point in time for which the Commission assessed the market conformity of the loss coverage under the PLTA, is the end of the initial five-year duration. This is because within that initial duration the PLTA could only be terminated for important reasons. The expiry of that initial duration is the first point in time when either party was free to terminate the PLTA. The Commission notes that the agreement provides the loss of the majority of voting rights in DB Cargo as an important reason for termination (see recital 48). This has not been the case, as also described by Germany (see recital 50), hence this important reason was not triggered during the initial five-year period. Furthermore, the Commission also notes that according to §297 AktG an important reason exists in particular if the other contracting party is unlikely to be able to fulfil its obligations under the contract ([133]). The PLTA provides that DB Cargo has to transfer profits and DB ML (and later DB AG) has to take over losses. As losses were transferred, no party did not fulfil its obligations.

(386) Furthermore, the Commission takes note of the information provided by Germany concerning the corporate tax guidelines. While paragraph (6) of R14.5 of the corporate tax guidelines leaves out the question whether continuous losses would be an important reason for terminating the PLTA during the initial five-year period, the Commission understands from point 4 of paragraph (5) of R14.5 that the fact that the subsidiary consistently generates losses does not present a reason that would be an obstacle for the execution of the PLTA ([134]). Hence the Commission understands that also in this regard no important reason for termination existed. Therefore, in the Commission's understanding, no important reasons existed that would have justified an early termination of the PLTA.

([132]) *Source:* ir.deutschebahn.com/de/berichte/archiv/ (last accessed on 15 November 2024).

([133]) Original wording '*Ein wichtiger Grund liegt namentlich vor, wenn der andere Vertragsteil voraussichtlich nicht in der Lage sein wird, seine auf Grund des Vertrags bestehenden Verpflichtungen zu erfüllen*'.

([134]) Original wording '*Der Durchführung des GAV steht es nicht entgegen, wenn z. B.* […] *die Organgesellschaft ständig Verluste erwirtschaftet*'.

(387) Moreover, even if it would have been possible for one of the parties to terminate the agreement due to important reasons, it is questionable that a market economy operator would have terminated the PLTA within its initial duration. In addition to the risk of such a termination being unlawful, the termination of the PLTA would have meant for the controlling parent to surrender the certain advantages of the PLTA, i.e. the tax advantages from the fiscal unity and the direct control over the subsidiary's management, against uncertain advantages of avoiding the transfer of potential losses in the future. It is questionable that a parent would have done so shortly after signing the PLTA. This is all the more so given that during the initial duration, all mid-term plans, and hence the basis for the strategic decisions, showed a positive value for DB Cargo (see recital 391).

(388) Based on the methodology described in recitals 378 and 379, the Commission estimated DB Cargo's equity value in NPV terms to have been approximately EUR 1 000 million based on the mid-term plan 2015 (covering the years 2016-2020) and approximately EUR 2 185 million, based on the mid-term plan 2016 (covering the years 2017-2021).

(389) As was the case for the mid-term plans of 2011 and 2012, DB Cargo was also expected to meet at least the EBIT-margin target in the final year of the planning period. Moreover, the ROCE, with the caveat that in the mid-term plan 2016 ROCE is only provided for the DB Cargo group, was expected not to be significantly below the ROCE target with a positive development over the planning period.

(390) While the Commission notes that, as can be seen from Table 4, DB Cargo had underperformed in the initial five-year period compared to the previous forecast, as DB Cargo solely generated losses, there is no evidence at the Commission's disposal to prove that the underlying assumptions of the mid-term plans 2015 or 2016 were manifestly wrong. Furthermore, the mid-term plan 2015 introduced measures to reform DB Cargo within the 'Zukunft Bahn' programme.

(391) While the Commission assesses the market conformity at strategic points in time, i.e. (i) the signing of the PLTA; (ii) the end of the initial five-year duration of the PLTA; and (iii) after the SWL-Study, the replacement of DB Cargo's management and the introduction of the 'Starke Cargo' programme, the Commission has also estimated DB Cargo's equity value based on the mid-term plans of other years. In this regard, the Commission notes that based on the mid-term plans 2013 and 2014, the NPV would have been EUR 2 075 million, respectively EUR 5 555 million.

(392) Therefore, the Commission concludes that covering the losses under the PLTA with effect as at the end of 2016, i.e. on expiry of its initial term, did not provide DB Cargo with an economic advantage.

5.1.3.1.3. Period as from 2020

(393) Finally, the Commission assessed whether DB AG acted as a market economy operator would have done by covering the losses after having already implemented other measures to address the continuous loss-making by DB Cargo, i.e. by commissioning the SWL-Study, introducing the 'Starke Cargo' programme and replacing the management team (see recitals 61 and 66). Therefore, the Commission assessed the market conformity based on the mid-term plan of the year 2020.

(394) The Commission assessed DB Cargo's equity value, according to the methodology described in recitals 378 and 379 and based on the data included in the mid-term plans 2020 and 2021. In this regard, the Commission notes that the NPV of DB Cargo's equity value stemming from the 2020 mid-term plan and calculated according to the methodology used by the Commission is negative, at approximately EUR – 441 million. However, this is without taking the potential taxation benefit (see recital 43) into account. Using a conservative approach for estimating the tax shield by using the taxation rate of 30,5 % ([135]) indicated in DB group's annual reports of 2020 and 2021 ([136]), the Commission estimated DB Cargo's equity value in NPV terms to have been approximately EUR – 259 million based on the mid-term plan 2020 (covering the years 2021-2025) ([137]). This means that an investor would incur losses for an investment in the company based on the business forecasts included in the mid-term plans. The Commission notes in this regard that the COVID-19 pandemic additionally augmented the magnitude of DB Cargo's losses. However, the damage from the COVID-19 pandemic is not the sole source of the losses and the Commission understands that the mid-term plan 2020 already incorporates countermeasures that would compensate around two-thirds of the damage.

(395) The Commission recalls that, as described in recital 66, in view of increasing losses (see Table 4), DB AG put in place new management at DB Cargo in 2020, as well as introduced a programme to return the company to viability, which was already included in the 2019 mid-term plan ('Starke Schiene', respectively concerning DB Cargo: 'Starke Cargo'). This means that the shareholder in DB Cargo had already taken various steps (and not for the first time, as other programmes had previously been launched, for example 'Zukunft Bahn') to turn around DB Cargo albeit unsuccessfully. It is thus that the parent could have expected an improvement of DB Cargo's financial standing, or, taking into account the negative impact of the COVID-19 pandemic, at least not a clear deterioration of the status-quo. However, despite all previous actions, DB Cargo's value deteriorated and became negative in the mid-term plan 2020. It is also clear from the mid-term plan 2020 that the 'Starke Cargo' programme, which was a strategy based on volume growth, was not achievable anymore as the volumes forecasted in the 2020 mid-term plan remained for the entire planning period below the volumes forecasted in the mid-term plan 2019, which introduced the 'Starke Cargo' programme.

(396) The Commission notes that DB Cargo's mid-term plans prepared since 2015 include the identification of additional risks and opportunities with a likelihood of materialising above 40 %; those are not included in the baseline scenario but are nonetheless identified given the plausibility of their occurrence. The 2020 mid-term plan included no such additional opportunities. It did, however, identify additional risks (see recital 58). Those risks were of a significant nature, as they would have meant an accumulated negative impact on DB Cargo group's EBIT for the planning period of EUR – 417 million (see Figure 3), which means that if those identified risks would materialise, the negative EBIT forecasted for the period would increase by around 65 %. That means that it was reasonable to assume that any deviations from the plan would be negative and not positive. Hence a risk that DB Cargo would underperform again, despite already being forecasted to generate a negative return for the shareholder. A diligent shareholder would take this risk of underperformance also into account.

(397) Moreover, in 2019, a study was commissioned to find solutions to address the weaknesses of the SWL segment, which was not only structurally loss-making, but was in fact the largest contributor to DB Cargo's annual losses (see Table 6), (see recital 61). That study was dated October 2019 and amended, to a limit extent, in January 2020. Therefore, it was available to inform the decisions to be made for the SWL segment. The Commission notes, concerning the findings of the SWL-study, that four of the six criteria used to assess the potential strategic options

([135]) The Commission uses DB group's pre-tax WACC, as provided in the annual reports of the mid-term plan year, to discount the tax advantage. This is a conservative assumption as the cost of equity of DB group is lower than the cost of equity of its freight and logistics business segment.

([136]) In this context, the Commission recalls that the second E.CA report uses a tax rate of 15 % for losses as it assumes that 50 % can be recognised as a loss carry-forward at a tax rate of 30 %, and 12 % for positive results due to the loss carry-forward (see recital 126).

([137]) The Commission also notes that the negative NPV is not limited to the mid-term plan 2020, but, based on the mid-term plan 2021 (covering the years 2022-2026), the NPV would also be negative at around EUR – 166 million.

related to public policy criteria ([138]). The Commission considers that a private shareholder would not have taken into account either the benefits to the national economy or the ecological benefits as decisive criteria for its analysis. Similarly, the special responsibility for maintaining the staff of DB Cargo as a State-owned company is not a consideration that would be relevant to a private shareholder. Furthermore, the impact that the chosen option would have on the (domestic and European) rail system seems also more relevant for the State as it concerns the infrastructure but also the modal split (for example it assesses positively a modal shift to rail transport). That being said it also seems to include certain aspects important for a private shareholder, such as impact on other segments, i.e. block trains and combined transport. Only two criteria, i.e. the strategic positioning of DB Cargo and DB Cargo's finances, would have been criteria taken into account by a private investor (see recital 64). The more important of those two criteria is the impact on DB Cargo's finances, because this is in the end the basis for the value creation for the shareholder. In this regard, as shown in Figure 4, downsizing the SWL business segment would have been the option with the most positive impact on DB Cargo's finances.

(398) However, a different strategy was chosen. That was a strategy that, while already including revenues from State support to the SWL segment (see recital 68) would still result in that segment remaining perennially loss-making on operative level (i.e. EBIT), as is shown in Figure 5 (in the mid-term plan 2021, the figure was revised to the SWL segment starting to generate a positive EBIT in 2026, however based on significant and continuous financial State support, see Figure 7).

(399) The Commission understands that it is argued that this choice was partially based on not breaking network links (see recital 66) to avoid causing negative network consequences (and hence increased costs), which seems to be a legitimate concern. the Commission also notes that the current restructuring plan, however subsequent to the events of 2021, envisages precisely changes to the production system dissolving interlinkages between business segments (see recital 262), as necessary, which could cast doubts on the reasonableness of not opting earlier for the focus scenario.

(400) Furthermore, the plan seems to not only include aid stemming from the scheme concerning '*Anlagenpreisförderung*' (support of train composition) but additional aid for the SWL business, given that the amount of EUR 246 million in Figure 6 exceeds the entire budget of that scheme of EUR 200 million (see recital 67). Additional aid only materialised in 2024 (see footnote 74) and so the reasonableness of including such revenue streams in the planning is highly questionable.

(401) The Commission has also assessed the NPV based on the mid-term plans between the end of the initial duration of the PLTA and 2020, i.e. the mid-term plans 2017 to 2019. The Commission notes that the NPV of DB Cargo's equity, based on the mid-term plans 2017 and 2018, would have been positive with around EUR 1 888 million in 2017 and around EUR 1 883 million in 2018. The NPV based on the 2019 mid-term plan, however, is inconclusive. Based on the methodology described in recitals 378 and 379 the NPV would have been negative with around EUR − 108 million. However, as described in recital 407, based on a slightly different methodology, DB Cargo's equity as NPV would have been slightly positive with around EUR 34 million. Hence, the assessment based on the mid-term plan 2019 is inconclusive, with the effect that the Commission cannot confirm that already in light of that mid-term plan a rational private shareholder would have terminated the PLTA. However, that mid-term plan shows already a negative trend.

(402) Based on the reasons set out above, and against the backdrop of the ever-mounting losses of DB Cargo, and the fact that other measures such as a change in management and in the business strategy had already been introduced, a prudent market economy operator would have terminated the PLTA to end the negative impact of the transferred losses to the parent and also as a means to further discipline the company by making it look for different sources of financing ([139]).

([138]) Namely the criteria numbered 1, 2, 5 and 6, i.e.: (1) benefits to the national economy (impact on Germany as industrial location); (2) ecological benefits (impact on the sustainability of freight transport in Germany); (5) impact on DB Cargo's personnel taking into account the 'special responsibility' for the State-owned company's employees; and (6) impact on the domestic and European rail system.

([139]) While Germany argues that the control element of the PLTA has a disciplining effect (see recital 113), the Commission doubts the effectiveness of those elements, given DB Cargo's continual failure to meet performance targets and its continuous annual losses (see Table 4).

(403) Therefore, given the notice period of three months before the end of the fiscal year (see recital 51) and the timing of preparation of the mid-term plans and presentation to DB Cargo's Supervisory Board, and to DB AG (see recital 54), deciding on the termination of the PLTA at the earliest after preparing the mid-term plan 2020 would have been effective at the end-2021, and the losses incurred by DB Cargo in 2022 would not have been automatically covered anymore.

(404) Concerning the first E.CA report and the second E.CA report, the Commission notes that only the second E.CA report includes a quantification of the profitability (in terms of Net Present Value) for the shareholder of DB Cargo. Moreover, the reports were commissioned *ex post* after the losses were covered, so that it is evidence produced after the shareholder made the decision to cover the losses in question.

(405) The Commission notes that the second E.CA report uses a slightly different methodology to calculate the NPV of DB Cargo by using Free Cash Flows to the Firm (FCFF), FCFF to DB AG in this case. As the E.CA report did not cover the period of 2019 or thereafter in its quantitative assessment, the Commission calculated the NPV also based on FCFF using the same assumptions concerning the tax benefits and the discount rate (post-tax WACC of the freight transport and logistics segment) as in the E.CA report (see recitals 126 and 127).

(406) As is customary when determining the value of equity when using FCFF as a basis for the NPV, the Commission calculated the difference between terminal enterprise value and net debt as the terminal value of equity of DB Cargo ([140]).

(407) Based on the methodology described in recitals 405 and 406, DB Cargo's equity value as NPV in 2019 would have been around EUR 34 million, around EUR − 1 852 million in 2020, and around EUR − 1 445 million in 2021. Even, if one would take into account positively the avoidance of around EUR 1,5 billion in exit costs for the SWL segment, as estimated in the second E.CA report, the value of DB Cargo's equity would still remain negative. Therefore, using this different methodology does not put into question the findings that a prudent market economy investor would have terminated the PLTA with effect end 2021.

(408) With regard to Germany's argument that an existing shareholder acts differently than a new investor (see recital 116), the Commission, overall, agrees that it is the case. The Commission also takes its above position into account, given the fact that DB Cargo had not transferred any profits to DB AG since 2008 and had solely generated losses that had to be covered by its parent (see Table 4). The Commission also agrees that an existing shareholder would have taken the continual failure of DB Cargo to meet its performance targets into account in its decision-making process. The Commission notes that in this regard DB AG made efforts that are available to an existing shareholder, i.e. introducing restructuring programmes or changing the management of DB Cargo, to make DB Cargo viable again. It is reasonable to consider that an existing shareholder, also given the upsides of fiscal unity, would also have taken such efforts. However, it would not have done so indefinitely, in particular when the efforts failed to provide positive results. In this regard, the Commission recalls that already based on the mid-term plan 2019 DB Cargo's equity value as NPV would have been around zero and further deteriorated despite all previous efforts taken into a negative value with the mid-term plan 2020. This means that no action taken in the past, already from 2015 onwards with the 'Zukunft Bahn' programme, had succeeded. Hence, it is reasonable to assume that a rational private shareholder would have terminated the PLTA once the value of its investment, even under plan assumptions and not taking into account the actual historic results, would become clearly negative.

