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Subject: State aid SA.37673 (2013/N) – Poland – Renewal of rolling stock for PKP IC to serve the interregional line Warszawa – Szczecin

Dear Sir,

1. PROCEDURE

- (1) On 8 November 2013, Poland notified the above-mentioned measure in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (TFEU). The measure was registered, on the same date, under case number SA.37673. By letter of 10 December 2013, Poland submitted further information.

2. DESCRIPTION OF THE AID MEASURE

The investment project

- (2) The notified measure concerns a direct grant to facilitate the purchase of 20 new passenger carriages to operate on the inter-province route Warsaw-Kutno-Poznan-Szczecin (hereinafter: the route) as part of a regional investment project.
- (3) The beneficiary of the measure is PKP Intercity S.A. (hereinafter: PKP IC), a passenger rail operator fully owned by Polskie Koleje Państwowe S.A. (PKP SA). PKP IC operates on the passenger rail transport market in Poland, both under public

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service contracts (hereinafter: PSCs)¹ as well as providing commercial passenger rail services. The PSCs and commercial services are distinct parts of PKP IC's activities, with separate cost and revenue accounts. PKP IC's share of passenger transport in Poland is around 4.5%, while its share of the passenger rail market in Poland accounts for around 13%.

- (4) PKP IC operates the Warsaw-Kutno-Poznan-Szczecin route on a commercial basis, at the carrier's own risk, outside the PSO contracts.

Regions covered by the project

- (5) The carriages purchased under the project will be used to serve the Warsaw-Kutno-Poznań-Szczecin route, i.e. to provide services to meet the needs of Mazowieckie, Łódzkie, Wielkopolskie, Lubuskie, and Zachodniopomorskie provinces (regions). Some trains comprising these carriages will not operate on the entire Warsaw-Kutno-Poznań-Szczecin route, but only on the Warsaw-Kutno-Poznań section.

Table 1: Regions covered by the project

NUTS I	NUTS II	NUTS III
PL1 Central Region	PL11 Łódzkie Province	PL117 Skierniewice region
	PL12 Mazowieckie Province	PL127 City of Warsaw
		PL12A Western Warsaw region
PL4 Northwest Region	PL41 Wielkopolskie Province	PL411 Piła region
		PL414 Konin region
		PL415 City of Poznań
		PL428 Poznań region
	PL42 Zachodnio-pomorskie Province	PL423 Stargard region
		PL424 City of Szczecin
	PL43 Lubuskie Province	PL431 Gorzów region

- (6) Apart from the main agglomerations of Warsaw, Poznań and Szczecin, the trains comprising the carriages purchased under the project will regularly, i.e. during each journey, stop in Kutno in Łódzkie Province, for which the maximum admissible regional aid intensity for assisted regions under the Guidelines for national regional aid 2007-2013² is equal to 50%³.

¹ As defined by Regulation (EC)1370/2007 of 23 October 2007 on on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, OJ L 315 of 3.12.2007, p.1

² Guidelines on national regional aid for 2007 – 2013, OJ C 54, 4.3.2006, p. 13

³ The regional aid map for Poland was approved by the Commission decision of 13.9.2006 – case N 531/2006 – Poland – Regional aid map 2007 – 2013, OJ C 256 of 24.10.2006, p. 6.

- (7) According to Poland, Kutno is an important node in the Polish railway network. It is the convergence point of the following railway lines serving both regional (interprovincial) and local traffic:
- Railway line No 3 Warsaw West-Kunowice (connecting, among others, Warsaw, Kutno, Konin, Poznań), part of the international route E-20;
 - Railway line No 16 Łódź Widzew-Kutno (connecting, among others, Łęczyca, Zgierz, Łódź);
 - Railway line No 18 Kutno-Piła Główna (connecting, among others, Włocławek, Aleksandrów Kujawski, Bydgoszcz, Toruń and Piła);
 - Railway line No 33 Kutno-Brodnica (connecting, among others, Gostynin, Płock, Sierpc).
- (8) The stop at Kutno station will therefore allow the residents of Łódź, Zgierz, Włocławek, Aleksandrów Kujawski and other towns in the Łódzkie, Kujawsko-pomorskie, and Mazowieckie provinces to make use of the carriages purchased under the project.

