

# Major Transport investment projects co-financed with EU funds:

## State Aid issues

- General rules: EC/DG TREN presentation
- To be practical:
  - . Road projects
  - . Railway projects
  - . Urban Transport projects
  - . Airport projects, Port projects

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Michel Gaspard

**European Commission Directorate General  
for Energy and Transport**

*General rules on granting state aid  
in the transport sector*

*Seminar on  
State Aid for transport projects  
co-financed by EU Structural Funds in  
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Alejandro Martinez Godin  
DG TREN Unit A2  
Internal Market and  
Competition

# *General rules on granting state aid in the transport sector*

## *Prohibition of State Aid*

### **Article 87: Principle of prohibition of state aid**

“... 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 common market.”

# *General rules on granting state aid in the transport sector*

## *Prohibition of State Aid*

### The 4 criteria for existence of State aid:

- State resources
- Economic advantage favouring certain undertakings
- Distortion of competition
- Affectation of trade between Member States

# *General rules on granting state aid in the transport sector*

## *Exceptions*

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*State aids that **are** compatible Art 87(2):*

- Social character
- Individual consumers
- Natural disasters
- Exceptional occurrences

# *General rules on granting state aid in the transport sector*

## *Exceptions*

### **State aid that may be compatible Art 87 (3)**

- a) Economic development in certain areas “regional aid”;
- b) Important projects of common European interest;
- b-bis) Remedy serious disturbance in the economy of MS;
- c) Development of certain economic activities or areas (for instance: transport);
- d) Other types of Aid established by the Council.

# *General rules on granting state aid in the transport sector*

## *Procedural obligations*

- General obligation to notify draft State Aid to the Commission.
- MS cannot introduce new Aid without previous authorisation from the Commission.
- Aid not notified = **Illegal Aid**.  
If the Aid is incompatible = **Recovery!**
- Regulation 659/99 on state aid procedures.

# *General rules on granting state aid in the transport sector*

## *Procedural issues*

### **Preliminary assessment and formal investigation procedure.**

- If the **Commission has no doubts**, it adopts a positive decision on compatibility;
- If the **Commission has doubts**, it opens the formal investigation procedure;

# *General rules on granting state aid in the transport sector*

## *Exception to the notification obligation*

- In certain cases there is **no obligation** to notify to the Commission:
  - When there is no aid (PSO/PSC - Altmark conditions, Administration acting as Private investor, general measure, trade is not affected ...)
  - When the Aid corresponds to a Block exemption Regulation (SME, Training, Regional, PSO ...)
  - *De minimis*

# *General rules on granting state aid in the transport sector*

## *Commission guidelines for compatibility*

- **The Commission** has adopted **guidelines** in several sectors concerning **transport**:
  - Air transport 1994
  - Airports 2005
  - Maritime 2004
  - Rail 2008
  
- **Aid has to be notified to the Commission.**

*General rules on granting state aid  
in the transport sector  
Article 73 of the Treaty*

- “Aid shall be compatible with this Treaty if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service”

*General rules on granting state aid  
in the transport sector*

*Council regulations for compatibility*

- **The Council** has adopted **Regulations** concerning state aid on the basis of Art 73:
  - Regulation 1191/69 on land PSO (rail, road inland navigation);
  - **New Regulation 1370/07**;
  - Regulation 1107/70 on coordination aid;
- **No obligation to notify to the Commission.**

# *General rules on granting state aid in the transport sector*

## *Other relevant legislation*

- There are other rules also relevant for state aid control
  - Public procurement directives: Directive 2004/17 and 2004/18;
  - In general; Aid cannot be considered compatible if there is a substantial breach of other EC legislation.

*To be practical...*

*What Transport project may fall under  
State Aid procedures?*

- Road projects
- Rail: Infrastructure / Rolling Stock
- Urban Transport
- Airports
- Ports
- Intermodal projects
- Intelligent Transport Systems

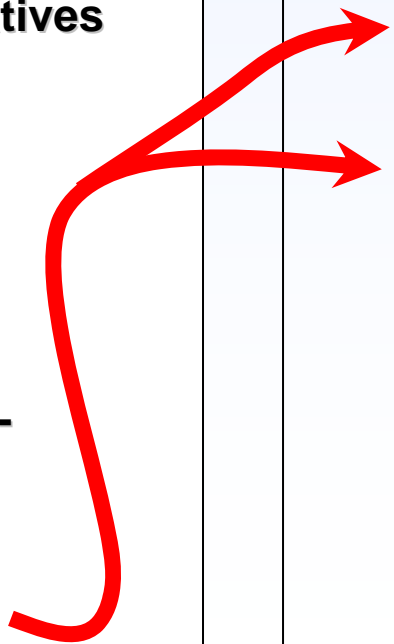
# State Aid Analysis as part of Project Feasibility Study, basis of Funding Application

## Feasibility Study

- A1- Executive Summary
- A2- Socio-economic context
- A3- Supply and Demand for the Project's outputs
- A4- Technological alternatives and production plan
- A5- Human resources
- A6- Location
- A7- Implementation
- A8- Financial analysis
- A9- Socio-economic Cost-benefits analysis
- A10- Risk Analysis
- A11- State Aid analysis (if applicable)**