(409) Furthermore, concerning Germany's argument that the Commission accepted in another case a compensation of multi-year losses as not conferring an economic advantage (see recital 115, the Commission recalls that its assessment has to be based solely on the facts of the specific case. Thus, the argument is irrelevant. That being said, the case referred to by Germany concerned the airports of Berlin Schönefeld, Tegel, and Tempelhof. In that case, the Commission noted in recital 179 of its Decision finding that the measures do not constitute aid that 'long-term

([140]) The Commission notes that E.CA did not calculate the difference between the terminal enterprise value and the net debt, solely calculating DB Cargo's enterprise value and not its equity value.

benefits – the successful opening and profitable operation of a new single airport for the Berlin agglomeration (plus the expected profits from the operations of Schönefeld after some years of implementing the LCC strategy) – could be expected by FBS to exceed the losses accumulated by Schönefeld before the opening of BER'. In this context, the situation of DB Cargo, which had no significant long-term change expected, such as the opening of the Berlin-Brandenburg (BER) airport, is not in the slightest comparable to that of the case mentioned by Germany.

(410) Therefore, the Commission concludes that, following the mid-term plan of 2020, a market economy investor would have terminated the PLTA with effect from end 2021. This means that the automatic loss coverage of the years 2022 and following confer an economic advantage on DB Cargo who, together with its subsidiaries whose losses or profits DB Cargo consolidates in its corporate accounts, is the beneficiary of such advantage.

(411) As the Court has stated, where individual aid is at issue, the identification of the economic advantage is, in principle, sufficient to support the presumption that a measure is selective ([141]). This is so regardless of whether there are operators on the relevant markets that are in a comparable factual and legal situation. As this advantage is only granted to DB Cargo as the sole beneficiary, the economic advantage is selective.

5.1.3.2. Partial coverage by BEV of the remuneration of civil servants employed by DB Cargo ('Measure 4')

(412) Article 107(1) TFEU embraces measures which, in various forms, reduce the burdens normally to be borne by an undertaking and are thus not subsidies in the strict sense of the term but analogous to them in nature and effect ([142]). Article 107(1) TFEU does not distinguish between measures of State intervention by reference to their causes or their aims but defines them in relation to their effects ([143]).

(413) The Commission notes that Measure 4 results in a system where all railway officials formerly employed by German public railways have been transferred to a specific State entity which resulted from a merger between Deutsche Bundesbahn and Deutsche Reichsbahn – BEV – which is responsible for payments of the salaries and other benefits directly to the relevant officials. BEV also manages the railway officials' health insurance fund and pensions of the retired staff. This system was put in place at the moment of creation of DB AG as a new federal railway company established under private law in 1994, that is 13 years before the full liberalisation of the rail freight market in 2007, and it has not been substantially modified since then (recital 77) ([144]).

(414) On the basis of the provisions of Article 143a of the German Federal Constitution and §§ 12, 21 and 23 DBGrG, the railway officials formally employed by BEV are assigned to DB AG in return for payment, the amount of which is calculated individually and concretely for each assigned worker and paid annually by DB AG to BEV. DB AG allocates railway officials assigned to it to its subsidiaries, including to DB Cargo. DB Cargo is paying back the staff costs for railway officials to DB AG, which transfers that payment to BEV.

(415) In addition, evidence submitted by Germany shows that BEV has been assigning railway officials also to other undertakings which are competitors of DB AG. These limited assignments are voluntary, in the sense that they are not based on the provisions of the DBGrG but exclusively on the provisions of § 29 of BBG, which requires consent of the relevant official (see recital 77).

([141]) See judgment of the Court of Justice of 4 June 2015 *Commission* v *MOL*, C-15/14 P, ECLI:EU:C:2015:362, paragraph 60.
([142]) Judgments of the Court of Justice of 15 March 1994, *Banco Exterior de España*, C-387/92, ECLI:EU:C:1994:100, paragraph 13 and of 11 July 1996, *SFEI and Others*, C-39/94, ECLI:EU:C:1996:285, paragraph 58.
([143]) Judgment of the Court of Justice of 26 October 2016, *Orange v Commission*, C-211/15 P, ECLI:EU:C:2016:798, paragraph 38.
([144]) For limited modifications to §21 DBGrG, see footnote 48.

(416) On the basis of §§ 21(1) and 23 DBGrG, the payments to be made by DB AG to BEV for each individual railway official assigned have to be calculated according to the 'als-ob-Kosten' ('as if-costs') principle, which means that its amount is based on the staff costs of DB AG's comparable workers recruited on the labour market, *as if* the assigned officials were newly recruited by DB AG. Those payments include all the elements of the remuneration of a worker employed under a relevant collective agreement, that is basic wage and relevant allowances and the employers' contributions to mandatory social security schemes. Those contributions concern, in particular, pensions schemes, health, accident and unemployment insurance, long-term care levy, maternity levy and insolvency levy. As result of the application of the principle, several charges and levies that were introduced after the creation of DB AG and which are part of staff costs of contractual workers are also added to the costs that DB AG reimburses to BEV. On the other hand, costs stemming from the structural differences in remuneration and the special features of public service law compared to private labour law are covered by BEV. Finally, the payments to BEV also include costs related to human resources administration (recital 79).

(417) The rules described in recital 416 apply also to DB Cargo, which reimburses to DB AG the staff costs of railway officials allocated to it. Germany provided evidence relating to the implementation of the 'als-ob-Kosten' principle in practice within DB Cargo, in the form of tables comparing staff expenditure for individual contract workers employed directly on the labour market to staff expenditure for officials assigned from BEV in similar professional situation (similar age, functions, qualifications and pay group). The evidence provided demonstrates that staff costs of relevant contract workers and the staff costs that DB Cargo – through DB AG – has to pay to BEV in return for the assigned officials are calculated according to the same methodology, include the same elements, in particular the same employers' share of compulsory social security contributions and are, *in fine*, of a similar amount. In conclusion, as a result of implementation of the 'als-ob-Kosten' principle, staff costs that DB Cargo have to reimburse BEV for the assigned railway officials reflect the market price for staff with relevant qualifications.

(418) In addition, it has been demonstrated by Germany that BEV has been assigning railway officials to other state agencies and, most importantly, to the competitors of DB AG. In such cases, in the same vein as for DB AG and DB Cargo, BEV has been covering the part of the staff costs which are specific to the statutory regime of the officials concerned on the basis of individually concluded agreements which reflect the 'als-ob-Kosten' principle as laid down in §21(1) DBGrG ([145]). In consequence, those specific staff costs do not burden the relevant undertaking's budgets. While this practice is limited, it demonstrates that, as a matter of principle, the assignments of railway officials employed by BEV – be it to DB AG or to its competitors – are made at a market price.

(419) Furthermore, contrary to the complainant's allegations, Measure 4 significantly differs from the measure assessed by the Commission in Decision 2012/540/EU of 20 December 2011 on State aid, C 25/08 (ex NN 23/08) – reform of the arrangements for financing the retirement pensions of civil servants working for France Télécom implemented by the French Republic in favour of France Télécom ([146]) ('Orange Decision'), confirmed by the Union Courts ([147]). First, the measure examined in that decision was a law applicable only to France Télécom (of whom Orange is a successor) which was, as former department of the Ministry for Post, Telegraphs and Telephones, the only employer of civil servants of such Ministry for which, together with La Poste, the French State was bound to secure the payment of pensions ([148]). The measure consisted in a modification of the *ad hoc* France Télécom law of 1990 ([149]) which provided, among others, for an obligation for France Télécom to pay back to the State the pensions of civil servants employed by France Télécom. The modification introduced in 1996 freed France Télécom from pension liability for the estimated burden of eventually servicing the pensions, also freeing the necessary accounting provisions posted to face the liability, and significantly reduced the amount of that compensation, thereby putting France Télécom is a more favourable position than the one resulting from the law of 1990. Secondly, the Commission observed that the measure examined in the Orange Decision did not ensure that that the social charges

([145]) Germany's submissions of 21 April 2022 and of 27 September 2024.
([146]) OJ L 279, 21.8.2012, p. 1, ELI: http://data.europa.eu/eli/dec/2012/540/oj.
([147]) Judgments of the General Court of 26 February 2015, *Orange v Commission*, T-385/12, ECLI:EU:T:2015:117 and of Court of Justice of 26 October 2016, *Orange v Commission*, C-211/15 P, ECLI:EU:C:2016:798.
([148]) See recitals 98 and 138 of the Orange Decision.
([149]) Law No 90-568 of 2 July 1990.

paid by France Télécom were equivalent to those of its competitors. In particular, the contribution paid by France Télécom was calculated based on a rate including only the contributions corresponding to the common risks of employees subject to common private labour law and civil servants and, as a result, excluding the contributions corresponding to the non-common risks that competitors -or France Télécom for non-civil servant staff- had to contribute for, such as unemployment or non-payment of wages in the event of the employer's insolvency.

(420) By stark contrast, Measure 4 is part of a system within which the State railway officials have been employed from the outset of the Federal railway transformation process by a separate State entity which has been acting as an agency hiring them out under the same conditions to DB AG (and ultimately to its subsidiaries) and to other undertakings. That system has been applicable to DB AG since its creation in 1994 and has never been modified in a way that would improve the situation of DB AG or its subsidiaries ([150]). In addition, the remuneration to be paid in return for the workforce provided by BEV both to DB AG and to its competitors is calculated individually and concretely for each staff member and reflects market costs of similarly qualified staff, as it includes all the elements of the costs which are paid by an employer for such staff hired on the market. Most importantly, remuneration to be paid to BEV includes contributions to the social security schemes covering all the risks incurred by the private-sector employees (see recital 416).

(421) In conclusion, Measure 4 cannot be considered as resulting in a selective advantage within the meaning of Article 107(1) TFEU for DB AG or companies belonging to DB group such as DB Cargo.

(422) Given that the existence of an advantage, which is one of the cumulative conditions for the existence of aid, cannot be established, the Commission concludes that Measure 4 does not involve State aid.

5.1.4. *Distortion of competition and effect on trade*

(423) A distortion of competition within the meaning of Article 107(1) TFEU is generally found to exist when the State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, competition ([151]). DB Cargo provides rail freight services in Germany and in other Member States, where other undertakings provide such services in competition with DB Cargo, in particular after the liberalisation of rail freight services in the internal market (see footnote 39). It follows that the Measure 1, in so far as it is found to provide a selective advantage to DB Cargo is liable to distort or threaten to distort competition and affect trade between Member States within the meaning of Article 107(1) TFEU.

5.1.5. *Conclusion on the existence of aid*

(424) In light of the considerations set out in Section 5.15.1, the Commission concludes that Measure 1 involves State aid within the meaning of Article 107(1) TFEU for the period as from 1 January 2022. By contrast, Measures 2, 3 and 4, as well as Measure 1 for the period until the end of 2021, do not constitute State aid within the meaning of Article 107(1) TFEU.

5.2. **New aid**

(425) Notwithstanding arguments of Germany relating to the qualification of the four investigated measures as existing aid, the Commission must fully examine, of its own accord whether the measure that it qualified as giving rise to State aid, i.e. the PLTA, is a new or an existing aid.

(426) Pursuant to Article 1, point (c), of the Procedural Regulation, new aid means all aid which is not existing aid, including alterations to existing aid.

([150]) See footnote 48.

([151]) Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, point 187 and case-law cited.

(427) PLTA under examination was concluded for an initial period of five years following which it has been automatically prolonged at the end of each financial year for one additional year (see recital 51). The analysis of the market conformity of the PLTA showed that the PLTA conferred a selective advantage on DB Cargo only starting from 2022 (see recital 393 to 411) and that only from that moment the PLTA can be considered as a State aid measure within the meaning of Article 107(1) TFEU.

(428) In accordance with established case-law, extension of the duration of existing aid creates a new aid which is distinct from the aid which was extended ([152]), particularly so when that extension is accompanied by a budget increase to support it ([153]). Hence, with regard to the argument put forward by Germany according to which the 2012 PLTA was a mere prolongation of previous PLTAs in place since 1999, the Commission notes the PLTA is a legal act clearly distinct from any previous similar agreements that had been concluded between DB Cargo and its parent; it applies in a new period of time and involves new resources than those mobilised under any predecessor agreement. The same applies to the annual tacit prolongations of the PLTA following the expiry of its initial term. The Commission notes in addition that the parties to that agreement also changed in 2016, following the merger between the DB AG and AB ML (recitals 14, 45 and 46), which also alters the enforceability and balance of interests to the parties thereof compared to earlier agreements. As a result, the existence of any earlier PLTAs covering different periods of time does not result in the PLTA in question (including its tacit prolongations) qualifying as existing aid.

(429) In addition, it should be noted that the Article 1 (b)(v) of the Procedural Regulation is not applicable to the PLTA. Indeed, that provision applies to measures which did not constitute an aid when they were put into effect, and subsequently became an aid due to the evolution of the internal market, without having been altered by the Member State. By contrast, the continuation of the PLTA gave rise to State aid not due to any evolution of the internal market but due to the intrinsic difficulties of DB Cargo, translating into such losses that the continuation of that agreement could no longer be seen as market conform (see recitals 393 to 411).

5.3. **Lawfulness of the aid**

(430) In accordance with Article 108(3) TFEU, any plans to grant new aid are to be notified to the Commission and should not be put into effect before the Commission has authorised it. The aid under examination was put into effect through the creation of an enforceable right for DB Cargo to have its effective profits or losses incurred as from 2022 transferred to DB AG, prior to its approval by the Commission. The German authorities have therefore breached their obligations under Article 108(3) TFEU. Therefore, Measure 1, insofar it qualifies as State aid as from 2022, constitutes unlawful aid.

5.4. **Compatibility of the aid with the internal market**

(431) Article 107(3), point (c), TFEU provides that aid to facilitate the development of certain economic activities or of certain economic areas may be considered compatible with the internal market where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(432) Thus, in order to be capable of being considered compatible with the internal market under Article 107(3), point (c), TFEU, State aid must meet two conditions: (i) it must be intended to facilitate the development of certain economic activities or of certain economic areas, and (ii) it must not adversely affect trading conditions to an extent contrary to the common interest.

(433) The two conditions are without prejudice to the fact that decisions adopted by the Commission on that basis must ensure compliance with Union law ([154]).

([152]) See judgments of 26 October 2016, *DEI and Commission v Alouminion tis Ellados*, C-590/14 P, ECLI:EU:C:2016:797, paragraph 50 and case-law cited; of 15 December 2022, *Veejaam and Espo*, C-470/20, ECLI:EU:C:2022:981, paragraphs 44 and 47.
([153]) Judgment of 20 May 2010, *Todaro Nunziatina & C.*, C-138/09, ECLI:EU:C:2010:291, paragraphs 44 to 47.
([154]) Judgment of the Court of Justice of 22 September 2020, *Austria v Commission*, C-594/18 P, ECLI:EU:C:2020:742, paragraph 20.

(434) Under the first condition, the Commission examines whether the aid is intended to facilitate the development of certain economic activities. Under the second condition, the Commission balances the positive effects of the proposed aid against the negative effects that the aid may have on the internal market ([155]).

(435) In the R&R Guidelines, the Commission set out the criteria which it examines when assessing the compatibility of a company's restructuring aid with the internal market pursuant to Article 107(3), point (c), TFEU ([156]). In view of the nature and aims of the State aid at stake, the Commission will assess whether the aid complies with the provisions laid down in the R&R Guidelines.

