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**Position Paper on**

**Working Document Preliminary Draft  
Community Guidelines On State Aid  
To  
Railway Undertakings  
(EC DG TREN 13 December 2007)**



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## **EPTO - POSITION ON STATE AID GUIDELINES FOR RAILWAY UNDERTAKINGS**

EPTO is the association of European Passenger Transport Operators, whose members are the nine largest public transport companies in Europe: Arriva, First Group, Grupo Barraqueiro, Keolis, National Express, Stagecoach, Transdev, Transdev-Connexion and Veolia Transport.

Established in 2007, EPTO promotes the development of a competitive market structure for the supply of public transport services and will assist and support the opening of the passenger transport market. EPTO aims to work in a positive and constructive way with the European Parliament, the European Commission and other public bodies so that Europe's citizens have access to high quality passenger transport services that are effective in meeting their needs, are efficient in the use of resources and represent good value for money.

Members of EPTO operate passenger rail services in many European countries: Czech Republic, Denmark, France, Germany, The Netherlands, Poland, Portugal, Sweden, and United Kingdom.

### **1. General considerations for passenger transport**

**EPTO welcomes the initiative of the European Commission to clarify financial relationships in the rail industry** in order to prepare the implementation of the rail market opening through competition and to reach the objectives in terms of modal shift from the private car to rail.

**EPTO believes that State aid to former State public monopolies should stop as soon as possible.**

**EPTO wishes that no overcompensation is provided for the provision of public services.**

**EPTO wishes to stress, that if state aid is granted it should be open to all**, it should be granted in a transparent manner and the use should be monitored in a way that no intramodal competitive advantage is given to any party.

**EPTO wishes to stress that – with the exception of the recent accession countries - the opening of markets did not arise unexpectedly but had been known for a sufficient period of time** to allow member states the opportunity to bring about the necessary changes.

EPTO encourages the European Commission to consider measures to boost modal shift from the private car to rail, **provided that these grants remain neutral in terms of intra-modal competition.**

EPTO encourages the European Commission to strictly apply the State aid rules, in particular, after the adoption of the PSO Regulation (EC) No 1370/2007. The PSO Regulation will bring more competition into the European railways market and therefore all railway operators should compete on a level playing field for the contracts to be awarded by Member States.

This should not exclude other aid instruments to rail companies which can be allowed and notified to the European Commission.



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## **2. Public financing of railway infrastructure**

Some EPTO members own and provide small sections of railway infrastructure in Member States and do thus also have an interest in discussions on the financing of railway infrastructure from the point of view of the infrastructure provider.

The level of access fees paid by (and access conditions for) operators should be non-discriminatory especially in the case of infrastructure owned and/or managed by an integrated company.

**If state aid is paid for the construction, provision and maintenance of infrastructure there should be a link between the public financing and the type of infrastructure charging scheme. The private sector favours performance-related schemes, ensuring that only the real quality of the infrastructure and its usability are compensated.**

**Overfunding in the field of infrastructure financing should be avoided. The controlling of where and how the money is spent should be defined in a clear way.** It should be avoided that in-house infrastructure planning companies should not charge higher planning or building fees than the private sector would or could do. This can be achieved by the setting of clearly-defined rules of transparency.

**In the field of infrastructure financing, state aid constitutes only one of several different financing methods. In some European countries the private sector is a partner in PPP models, thus bringing in private finance.** The private sector has demonstrated an interest in the financing, planning, provision and maintenance of infrastructure and develops it as a business activity

**It should be kept in mind that the provision of infrastructure will in the future not necessarily be a national or natural monopoly.** Thus the basic rules of state aid (Art. 87 1) should be applied If state aid is used as a financing method.

**State aid for the financing of public infrastructure should be available and open in a transparent way for all providers of infrastructure – both public and private.** In some Member States, the provision of former publicly-owned infrastructure is now organised by the private sector (e.g. Germany).

Although many member states have already implemented the separation of infrastructure management and railway operation as laid out in Directive 2001/12/EC, there may still be a need for the Commission to push this to an end. **In this respect there may be a need to provide clear definitions for the concept of railway infrastructure** (i.e. what is actually to be regarded as infrastructure), since inappropriate separations may provide the state-owned operator with the advantage of “hidden assets” (such as real estate, stations etc.). **In particular where infrastructure financing is provided to integrated incumbent state operators there must be clear ring-fencing** to prevent that funding (or any indirect effect such as security for borrowing) providing a competitive advantage to that operator over other rail operators either on the same network or elsewhere in Europe.

