Transport: Commission urges Germany to comply with EU rules on the separation of accounts in rail

The Commission is concerned that Germany is failing to implement European rules on the separation of accounts between infrastructure managers and railway undertakings, and on the use of track access charges. This procedure is part of a series of similar procedures against a number of Member States on account separation. The German system creates the possibility for cross-subsidising commercial transport activities from state funds for infrastructure and public-service passenger transport.

Vice-President of the European Commission Siim Kallas, responsible for Transport said:

"The Commission welcomes Europe's railways establishing services in other Member States – but it is vital that this is done, and seen to be done, without using money given to the railway by Member States to support infrastructure investments."

Deutsche Bahn Holding has concluded profit transfer agreements with all its subsidiaries. These agreements include subsidiaries in charge of transport activities like DB Regio (active in the provision of subsidised regional passenger services) and the infrastructure companies of the group: DB Netz (which is managing the railway network), DB Station and Services (which is managing the railway stations) and DB Energie (responsible for the provision of rail energy). According to these profit transfer agreements, the subsidiaries are obliged to transfer all profits to the holding, which is in turn free to use them for any purpose, including the cross-subsidising of commercial railway transport sectors. A substantial part of the transferred amounts originates from public subsidies without which infrastructure and public service passenger companies would not make any profit, since their own commercial revenues are not sufficient to cover their costs.

By doing so, the prohibition to transfer public funds between infrastructure management activities and transport activities (and vice-versa) is not respected. This system also allows transferring revenues from track access charges of the infrastructure to any other activity contrary to the EU obligation stating that they must be used to "fund the business of the infrastructure manager". Finally DB Regio's accounts do not allow tracing which compensations have been paid for each public service contract and do not provide the necessary information (e.g. on costs) to ensure that compensation paid for public service contracts do not benefit other activities of the company, and profits from public service activities are reasonable.

Germany has now two months to respond to this reasoned opinion. If it fails to do so, or does not bring sufficient justification for compliance with EU law, the Commission may refer the case to the Court of Justice of the European Union.
Background
The first railway package, adopted in 2001, requires the compliance with the following provisions: 1) the separation of accounts between infrastructure management activities and railway operation activities, including publication of the separated accounts; 2) the prohibition to transfer public funds between infrastructure management activities and transport activities (and vice-versa); 3) the obligation to show funds paid for the operation of passenger transport services under public service obligations separately in the relevant accounts; and 4) the prohibition to transfer them to any other business. Additionally, the above mentioned legislation specifically provides that infrastructure charges must be used to finance the business of the infrastructure manager. The issue of account separation between different activities is separate from the question of independence of the essential functions of an infrastructure manager from railway undertakings, which was the object of a separate procedure.

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