(436) In examining whether restructuring aid has an adverse effect on trading conditions to an extent that is contrary to the common interest, the Commission carries out a balancing test according to Article 107(3), point (c), TFEU and the R&R Guidelines. In carrying out that test, if the beneficiary is eligible to receive restructuring aid, the Commission weighs the positive effects of the aid against the negative effects on competition and trade between Member States created by the impact of the State aid. When making that assessment, it considers the need for State intervention, the appropriateness, proportionality, transparency of the aid and the mitigation of negative effects through the 'one time, last time' principle and measures to limit distortions of competition set out in the R&R Guidelines.

(437) As mentioned in recital 433, decisions adopted by the Commission in State aid matters must ensure compliance with Union law. In this context, the Commission observes that it does not result from the investigation that the restructuring aid or the conditions attached to it, or the economic activities facilitated by the aid, could entail a violation of a relevant provision of Union law. In addition, the Commission has not started a procedure against Germany on a possible infringement of Union law that would bear a relation to this case nor has it received any complaints or information that might suggest that the State aid, the conditions attached to it or the economic activities facilitated by the aid might be contrary to relevant provisions of Union law, other than Article 107 and 108 TFEU.

5.4.1. *Eligibility*

(438) In order to be eligible for restructuring aid, an undertaking must qualify as an undertaking in difficulty pursuant to section 2.2 of the R&R Guidelines. In particular, point 20 of the R&R Guidelines provides that an undertaking is considered to be in difficulty when '*without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term*'. This would be the case when at least one of the circumstances described in point 20(a) to (d), of the R&R Guidelines occurs. According to point 20(a) of the R&R Guidelines, '[i]n the case of a limited liability company, where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital'.

(439) As is apparent from Table 4, the equity of DB Cargo exceeded its subscribed share capital in every year since 2012. However, the reason for this is the existence of the automatic loss transfer under the PLTA. As losses are transferred to DB AG without affecting DB Cargo's balance sheet, they do not have a negative impact on DB Cargo's equity position, which otherwise would have to absorb the losses.

(440) In this context, the Commission has found that the transfer of the losses under the PLTA (as extended each year until end-2024) starting with the transfer of the losses of the year 2022 conferred an economic advantage on DB Cargo and constituted State aid (see recitals 410 and 424) unlawfully granted by Germany (see recital 430).

([155]) Judgment of the Court of Justice of 22 September 2020, *Austria v Commission*, C-594/18 P, ECLI:EU:C:2020:742, paragraphs 18 to 20.
([156]) R&R Guidelines, point 38.

(441) As such, the Commission deems that the loss transfer of the year 2022 distorted the actual financial situation of DB Cargo as reflected in its actual accounts, because DB Cargo's healthy equity position in its balance sheet is not due to its own financial performance but only due to the unlawfully granted State aid, i.e. State financing that the company would not have been able to obtain on the market. Therefore, the Commission considers that, in order to have a realistic financial picture of DB Cargo at that point in time, one should exclude the effects of these transfers and calculate the adjusted equity of DB Cargo in a situation where the losses would have affected DB Cargo's equity. In this context, the Commission underlines that point 20 of the R&R Guidelines commands that one looks at the beneficiary's situation in the absence of the aid. An undertaking is considered to be in difficulty when, without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term. The fact that a given State intervention was structured so as to prevent the beneficiary's losses from burdening its balance sheet rather than to tackle losses that were already recognised in that balance sheet, is not relevant insofar without that intervention the undertaking would have almost certainly been condemned to go out of business.

(442) As can be seen from Table 4, DB Cargo's equity position at the end of 2021 amounted to EUR 666 million. As the Commission only considers the losses transferred under Measure 1 starting in 2022 to be State aid, the equity position of 2021 still represents DB Cargo's actual financial position in the absence of the aid. However, DB Cargo's losses of the year 2022 amounted to EUR 858 million. If one charged those losses to DB Cargo's equity, the equity position would turn negative to EUR – 192 million. Hence, DB Cargo would have had negative equity. In this respect, the Commission notes that the losses accumulated during the year, while the loss transfer only takes place on 31 December of a year. Thus, DB Cargo would have lost more than half of its subscribed share capital at some point during the course of 2022. Therefore, absent the aid, more than half of DB Cargo's subscribed share capital would have disappeared as a result of accumulated losses at the end of 2022 at the latest and thereafter until now. DB Cargo thus qualifies as an undertaking in difficulty pursuant to point 20(a) of the R&R Guidelines ([157]). Therefore, DB Cargo would almost certainly be condemned, without the continuation of the PLTA imputable to Germany, to going out of business in the short or medium term as referred to in point 20 of the R&R Guidelines.

(443) According to point 20(c) of the R&R Guidelines, an undertaking qualifies as undertaking in difficulty when it is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors. DB Cargo is not in collective insolvency proceedings and also does not fulfil the criteria for being placed in such proceedings.

(444) According to point 20(d) of the R&R Guidelines, an undertaking qualifies as undertaking in difficulty in the case of an undertaking that is not an SME, where, for the past two years: (i) the undertaking's book debt-to-equity ratio has been greater than 7,5; and (ii) the undertaking's EBITDA interest coverage ratio has been below 1,0.

(445) DB Cargo is not an SME. In 2022 and 2021, DB Cargo had negative EBITDA of around EUR – 541 million in 2022 and EUR – 125 million in 2021, based on its published annual report 2022, hence its interest coverage ratio would have been negative. Given, the negative equity without the aid at the end of 2022, DB Cargo's debt to equity ratio would have been negative. However, in 2021 its debt-to-equity ratio, taking into account only loans, was around 3,4. Hence, point 20(d) of the R&R Guidelines would not be satisfied.

(446) According to point 21 of the R&R Guidelines, a newly created undertaking with less than three years of operation is not eligible for restructuring aid. DB Cargo has been operating under its current name and in its current corporate form since 2016 (see recital 12(d)). Taking into account different names and different corporate forms, DB Cargo has been active since 1999 as a(n) (in)direct subsidiary of DB AG (see recital 47). Therefore, DB Cargo is not a newly created undertaking.

([157]) Technically and in accounting terms, this condition is strictly met the day when such cumulated losses exceed the threshold of 50 % of the subscribed share capital, which may only be certified *ex post* at term of the financial year, and later after auditor's certification. For its practical application, the condition needs to be interpreted in the light of the qualitative definition that the undertaking would be almost certainly condemned to going out of business in the short- to medium-term horizon, which may vary. In the present case, de facto operating losses in 2021 and projected results for 2022 and thereafter that would have caused a market shareholder to give to DB Cargo notice of termination of the PLTA on 30 September 2021. In such case and as from that moment, DB Cargo would have almost certainly been condemned to going out of business in the short or medium term, with the predictable increasing depletion of its equity base.

(447) Furthermore, according to point 22 of the R&R Guidelines, a company belonging to a larger business group is not normally eligible for restructuring aid, except where it can be demonstrated that the company's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself.

(448) The Commission recalls that the objective of point 22 of the R&R Guidelines is to prevent a group of undertakings from having the State bear the cost of a plan for the restructuring of one of the undertakings belonging to the group, when that undertaking is in difficulty and the group itself has created those difficulties or has the means to deal with them on its own ([158]).

(449) As described in recitals 9 to 14, DB Cargo is part of DB group and hence part of a larger business group. However, as is clear from recital 60 and Table 6, DB Cargo's losses stem from its operation. In particular, its SWL business segment has been structurally loss making. Given that DB Cargo's difficulties are caused by continuously generating losses due to not operating profitably, its difficulties are intrinsic and not the result of an arbitrary allocation of costs within DB group, arbitrarily increasing DB Cargo's costs or reducing or transferring its profits to its parent or sister companies.

(450) While DB group, according to its annual reports of the years 2020 to 2023, has been loss-making since 2020 (EUR – 5 707 million in 2020, EUR – 911 million in 2021, EUR – 227 million in 2022, and EUR – 2 351 million in 2023), the Commission notes that the group in fact did deal with DB Cargo's difficulties. In fact, all losses of DB Cargo were transferred to DB AG and hence DB Cargo was shielded from the consequences of its negative performance. Although the Commission deems the transfer of the losses beginning with the losses of 2022 to be State aid, this does not alter the fact that the larger business group did help DB Cargo, albeit by being the provider of the aid.

(451) The Commission recalls that, as described in recital 448, the objective of point 22 is to avoid the State bearing the costs of a restructuring, when the group of undertakings to which the beneficiary belongs would have the means to do so. While DB Cargo's difficulties have been dealt with by the group itself, the Commission notes that the DB Group alleviated DB Cargo's difficulties by providing support which, while being considered not to constitute State aid prior to 2022, constitutes State aid as of 2022. The circumstances of DB AG and DB Cargo are specific in this context as the parent company became the grantor of State aid in 2022. It is not a situation, where, as explained in recital 448, a group offloads the costs of the restructuring of an undertaking belonging to the group to the State, rather on the contrary the group became the grantor of the aid. In these specific circumstances of the DB Group being the grantor of the aid, the group could not have done more to deal with DB Cargo's difficulties. Therefore, the Commission concludes that fact that DB Cargo belongs to the DB Group is not an obstacle for DB Cargo to be eligible for restructuring aid under point 22 of the R&R Guidelines.

5.4.2. *The aid facilitates the development of certain economic activities or certain economic areas*

(452) Under Article 107(3), point (c), TFEU, for State aid to be considered compatible with the internal market, it must facilitate the development of certain economic activities or certain economic areas.

(453) In that regard, to show that restructuring aid is intended to facilitate the development of such activities or areas, the Member State granting such aid must demonstrate that the aid aims to prevent social hardship or address a market failure (see section 3.1.1 of the R&R Guidelines) by restoring the long-term viability of the undertaking (see section 3.1.2 of the R&R Guidelines). The Commission notes that, as acknowledged in point 43 of the R&R Guidelines, in fact, market exit is important to the wider process of productivity growth, thus merely preventing an undertaking from exiting the market does not sufficiently justify State aid. On the contrary, rescue and restructuring aid are among the most distortive types of State aid, as they interfere with the process of market exit.

([158]) See judgment of the General Court of 13 May 2015, *Niki Luftfahrt v Commission*, T-511/09, ECLI:EU:T:2015:284, paragraph 159, and judgment of the General Court of 18 May 2022, *Ryanair DAC v Commission*, T-577/20, ECLI:EU:T:2022:301, paragraph 46.

(454) However, in certain situations, restructuring an undertaking in difficulty may contribute to the development of economic activities or areas, including beyond the very activities carried out by the beneficiary. This is the case where, in the absence of such aid, the beneficiary's failure would lead to situations of market failure or social hardship, inhibiting the development of the economic activities and/or areas that would be affected by such situations. A non-exhaustive list of such situations is provided in point 44 of the R&R Guidelines.

(455) The Commission will first assess whether the aid is intended to prevent a situation of market failure or social hardship (section 5.4.2.1) and whether the restructuring aid is accompanied by a restructuring plan restoring the beneficiary's long-term viability (section 5.4.2.2).

5.4.2.1. Prevention of social hardship or market failure contributing to the development of an economic activity or an economic area

(456) In accordance with point 44 of the R&R Guidelines, Member States must demonstrate that the failure of the beneficiary would be likely to involve serious social hardship or severe market failure, in particular by showing one of the situations listed in point 44 of the R&R Guidelines. Under point 44 of the R&R Guidelines, prevention of social hardship or market failure can be demonstrated in particular by showing that one of the circumstances listed from points 44(a) to (g) are met. In this regard, the Commission notes that, in particular, the circumstances mentioned under point 44(b) of the R&R Guidelines, namely where aid is intended to avert the risk of economic growth being hampered by the disruption of an important service as a consequence of the exit of the beneficiary from the market are relevant to the assessment of the aid measure.

5.4.2.2. The aid avoids the disruption of an important service

(457) The economic activity supported by the aid is the freight transport of goods, which is predominantly and consistently effected by road for more than two thirds of the total volume of goods transported in Germany (Table 31).

Table 31

Modal split for freight transport in Germany

(in %)

	2018	2019	2020	2021	2022
Road transport	72,0	71,7	72,4	71,4	71,3
Rail transport	18,7	18,5	18,2	19,6	19,8
Other modes of transport	9,3	9,8	9,4	9,0	8,9

Source: Bundesnetzagentur 'Marktuntersuchung 2023 5. Sonderausgabe' p. 12, fig. 3 ([159]).

(458) Notwithstanding the predominant share of road transport, the Commission observes that rail freight transport offers significant benefits over road transport, contributing to both the sustainable and economical development of the freight industry. Indeed, rail freight is far more environmentally friendly than road transport as trains produce up to 80 % less CO_2 emissions per tonne of cargo compared to trucks. The Commission Communication 'The European Green Deal' ([160]) indicates that 'to achieve climate neutrality, a 90 % reduction in transport emissions is needed by 2050' and that 'as a matter of priority, a substantial part of the 75 % of inland freight carried today by road should

([159]) Available at: https://www.bundesnetzagentur.de/SharedDocs/Downloads/DE/Sachgebiete/Eisenbahn/Unternehmen_Institutionen/Veroeffentlichungen/Marktuntersuchungen/MarktuntersuchungEisenbahnen/MarktuntersuchungEisenbahnen2023Sonderausgabe5.pdf?__blob=publicationFile&v=4.

([160]) COM(2019) 640 final of 11.12.2019. Available at: https://ec.europa.eu/info/strategy/priorities2019-2024/european-green-deal_en.

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*' ([161]) (the 'Sustainable and Smart Mobility Strategy'), 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)'. The Sustainable and Smart Mobility Strategy also acknowledged that 'as innovation will shape the mobility of […] freight of the future, the right framework and enablers should be in place to facilitate this transition that can make the transport system much more efficient and sustainable.'.

(459) Additionally, rail transport reduces air pollution, noise, and road congestion caused by road transport, making it a crucial part of the transition toward a low-carbon economy. Rail transport is also much more energy-efficient than road transport as trains can move large volumes of freight over long distances using less fuel, which reduces overall fossil fuel energy consumption. This efficiency is enhanced when rail networks are powered by renewable electricity, making the transportation of goods cleaner and more sustainable.

(460) Furthermore, over long distances, rail freight can offer significant cost advantages, particularly when transporting heavy or bulk goods as rail can handle larger quantities of cargo in a single trip, leading to lower transportation costs per ton compared to road transport. Reduced fuel consumption and a need for less personnel further decrease operating expenses, enabling companies to optimise their supply chains economically.

(461) Rail transport can move large volumes of goods with greater consistency and fewer delays, as it is less affected by road traffic congestion, weather, and accidents. This reliability is vital for industries with strict delivery schedules, as it ensures goods are delivered on time with fewer disruptions. Railways also offer greater scalability as they can accommodate large shipments more easily than road networks, making them ideal for bulk and containerised cargo.

(462) On additional benefit of rail freight transport is that by shifting freight transport to rail, the strain on road networks is reduced. This results in less congestion, fewer traffic accidents, and lower road maintenance costs. The decreased use of road transport extends the lifespan of public infrastructure and helps reduce the overall cost burden on governments and taxpayers. Finally, rail freight transport can be effectively integrated into multimodal transport systems, combining rail with sea, road, and air transport to create seamless logistics chains. This interconnectedness enhances global trade routes, facilitating the efficient movement of goods across regions and borders. Rail is particularly advantageous in connecting major ports with inland destinations, enabling smooth and efficient cargo flows.

(463) In light of the above, the Commission considers that rail freight plays a crucial role in the responsible development of freight transport in general by addressing the urgent need for sustainable logistics solutions. Its lower environmental impact, energy efficiency, and ability to move large volumes of goods over long distances help businesses achieve their environmental, social, and governance (ESG) goals while also reducing transportation costs.

