



Luxembourg  
ESTAT/D-1/LA/SF/gh D(2018)

Alfredo Cristóbal Cristóbal  
Director of Economic Accounts and  
Employment  
Instituto Nacional de Estadística  
Paseo de la Castellana, 183  
Madrid 28046  
Spain

**Subject: Consultation regarding the treatment of the fees charged by rail infrastructure managers for services declared as public service obligations (PSO)**

**Ref.: Your letter of 26 July 2017  
Our letter of 15 September 2017  
Your letter of 30 October 2017  
Discussions held in the EDP dialogue visit on 27-28 November 2017  
Your letter of 26 March 2018**

Dear Mr Cristóbal,

Following your letter under reference, Eurostat would like to provide you with its opinion on the appropriate statistical treatment of the fees charged by rail infrastructure managers for services declared as public service obligations (PSO).

***The accounting issue***

The issue for which an opinion is being sought is a determination of the correct ESA 2010 accounting treatment of the fees charged by rail infrastructure managers for services declared as public service obligations (PSO), i.e. whether they can be considered as sale for the purpose of the 50% test.

***Documentation provided***

- Background document on services declared public service obligations, explaining legal basis and methods of calculation the fees;
- Report of the Technical Committee of National Accounts on the treatment of the fee charged by the railway infrastructure manager (ADIF) to railways operators for the provision of services subject to PSO.

## *Description of the case*

### Legal basis

The Spanish *General State Budget Act* - dated 27 June 2017 - ordered the activation of the *Rail Sector Act 38/2015*, which transposes the Directive 2012/34/EU<sup>1</sup> into the Spanish law.

The *Directive 2012/34/EU* aims to ensure the transparency and non-discriminatory access of all rail companies to railway infrastructures and establishes the charges for the minimum access package and for access to infrastructure in different form and for different types of services, including service declared as PSO.

The Directive establishes that *the charges for the minimum access package and for access to infrastructure connecting service facilities shall be set at the cost that is directly incurred as a result of operating the train service. The charge imposed for track access within service facilities and the supply of services in such facilities, shall not exceed the cost of providing it, plus a reasonable profit.*

*In order to obtain full recovery of the costs incurred by the infrastructure manager a Member State may, if the market can bear this, levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, while guaranteeing optimal competitiveness of rail market segments.*

The *Regulation (EC) 1370/2007* aims to define the framework governing the means by which competent authorities ensure the provision of public transport services offering higher service frequencies, better quality or lower fares than the market would otherwise provide. More specifically, it sets out the conditions under which authorities securing services operated in accordance with PSO should compensate the service provider, and the mechanisms to be applied in procuring such services by contract.

PSO is defined as "*a requirement defined or determined by a competent authority in order to ensure public passenger transport services in the general interest that an operator, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions without reward*".

The annex to this Regulation defines the rules that have to be followed in the calculation of the compensation for the PSOs.

The *Commission implementing Regulation (EU) 2015/909* of 12 June 2015 on the modalities for the calculation of the cost that is directly incurred as a result of operating the train service aims to establish direct costs and non-eligible costs.

The *Spanish Rail Sector Act 38/2015* defines, in line with the above mentioned EU laws, the provision of public service and the compensation which the service provider is entitled to receive for operating the services under the terms and conditions established by the PSO. Fees for the use of the infrastructure must be equivalent to the costs directly attributable to the operation of the rail service.

The Council of Ministers may declare, either *ex officio* or at the request of the interested autonomous regions or local authorities, that the provision of certain rail transport services on

---

<sup>1</sup> *Directive 2012/34/EU<sup>1</sup> of the European Parliament and of the Council of 21 November 2012, establishing a single European railway area*

lines or stretches of lines falling under state jurisdiction and forming part of the general interest rail network is subject to public service obligation.

The declaration of public service will be made when the supply of transport passenger services that would normally be provided by operators, would be insufficient or not provided under the appropriate conditions of frequency, quality or price needed to guarantee communications between localities in Spain, if only the operators' commercial interests were taken into consideration and they were not given any compensation.