## Funding Application

- A.ADDRESSES AND REFERENCES
- B.PROJECT DETAILS
- C.RESULTS OF FEASIBILITY STUDIES
- D.TIMETABLE
- **E. COST-BENEFIT ANALYSIS**
- F. ANALYSIS OF THE ENVIRONMENTAL IMPACT
- **G.JUSTIFICATION FOR THE PUBLIC CONTRIBUTION**
- H.FINANCING PLAN
- I. COMPATIBILITY WITH COMMUNITY POLICIES AND LAW
- J. ENDORSEMENT OF COMPETENT NATIONAL AUTHORITY
- ANNEX I DECLARATION BY AUTHORITY RESPONSIBLE FOR MONITORING NATURA 2000 SITES
- ANNEX II – COST-BENEFIT ANALYSIS



# *What Transport project may fall under State Aid procedures?* Road projects

- National/regional/municipal roads:

***No State Aid, “the state cannot provide aid to itself”***

- Projects in Concession/PPP

(Motorway sections, bridges, tunnels...)

***Return of ownership to the State beyond the Concession period***

***+ fair and transparent competitive procedure for selection of the Concessionnaire:***

***→ No State Aid***

# *What Transport project may fall under State Aid procedures?* Rail projects

- Railway Infrastructure

*No State Aid (State-owned Companies with “natural monopoly)*

- Railway rolling stock

*“open rail networks” policy based on EU Railway Directives, obligation of separation between Infrastructure Managers (IM) and Railway Undertakings (RU):*

***State Aid notification compulsory, except if PSO regime and compliant PS Contract between State and RU concerned (usually the “historic” rail operator) – see below new PSO regulation***

## *What Transport project may fall under State Aid procedures?* **Urban Transport**

- PSO regulation (see below)

*No State Aid notification provided that all criteria are fulfilled (under the old or new regulation, see below)*

- Other cases: notification absolutely required
- Consultation with National State Aid Authority necessary (MoF), in some cases consultation with DG TREN also necessary

# EU legal framework – Article 73 EC

## **Aids shall be compatible with this Treaty**

- **if they meet the needs of coordination of transport or**
- **if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service.**

**Regulation 1191/69**

**Regulation 1107/70**

**e n f o r c e m e n t**



# Altmark, C-280/00

## ■ Criteria

- public service obligation (PSO) well defined
  - parameters of public service compensation (PSC) predetermined
  - aid covers only extra costs of PSO
  - costs not higher than those of typical undertaking or public tender chooses the beneficiary with lowest price offered
- If above criteria are met, **PSC aid is not state aid**, no notification is required

# New PSO Regulation 1370/2007

- extends the scope to national and international operation of public passenger services;
- provides clear definition about “public service operator”, “direct award”, “public contract”;
- permits local authorities to provide services or to directly award contract to an internal operator;
- applies detailed rules on compensation payments;
- provides exemption from notification
- enters into force 3 Dec 2009

**Compensation may or may not constitute state aid**  
[it is not state aid if it satisfies Altmark criteria]

# Regulation 1370/07 **How contracts are granted?**

- **All modes: can be via Tender**
- **Service Concessions (including traffic risk): can be awarded directly if local law permits**
- **Direct Award possible (if local law permits) for:**
  - **Railways**
  - **“In house” providers:** local authority exercises over the person concerned (the in house entity) a control which is similar to that which it exercises over its own departments and, at the same time, that person carries out the essential part of its activities with the controlling local authority or authorities. (Judgement Teckal, 50).  
Court jurisprudence: in the “in house” entity there are no private capital, even 1%.
  - **“De minimis”** contracts < 1M€ or < 300.000km
  - **SME** < 23 vehicles < 2M€ or < 600.000km
  - **“Urgency”**


# Well-Defined PSO

- **PSO Regulation itself (Article 3) requires PSCs to define:**
  - service level and geographical coverage;
  - compensation parameters
  - Exclusive rights granted
  - Arrangements for cost allocation
  - Allocation of revenue
  - Duration
- **Examples of not well-defined PSOs**
  - a service is adequately provided by the market;
  - policy objective is too broad or vague;
  - obligations are either too general or not legally binding;
  - no clarification of extra costs involved in the presumed public service.

# Notification requirements

- Regulation 1191/69
  - compensation payment for PSO is state aid exempted from notification
  - Public contracts establishing contractual price for PSO must be notified for compatibility
- Altmark criteria
  - there is no state aid so there is no notification requirement
- PSO Regulation
  - Public contracts (through tender or direct award to internal operator) establishing compensation for PSO are exempted from notification

## *What Transport project may fall under State Aid procedures?* Airports

- Airport projects: under State Aid rules in general (EC /DG TREN Guidelines 2005 valid)  
Notification  compulsory
- Possibility to set up a State Aid Scheme: national regulation (State Aid for Airports) + notification of the entire scheme, to be accepted by EC
- Alternative: no State Aid Scheme, notification to EC project by project

## *What Transport project may fall under State Aid procedures?* **Ports**

- Procedures: similar to Airports (see above)
- In the past: two categories of Port projects:
  - *Infrastructure open to all users (navigation channels, breakwaters etc...): no State Aid, no notification*
  - *Infrastructure used by specific users (berth+aquatorium, terminals, warehouses...): State aid, notification necessary*
- new draft guidelines on State Aid for Port to be published for consultation by EC/DG TREN in autumn 2008

*Thank you  
for your attention!*