(464) By supporting rail freight, businesses contribute to a more sustainable global supply chain, help reduce CO_2 emissions, and foster long-term economic growth that aligns with environmental objectives. By shifting freight from road to rail, businesses and governments can therefore play a direct role in meeting climate targets and reducing the environmental impact of logistics.

(465) Against that background, the Commission notes that the restructuring measures aim at preventing a situation in which DB Cargo goes out of business due to the financial difficulties that it is facing.

([161]) Commission Communication on a 'Sustainable and Smart Mobility Strategy', COM(2020) 789 final of 9.12.2020, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0789.

(466) Indeed, while the European rail freight sector, particularly the single-wagon load transport segment, plays a crucial role in the logistics network, especially in Germany, it nevertheless faces significant structural and operational challenges as explained in detail in recitals 60 to 68. Single-wagon load transport, which involves transporting goods in individual wagons rather than full trains, offers flexibility for smaller shipments. However, the Commission notes that it struggles to compete with road freight, which is faster and more adaptable to various logistics needs. This sector's survival is crucial, not just for industrial supply chains, but also for meeting Europe's sustainability targets. Despite its importance, single-wagon load transport is a vulnerable business segment due to a host of challenges, including limited rail network coverage, high costs, and inefficiencies.

(467) The Commission observes that one of the main hurdles for single-wagon load transport is the limited capillarity of the rail network compared to road networks. While rail excels at long-distance transportation, it often lacks the local connectivity needed for efficient point-to-point deliveries. As a result, supplementary road transport is often required for the final mile, which complicates the logistics chain and slows down deliveries. Compounding this issue, the average speed of single-wagon trains is especially low, ranging between 22 and 25 km/h, far slower than road transport. This sluggish pace, along with frequent transshipments, undermines the single-wagon load transport's ability to offer competitive delivery times in a market that increasingly demands speed and flexibility.

(468) Another pressing issue is the financial viability of single-wagon transport. This model is burdened by high fixed costs related to infrastructure, rolling stock, and operations. Profitability is only feasible when large volumes are moved over long distances, but single-wagon load transport often handles smaller shipments, resulting in inefficiencies and higher costs. Interoperability issues across European rail networks further complicate operations. While initiatives such as the European Rail Traffic Management System (ERTMS) have contributed to removing interoperability issues, national regulatory differences, track gauge variations, and incompatible signalling systems still lead to delays and increased costs for cross-border single-wagon operations.

(469) The operators of the single-wagon load transport segment face intense competition, not only from road freight but also from new entrants in the rail market as these new operators tend to solely focus on profitable niche segments, such as block trains, which offer point-to-point services without intermediate stops and thereby avoid the operational complexities and inefficiencies associated with single-wagon transport of which the legacy systems, older equipment, and high fixed costs weigh down the incumbent operators, such as DB Cargo.

(470) Although the challenges are considerable, there is renewed emphasis on the strategic value of single-wagon transport in Europe's transition toward sustainable freight. Rail freight is a cornerstone of the Union's Green Deal ([162]) and Fit for 55 ([163]) policy, which aim to reduce carbon emissions by 55 % by 2030. Encouraging a shift from road to rail, especially for single-wagon and intermodal transport, is essential for achieving these environmental goals. In that context, technological advancements offer some hope for improving the efficiency and competitiveness of single-wagon load transport. Investments in digital infrastructure and the modernisation of single-wagon load networks are expected to enhance the reliability and speed of services, making single-wagon load transport a more viable alternative to road transport in the future.

([162]) The European Green Deal, launched by the European Commission in December 2019, is the EU's roadmap to a sustainable, carbon-neutral economy and aims to make the EU climate-neutral by 2050. Its key goals include reducing greenhouse gas emissions by 55 % by 2030, decarbonising energy, promoting a circular economy, restoring biodiversity, and fostering sustainable agriculture through the Farm to Fork Strategy. The plan supports green innovation, industrial transition, and a Just Transition Mechanism to aid workers in affected regions. Its timeline is as follows: 2019: Green Deal launch; 2020-2021: Development of specific strategies (e.g. Biodiversity and Circular Economy); 2021: Introduction of the Fit for 55 package; 2022-2030: Policy implementation, targeting 55 % emissions reduction by 2030; 2050: Climate neutrality goal.

([163]) The Fit for 55 programme is a Union legislative package launched in July 2021 as part of the European Green Deal, aiming to reduce greenhouse gas emissions by 55 % by 2030 compared to 1990 levels, on the path to climate neutrality by 2050. Key measures include: (i) reform of the EU Emissions Trading System (ETS) and the introduction of a Carbon Border Adjustment Mechanism (CBAM); (ii) updates to the Renewable Energy Directive (RED), targeting 40 % renewable energy by 2030, and the Energy Efficiency Directive (EED) for improved energy use; (iii) strengthened carbon sinks under the Land Use, Land Use Change, and Forestry (LULUCF) regulation; (iv) creation of a Social Climate Fund to support vulnerable households. Its timeline is as follows: 2021: Package launched and debated; 2022: Political agreements reached; 2023-2025: Implementation of core policies; 2030: 55% emissions reduction target; 2050: Climate neutrality goal.

(471) Against that background, the Commission considers that the strategic importance of single-wagon load transport cannot be overstated. In that respect, the Commission notes that it is essential for numerous industries, including chemicals, automotive, and manufacturing, which rely on rail freight for smaller, flexible shipments that cannot fill entire trains. The failure of DB Cargo and therefore that of its single-wagon load transport operations would have severe repercussions for these industries, as alternative logistics solutions, particularly road freight, would struggle to match the capacity and environmental benefits of rail. Such a failure could lead to increased costs, supply chain disruptions, and even job losses across key sectors that depend on rail freight for transporting intermediate goods and raw materials.

(472) Additionally, the Commission considers that the broader societal impact of a disruption in single-wagon load transport services would be substantial. Indeed, redirecting freight to roads would exacerbate environmental and infrastructural challenges, as road transport produces significantly higher emissions and contributes to congestion. In that context, the Commission considers that this shift would undermine both national and EU sustainability goals, such as the Green Deal and the Fit for 55 initiatives, which emphasise reducing carbon emissions by shifting freight from road to rail. Therefore, the loss of single-wagon load services would represent both a market failure and a setback in the broader effort to reduce environmental harm.

(473) The Commission recognises that the complexity of single-wagon load transport operations makes it difficult for other rail operators to replicate or expand into this segment. Unlike block trains, which run directly between two points, single-wagon load transport involves assembling individual wagons from different customers into a single train at marshalling yards. This labour-intensive process requires sophisticated logistics, specialised equipment, and extensive infrastructure. Margins are thin, and the competition from road freight, which offers quicker and more flexible services, makes it difficult for other companies to invest in large-scale single-wagon load transport such as that of DB Cargo.

(474) As the leading operator of single-wagon load transport in Denmark (with a […] % share) ([164]), Germany (with a 90 % share) ([165]), The Netherlands (with an […] % share) ([166]) and Italy (with a […] % share) ([167]), DB Cargo has a vast network of marshalling yards, locomotives, and trained personnel, providing economies of scale that new entrants would struggle to achieve in those Member States. Additionally, DB Cargo's position as a Germany's incumbent rail freight operator allows it to integrate single-wagon load transport services with broader supply chain solutions, an advantage that smaller or newer operators may lack. The Commission considers that the high fixed costs, coupled with the inherent operational challenges of single-wagon load transport ([168]), create significant barriers for potential entrants in the SWL segment, making it unlikely that others could step in to fill the gap without a disruption, should DB Cargo, and in particular its single-wagon load transport segment, fail.

(475) The Commission considers that the restructuring aid supporting the restructuring plan avoids the exit of an undertaking capable of preventing the disruption of the important service provided by DB Cargo in particular in relation to single-wagon load transport. It concludes that, by averting the risk of disruption of services provided by DB Cargo, the restructuring aid supporting the restructuring plan contributes to a well-defined objective of avoiding social hardship or market failure as provided by point 44(b) of the R&R Guidelines, and hence to the development of the economic activity of provision of land freight transport services in the whole territory of Germany and other Member States where DB Cargo is active.

([164]) See Section 2.2., recitals 27 and 37.
([165]) See Section 2.2., recitals 27 and 37.
([166]) See Section 2.2., recitals 27 and 37.
([167]) See Section 2.2. above, recitals 27 and 37.
([168]) See recitals 466 to 469.

5.4.2.3. Restructuring plan and return to long-term viability

(476) Under point 46 of the R&R Guidelines, in cases of ad-hoc aid, the granting of restructuring aid must be conditional on the implementation of a restructuring plan that would restore the viability of the beneficiary. The remedying of the causes that led to the difficulty of the beneficiary, by facilitating its return to long-term viability, is a necessary condition for the restructuring aid to serve the development of the economic activities and areas where the beneficiary operates.

(477) It follows that the compatibility of the restructuring aid that has covered the losses that DB Cargo has incurred in the course of 2022 and would have posted by 31 December 2022 in the absence of the PLTA needs to be assessed as conditional upon the implementation of the restructuring plan whose preparation and draw-up process started in July 2022, even if the plan was formally transmitted already in course of implementation to the Commission thereafter (recitals 173 and 174). The occurrence of the losses covered by the PLTA which the plan aims at curbing and the chronology of the preparation and implementation of the plan within 2022 are close in time in the present case.

(478) It is therefore appropriate to consider that the compatibility of the restructuring aid planned until end 2025 inclusive, however unlawfully granted at the outset, needs to be assessed in connection with the restructuring plan and its compliance with the requirements of the R&R Guidelines.

(479) Under points 45 to 48 of the R&R Guidelines, restructuring aid should only be granted to support a realistic, coherent and far-reaching restructuring plan, the measures of which must be designed to restore long-term viability excluding any further aid beyond the one supporting the beneficiary's restructuring plan within a reasonable timescale, in a period as short as possible. The restructuring plan must identify the causes of the beneficiary's difficulties and the beneficiary's own weaknesses, and outline how the proposed restructuring measures will remedy the beneficiary's underlying problems.

(480) Under point 49 of the R&R Guidelines, the restructuring plan must provide information on the business model of the beneficiary, demonstrating how the plan will foster its long-term viability. This should include, in particular, information on the beneficiary's organisational structure, funding, corporate governance, and all other relevant aspects. The restructuring plan should assess whether the beneficiary's difficulties could have been avoided through appropriate and timely management action and, where that is the case, should demonstrate that appropriate management changes have been made. Where the beneficiary's difficulties stem from flaws in its business model or corporate governance system, appropriate changes will be required.

(481) Under points 50 to 52 of the R&R Guidelines, the results of the restructuring must be demonstrated in a variety of scenarios, in particular by identifying performance parameters and the main foreseeable risk factors. The return to viability of the beneficiary must result in an appropriate return on capital invested after covering costs, without depending on optimistic assumptions about external factors such as variations of price or demand. Long-term viability is achieved when an undertaking is able to provide an appropriate projected return on capital after having covered all its costs including depreciation and financial charges, and is thus able to compete in the marketplace on its own merits.

(482) These requirements are examined in sections 5.4.2.3.1 to 5.4.2.3.3.

5.4.2.3.1. Assessment of the credibility of the Restructuring Plan to address the causes of DB Cargo's financial difficulties

(483) DB Cargo's financial difficulties have been primarily driven by the SWL segment, which has been a significant source of losses since 2013 (it accounted, alone, for 64 % of the company's losses in 2022 and 82 % in 2023), while the block train and combined transport segments showed volatile but less negative performance. In addition to the SWL segment's losses, the COVID-19 pandemic, global supply chain disruptions, and local German market infrastructure issues exacerbated DB Cargo's challenges from 2019 to 2022.

(484) Those adverse financial performances, which translated into repeated heavy losses, underpin the need for the Restructuring Plan which will significantly modify DB Cargo's operating model and strategy in order to strengthen its financial foundations and streamline the costs of operating its business with a view to returning to viability by the end of the restructuring period.

(485) In that respect, the Commission notes that the Restructuring Plan includes a set of serious, numerous, consistent and mutually reinforcing measures (sections 5.4.2.2.1 to 5.4.2.2.31) that address the root causes of DB Cargo's operational and financial difficulties as they will contribute to improving the efficiency of service production and provision by DB Cargo to its customers as well as streamlining its cost base in many different ways. In particular, the transformation of its highly complex joint production system is expected to allow DB Cargo to respond more flexibly to its customers' requirements. The restructuring into smaller, more focused business areas based on business sectors and/or customer groups should significantly reduce the complexity of the production model, which, in turn, should drastically reduce costs and improve DB Cargo's competitiveness.

(486) For instance, DB Cargo's Restructuring Plan measure of the optimisation of its single wagon network through the review of its design is expected to radically simplify and enhance the robustness of the production and the standardisation of DB Cargo's commercial offering in that segment. Indeed, the dedication of personnel and equipment to the single wagon segment is a radical change when compared to today's integrated production of single wagon, block trains and combined transport. These improvements in the production model should also lead to quality improvements in the service for the customers and, as a result, are expected to enable positive price adjustments in order to better capture the customers' willingness to pay for single wagon services. As such, the Restructuring Plan measures that focus on DB Cargo' single wagon segment are expected to significantly contribute to improving the company's financial situation as they are expected to generate over EUR 100 million of additional EBIT starting in 2025 as shown in section 4.1.5.2.

(487) Similarly, the Restructuring Plan's measures targeted at optimising DB Cargo's block train segment's portfolio and developing smart logistics solutions for its customers are expected to significantly contribute to the improvement of DB Cargo's EBIT as innovative rail transport solutions are expected to enable the company to better benefit from the customers' differentiated willingness to pay and also identify those routes that should be discontinued in order to better allocate the resources to higher-margin business. In addition, also similar to what will be done in the single wagon segment, DB Cargo's Restructuring Plan includes a measure that will encapsulate the operation of block trains with dedicated resource allocation in order to increase production quality. The quality improvements, described above, in the services for the customers should also justify price adjustments for more qualitative block train services over and above the factor cost compensations. As such, the Restructuring Plan measures focused on DB Cargo's block train segment are expected to significantly contribute to improving the company's financial situation as they are expected to generate well over EUR 200 million of additional EBIT starting in 2025 as shown in section 4.1.5.2.

(488) The Restructuring Plan measures targeting the combined transport segment including, among others: (i) the maritime network redesign, its terminals integration, its portfolio optimisation; (ii) the continental combined transport redimensioning, its production system quality improvement; and (iii) the carrier sales portfolio optimisation, are also all expected to contribute to improving DB Cargo's financial situation as they are expected to generate over EUR 50 million of additional EBIT starting in 2025 (and over EUR 100 million per year thereafter) as shown in section 4.1.5.2.

(489) Finally, DB Cargo's Restructuring Plan will seek to eliminate the inefficiencies stemming from redundant processes, the overcapacity and the services with limited added value through the reduction in complexity in the company's various business units and the modernisation of DB Cargo's IT systems. Reduction in office space and marketing expenditures as well as the rightsizing of DB Cargo's administration management structure are similarly all expected to contribute to improving DB Cargo's financial situation. Together these measures are expected to generate over EUR 50 million of additional EBIT starting in 2025 (and over EUR 100 million per year thereafter) as shown in section 4.1.5.2.

(490) Overall, when taken together, DB Cargo's Restructuring Plan measures are expected to contribute over EUR 500 million of additional EBIT as from 2025 and well above that thereafter. The implementation of DB Cargo's Restructuring Plan is therefore expected to transform the company into a leaner, more efficient and customer solutions focused service provider so that its return to viability is expected as from 2026, the last year of the restructuring period, when it is expected to generate its first positive Net Income (which should grow further thereafter).