Objectives of the project

- (9) The objective of the project is the partial replacement of the rolling stock operated on the route, which is of a poor standard and has inferior technical parameters. The age of carriages currently operated on the route is varied. Both new carriages and carriages of up to 23 years old are operated on this route. Only carriages more than 15 years old will be replaced under the project. The purchased carriages will replace the old stock previously used to operate the route and, combined with 14 latest generation carriages owned by PKP IC, will allow the provision of trains of the highest standard.
- (10) In Poland's opinion, the project is consistent with the development policy at the level of the Union, country, and regions through which the route passes.
- (11) The project will be funded under the Infrastructure and Environment Operational Programme 2007-2013 (hereinafter I&EOP)⁴. I&EOP is one of the instruments to achieve the goals of the National Development Strategy. In its Priority Axis VII - Environment Friendly Transport, I&EOP aims at: “[...] improving the condition of the railway connections system included in the TEN-T network, and particular sections of the system which are not included in the network, as well as improving passenger services in the international and inter-regional railway transport system”. “The implementation of the priority axis shall increase the rate of alternative to road means of transport in total passenger and cargo transport (railway transport, [...]), which shall result in a better balance of the transport system, decrease the negative effects of transport on the environment and limit traffic congestion. The Priority Axis shall implement mainly projects concerning modernisation of railway lines [...] as well as projects involving modernisation and purchase of rolling stock and necessary equipment”.
- (12) The project shall in particular contribute to:

- an improvement of the country's territorial cohesion,
- an improved accessibility of individual regions,
- an improved quality of the national transportation system,
- an increased share of environment-friendly transport.

Investment costs and public aid

- (13) The eligible costs of the project are estimated, in nominal terms, at PLN 120 million (approx. EUR 28.3 million). The amount of public aid included in the project is PLN 60 million (approx. EUR 14.2 million), representing 50 % of eligible expenses. The beneficiary's own contribution will be derived from debt financing.

Table 2: The assumed structure of funding for the project's eligible costs is as follows:

Source	Amount in PLN	Amount in EUR ⁵
PKP IC's own contribution - debt financing	60,000,000.00	14,171,331.39
Grant from EU funds	60,000,000.00	14,171,331.39
Total	120,000,000.00	28,342,662.79

- (14) The project will be funded under the I&EOP, Priority Axis VII: Environment-friendly transport, Measure 7.1: Development of railway transport. I&EOP funds come from the Cohesion Fund.
- (15) The granting authority is the Minister of Transport, Construction and Maritime Economy, acting through the Centrum Unijnych Projektów Transportowych (Centre for EU Transport Projects, hereinafter: CEUTP), a state budget unit within the Minister of Transport, which is responsible for implementing Measure 7.1. of the I&EOP.
- (16) The aid will be provided in the form of direct grant in accordance with the financial cash flow principles adopted for operational programmes 2007-2013. It will be transferred to the beneficiary under a financing agreement concluded with CEUTP and a properly filed and certified request for payment. The aid will be provided as an advance payment and a reimbursement of eligible expenses.
- (17) Poland committed that the aid will not surpass 50% of the eligible investment costs in real terms. It also confirmed that the aid granted for the project shall not be cumulated with aid received from other local, regional, national or Union schemes to cover the same eligible expenses.

5 PLN amounts converted into EUR at the exchange rate of EUR 1=PLN 4.2339 – Table A of average foreign exchange rates of the National Bank of Poland, of 2 August 2013.

3. ASSESSMENT

3.1. Existence of State aid

- (18) According to Article 107(1) TFEU “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 internal market.”
- (19) The qualification of a measure as State aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be financed through State resources and be imputable to the State; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and have the potential to affect trade between Member States.

State resources and imputability to the State

- (20) The direct grant will be financed using the resources from the Cohesion Fund which are transferred to Poland to implement activities set in the I&EOP. The Polish authorities are responsible for implementing and managing the I&EOP, including the selection of beneficiaries and projects under the specific measures and payment of financing to the ultimate selected beneficiaries for realisation of their projects. Therefore, the financing from the Cohesion Fund is at the disposal of the Polish authorities and imputable to the Polish authorities. Hence, it can be concluded that the direct grant is provided by public authorities and through State resources.