### **3. Aid for the purchase and renewal of rolling stock**

**EPTO makes the general point that state aid is not a necessary instrument for the financing of rolling stock purchases or renewals, since many instruments exist to finance and purchase rolling stock being open to public and private-owned companies.**

**EPTO makes the point that where new rolling stock is desired by the transport authority but cannot be justified on objective commercial grounds it should be made a requirement of a public service contract and compensated through such contract.**

Nevertheless in the field of public passenger transport, organising authorities have decided to fund rolling stock purchase or leasing and provide trains to the operators. EPTO recognises that funding mechanisms such as regional aid or taxation rules may make this advantageous in some cases. EPTO therefore believes that transport authorities should, of course, remain free to provide funding for new trains (including also trams, underground trains etc), provided that such funding is open to all relevant operators and potential bidders and interested parties for such operations whether at the time of the initial funding or subsequently. **If the granting of state-aid is considered in relation to tendered services, it should be open to all potential bidders - or to none, but always on equal terms to ensure a level playing field.**

**For such cases, the guidelines should be more specific and set out that new entrants are also eligible to these aids.** Considerable parts of the passenger rail transport sector are contracted or licensed by a public body and fall as such under the PSO rules.

Experiences from countries with competitive tendering regimes have shown that tendering authorities set the standards for the choice of rolling stock, i.e. its technical requirements, age etc. **So state aid for the purchase and renewal as a grant to the state railways only is a substantial distortion of fair competition.**

**It also appears important that state aid for investment in the purchase or renewal of rolling stock should be provided on a project-related basis to identified projects only** in order to avoid a single operator gaining advantage by having a publicly-financed pool or fleet from which to bid. Often, if not always, new operators taking over a line or a network after competitive tendering have the disadvantage of having to invest in or provide new rolling stock whilst the state owned incumbent competes with rolling stock already funded by its state.

**System interoperability as a condition of allow financial aid should be reconsidered as the rolling stock operated in contracted services remains assigned for the awarded regional network** (cf. point 40 and the assignment for a minimum of 5 years, which seems contradictory to the interoperability criteria).

**In general (except for some cross-border services), regional rolling stock does not require European interoperability specifications, which can lead to costly and not effective equipment.** Indeed some regional and urban operations have historic restrictions that would prevent interoperable rolling stock from being used. EPTO recognises that there are long term benefits to the competitive functioning of the rail supply industry in interoperability and proposes that it should be a condition for grant but with automatic derogation if interoperability would impose material extra costs or practical operating difficulties for the rolling stock subject to financial aid or the services on which it will operate.

The assignment of new rolling stock financed through regional funds to regional traffic for 5 years is a way to impose a minimum public service contract duration of 5 years. EPTO considers that because rolling stock typically has a life of at least 30 years, this 5 year



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provision is inadequate to avoid distortion in the market. **The assignment to services should be longer and more specifically reflect the level of investment.**

**If state aid has financed the purchase or renewal of rolling stock, it should be clearly stated that at the end of a concession the rolling stock has to be handed over to the new operator or that the trains have to remain in the region for which they were financed.**

Paragraph 38: the guidelines should specify the criteria defining "small and medium-sized enterprises", perhaps by reference to turnover, rolling stock fleet or train-km, etc.

Point 39: It should be made clear that competition should not be distorted.

#### **4. Debt cancellation**

**EPTO stresses the importance of proper controls where state aid is being used for the purpose of debt cancellation.**

Paragraph 45: is only applicable to historic public monopolies, which should be clearly set.

Paragraph 60: this should be examined with a view to the 3rd Railway Package and the liberalising of international rail services with the possibility of cabotage and which foresees the possibility for Member States to establish a levy to be paid by new entrants to compensate the possible impact of liberalised services on existing public service contracts. This levy, if any, should only be assigned to any specific compensation that has been identified and must not be "hidden aid" to an incumbent, historic operator. In order to avoid public financing of activities in competitive sectors there should be an assessment of whether the existing guidelines have been sufficient and what the experience has been with debt cancellation.

**EPTO also wishes to highlight the "one time, last time" idea as a key principle.** In addition to this, it should be a strict demand, that any debt cancellation by a member state to its incumbent public monopoly should follow the market investor principle. **EPTO would also like to draw the Commissions attention to the granting of "Founder Loans" in the incumbent public monopoly's conversion from the state of internal operator to the state of state-owned undertaking operating in a competitive market.** If such "Founder loans" become subject to debt cancellation (direct or via increased compensation) it will distort competition on equal terms.