(491) Based on the above, the Commission considers that the restructuring plan adequately addresses the causes of DB Cargo' financial difficulties. The Commission also considers that the duration of the Restructuring Plan, until the end of the year 2026, is not unreasonably long, given the number and the extent of the restructuring measures discussed above as well as the heavy losses that were the starting point for DB Cargo.

(492) Next, the Commission needs to assess the credibility of the assumptions underlying the beneficiary's Restructuring Plan and then the evidence of the beneficiary's return to viability at the end of the Restructuring Plan.

5.4.2.3.2. Assessment of the credibility of the Restructuring Plan's assumptions

(493) As part of its assessment of DB Cargo's Restructuring Plan assumption, the Commission has reviewed the revenue (both in price and volumes) and cost projections submitted by Germany for the duration of the restructuring period.

(494) First, with respect to the revenue projections, the Commission observes that Germany's assumption concerning the evolution of DB Cargo's revenues over the duration of the restructuring period considers that DB Cargo's revenue will remain relatively flat (+ 4,9 % over the restructuring period when the other operating income is taken into consideration) and actually negative (– 2 %) when the other operating income is excluded ([169]) and only the expected growth of DB Cargo's revenues derived from its main activities is considered over the restructuring period (Table 21). The Commission considers this evolution as reasonable to the extent that it is in line with the volume reductions expected by DB Cargo as part of the implementation of its Restructuring Plan measures in that respect.

(495) In addition, following a more thorough analysis of volumes and pricing, the Commission considers that, with respect to volumes, the development of DB Cargo's total volume, on a tonne-kilometre basis, as foreseen by Germany can be considered as reasonable and realistic in the context of the current market as it is remains limited to a CAGR increase of […] % over the 2025 to 2029 period. The volume growth assumptions of DB Cargo are indeed conservative as Germany foresees no additional effects from market driven growth in SWL transport and below market growth rate in the block train and combined transport segments.

(496) Furthermore, while Germany foresees the development of DB Cargo's revenue per tonne-kilometre to increase with a CAGR of […] % between 2025 and 2029, the Commission also considers such assumptions to be reasonable and realistic to the extent that such passthrough of most of the cost increases is based on the improvement of DB Cargo's productivity and service quality as a result of the implementation of the various Restructuring Plan measures precisely aiming at being able to offer improved customer services in exchange for higher prices.

(497) On that basis, the Commission considers that the assumptions submitted by Germany in terms of the overall revenue evolution are reasonable and credible.

(498) Second, with respect to the cost projections, the Commission observes that the three main cost categories (materials, personnel and other operating expenses) projected over the duration of the restructuring period are expected to decrease by roughly 10 % (2026 v 2023) as regards the costs of materials and personnel expenses, which together represent well over […] % of the beneficiary's total cost base (while DB Cargo's other operating expenses are expected to be reduced even more). Those costs reductions, which may seem significant in absolute terms, yet not so significant in relative terms are considered reasonable for that particular latter reason and the fact that they are

([169]) The other operating income includes the one-off effect of the carrying amount gains from the sale of locomotives in 2026.

grounded in well-defined and agreed cost reduction programmes and, as such, support the improvement of DB Cargo's EBITDA level and enable it to turn positive (EUR 107 million) in 2025 already, i.e. one year before the expiry of the restructuring period.

(499) The decrease of depreciation charges resulting from reduced capital expenditures, which can be observed on the balance sheet of DB Cargo further contributes to the improvement of DB Cargo's EBIT and operating margin which, on that basis, are both expected to turn positive (EUR […] and […] % respectively) by the end of the restructuring period in 2026.

(500) Based on the various restructuring measures put in place by DB Cargo in the context of its Restructuring Plan, the assumptions submitted by Germany with respect to its cost evolution and underpinning DB Cargo's return to viability can be considered to be reasonable and credible.

(501) In conclusion, the Commission has carefully reviewed the key assumptions underlying the financial forecasts of DB Cargo's Restructuring Plan submitted by Germany and finds that the assumptions underlying the financial projections are reasonable and credible and therefore plausible.

5.4.2.3.3. Assessment of the credibility of the beneficiary's return to viability

(502) Having established the credibility of the assumptions underlying the financial projections, the Commission will now assess whether, based on those projections, the beneficiary is able to return to viability by the end of the restructuring period. More specifically, the Commission will verify whether, by the end of the financial year 2026 the beneficiary expects to generate a sufficient rate of return from its operation and be able to compete on its own merits.

(503) DB Cargo's EBIT margin (of revenues excluding the other operating income) is forecasted to be […] % negative at the end of 2024 and […] % positive by the end of the restructuring period in December 2026. DB Cargo's profitability, measured as EBIT margin, is consequently expected to significantly increase over the duration of the restructuring period (and stabilise thereafter) ([170]). Those improved performances do not allow proper comparison to past performances to the extent that those were essentially negative and this significant improvement is built on the back of the implementation of DB Cargo's Restructuring Plan

(504) In addition, DB Cargo is expected to generate a positive net income both in the case of the baseline and pessimistic scenarios. In addition, such positive developments are going to positively contribute to DB Cargo's equity position as they are planned to continue beyond the restructuring period.

(505) Moreover, DB Cargo's Restructuring Plan financials show that its return indicators will improve all along the restructuring period and will reach a ROCE of […] % by the end of 2026, which will further increase after the end of the restructuring period to […] % in 2030 for instance. According to Germany's calculation, DB Cargo's return on capital, as measured by ROCE, would consequently, from the end of the restructuring period in 2026 onwards, constantly be higher than the level of its […] (footnote 112). The Commission therefore considers that, DB Cargo's level of ROCE is high enough to consider it an appropriate projected return on capital to the extent that it enables DB Cargo, after having covered all its costs including depreciation and financial charges, to compete in the marketplace on its own merits.

([170]) It is important to note that this EBIT margin can only be reached by the combination of ambitious company-internal measures and the German SWL transport subsidy of about EUR 300 million annually. Excluding the subsidy, the single wagon business segment would not return to profitability. It is equally relevant to note that the DB Cargo's application for the single wagon transport funding for 2024 have not yet been approved by the German Federal Railway Authority. It is therefore not yet clear to what extent the funding of EUR 300 million per year for the sector will eventually reach DB Cargo. The assumption in the base case is that […] % of this volume (EUR […] per year) will be allocated to DB Cargo.

(506) The Commission considers that it is even more so the case that Germany's projection of DB Cargo's ROCE includes the limited contribution of the SWL transport segment to DB Cargo's overall profitability which, as explained in section 5.4.2.1, faces numerous challenges (high fixed costs, limited rail network coverage, and competition from the faster and more adaptable road transport) but plays a critical role in Europe's logistics network (particularly for industries such as chemicals, automotive, and manufacturing, which depend on flexible rail freight services) and is essential for reducing CO_2 emissions and achieving the EU's climate goal as a more sustainable and efficient alternative to road transport.

(507) The Commission further considers that DB Cargo's expected performance is planned to be better than that of its peer group. Indeed, when comparing the respective EBIT margin levels (the EBIT is an important component of the ROCE ratio) levels, the Commission observes that DB Cargo's EBIT margin is planned to reach […] % by the end of the restructuring period in 2026 while that of its peers stood, on average over the 2021/2023 period at 2 % for comparable activities (and at 5 % when considering only those peers that do not operate SWL transport businesses). DB Cargo is thus expected to perform in line with or above its current peers.

(508) As regards its solvency indicators, DB Cargo is expected to maintain a positive and growing equity position throughout the duration of the implementation of its Restructuring Plan and its equity ratio (Equity/Total Assets) will steadily increase by the end of the restructuring period ([…] % in December 2026) and afterwards (up to […] % in December 2030). Likewise, DB Cargo's Interest Coverage Ratio (EBIT/Interest Expenses) is expected to evolve positively over the duration of the Restructuring Plan and reach a level well over 1x by the end of 2026 (and over 1,5x by December 2030).

(509) As an alternative to the Baseline scenario of the financial projections, the Commission considers that the Pessimistic scenario as defined in the Restructuring Plan is also adequate and credible to the extent that it assumes a number of possible adverse developments affecting the driving parameters of the beneficiary's performance, such as possible delays in the execution of DB Cargo's Restructuring Plan measures, significant losses of volumes or intense price competition. The Commission therefore notes that the Pessimistic scenario effectively takes into account plausible variations in revenue and costs drivers that might all, individually or collectively, affect the viability of DB Cargo. The Commission further notes that the factors negatively affecting revenues and costs in the Pessimistic scenario are deemed to take place simultaneously.

(510) In such Pessimistic scenario, the results of DB Cargo are affected but remain positive and sustainable, thus not compromising the beneficiary's return to viability. Indeed, the Pessimistic scenario's expected net income after coverage of all operating costs, including interests and depreciation costs, continues to be positive by the end of the restructuring period in 2026 and thereafter as in the Baseline scenario. In addition, while, under the Pessimistic scenario, DB Cargo's EBIT margin would stand at EUR […] (i.e. a […] % margin on revenues) in 2026, it would increase to close to EUR […] (i.e. around a […] % margin on revenues) in the following years.

(511) Likewise, DB Cargo's Pessimistic scenario ROCE is expected to decrease to […] % when compared to the Baseline scenario's […] % but is expected to pick up to […] % by 2030 (compared to the Baseline scenario level of […] %). This confirms that in the Pessimistic scenario DB Cargo's return to long-term viability remains solid despite all the adverse assumptions that that scenario includes.

(512) This is confirmed also by the expected evolution of DB Cargo's ROA which, under the Pessimistic scenario, will stand at close to […] % at the end of the restructuring period (compared to […] % under the Baseline scenario) and grow to 2,5 % by 2030 (compared to […] % under the Baseline scenario).

(513) With respect to solvency indicators, under the Pessimistic scenario, DB Cargo is also expected to maintain a positive and growing equity position throughout the duration of the implementation of its Restructuring Plan. DB Cargo's equity ratio (Equity/Total Assets) will, as in the Baseline scenario, steadily increase by the end of the restructuring period and onwards (up to […] %). Likewise, DB Cargo's Interest Coverage Ratio (EBIT/Interest Expenses) under the Pessimistic scenario is expected to evolve positively over the duration of the Restructuring Plan and reach a level of close to 1x by the end of 2026 (and over 1x by December 2030).

(514) In view of the above, the Commission concludes that the proposed Restructuring Plan, in both its Baseline and Pessimistic scenarios, is feasible, coherent and far-reaching and is capable of restoring the long-term viability of DB Cargo within a reasonable timeframe.

5.4.3. *Positive effects of the aid on the development of economic activities or of economic areas outweigh the negative effects, in terms of distortions of competition and adverse effects on trade*

(515) In order to assess whether the aid does not unduly affect the competition and trading conditions, it is necessary to examine the necessity, appropriateness and proportionality of the aid, and to ensure transparency. It is also necessary to examine the effects of the aid on competition and trade and weigh the positive effects of the aid for the development of the economic activities and areas that the aid intends to support, as well as other positive effects of that aid, against its negative effects on the internal market.

5.4.3.1. Necessity of the aid and incentive effect

(516) Under point 53 of the R&R Guidelines, Member States that intend to grant restructuring aid must provide a comparison with a credible alternative scenario not involving State aid, demonstrating that the development of the economic activities or areas sought by the aid, referred to in section 3.1.1 of the R&R Guidelines, will not be attained or would be attained to a lesser degree without the aid. Also, in order to demonstrate that restructuring aid has an incentive effect, Member States must show that, in the absence of the aid, the beneficiary would have been restructured, sold or wound up in a way that would not have achieved the intended objective of avoiding market failure or social hardship (point 59 of the R&R Guidelines).

(517) In the alternative scenario in which DB AG would not have terminated the PLTA and granted and still grant thereafter the restructuring aid resolving the negative equity situation, DB Cargo would have attracted possible mistrust of clients or suppliers first forcing it to reduce abruptly its operating losses in the segments of business where they are the greater, in particular SWL. DB Cargo would have soon posted large losses, thus prompting its insolvency de facto.

(518) Moreover, as the only shareholder of DB Cargo is historically DB AG, (see recital 13), it would be unrealistic that an alternative controlling shareholder would have been or still be attracted in the short term to provide capital to cover DB Cargo's losses. It was, therefore, for DB AG to avoid that the beneficiary ceases or greatly reduces operations. In a counterfactual scenario without aid, DB Cargo would have risked and still risk ceasing to provide important land transport services in the SWL segment in Germany, which by size and nature, competitors could not and cannot easily and timely replicate.

(519) The restructuring aid is thus shown to have had and still have a determinant effect incentivising the implementation of all the envisaged restructuring measures in order to return to long-term viability, whilst preventing the beneficiary from risks of ceasing or greatly reducing land transport operations in SWL activities or other rail freight segments which are essential contributors to the sustainable economic development of transport of goods within the internal market.

5.4.3.2. Appropriateness

(520) Restructuring aid will not be considered compatible with the internal market if less distortive measures allow the same objective to be achieved; the aid must be properly remunerated, and the instruments chosen must be appropriate to the solvency or the liquidity issues it intends to address ([171]).

(521) The restructuring aid takes the form of a loss transfer from DB Cargo to DB AG. This loss transfer has a positive effect on DB Cargo's solvency, as it protects DB Cargo's equity position from being negatively affected by the losses generated. The Commission notes that the loss transfer does not provide DB Cargo directly with any liquidity in line with the fact that DB Cargo did not have any liquidity issue when it became an undertaking in difficulty.

([171]) Points 38(c), and points 54 and 58 of the R&R Guidelines.

(522) With respect to the solvency enhancing aspect of the aid, as explained in recital 442, absent the aid, DB Cargo's equity would have had to absorb the losses and thus would have turned negative in 2022. A negative equity position, meaning that a company's liabilities exceed its assets, would be a serious solvency problem, which has been avoided between 2022 and 2024 by the granting of the aid. .

(523) Concerning the question of a proper remuneration for the instruments, the Commission notes that the losses are automatically charged under the PLTA to DB Cargo's parent DB AG. DB AG does not receive any direct net positive remuneration for the loss transfer. However, DB Cargo is fully owned by DB AG, hence DB AG, as sole shareholder of DB Cargo, will fully reap any benefit derived from DB Cargo's return to long-term viability.

(524) In that context, the assessment anticipates reasonable future financial returns from DB Cargo that are expected to safeguard DB AG's broader strategic interests, such as maintaining a key subsidiary like DB Cargo, particularly by serving industries like steel, automotive, and chemicals, which generate a substantial portion of DB Cargo's EUR 4,5 billion in annual revenues. Therefore, by ensuring continued operation through the aid, Germany preserves DB Cargo's long-term strategic positioning. The assessment of the projections in the baseline scenario reasonably anticipates cumulative financial returns from DB Cargo over the next five to ten years, aligning with expected remuneration throughout the restructuring period and beyond. However, below what a market investor in a similar situation and having borne the recent losses incurred since 2022 might hold, the returns remain reasonable and adequate, especially as from the last year of the restructuring period and thereafter. In this regard, the Commission has calculated the Internal rate of Return (IRR) that DB AG could expect from the successful restructuring plan. The Commission uses the approach as described in recitals 378 and 379. However, instead of using the mid-term plans as a basis, the Commission uses the projections of the baseline scenario of the restructuring plan. Based on this calculation, DB AG could expect an IRR of around […] %. This IRR would be within the range of yields of the most recent bonds issued by Deutsche Bahn Finance GmbH ([172]), which currently yield between […] % and […] % ([173]). Therefore, the remuneration is largely in line with the funding costs of DB AG.