Rail infrastructure managers will receive rail charges from any railways company (public or private) using the lines. Charges for the use of the infrastructure must be equivalent to the costs directly attributable to the operation of the service. The law also provides that, in order to fully recover the costs borne by the infrastructure manager, and provided that the market can bear it, it is possible to levy mark-ups based on efficient, transparent and non-discriminatory criteria.

#### *Situation prior the activation of the Rail Sector Act 38/2015*

The infrastructure manager (ADIF) is a public company, classified in the *General government sector* (S.1311).

Under the previous system, ADIF received the compensation for operating services declared as PSO from:

- Revenues from the fees for the use of infrastructure and facilities paid by the rail operator.<sup>2</sup> *Such revenues from RENFE cover roughly 10 % of the total revenue ADIF. The rest is received directly from government.*
- Budgetary contributions - in order to cover a part of the costs of maintenance activities, circulation and safety;

At present, a public company RENFE is the only rail operator in Spain, pending the liberalisation of the market in 2023. The *Regulation 23386/2016*, amending *Regulation 1370/2007*, established that after December 2023, all public service contracts must be awarded on the basis of a competitive bidding procedure.

RENFE is classified in the *Non financial corporation sector* (S.11).

The revenue that ADIF received from RENFE for the services declared as PSO, cover about 10 % of costs associated with infrastructure.

For the public passenger transport services declared as PSO, RENFE receives compensation from the State (see footnote 2).

#### *Changes due to the activation of the Spanish Rail Sector Act 38/2015*

Based on the regulations described above, the infrastructure managers (ADIF) shall prepare a proposal for the charges established in Articles 97 and 98 of the *Rail Sector Act 38/2015*<sup>3</sup>. In

---

<sup>2</sup> Operators' revenues from PSO services come partly from the price paid by users of those services for their tickets, and partly from budgetary funding based on a contract between the General State Administration and RENFE to compensate the latter for the cost of providing those services which are not covered by the price of the ticket.

<sup>3</sup> [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2015-10440](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-10440)

compliance with the provisions of Article 100 of the Act, this proposal must be subject to a consultation with rail companies and a report from the National Commission for Markets and Competition (CNMC)<sup>4</sup>.

The CNMC issued a positive opinion on the transfer of the underlying costs generated by PSOs to the railway operator.

The fees calculated by ADIF for the provision of public services are set at the costs of fulfilling the PSO. No compensation may exceed the amount necessary to cover the net financial impact on the costs and revenues arising from the fulfilment of the PSO, taking into account revenues from sales of tickets and the existence of reasonable profits. The infrastructure manager (ADIF) started under the new system to pass on costs associated with the public service, which may follow upward or downward trend over time.

Consequently, under the new system, ADIF receives higher fees from railways operators (currently only RENFE). Based on 2016 data, it is estimated an increase of revenue from fees, from 71 million euro (under the current system), to 637 million euro (under the new system). Accordingly ADIF will no longer receive compensation from the State for the coverage of those costs. In 2016, this compensation amounted to 585 million euro.

RENFE receives compensation from the State (and also from the Autonomous Communities of Catalonia, Aragon and Extremadura) for the PSO. This compensation received by RENFE is than paid to ADIF. As explained by the representative of ADIF and RENFE, this amount is not the same as the compensation received by the operator, as it must cover the deficit incurred by providing PSO.

Given the nature of services classified as PSO, the State is bound to compensate RENFE for the difference between the tariffs paid by users and the cost of providing these services.