Selective economic advantage

- (21) The direct grant allows PKP IC to be relieved of a part of the costs which it would normally have to bear itself when purchasing the rolling stock. The direct grant can therefore be considered to confer a selective advantage upon PKP IC.

Distortion of competition and effect on trade between Member States

- (22) When aid granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid⁶. It is sufficient that the recipient of the aid competes with other undertakings on markets open to competition⁷. PKP IC provides international passenger services that are opened to competition⁸. Moreover, when providing passenger services, PKP IC competes with other modes of transport.

⁶ See, in particular, Case 730/79 Philip Morris v Commission [1980] ECR 2671, paragraph 11; Case C-53/00 Ferring [2001] ECR I-9067, paragraph 21; Case C-372/97 Italy v Commission, [2004] ECR I-3679, paragraph 44 .

⁷ Case T-214/95 Het Vlaamse Gewest v Commission [1998] ECR II-717.

⁸ The international passenger rail transport market was opened to competition as of 2010, based on the provision of Directive 2007/58/EC amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure, OJ L 315 of 3.12.2007.

Consequently, the aid is liable to distort competition and affect trade between Member States.

Conclusion on the existence of aid

- (23) For the reasons laid out above, the Commission finds that the direct grant to PKP IC to finance the purchase of 20 carriages constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Compatibility of the aid

- (24) In the following section, the Commission will examine whether the direct grant to PKP IC can be deemed compatible with the internal market.
- (25) PKP IC is a railway undertaking under the terms of Article 3 of Directive 91/440/EEC.⁹ The aid must therefore be examined in the light of the Community Guidelines on State aid for railway undertakings¹⁰, in particular point 15 thereof.
- (26) Chapter 3 of the Railway Guidelines provides guidance on the assessment of aid for the purchase and renewal of rolling stock. Point 31 of those Guidelines explains that that compatibility assessment has to be made according to the common-interest objective to which the aid contributes. In assessing the compatibility of aid for the purchase of rolling stock, the Commission therefore applies the criteria for the category of aid which the measure seeks to achieve. Point 33(f) of the Guidelines lists regional aid as one such category.
- (27) Where regional aid is granted for the purchase of rolling stock, points 34 to 40 of the Railway Guidelines apply, as well as the relevant provisions of the Regional Aid Guidelines (“RAG”)¹¹, provided that they are not explicitly subject to derogations laid down in the abovementioned provisions of the Railway Guidelines.

3.2.1. Assessment under the Railway Guidelines

- (28) Point 34 of the Railway Guidelines states that “[i]n the case of regional aid for initial investment, the Guidelines on national regional aid [...] provide that ‘in the transport sector, expenditure on the purchase of transport equipment (movable assets) is not eligible for aid for initial investment’ (point 50, footnote 48). The Commission considers that a derogation should be made from this rule with regard to rail passenger transport. This is due to the specific characteristics of this mode of transport, and in particular to the fact that it is possible that the rolling stock in this sector may be permanently assigned to specific lines or services.” In this regard, the Commission notes that the aid to PKP IC relates to the purchase of rolling stock intended for the transport of passengers. It is thus an investment within the meaning of point 34 of the Railway Guidelines.

⁹ Council directive of 29 July 1991 on the development of the Community's railways, OJ L237 of 24.8.1991, p. 25.

¹⁰ Communication from the Commission - Community guidelines on State aid for railway undertakings, OJ C184 of 22.7.2008, p. 13

¹¹ Guidelines on national regional aid for 2007 – 2013, OJ C 54, 4.3.2006, p. 13

(29) Point 35 of the Railway Guidelines states that the derogation set up in point 34 of the Railway Guidelines applies to any kind of investment in rolling stock – whether initial or for replacement purposes, so long as it is assigned to lines regularly serving a region eligible for aid under Article 107(3)(a) TFEU. In addition, for aid for investment for replacement purposes, the derogation applies only when all the rolling stock that the aid is used to modernise is more than 15 years old. Since the whole territory of Poland is eligible for investment aid under the derogation provided for in Article 107(3)(a) TFEU, the rolling stock will regularly serve lines solely located in Poland, and the rolling stock to be replaced is more than 15 years old, the Commission finds the investment to be in line with point 35 of the Railway Guidelines.

