



European Rail  
Infrastructure Managers



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# EIM POSITION PAPER ON THE DRAFT COMMUNITY GUIDELINES ON STATE AID FOR RAILWAY UNDERTAKINGS

Rail Infrastructure Managers are a specific case  
and should be treated accordingly



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# EIM Position Paper on the Draft Community Guidelines on State Aid for Railway Undertakings

## Rail Infrastructure Managers are a specific case and should be treated accordingly

As a general principle, public support granted by a Member State to managers of railway infrastructure does not constitute aid and does not need to be notified for the following reasons.

- a. Member States are not required to open up the operation and management of the rail infrastructure network to competition and the large majority of the Member States have not done so. It follows that, as a general rule, there is no competition for the market of operating the national rail network.<sup>1</sup>
- b. The management of the main national rail infrastructure network is currently confined to the territory of a Member State. Given the “essential facility” nature of the main rail infrastructure network for which high investments costs would make the replication prohibitively expensive, the operation and management of any given integrated rail infrastructure network may be characterised as a “natural monopoly” within this territory. It follows that there is no competition on the market for operating and managing the national rail network either<sup>2</sup>. In this respect, railway infrastructure managers are very different from airport or port infrastructure managers who compete fiercely with each other, and where investments by private companies are increasing.
- c. EIM notes that the financing of railway infrastructure managers is foreseen and recognised as necessary by the EU legislation. Indeed, Article 7(3) of Council Directive 91/440/EEC provides that *“Member States may accord the infrastructure manager, having due regard to Articles 73, 87 and 88 EC Treaty, financing consistent with the tasks, size and financial requirements, in particular in order to cover new investments”*. In addition, the principles of charging for the use of the infrastructure are determined by the provisions of Directive 2001/14/CE<sup>3</sup>. The main principle is such that the charges shall cover at least the marginal costs, with the possibility of a supplementary tariff in certain cases. Marginal costs are defined by Article 8(1) as *“at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear”*. The marginal costs charging principle will normally not allow recovering the full costs made for the construction, maintenance and renewal of the infrastructure. Public financing of the infrastructure manager by Member States is therefore necessary.

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<sup>1</sup> Commission decision N 356/2002 Network rail.

<sup>2</sup> Commission decision N 356/2002 Network rail.

<sup>3</sup> Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, OJ No. L 75, 15 March 2001, p.36.

- d. The construction or financing of railway transport infrastructure, provided that it is open to all potential users on equal and non-discriminatory terms<sup>4</sup>, represents a measure of general economic policy that generally falls within the State's public authority remit and does therefore not, as a general rule, fall within the scope of the Community rules on State aid.<sup>5</sup>
- e. The responsibility to operate and manage the main national railway networks is in general the responsibility of the State, either through an administrative body or by a public undertaking, in many cases under a statutory monopoly. This State responsibility is consistent with the requirement laid down in EU-legislation (Directive 91/440/EC, Directive 2001/14/EC) that rail infrastructure management should be separated from the provision of rail transport services in order to ensure, amongst others, fair and non-discriminatory access to the infrastructure for railway undertakings.

## Conclusion:

National infrastructure managers manage essential facilities that are also a natural monopoly. Therefore, the activities of rail infrastructure managers cannot *per se* lead to any distortion of competition.

It follows that public support to such a railway infrastructure manager should not be considered by the Commission as an aid within the meaning of Article 87 of the Treaty and will not need to be notified to the Commission on the basis of Article 88(1) of the Treaty. **A statement in the Guidelines to the effect that such public funding is not State Aid would be appropriate.**

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<sup>4</sup> See Commission decision N 478/2004 of 16 May 2006, State guarantee for capital borrowings by Coràs Iompair Eirann (CIÉ) for infrastructure investment, OJ C 209 of 31.8.2006.

<sup>5</sup> See the Aviation Guidelines.