(525) In that juncture, the expected aid instrument will address and remedy the degraded solvency situation, whilst sufficiently remunerating DB AG and thus the German State, whose stake in the beneficiary will have increased in value.

(526) It follows that the restructuring aid instrument is appropriate.

5.4.3.3. Proportionality of the aid and burden-sharing

(527) Under point 38(e) of the R&R Guidelines, restructuring aid must not exceed the minimum needed to achieve the objective sought by that aid. The amount and intensity of restructuring aid must be limited to the strict minimum necessary to enable the restructuring to be undertaken, in the light of the existing financial resources of the beneficiary, its shareholders or the business group to which it belongs (point 61 of the R&R Guidelines). In particular, a sufficient level of own contribution to the costs of the restructuring and, where State support is given in a form that enhances the beneficiary's equity position, of burden sharing, must be ensured. The assessment of those requirements will take account of any rescue aid granted beforehand.

([172]) Bonds with the International Securities Identification Numbers (ISIN):
- XS2624017070
- XS2689049059
- XS2755487076
- XS2808189760.

([173]) According to data from https://www.boerse-frankfurt.de/en, last accessed on 27 November 2024.

5.4.3.3.1. Own contribution

(528) The own contribution of the beneficiary to the restructuring costs from the own resources of DB Cargo, its shareholder or creditors -or new investors- must be real and actual and should normally be comparable to the aid granted in terms of effect on the solvency or liquidity position of the beneficiary. Pursuant to point 63 of the R&R Guidelines, the Commission needs to assess whether the various sources of own contribution are actual and aid-free. According to point 64 of the R&R Guidelines, the Commission normally considers the own contribution to be adequate if it amounts to at least 50 % of the restructuring costs.

(529) First, as a preliminary consideration for the assessment of the proportionality, it should be noted that the amount of restructuring aid supporting the costs of the restructuring plan is de facto capped by design to the amount of net losses incurred during the restructuring period up to 31 December 2024. Thereafter, any net loss incurred by DB Cargo – as expected in 2025 – would, in the absence of the terminated PLTA with DB AG need to be posted and incurred as recorded in the income statement and balance sheet of DB Cargo. Moreover, the own contribution of the shareholder of DB Cargo includes Mezzanine capital (EUR 842 million subordinated convertible loans) that could be converted and support the equity and solvency position of DB Cargo if needed in a similar manner as the restructuring aid did and does until 2024 inclusive.

(530) Indeed, any solvency issues after termination of the PLTA or lagged effects thereof until profits are expected are addressed by the availability of financing lines contributed by DB AG and, in particular, the Mezzanine capital (EUR 842 million subordinated loans), which is the biggest single amount of the own contribution. For the solvency of DB Cargo, the Mezzanine capital would play a similar role to the PLTA of enhancing DB Cargo's equity position given its subordination and therefore security ranking close-to-equity.

(531) With respect to point 63 of the R&R Guidelines, the Commission needs to verify whether the various sources of funding of the own contribution to the costs of the restructuring plan described in section 4.1.5.3.2.2 are free of aid and real, that is, sufficiently likely to materialise in the course of the implementation thereof, excluding profits. With respect to the aid-free nature of the beneficiary's own contribution, with the exception of the asset divestitures and factoring, most of it is made up of financial instruments or support made available by DB AG to DB Cargo through State resources, it is required that it be strictly structured and provided on market terms.

5.4.3.3.1.1. Mezzanine Capital (Subordinated Convertible Loans of EUR 842 million) and Credit Lines (EUR 325 million and EUR 434 million)

(532) The Commission considers that DB AG has adhered to this market-terms principle by first assigning, on the basis of DB Cargo's intrinsic financial characteristics, a measurable, verifiable and market-based internal rating, and second, by benchmarking the financial instruments it provides to DB Cargo against data from reputable market pricing tools such as LSEG Data & Analytics ([174]) thereby ensuring that the interest rates applied to the various instruments reflect the risk associated with DB Cargo's rating.

([174]) LSEG Data & Analytics, formerly Refinitiv, is an American-British global provider of financial market data and infrastructure. The company was founded in 2018 as a subsidiary of Thomson Reuters, which then sold a 55 % stake to Blackstone Group LP in August 2018. In October 2019, Blackstone and Thomson Reuters announced the sale of the company to London Stock Exchange Group (LSEG). LSEG Data & Analytics is considered highly reliable for financial market data due to its long-standing reputation, comprehensive global coverage, and accuracy. It delivers real-time, accurate data across various asset classes and is integrated with major financial systems. LSEG Data & Analytics indicates it follows strict regulatory standards, ensuring transparency and compliance. Its affiliation with the LSEG has further solidified its trustworthiness. Financial institutions, analysts, and regulators depend on LSEG Data & Analytics for its robust data and analytics tools, making it a cornerstone of the financial industry.

(533) In corporate finance, credit ratings serve as a critical tool for assessing a firm's default risk and, consequently, its cost of debt. According to the trade-off theory of capital structure, undertakings balance the benefits of debt (tax shields) against the costs (bankruptcy risk and interest costs). As firms such as DB Cargo face financial strain, as reflected in lower credit ratings, their cost of borrowing rises due to increased risk of default.

(534) In that respect, the Commission considers that the fact that DB AG internally assesses the creditworthiness of DB Cargo using established corporate finance principles aligned with those used by credit rating agencies such as S&P ([175]) is a sound basis for the determination of DB Cargo's internal credit rating as, in large corporations, the internal credit rating process typically mirrors external agency methodologies but is adapted to better reflect the company's strategic and operational insights. Consequently, the Commission considers that DB AG's internal rating process ensures that DB AG's contribution is structured in compliance with the applicable regulatory standards and in accordance with market principles which form the foundation for determining the appropriate risk premiums and interest rates on financial instruments such as subordinated loans, mezzanine financing, and credit lines that are provided by DB AG to DB Cargo as the beneficiary's own contribution to the financing costs of DB Cargo's Restructuring Plan.

(535) Furthermore, the Commission acknowledges that the financial metrics such as 'recovery cover' (i.e. operational cash flow after tax divided by net debt), 'net debt/EBITDA ([176])' and 'EBITDA/interest coverage ([177])' that DB AG uses as references to classify its subsidiaries, including DB Cargo, into different credit and rating classes using financial ratios are foundational in credit risk assessments and widely recognised in corporate finance theory ([178]) for evaluating a firm's debt sustainability, liquidity, and operational performance and, as such, regularly used by financial market analysts assessing the creditworthiness of undertakings.

(536) With respect to DB Cargo, the Commission considers that DB AG's decision, following its review of DB Cargo's financial performances and projections (e.g. projected 2024 EBITDA), to downgrade DB Cargo's internal rating from '[…]' '[…]' based, in particular, on the deterioration of DB Cargo's financial health from 2021 to 2023, is a prudent approach which contributes to the determination of more realistic and appropriate interest rates applicable to the relevant financial instruments provided by DB AG to DB Cargo.

(537) The downgrade to '[…]' indicates that DB Cargo is in the high-yield (junk bond) category, which is often associated with distressed firms of which the default probability is quantified through the use of credit risk models such as the Altman Z-Score and the Merton model ([179]) which mirror DB AG's use of financial ratios and market conditions in its internal credit rating process.

(538) The Commission therefore considers that DB Cargo's internal credit rating of '[…]' appropriately reflects its worsened creditworthiness following the expected deterioration in its EBITDA in 2024, driven by industry challenges and operational difficulties, which weakens its ability to generate sufficient operating income to meet its debt obligations, particularly in light of its capital-intensive nature as a logistics company.

([175]) Such as S&P's published historical default probabilities.

([176]) The net debt/EBITDA ratio measures a firm's leverage, indicating how many years it would take for the company to repay its debt if both debt and EBITDA remained constant. As a best practice, a ratio above 3 is often seen as a sign of elevated credit risk, and for DB Cargo, a high net debt/EBITDA ratio likely contributed to the downgrade in its rating.

([177]) The EBITDA/interest coverage ratio measures the firm's ability to service its debt obligations, with higher values reflecting greater financial stability.

([178]) According to modern corporate finance practices, a comprehensive internal credit rating model assesses both quantitative factors (financial ratios) and qualitative factors (business outlook, management quality, industry risk).

([179]) The Altman Z-Score is a financial model used to predict a company's likelihood of bankruptcy. It combines several financial ratios into a single score, with higher scores indicating lower risk of insolvency. The Merton Model estimates a company's credit risk by calculating the probability of default based on the firm's asset value relative to its liabilities, using option-pricing theory.

(539) This rating, which incorporates higher credit risk compared to better-rated subsidiaries, directly affects the interest rates charged on debt financing as, under the Modigliani-Miller theorem ([180]), in the presence of financial distress, debt becomes increasingly expensive, reflecting the increased default risk premium. The Commission therefore considers that the interest rates applied by DB AG to DB Cargo's Mezzanine capital (also referred to as subordinated convertible loans) of EUR 842 million and two credit lines of EUR 325 million and EUR 434 million reflect this risk premium, adhering to the widely accepted corporate finance principles of risk-adjusted return and appropriately takes into account DB Cargo's '[…]' rating and thereby ensures that the loan terms are competitive with similar high-yield bonds in the market.

(540) After the assessment of the component elements and mark-ups of the interest rates at hand and their financial rationale, it is also appropriate in practice to assess the level of rates that results from the application of the provisions of the respective financing agreements for the Mezzanine capital (or subordinated loans) and the two credit lines provided to DB Cargo.

(541) In that respect, as DB Cargo does not borrow from external financial institutions or banks, there is no observable market interest charged to its loans that would be available as benchmark for comparison. It is not practicable either to identify a rail freight operator – or else – borrowing at market terms that would be sufficiently similar in operating and financial profile and that would serve to draw any valid inference on the borrowing costs of DB Cargo if it raised finance from markets or financial institutions. In such situation, the Commission's Communication on the revision of the method for setting the reference and discount rates sets out criteria for determination of a proxy for the market rate ([181]).

(542) The appropriate proxy resulting from the Communication on the revision of the method for setting the reference and discount rates would therefore be a loan from a parent company to a subsidiary such as DB Cargo with a weak rating and no external borrowings. In case of default, the parent/lender would still remain entitled to seek satisfaction from the subsidiary's unencumbered assets. DB Cargo's fixed, non-current assets are worth EUR […] billion in its balance sheet, well above the EUR 1,7 billion of total amount of financial instruments that DB AG provides to support the costs of DB Cargo's restructuring plan. The lender would thus have no to low loss if DB Cargo defaulted. The resulting (proxy of) interest rate charged by the parent/lender would be […] and […] as set out in the Communication on the revision of the method for setting the reference and discount rates. The […] % annual interest rate that DB AG charges to DB Cargo on the two credit lines, which are the most senior loans of own contribution, is in the range of the proxy rates: well above the former proxy and close to the latter proxy. Riskier finance in terms of seniority such as the Mezzanine capital ([182]) (or subordinated convertible loans) attracts much higher interest rates, in application of the market based and objective methodology set out in the credit agreements with DB AG, up to […] % at present.

(543) Furthermore, the Commission collected financial data from the database *S&P Capital IQ* ([183]) for benchmarking the interest rates that DB Cargo has to pay for the credit lines and the Mezzanine capital. In this regard, the Commission collected data on the yields of corporate bonds for non-financial corporates with a similar risk profile to DB Cargo, i.e. companies rated '[…]' and '[…]'. Figure 9 depicts the corporate bond yield curves for such companies. For a particular risk group, the curve provides a relevant estimate of the yield at which the market currently prices the debt of those issuers. The Commission uses the bond yields as a benchmarking proxy as a bond yield is the amount of return an investor realizes on a bond which gives a good indication of the 'all-in' cost of borrowing for a company.

([180]) The Modigliani-Miller theorem suggests that, in a perfect market, credit ratings, distress and bankruptcy risks don't affect a firm's value, as capital structure is irrelevant. However, in reality, these factors matter because markets are not perfect. Hence credit ratings and bankruptcy risks always influence borrowing costs/interest charges, investor perceptions and the financial stability of distressed companies, making capital structure decisions crucial in real-world scenarios.

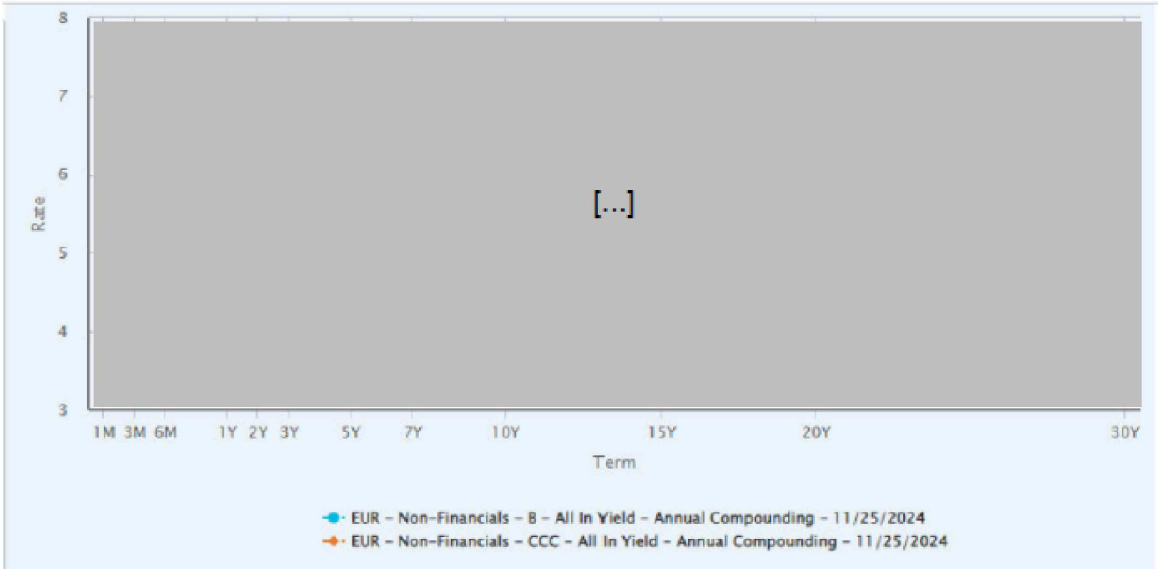
([181]) OJ C 14, 19.1.2008, p. 6.

([182]) Mezzanine financing typically carries a higher interest rate due to its position below senior debt in the capital structure, consistent with corporate finance's pecking order theory. This theory states that companies prefer to raise capital in the order of least to most costly, with mezzanine financing representing an option between equity and senior debt. In the particular case of DB Cargo and unlike in other cases of mezzanine financing, the DB AG mezzanine loan does not allow the interest payment to be suspended or the repayment date to be postponed, which results in a lower interest charge than in the case of straight equity financing which has neither a maturity nor an obligation to pay interest.

([183]) https://www.capitaliq.com/.

Figure 9

Corporate bond yield curve for different maturities and ratings



Source: S&P Capital IQ accessed on 26 November 2024.

(544) The Commission notes that, for the temporary credit lines, see recitals 257(f) and 257(b), the applicable interest rate is calculated for the individual drawdown. Using the example of the 6-month period for which, according to the interest methodology described in the agreements, the interest rates amount to […] % on annual basis at present, the Commission notes that the market currently prices debt with a 6-months maturity at […] % for companies with a '[…]' rating, respectively at […] % for companies with a '[…]' rating. DB Cargo's interest would fall within those two boundaries, being closer to the upper boundary. Hence, the interest rate seems to be in line with expectations of the market.