(30) Point 36 of the Railway Guidelines sets out four conditions which must be cumulatively satisfied for the above-mentioned derogation to apply.

(a) The functional assignment of rolling stock

(31) The rolling stock concerned must be exclusively assigned to urban, suburban or regional passenger transport services. However, the allocation to interregional transport services is permissible only if it can be shown that there is an impact on the regional development of the regions served, in particular in terms of the regular nature of the service, and the Commission verifies that the aid does not compromise the effective opening of the international passenger transport market and cabotage following the entry into force of the third railway package.

(32) The beneficiary is obliged to use the rolling stock purchased exclusively for interregional regular passenger rail services on the determined route in Poland. These services will, amongst others, improve the country's territorial cohesion and increase accessibility of individual regions fully eligible under Article 107(3)(a) TFEU.

(33) The Commission considers that, because of the targeted nature of the investment aid, the aid does not compromise the effective opening of the international passenger transport market and cabotage following the entry into force of the third railway package. Moreover, Poland has already opened its domestic commercial passenger transport market to competition.

(34) In light of the foregoing, the Commission considers that the criterion for allocating the investment set out in point 36(a) of the Railway Guidelines has been met by the measure under review.

(b) The regional allocation of railway rolling stock

(35) The Railway Guidelines provide that the rolling stock must remain exclusively assigned to the specific region or the specific line passing through several different regions for which it has received aid for at least ten years.

(36) In this respect, Poland has indicated that the rolling stock purchased with the aid will be operated exclusively for the needs of interregional passenger transport. The beneficiary is obliged to serve a clearly determined route for a minimum period of 10 years.

- (37) On this basis, the Commission finds that the criterion of geographical allocation, set out in point 36(b) of the Railway Guidelines, has also been met.

(c) Technical and environmental standards

- (38) The replacement rolling stock must meet the latest interoperability, safety and environmental standards applicable on the relevant network.
- (39) According to Poland, the rolling stock will comply with the legal requirements contained in the Technical Specifications for Interoperability (TSI) for rolling stock and with relevant EU regulations on safety and environmental protection.

Table 3: The list of TSIs applicable to carriages purchased under the project

Specification name	Subject matter	Legal status
CR LOC&PAS TSI	locomotives, passenger rolling stock	adopted in Commission decision 2011/291, amended by decision 2012/464, Annex XI
CR NOI TSI	Conventional Rolling Stock - Noise	adopted in Commission decision 2011/229, amended by decision 2012/464, Annex VIII
SRT TSI	Safety in railway tunnels	adopted in Commission decision 2008/163, amended by decisions 2001/291 and 2012/464, Annex II
PRM TSI	Persons with reduced mobility	adopted in Commission decision 2008/164, amended by decision 2012/464, Annex III
TSI TAP	Telematic applications for passenger service	adopted in the Commission Regulation 454/2011, amended by Regulation 662/2012

- (40) In addition, the rolling stock will require documentation issued by the President of the Office for Railway Transport (UTK) authorising placement of the rolling stock in service on railway infrastructure in Poland.
- (41) It therefore follows that the measure under review complies with the criterion described above and set out in point 36(c) of the Railway Guidelines.

(d) Contribution to a coherent regional development strategy

- (42) As a final condition, the Member State must prove that the project contributes to a coherent regional development strategy. The Commission has concluded, on the basis of the arguments put forward by Poland and set out in recitals (9) to (12) of this decision, that the measure does indeed contribute to a coherent regional strategy in accordance with point 36(d) of the Railway Guidelines.
- (43) Poland committed that the carriages of PKP IC replaced by the purchased rolling stock will be transferred to serve PSCs contracted to PKP IC by Poland. That transfer of carriages will reduce the compensation that will have to be paid to PKP IC for carrying out the PSCs and, in this way, the possibility of deriving additional revenue

from the replaced carriages will be eliminated. Therefore, the Commission finds that the measure is in line with point 37 of the Railway Guidelines.

