"Community guidelines on State aid for railway undertakings"

Position of the UITP European Union Committee on the European Commission Working Document

1. The European Union Committee of UITP (International Association of Public Transport) represents the views of the operators of urban, suburban and regional collective passenger transport sector by rail, by road and waterborne (www.uitp.org) in the European Union. UITP has been recognized by the European Commission as a “European representative rail association”.

2. Following a first analysis of the Working Document “Community guidelines on State aid for railway undertakings”, the UITP-EU Committee welcomes the intention of the Commission to clarify the state aid regime to the railway sector, and is confident that such a clarification is necessary to support the other initiatives of the Commission in favor of rail sector development.

The current Working Document has been presented just before the Christmas leave, which did not let enough time for the rail stakeholders to fully comprehensively analyse before the 25th January the potential implications of the proposed document. The UITP EU-Committee may therefore complement its position later on.

3. The UITP-EU Committee agrees with the description of the general context described in part 1.1 of the introduction, as long as it refers to the so-called “interoperable networks”. Many statements presented in this part of the document cannot indeed apply to metro, tramway and light rail services, which are a growing rail market segment (“urban rail”). In addition, the urban rail services are operated most usually on non interoperable networks which have to cope with different essential requirements than interoperable railway networks (e.g. light rail services are also following road based requirements). And last but not least urban rail services, as well as many suburban and regional interoperable services (as defined in directive 91/440/EEC) are operated under public service requirements and not on commercial basis.

From part 1.2 of the introduction and in continuation of part 1.1 the proposed Community guidelines appear to be in priority focusing on the interoperable rail services, and especially rail freight services, but the following chapters clearly apply to a wider variety of rail market segments.
Therefore, in line with the intention of clarification, according to the UITP EU Committee the understanding of the proposed measures would be much facilitated if the Commission could precise in the introduction that the urban rail sector (metro, tramway and light rail) as well as the urban, suburban and regional rail services operated under public service contracts do not face the same context as the one described and therefore cannot call for the same solutions as the interoperable rail services operated on commercial basis.

An example of the differing treatments for different rail market segments is given by the PSR regulation 1370/2007/EC published on 3 December 2007. This new PSR regulation makes unnecessary the distinction made in the document between public service compensations and aids transferred via public service contracts.

4. It should be mentioned in the introduction that the proposed guidelines cannot be exclusive from other forms of aid which can be submitted to the Commission for approval on an individual company basis.

5. The UITP EU Committee recalls that the long lasting unfair competition between rail and road services, both for freight and passenger services, due to the lack of internalization of external costs, is a parameter which partially explains the current difficult situation of the rail sector. A condition to improve the rail sector situation and to achieve better competition within the rail sector is to apply fairer competing rules between the rail sector and the road sector, not only for freight but also for passenger transport market. This should lead to define and adopt any measure favoring a modal shift from road to rail (for freight and passengers), which is of course not contradictory with the implementation of additional measures taking benefit of the combination of rail and road based joint services along the transport chain for given trip categories, bringing synergy through co-modal solutions.

All the measures have to be neutral from the intra-modal rail competition point of view.

6. Public financing of railway infrastructure (Chapter 2)

The UITP EU Committee recalls that no rail infrastructure used for urban, suburban and regional services can be funded without relevant public authorities’ financial support. This remark does not preclude the solutions adopted for awarding contracts to public or private companies either for the construction and operation of such rail infrastructure or for the operation of the rail services.

In any case the funding has to be made available and allocated in a transparent and open manner, and on equal basis in case of competitive environment. This requirement applies to other financing measures proposed in other chapters of the document.

7. Aid for the purchase and renewal of rolling stock (Chapter 3)

UITP EU Committee is obviously in favour of aids for the passenger rail rolling stock purchase, for all categories of urban, suburban and regional rail services (point 39). These aids should be extended to the renewal - or upgrade or reconstruction, especially in new Member States- of the rolling stock.

For this sector, in case these aids are available on equal, open and transparent basis for any competitor, the criteria listed in point 38 should not be necessary referred to, in order to avoid unnecessary bureaucracy (in analogy with point 29).

The meaning of SMEs as mentioned in point 38 should be précised in case of rail companies (Turnover? Production measured in vehicle x km? Fleet of rolling stock?).

Point 40 calls for clarification:

- The sentence “the rolling stock must remain assigned for five years to the service for which it received aid” can be accepted (possibly also for a longer period?) but needs a clearer definition of the word “the service” in order to precise if it targets a defined timetable, or a given line, or a given area or region. Some flexibility for rolling stock reassignment could be necessary for an optimal use of such rolling stock over time within a wider bunch of
services or lines than the one initially selected. In some cases the interoperability of the rolling stock might be required (e.g. for some cross-border services), but in most cases such interoperability is not relevant (e.g. for urban rail, and in some cases for some suburban and regional services). In other cases some hybrid solutions will have to be preferred to fully interoperable ones, including for some cross-border services (e.g. tram-train).