(545) Concerning the subordinated convertible loans, see recitals 257(a) to 257(e), the Commission notes that those loans have maturities between around five years and around seven years with an applicable interest rate amounting to […] % on annual basis at present. Currently, the market prices debt with a five-year maturity for '[…]' rated companies at […] % and […] % for '[…]' rated companies. Moreover, for bonds with a seven-year maturity, the yield currently is priced at '[…] % for '[…]' rated companies, respectively […] % for '[…]' rated companies. This means that DB Cargo pays a sizeable premium for the riskier nature of the subordinated convertible loans compared to the current bond yields. Hence, also concerning the subordinated convertible loans, the benchmarking does not show that the financing would be provided by DB AG at manifestly advantageous conditions to DB Cargo.

(546) It follows that the terms at which the Mezzanine capital and credit lines financing are made available to DB Cargo as sources of own contribution are in line with and actually above proxies and benchmarks of market rates and thus aid free.

5.4.3.3.1.2. Proceeds from asset divestments (EUR [460-560] million)

(547) DB Cargo's divestments of assets worth EUR [460-560] million, which must take place during the restructuring period exclude intra-group purchases, can therefore be considered as free of State resources. Moreover, the instances available of sales already to private operators and the principles governing the planned sales indicate a market-based approach of buyer selection preserving the interest of DB Cargo (see section 4.1.5), which Germany and DB Cargo should follow for divestments and sales of assets committed to.

(548) However, point 63 of the R&R Guidelines excludes expectations of future profits from the scope of actual contributions. The real and actual own contribution from DB Cargo identified by Germany includes EUR [460-560] million proceeds expected from sales of assets or shareholdings that must take place […]. That full amount of proceeds is not yet sufficiently certain. In another past case of compatible aid to a railway freight competitor, the Commission considered that a commitment to divest assets or shareholdings in the course of the restructuring plan, in addition to financing from the parent company, was a valid source of actual own contribution even if not fully implemented or absent committed buyers ([184]).

(549) However, the Commission will conservatively set aside from the assessment of the proportionality of the restructuring aid to DB Cargo the amount of revenues expected from divestments or sales of assets which are not yet signed and those for which there are not sufficiently committed buyers identified and/or the sales price is a mere estimate. The relevant costs planned to be incurred for the same amount will thus need to be financed with expected operating revenues from normal operation.

(550) It follows from the description of the state of play provided by the German authorities that the revenues expected from divestments or sales of assets which are signed and those for which there are binding offers from buyers identified amount to EUR […], out of the EUR [460-560] million total expected amount of sales (recital 325). These former revenues already paid to or imminent for DB Cargo should be considered real and actual contributions from the beneficiary.

5.4.3.3.1.3. Factoring of receivables by HSBC (EUR [100-140] million)

(551) The factoring of EUR [100-140] million receivables is agreed by […], a private bank selected after a tender process with the best binding bid (recital 257(c)(f)). The factoring of receivables reduces and will reduce costs held by DB Cargo and improve its working capital and cash flows. Because of provision by resources which are not under control of the German State, the factoring by […] is a source of aid free and actual own contribution.

5.4.3.3.1.4. Transfer and coverage of staff wage and severance costs (EUR [100-140] million)

(552) The costs related to the reductions of the number of DB Cargo staff triggered by the restructuring plan will be covered by the contribution of DB JobService Gmbh (recital 257(c)(f)). The reduction and reattribution within the DB Group has been agreed by the competent internal bodies for precise staff numbers, so that the involvement of DB JobService Gmbh is certain, defined and accurately quantified. This contribution results from the application of DB AG preestablished corporate rules and policies. The decision of DB Cargo to use the service is an autonomous decision within the group, unlikely to be due to State involvement or interference in its capacity of shareholder of DB AG.

(553) Moreover, the role of DB JobService Gmbh as in-house service provider is similar to those of placement agencies in the labour market for the reattribution of redundant staff. The intra-group nature of the scope, provision and value of the service provided is no impediment to considering that the service is provided at market terms, as would be the case for a privately-owned group of similar size and activities. It follows that this source of contribution is free of aid, real and actual.

5.4.3.3.1.5. Conclusion

(554) The resources provided by the beneficiary and its shareholder and factoring bank can be considered free of any State aid. Those contributions put forward by Germany effectively amount to EUR 2 291 million and exceed the EUR 1 914 million estimated amount of restructuring aid thus representing 54 % of the necessary funding for the costs of the plan. The aid is capped to a maximum of the losses incurred in 2022, 2023 and those planned for 2024, so that it would remain proportionate if the actual losses recorded on 31 December 2024 still transferred in application of the PLTA remained below the amount of own contribution from DB Cargo.

([184]) Decision C(2004) 3955 final of 2 March 2005, recitals 82 to 87 and 186-187.

(555) However, these contributions must also be real and actual, which is not so for the full amount of EUR [460-560] million proceeds expected from shareholding divestments or sales of assets during the restructuring period. Even under the extremely conservative assumption that there would be no proceeds from the sales and divestments that DB Cargo must carry out during the restructuring period for which there are no sufficiently committed buyers yet, the actual own contribution to costs from remaining sources of aid free funding now secured would still amount to 50 % of the total.

(556) Hence, the requirement of point 64 of the R&R Guidelines, according to which the own contribution from the beneficiary will normally be adequate if it amounts to 50 % of the restructuring costs and is significant, is met.

5.4.3.3.2. Burden sharing

(557) Pursuant to points 65 to 67 of the R&R Guidelines, State support given in a form that enhances the beneficiary's equity position can have the effect of protecting shareholders and subordinated creditors from the consequences of their choice to invest in the beneficiary, thus creating moral hazard and undermining market discipline. Consequently, aid to cover losses should only be granted on terms that involve adequate burden sharing by existing investors and State intervention should take place after losses have been fully accounted for and attributed to the existing shareholders and subordinated debt holders.

(558) Adequate burden sharing will normally mean that incumbent shareholders and, where necessary, subordinated creditors must absorb losses in full. Subordinated creditors should contribute to the absorption of losses either via conversion into equity or write-down of the principal of the relevant instruments. Therefore, State intervention should only take place after losses have been fully accounted for and attributed to the existing shareholders and subordinated debt holders. In any case, cash outflows from the beneficiary to holders of equity or subordinated debt should be prevented during the restructuring period to the extent legally possible, unless that would disproportionately affect those that have injected fresh equity (point 66 of the R&R Guidelines).

(559) Moreover, point 67 of the R&R Guidelines provides that any State aid that enhances the beneficiary's equity position should be granted on terms that afford the State a reasonable share in future gains in value of the beneficiary, in view of the amount of State equity injected in comparison with the remaining equity of the company after losses have been accounted for.

(560) In the present case, the restructuring aid does not incentivise moral hazard or excessive risk taking having benefitted shareholders or creditors of the beneficiary. Indeed, there are no subordinated creditors having financed DB Cargo as all of DB Cargo's financing has been provided on an inter-company basis directly from the Treasury department of DB AG. In that juncture, the losses of DB Cargo which the PLTA prevented from appearing have been and will be for 2024 *de facto* absorbed by the sole shareholder DB AG by the transfer of such losses in implementation of the PLTA as from 31 December 2022. There are therefore no recorded losses left to absorb by or attributed to DB AG. Accounting-wise the losses have not been recorded nor absorbed; however, they have been de facto supported already by the sole shareholder of DB Cargo. With the concomitance of the loss transfer, the restructuring aid and the discontinuation of the PLTA as from 31 December 2024 preventing automatic transfer of DB Cargo's profits to DB AG, such equity enhancing aid complies with point 66 of the R&R Guidelines.

(561) The restructuring aid also complies with point 67 of the R&R Guidelines because, when considering the improvements in equity that the aid brings about by preventing net losses from eroding it, Germany, sole shareholder through DB AG of DB Cargo, will fully reap all potential shareholder benefits derived from the upsides expected from the implementation of the Restructuring Plan and from DB Cargo's return to long-term viability. This is so regardless of whether future upsides accrue in the form of future dividends or in the form of retained net income increasing the equity and the value of the indirect State shareholding that loss transfers enhanced since 2022 and will still enhance for 2024. It follows that, via DB AG, the terms of the State intervention afford Germany a reasonable share in future gains in value of DB Cargo.

5.4.3.3.3. Conclusion

(562) The Commission therefore concludes that the restructuring aid is proportionate and involves appropriate burden-sharing.

5.4.3.4. 'One-time, last time' principle and limitation of distortions of competition

(563) To ensure that the negative effects of the aid are limited in order to avoid undue effects on competition and trade and to ensure that the overall balance is positive ([185]), aid must be granted to undertakings in difficulty in accordance with the 'one time, last time' principle limiting such aid for a period of ten years.

(564) The Commission allows restructuring aid in support of only one restructuring operation and provided, if appropriate, that more than ten years has elapsed after an earlier granting of restructuring aid or after the restructuring plan has come to an end or was halted ([186]). The Commission permits exceptions to that rule where restructuring aid follows rescue aid as part of a single restructuring operation ([187]).

5.4.3.4.1.1. 'One-time, last time' principle

(565) The restructuring aid supports only one restructuring operation of the beneficiary. The German authorities confirmed that the beneficiary has not benefited from any rescue or restructuring aid or temporary restructuring support in the past and does not belong to a larger group of undertakings that could have received such aid. The Commission's assessment of the past financial situation of DB Cargo as well as the Commission records on past rescue or restructuring aid and on temporary restructuring support confirm this declaration. Therefore, the restructuring aid respects the 'one time, last time' principle.

(566) Under point 74 of the R&R Guidelines, the 'one time, last time' principle is extended to the group, in the meaning that, where a business group has received rescue aid, restructuring aid or temporary restructuring support, the Commission will normally not allow further rescue or restructuring aid to the group itself or any of the entities belonging to the group unless ten years have elapsed since the aid was granted or the restructuring period came to an end or implementation of the restructuring plan was halted, whichever occurred the latest. Moreover, Member States have to demonstrate that, where an entity belonging to a business group has received rescue aid, restructuring aid or temporary restructuring support, however with the group as a whole as well as the other entities of the group remaining eligible for rescue or restructuring aid, no aid will be passed on from the group or other group entities to the earlier beneficiary of the aid.

(567) As regards DB group, the German authorities confirmed that the beneficiary's parent company and its sister companies have not benefited from any rescue aid or restructuring aid or temporary restructuring support in the past. The Commission's records on past rescue or restructuring aid and on temporary restructuring support confirm this declaration. Therefore, the rescue aid respects the 'one time, last time' principle.

5.4.3.4.1.2. Limitation of distortions of competition

(568) According to point 76 and following of the R&R Guidelines, when restructuring aid is granted, measures must be taken to limit distortions of competition, so that adverse effects on trading conditions are minimised as much as possible and positive effects outweigh any adverse ones. As explained in points 87 to 93 of the R&R Guidelines, competition measures should be calibrated and set out in proportion to the distortive effects of the aid. In particular, relevant factors are the size and the nature of the aid and the conditions and circumstances under which it is granted, the degree of own contribution and burden sharing as well as the size and relative importance of DB Cargo in the market and the characteristics of the market concerned. Moreover, measures to limit distortions of competition should not compromise the prospects of the return to viability, nor should they come at the expense of consumers and competition.

([185]) Point 38(f) of the R&R Guidelines.
([186]) Points 70 and 71 of the R&R Guidelines.
([187]) Point 72(a) of the R&R Guidelines.

(569) Finally, point 122 of the R&R Guidelines recalls that the beneficiary must fully implement the restructuring plan and must discharge any other obligations laid down in the Commission decision authorising the aid. As set out in detail in section 4.1.5, Germany commits that DB Cargo will implement the following measures limiting distortions of competition which will apply […]: (i) a sale of shareholdings (as described in section 4.1.5.1.2); (ii) an advertising ban of received State aid (see recital 301); (iii) an acquisition ban (see section 4.1.5.1.1); (iv) a commitment to outsource certain production volumes (see section 4.1.5.2); (v) a commitment to limit DB Cargo's production volumes (see section 4.1.5.3); and (vi) a sale of locomotives (see section 4.1.5.4). DB Cargo should therefore on its own motion, diligently and timely implement the measures concerned.

(570) The assessment of the proper calibration of these measures has to take into account the impact on competition of the restructuring aid to DB Cargo in the light of the degree of own contribution and burden sharing achieved in the present case. As regards own contribution, the nature and amount of the various sources and instruments supports the conclusion that the aid is proportionate, whilst showing the trust of the present shareholder in the continuation of operations of DB Cargo, subject to its restructuring. In addition, appropriate burden sharing is ensured, as the existing shareholder has been absorbing DB Cargo's losses (including through the aid measure), DB Cargo has no subordinated debt and the State is entitled, through DB AG, to receive a reasonable share in future gains of DB Cargo's value.

(571) With regard to the size and nature of the aid (point 88 of the R&R Guidelines), the Commission observes that the losses transferred under the PLTA since 2022 total around EUR 1 914 million (see Table 19). Even if sizeable in total, amounting to […] of expected annual revenues of DB Cargo in 2024 (see Table 21 in recital 282), when comparing the annually transferred losses separately to the annual revenue of that year (Table 21 in recital 282) or to total assets (Table 22), their significance decreases: respectively […] % of revenue in 2022, […] % in 2023, and […] % in 2024, as well as […] % of total assets in 2022, […] % in 2023 and […] % in 2024. Also taking into account the share of rail freight in total freight market in Germany (Table 31) or even the dimension of the rail freight market in Germany, estimated as generating around EUR 6,3 billion in revenues in 2022 and growing compared to 2021 (as shown in Figure 10), the amount of aid does not seem excessive.

Figure 10

Development of revenues on the German rail market in EUR billion (rail freight in grey/top of the columns)

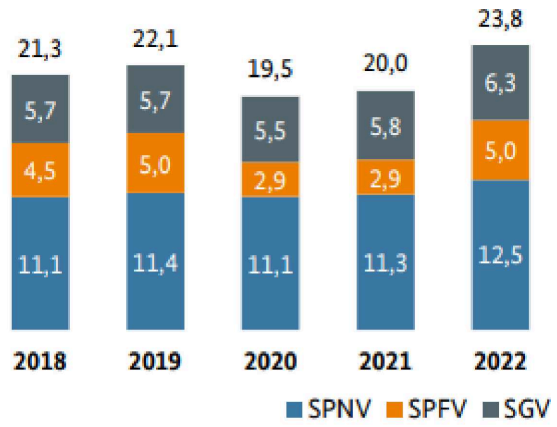


Abbildung 57: Umsatzentwicklung im Eisenbahnverkehrsmarkt (2018-2022; in Mrd. Euro)

Source: Federal Network Agency (Bundesnetzagentur Marktuntersuchung Eisenbahnen 2023, Marktuntersuchung Eisenbahnen 2023 (bundesnetzagentur.de), last accessed 10 October 2024).

(572) The Commission notes that DB Cargo provides around 8,5 % of the freight transport services provided in Germany (2022, relatively stable with similar proportions around 10 % or less in previous years). For the narrower economic activity of rail freight, its market share in Germany for all SWL combined road/rail transport and block-train segments taken together, is more significant around 43 % in 2022. However, DB Cargo's share for rail freight activity has been continuously decreasing, and other service providers have been gaining larger shares (recital 26). Moreover, when taking a wider geographic scope of rail freight activities in the internal market, DB Cargo provides freight services in a number of other Member States, holding market shares between […] % and […] % in those countries. Nevertheless, in total, as shown in Figure 2 DB Cargo has a market share of around 22 %, which has constantly been decreasing over recent years reducing DB Cargo's market position. Furthermore, in addition to Germany, DB Cargo only reaches significant market shares in two other Member States, namely […] (see recitals 26 and 27), and Tables 2 and 12). When considering the different business segments (SWL combined road/rail transport and block-train), DB Cargo has an almost monopoly position on the SWL market in Germany, while holding significant market shares between […] % and […] % in the Block Train and Combined Transport segments (see Table 3). In fact, according to a report by the Federal Network Agency, DB Cargo only held 39,3 % of the relatively diversified total rail freight market in Germany in 2023, thus also including the SWL segment, in which most of the very numerous rail freight suppliers are not active (Table 3).