- (44) Point 38 of the Railway Guidelines states that the other conditions provided for in the RAG, notably as regards the intensity ceilings and the regional aid maps and the rules on cumulation of aid apply. When the specific lines concerned pass through regions where there are different applicable aid intensity ceilings, the highest intensity among those applicable to the regions regularly served by the line concerned, in proportion to the regularity of such service, shall be applied.
- (45) The Commission notes that the rolling stock for which the aid is provided will serve regions to which different regional aid intensity ceilings apply. Nevertheless, that rolling stock will regularly, i.e. with each passage, serve the Kutno station in the Łódzkie province (NUTS III PL423 Skierniewicki region) for which the regional aid intensity ceiling is 50 %. Therefore, the Commission finds that the aid intensity of 50 %, applied to the project, is in line with point 38 of the Railway Guidelines.

Table 4: The maximum regional aid intensity ceilings for regions covered by the project:

NUTS II region	Aid intensity
Mazowiecki (PL 12)	30 %
Łódzki (PL 11)	50 %
Wielkopolski (PL 41)	40 %
Lubuski (PL 31)	50 %
Zachodniopomorski (PL 42)	40 %

- (46) Finally, since the eligible investment expenditure for the project amounts to less than EUR 50 million and the carriages will not be used to carry out PSCs, the Commission finds that the conditions provided in Points 39 and 40 of the Railway Guidelines do not apply to the measure under review.
- (47) In light of the above, the Commission considers that the assessed investment aid fulfils all the relevant conditions under the Railway Guidelines.

3.2.2. Assessment under the Regional Aid Guidelines 2007-2013

- (48) As stated in recital (44) above, point 38 of the Railway Guidelines refers to the RAG for the other compatibility requirements.

Eligible expenses

- (49) Point 36 of the RAG states that regional investment aid can be calculated in reference to material and immaterial investment costs resulting from the initial investment project, while point 37 of the RAG explicitly lists grants as a permissible form of regional aid. The Commission notes that these two conditions are fulfilled by the assessed investment aid.

Incentive effect

- (50) Point 38 of the RAG requires that regional aid should have a real incentive effect, in the sense of leading beneficiaries to undertake investments which would not otherwise be made in assisted areas. Therefore, in the case of ad hoc aid, the competent authority must have issued a letter of intent, conditional on Commission approval of the measure, to award aid before work starts on the project. Such a letter was issued on 24 April 2013 by the Ministry of Transport, Construction and Maritime Economy, while works on the implementation of the project have not yet commenced (proceedings on the contract for supply of the rolling stock have not yet been resolved, and thus PKP IC has not yet undertaken to order them). Thus, the condition of point 38 of the RAG is satisfied.
- (51) Point 39 of the RAG states that the beneficiary must provide a financial contribution of at least 25% of the eligible costs, either through its own resources or by external financing, in a form which is free of any public support. Since the beneficiary is financing 50% of the eligible costs through external funds, this point of the RAG is fulfilled.
- (52) Point 40 of the RAG provides that aid must be made conditional on the maintenance of the investment in question in the region concerned for a minimum period of at least five years after its completion. The assessed aid satisfies this condition of the RAG since the beneficiary is obliged to use the purchased rolling stock on the determined route for at least 10 years.

Rules on cumulation

- (53) Section 4.4 of the RAG contains the rules on the cumulation of aid. Point 71 stipulates that the aid intensity ceilings laid down in the RAG apply to the total aid: (i) where assistance is granted concurrently under several regional schemes or in combination with ad hoc aid; and (ii) whether the aid comes from local, regional, national or Community sources. According to point 75 of the RAG, regional investment aid shall not be cumulated with de minimis support in respect of the same eligible expenses in order to circumvent the maximum aid intensities laid down in the guidelines.
- (54) Poland has confirmed that the assessed regional investment aid cannot be cumulated with other aid if such cumulation would result in an aid intensity exceeding the aforementioned applicable regional aid intensity ceiling. Thus, the RAG's conditions on the cumulation of aid are satisfied.
- (55) Taking the afore-mentioned into consideration, the Commission finds the assessed investment aid in compliance with the RAG.

4. CONCLUSION

Based on the above findings, the Commission concludes that the investment aid in the form of direct grants for the purchase of 20 passenger carriages to operate on the inter-province Warszawa-Kutno-Poznan-Szczecin line by PKP IC fulfils all applicable conditions laid down by both the Railway Guidelines and the Regional Aid Guidelines and is therefore compatible with the internal market in accordance with Articles 107(3)(a) and 107(3)(c) of the TFEU.

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<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent by registered letter or fax to:

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President