• The third condition needs to be supported by criteria regarding the “normal market conditions” to be applied for selling any rolling stock, and how a rolling stock is recognized as “no longer using”.

For rolling stock referred to under point 40, the intensity of aid may vary from 0% up to 100% whatever the operator of the services, depending on the public service contract for rail services operation.

In case of competitive tendering, the funding rules have to be applied to all potential bidders in a non discriminatory way in order not to endanger a fair and transparent competition. New entrants in passenger rail services must be eligible for these aids. For example, Swiss legislation will, in the context of current legal amendments (“Bahnenform 2”) introduce the possibility for the authorities to provide all companies with a state guarantee on an equal basis when purchasing new rolling stock.

8. Debt cancellation (Chapter 4)

It is not clear which rail market segments (see above comment 3) and which companies are in the scope of this chapter.

The date up to when debt accumulation can be taken into account is not so clear: 15 March 2003 in point 50 vs. 15 March 2001 in point 56.

Point 60 should be reexamined with a view of the possibility opened to Member States by the directive 2007/58/EC to raise a levy on passenger rail services in order to contribute to the financing of public service obligation compensation in the framework of public services contracts concluded in accordance with Community law.

9. Aid for restructuring railway undertakings restructuring a “freight” division (Chapter 5)

This chapter is not relevant to UITP sector.

10. Aid for the needs of transport coordination (Chapter 6)

These aids are crucial for the development of rail services in all rail market segments. However the following points should be clarified:

According to point 98 “any aid notified to the Commission for the purpose of obtaining a declaration that it is compatible with Article 73 of the EC Treaty has to be limited to a maximum of 5 years, in order to allow the Commission to re-examine it in the light of the results obtained and, where necessary, to authorise its renewal”. This statement, though understandable, could result in difficulties for the purchase of rolling stock, except if it is interpreted in combination with other provisions in the document itself (for example, when it is saved the possibility of granting funding when they are connected with public service obligations). And this statement should be re-examined with a view of rail market segments regulated by regulation 1370/2007/EC.

Point 108 sets up ceilings for the intensity of state aids which are not relevant for non-interoperable railway networks (see above comment 3), and more flexibility is required as regard compensation services regulated by PSR regulation 1370/2007/EC.

Some companies may fulfill specific tasks related to the coordination of country- or region wide rail passenger transport (e.g. SBB in Switzerland). Therefore, the provision of integrated transport planning (incl. timetabling) should also be stated as being in principal eligible for state aid.
Similarly, investments linked to the implementation of integrated ticketing and passenger information systems (including clearing) should be eligible for state aid as far as “common interfaces” are concerned for commercial services when interoperability is needed.

The aid needs also to be available for the integration of urban, suburban and regional rail systems into wide urban, suburban and regional transport public information and ticketing systems implemented at the local level. In particular, it means that it should also apply for suburban and regional rail services which are interoperable in terms of operation but not interoperable in terms of information and ticketing according to long distance rail services interoperability criteria (see above comment 3). More than 90% of rail passengers using interoperable rail networks are traveling on suburban and regional rail services which follow in general local rules in terms of passenger information and ticketing systems, which is in line with recital 14 of the PSR regulation 1370/2007/EC.\(^1\)

Other measures supporting a modal shift from road to rail or co-modality between road and rail should also be eligible for aid.

11. Aid in the form of public service compensation (Chapter 7)

This chapter is outdated by the PSR regulation 1370/2007/EC and therefore cannot lead to guidelines which could potentially be contradictory with this PSR regulation once in application. The chapter needs to be fully re-examined and simplified in line with this PSR regulation.

12. State guarantees for railway undertakings (Chapter 8)

This chapter should not derogate to rules applied to other economic sectors than rail, in order to avoid a distortion of competition between sectors.

It is not clear which rail market segments (see above comment 3) are in the scope of this chapter, especially with regard to point 141 and with the regulation 1370/2007/EC. The mentioned deadline (2010) is not appropriate for all market segments (e.g. freight rail is already opened to competition).

In the European Union around 80% of the population lives in urban areas which generate 75-85% of gross national product. Urban areas are vital to the economic, environmental and social future of the European Union. Policy at the European level must therefore have an urban dimension. European cities attract investment and employment by offering economic opportunities and a high quality of life. Clean, efficient, affordable, safe, secure and effective intra-urban mobility contributes both to economic efficiency and to the quality of life of employees and the inhabitants served. Increased traffic and urban congestion go hand in hand with more accidents, as well as air and noise pollution. One fatal traffic accident in two takes place in urban areas and usually involves private cars. Urban transport accounts for 40% of CO2 emissions of road transport and up to 70% of other pollutants. German research suggests that 1,800 early deaths - most in urban areas - are caused each year through excessive noise.

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\(^1\) Where the competent authorities are responsible for organizing the public transport network, apart from the actual operation of the transport service, this may cover a whole range of other activities and duties that the competent authorities must be free either to carry out themselves or entrust, in whole or in part, to a third party.