Figure 11

Rail freight market in Germany in 2023

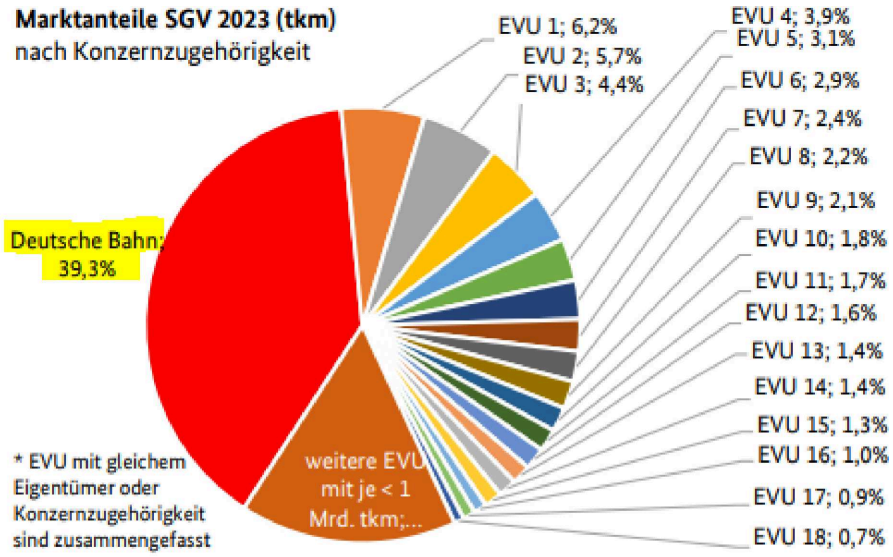


Abbildung 15: Marktanteile im SGV 2023 in Prozent

Source: Federal Network Agency (Bundesnetzagentur Marktuntersuchung Eisenbahnen 2024 (Kurzerhebung Berichtsjahr 2023), Marktuntersuchung Eisenbahnen Kurzerhebung Berichtsjahr 2023 (bundesnetzagentur.de), last accessed 10 October 2024).

(573) Taking into account the size and nature of the aid, the degree of own contribution and burden sharing, and DB Cargo's market position (see recitals 570 to 572), the Commission will assess the appropriateness of the measures limiting distortions of competition put forward by Germany.

5.4.3.4.1.2.1. Structural measures

The sale of shareholdings

(574) The sale of the shareholdings described in recital 305 and seq. concerns the divestment of business interests on a going concern basis in viable businesses. In particular, the divestments in […] concern the divestment of subsidiaries indirectly controlled by DB Cargo (see recital 324). As evidenced by Germany, the companies have historically been profit-making (see Table 30) and thus exit by DB Cargo group would immediately open up new opportunities for competitors, as demonstrated by the interest that potential buyers have already shown (see recital 325). The Commission notes that the divestments concern not only Germany ([…]) but also the […], where DB Cargo group has a significant market share.

(575) Moreover, the divestment of more than […] concerns historically a profit-making businesses, as shown in Table .

(576) Concerning the divestments on the […], a due diligence process is ongoing (see recital 325(c)), hence the interest in those assets show the potential opportunities for competitors of DB Cargo group. Also this divestment concerns viable businesses, although […] did generate a loss in 2023.

(577) Moreover, should the commitment not be fully implemented by 31 December 2026, it will be for the Commission to assess that alternatives put in place are of comparable size and impact.

The sale of locomotives

(578) In addition to the sale of shareholdings, DB Cargo, as described in recital 318, also plans to divest a significant number of locomotives. The sale of the locomotives concern at maximum […] locomotives, which is considerable.

(579) In this regard, the divestment of the locomotives decreases DB Cargo's capacity and ability to provide freight services and therefore has a negative impact on DB Cargo's competitiveness. Furthermore, the locomotives will be sold to competitors increasing their competitiveness compared to DB Cargo. Finally, the Commission also notes that the locomotives concerned are used in the block train and the combined transport segments, the two segments in which DB Cargo faces more intense competition.

(580) The planned implementation and phase in of this measure as committed to by Germany does not undermine a positive assessment of its effectiveness. In particular, safeguards are provided to the effect that DB Cargo is not forced to lose more than […] % of the market value of the locomotives due to its obligation to sell them by the prescribed timeline until 2026. A forced sale below market value would unduly reduce in turn the own resources of DB Cargo available and that would be valuable, in particular, in a pessimistic scenario as depicted. Moreover, should the sales of locomotives not be fully implemented by then, it will be for the Commission to assess that alternatives put in place are of comparable size and impact.

5.4.3.4.1.2.2. Behavioural measures

Production volumes limit

(581) As described in recital 317, DB Cargo will not exceed certain production volumes. The Commission notes that this commitment until the end of the restructuring period on 31 December 2026 in effect results in a decrease of production volumes of around […] % compared to DB Cargo's output of services supplied in 2022. This reduction of output in the geographic area where DB Cargo is most active is significant in absolute terms and *a fortiori* so in relative terms. Indeed DB Cargo expects a growing market in the coming years (see recital 279). In the expected growing market demand scenario, the volume cap of DB Cargo will also more sizeably reduce DB Cargo's market presence than with stagnant or declining demand. Such reduction of volumes is likely to produce lagged effects beyond the end of the restructuring period, increasing or accelerating the observed and regular annual reduction of the share of DB Cargo in the total of railway freight services provided in Germany.

Outsourcing of production volumes

(582) Apart from the volume cap, DB Cargo will also outsource production to third party operators (see recital 314). While this measure in itself does not affect DB Cargo's market presence in nominal terms, as the production would only be outsourced with DB Cargo still holding the contracts with the customers, it will still provide competitors with opportunities to expand their current business and increase competition in the future. This is because the outsourcing will have a negative effect on DB Cargo's capacity utilisation, if the capacity is not decreased. Moreover, in addition to additional revenues from the services provided, opportunities may arise for the competitors that perform under the outsourcing contracts when clients are satisfied with the services provided.

Advertising ban and acquisition ban

(583) Furthermore, DB Cargo's business growth will also be hampered by the acquisition ban, which imposes on the company to refrain from acquiring shares in any company during the restructuring period, except where needed to ensure the long-term viability of DB Cargo (recital 302). Germany has not presented any planned acquisition that would meet the condition of being indispensable at this stage. Any acquisitions deemed by Germany as indispensable to ensure DB Cargo's long-term viability in the future will have to be notified to the Commission and duly motivated, while refraining from implementing it until the Commission confirms that the acquisition is necessary to support the long-term viability of DB Cargo.

(584) Given that DB Cargo will reduce its output, outsource services and be further limited regarding growth through external acquisitions of competitors or suppliers of products or services complementary to its own until the end of the restructuring plan, the competition measures ensure that DB Cargo will not regain market share through acquisitions, take any unnecessary risks and focus resources on completing its restructuring. Therefore, DB Cargo, unlike competitors, will be prevented from expanding by acquisitions, which would indirectly be made possible by the restructuring aid.

(585) Finally, DB Cargo will also refrain from publicising State support as a competitive advantage when marketing products and services (recital 301).

(586) Therefore, the Commission considers that the measures to limit distortions of competition proposed by Germany are appropriate for reducing the negative effects of the restructuring aid.

5.4.3.5. Aid granted to DB Cargo or its subsidiaries during the restructuring period.

(587) Pursuant to points 127 to 130 of the R&R Guidelines, the grant of any other aid during the restructuring period, even in accordance with a scheme that has already been authorised, is liable to influence the Commission's assessment concerning the necessary extent of the measures to limit distortions of competition. The Commission needs to take this aid into account when assessing the restructuring aid, and needs to ensure that such other aid does not circumvent the requirements of the R&R Guidelines.

(588) Germany has indicated the aid that is granted or planned to the beneficiary during the restructuring period, informing that DB Cargo receives or is expected to receive aid until the end of the restructuring period under 29 schemes in place as from 2019, whether of general application to railway sector or specific to railway freight from 12 Member States, namely France, Italy, Austria, The Netherlands, Sweden, Belgium, Czechia, Germany, Poland, Hungary, Spain and Denmark. The actual or expected amounts are EUR 337,7 million (2023), EUR 340 million (2024), EUR 502,9 million (2025) and EUR 502,5 million (2026).

(589) The Commission is satisfied that the individual aid provided or planned by the 12 Member States in favour of the beneficiary relates, in particular, to reduction of energy costs or track access charges or support to railway freight that is generally available to other providers of freight transport services, albeit excluding road transport. Such individual aid does not de iure or de facto amount to ad hoc aid. By reason of the design and historical background of the restructuring aid instrument in the form of a PLTA as well the chronology and geographic diversity of the schemes at hand, it is not apparent that the individual aid in question granted or envisaged by so many different Member States has the object or the effect of circumventing the requirements of the R&R Guidelines, in particular, by artificially reducing the amount of restructuring aid supporting the plan. In the circumstances of the present case, it is therefore not appropriate to consider that additional measures reducing distortions of competition in the Member States concerned are appropriate.

(590) As noted in section 5.4.2.1, the decarbonisation of freight transport is of paramount importance for the Union's Green Deal and the services that DB Cargo provides have intrinsic cost disadvantages compared to those of road transport by trucks. The 29 schemes at hand partly address those cost disadvantages and are in principle available to railway freight operators meeting the requisite eligibility conditions. In this regard, DB Cargo will maintain a solid equity position throughout the restructuring plan and, provided indeed that such plan is duly and timely implemented, the Commission raises no objection to DB Cargo continuing to benefit from the schemes in question, without prejudice to compliance with relevant conditions therein, which it will be for the Member States concerned to assess.

(591) The Commission requests Germany, in line with point 130 of the R&R Guidelines, to inform about any future aid to the beneficiary to be granted during the restructuring period, including aid granted in accordance with an approved scheme, in addition to the individual aid of which Germany informed the Commission about as referred to in recital 588.

5.4.3.6. Transparency

(592) According to point 38(g) of the R&R Guidelines, Member States, the Commission, economic operators and the public must have easy access to all relevant acts and pertinent information about the aid awarded. This means that Germany must respect the provisions on transparency laid down in point 96 of the R&R Guidelines. The Commission notes that Germany undertakes to respect those obligations. The relevant information will be made available on the following website:

https://webgate.ec.europa.eu/competition/transparency.

(593) The Commission considers it necessary for Germany to provide regular reports on the implementation of the restructuring plan every six months from the date of adoption of this Decision until the end of the restructuring period. These reports will specify, in particular, the dates and amounts of the actual disbursement of the funding committed whether as restructuring aid or as own contributions, any planned future aid to the beneficiary or its subsidiaries including under approved schemes, the state of implementation of the measures reducing distortions of competition, any deviations from the financial or operational trajectories of the restructuring plan, containment of costs and cost reductions and earnings achieved by the restructuring measures, and, where appropriate, the corrective measures envisaged or taken by Germany, DB AG or the beneficiary within their respective ambits of competence. The obligation for Germany to provide such reports is laid down in Article 4 of this Decision.

(594) In addition, the Commission reminds Germany of its obligation to submit annual reports to the Commission, in accordance with point 131 of the R&R Guidelines and to report on any aid granted to DB Cargo or its subsidiaries within the internal market during the restructuring period, including aid granted in accordance with an approved scheme in line with point 129 of the R&R Guidelines.

5.4.4. *Balancing positive and negative effects*

(595) A carefully designed State aid measure must ensure that the overall balance of the effects of the measure is positive by avoiding adversely affecting trading conditions to an extent contrary to the common interest.

(596) In the R&R Guidelines, the Commission laid down the criteria that it examines when assessing the compatibility of restructuring aid with the internal market, ensuring that the development of the economic activity in question does not adversely affect trading conditions to an extent contrary to the common interest. As explained in sub-sections 5.4.3.1, 5.4.3.2 and 5.4.3.3, the restructuring aid has an incentive effect, is necessary, appropriate and proportionate. Furthermore, there are sufficient safeguards in place to limit distortions to competition, including transparency (sub-sections 5.4.3.4 and 5.4.3.6) and adequate competition measures reducing the negative effects of the restructuring aid (sub-section 5.4.3.4).

(597) Consequently, the positive impact of the restructuring aid on the development of the economic activity in question outweighs the potential negative effects on competition and trade, which are therefore not adversely affected to an extent contrary to the common interest.

6. **CONCLUSION**

(598) The Commission finds that Germany has unlawfully implemented the aid in question in breach of Article 108(3) TFEU. However, in the light of the findings above, the Commission concludes that the restructuring aid meets the conditions of compatibility with the internal market laid down in the R&R Guidelines, provided that DB Cargo fully implements the measures provided for in the restructuring plan and/or committed to by Germany. The aid facilitates the development of an economic activity and does not adversely affect trading conditions to an extent contrary to the common interest. Therefore, the aid is compatible with the internal market pursuant to Article 107(3), point (c), TFEU,

HAS ADOPTED THIS DECISION:

Article 1

The measures consisting of the provision of Deutsche Bahn intragroup services to DB Cargo AG, the provision of loan financing by Deutsche Bahn Treasury to DB Cargo AG, the partial coverage of the remuneration of civil servants employed by DB Cargo AG and the transfer of annual losses of DB Cargo AG until 31 December 2021 under the profit and loss transfer agreement between Deutsche Bahn AG and DB Cargo AG concluded on 25 October 2012, as prolonged, do not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union ('TFEU').

Article 2

1. The transfer of annual losses of DB Cargo AG to Deutsche Bahn AG for the period between 1 January 2022 and 31 December 2024, under the profit and loss transfer agreement between Deutsche Bahn AG and DB Cargo AG concluded on 25 October 2012, as prolonged, constitutes State aid within the meaning of Article 107(1) TFEU. The aid was provided in breach of Article 108(3) TFEU.

2. The aid referred to in paragraph 1 is compatible with the internal market within the meaning of Article 107(3), point (c), TFEU, subject to the conditions laid down in Article 3 of this Decision and the obligations laid down in Article 4 of this Decision.

Article 3

Germany shall ensure that DB Cargo AG or Deutsche Bahn AG as the case may be, within the timelines included in the restructuring plan or, as appropriate, at the latest by the end of the restructuring period on 31 December 2026, fully implement the measures included in the restructuring plan of DB Cargo AG as well as the related measures limiting the distortions of competition.

Article 4

Germany shall inform the Commission, within two months of notification of this Decision, of the measures envisaged or taken to comply with it.

Thereafter, Germany shall provide the Commission with regular reports on the implementation of the restructuring plan every six months until the end of the restructuring period on 31 December 2026. These reports should specify, in particular, the dates of the actual disbursement of the funding committed as own contribution of the beneficiary, any planned future aid to DB Cargo AG or its subsidiaries, including under approved schemes, the state of advancement in fulfilling the conditions set out in this Decision, any deviations from the financial or operational trajectories of the restructuring plan, containment of costs and cost reductions and increased earnings achieved by the operational restructuring measures, and the corrective measures envisaged or taken by Germany or, where appropriate, DB Cargo AG or Deutsche Bahn AG as the case may be.

Article 5

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 29 November 2024.

For the Commission
Margrethe VESTAGER
Executive Vice-President