March 21, 2001 (implementation of Directive 2001/12) must be the absolute reference point from which to determine whether debts can or cannot be cancelled.

In addition to the contents of the draft proposal another aspect should be added. **The draft proposal should describe and define a process of reviewing how the burden of pension funds and former civil servant remuneration has and will be financed.** The spending of state aid for pensions should come under close scrutiny. **When defining these processes and rules consideration should be given to how to ensure that proper control will also be possible for holding companies,** in order to avoid cross-subsidy or the danger of state companies' employment costs that are below market rates.



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## **5. Aid for restructuring railway undertakings - Restructuring a "freight" division**

Although the focus of EPTO mainly is passenger transport it appears important to review the situation in the freight sector.

**EPTO's opinion is that if aid for restructuring railway undertakings is given it should be proportionate and take into consideration the degree of implementation of liberalisation by the Member State concerned, and should be reduced if implementation has been postponed or delayed by that Member State.**

**State aid should be limited to the economic objective of restructuring a company and should not support a re-orientation or re-development of the company to another activity or business.**

**EPTO believes that it is important to separate freight and passenger services in a clearly defined way in order to avoid any cross-subsidy from passenger to freight services or vice-versa (as it is the case today).** Thus the obligation to establish freight subsidiaries in countries where they do not exist is an important step in clarifying the situation and establishing transparency, as a pre-condition to a fair and efficient rail market. This remains a key element in ensuring a competitive market for passenger rail.

## **6. Aid for the needs of transport co-ordination**

EPTO considers that state aid for transport co-ordination is crucial to ensuring and boosting modal shift from road to rail and that this objective should be clearly stated in the guidelines.

**It should be stressed that the state aid given for transport co-ordination should be allocated in a open and transparent manner and should be accessible not only to state-owned companies but also to those in private sector, e.g. providing necessary infrastructures.**

Point 107: as regards interoperability aid, investments linked to the implementation of TAP-TSI and TAF-TSI should be included in this aid as far as the "common interface" is concerned. Other developments of these specifications should remain financed by the undertakings on their own financial funds.

## **7. Aid in the form of public service compensation**

**EPTO welcomes the reference to the "Altmark" judgement and proposes that it should be systematically assessed in decisions that are made. Not enough has yet been done in member states to take full account of this judgement.**

EPTO is particularly concerned that some state-owned transport undertakings not only have the benefit of protected home market but also receive over-compensation for their public service obligations allowing them to indulge in unfair below-cost bidding in other markets.

EPTO welcomes the clarification of Regulations 1191/69 and 1107/70 to State aid granted before entry into force of the PSO Regulation.



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EPTO has in particular noted that the Commission has applied these criteria in several recent Decisions to initiate in-depth investigations<sup>1</sup>. In particular, reference to the Altmark judgement should help to ensure that regions are not paying compensation above what is required to provide and operate a good service and prevent over-compensation, which can lead to cross-subsidy and hidden aid to other rail activities.

Paragraph 128: EPTO has in particular noted that State aid included in a public service contracts in accordance with Article 14 of Regulation 1191/69 is not excluded from the obligation to notify contained in Article 88(3) of the EC Treaty.

EPTO welcomes this clarification and notes that in practice that are many such contracts with national incumbent publicly-owned operators which should have been notified in the past. EPTO urges the Commission to investigate these contracts where the "Altmark" criteria do not seem to have been complied with.

EPTO agrees with the Commission that the principles set out in the 2005 Community framework for State aid in the form of public service compensation could be applied in the railway sector by analogy.

#### **8. State guarantees for railway undertakings**

EPTO believes that State guarantees for public passenger transport undertakings should be withdrawn as this sector is already open to competition.

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<sup>1</sup> See e.g. the formal investigation procedure of 30 May 2007, in case C 16/07 (ex NN 55/2006) *Austria - Official support for Postbus in the Lienz district*, OJ C 162, 14.7.2007, p. 19; the decision to initiate the formal investigation procedure of 18 July 2007, NN 17/2007, *Ireland - State aid to Cùoras Iompair Éireann Bus Companies*, OJ C 217, 15.9.2007 as well as the decision to initiate the formal investigation procedure of 23 October 2007, NN 22/2005, *Germany – Public Service Contract of Deutsche Bahn Regio AG with the Länder Berlin and randenburg*