**Table 1:** Estimated fees charged by ADIF for services declared as PSO in 2016 and comparison to the previous system:

**ADIF – ESTIMATED PROCEEDS FROM NEWCHARGES STRUCTURE VS PROCEEDS IN 2016**

*Amounts in thousands of euros*

*2016 traffic data*

CHARGES FOR THE USE OF LINES RFIG NLSF	ESTIMATED PROCEEDS NEW CHARGES STRUCTURE	CHARGES FOR USE OF LINES RFIG LAW 39	PROCEEDS 2016
Charge mode	Lines NOT A	Charge mode	Lines NOT A
Mode A: Allocation of capacity	145,923	Mode A: Access	3,622
Mode B: Use of railway lines	208,091	Mode B: Capacity reserve	51,036
Mode C: Use of ETP transformation and distribution facilities	44,625	Mode C: Circulation	16,379
MINIMUM ACCESS	398,639	SUM	71,036
MARK-UP CHARGE MODE B	238,418	Mode D: Traffic	
TOTAL	637.057	TOTAL	71.036

<sup>4</sup> Classified inside the government sector (S.1311)

## ***Methodological analysis and clarification***

### *Applicable accounting rules*

- Paragraph 3.33 on market/non-market criteria, definition of sales and production costs of the ESA 2010;
- Paragraphs 4.30 – 4.40 on subsidies (D.3) of the ESA 2010;
- Paragraphs 20.19-20.34 on market/non-market delineation of the ESA 2010;
- Guidance provided by the Manual on Government Deficit and Debt (MGDD), implementation of ESA 2010, 2016 edition, in part I.2.4.1, *The concept of economically significant prices* and in part I.2.4.3, *The quantitative market/non-market test*.

### *Availability of national accounting analysis*

The Spanish Technical Committee of National Accounts<sup>5</sup> opinion is that the fees charged by rail infrastructure managers (ADIF) for services declared as PSO might possibly be treated, in national accounts, as sales. The counterpart would correspond to intermediate consumption of RENFE.

According to the Spanish Technical Committee of National Accounts the following arguments support this view:

- The fee is variable as it is directly linked to the use of infrastructure (per train kilometre);
- The change of the calculation method was positively assessed by the National Commission for Markets and Competition (CNMC);
- The fact that the services related to PSO are currently supported only by the public company (i.e. RENFE) should not impact the economic nature of fees, as the same subsidy will be granted to any operator of rail passenger transport services from 2023 onwards, when the liberalisation is scheduled. Up to 2023, RENFE is, temporarily, the only company providing passenger transport services subject to PSO in Spain.

If the fees for services declared as PSO, would be recorded, in national accounts, as sales (market output), then the public company ADIF could be re-classified in the *Non-financial corporations sector* (S.11), as its sales revenues would exceed 50 % of their costs of production.

Moreover in the case of RENFE, its production costs would increase due to the payment of fees declared as PSO to ADIF. This would, however, not alter its current sector classification in national accounts (S.11), although the ratio sales/production costs would have significantly decreased.

### ***Eurostat analysis***

Eurostat acknowledges that the European regulatory framework (Directive 2012/34/EU and Regulation (EC) 1370/2007) establishes a framework for the way to calculate PSO charges, which all Member States should transpose into their national law. The annex to this Regulation defines the rules that have to be followed in the calculation of the compensation for the PSOs.

---

<sup>5</sup> It is composed by the National Statistical Institute (INE), the Bank of Spain and the Audit office (IGAE).

A directive is binding on the Member States addressed as to the result to be achieved, while leaving national authorities competence as to form and means. For a directive to take effect at national level, EU countries must adopt a law to transpose it. This national measure must achieve the objectives set by the directive. Member States have room for manoeuvre in this transposition process. This allows them to take into account specific national characteristics

### The consultation process

The consultation process is as follows:

- Firstly, the proposal for updating or reviewing the rail charges is sent to rail companies;
- Secondly, meetings are held with the rail companies with the CNMC presence;
- Thirdly, the rail companies may send their observations;
- Finally, ADIF studies these observations and the report issued by the CNMC, and if appropriate, ADIF incorporates the suggestions made. The CNMC only recommends its suggestions;
- Once the proposal is approved by ADIF's Board of directors, the proposals are passed on to the Ministry of Development to be included in the Draft General State Budget.

In your letter, you explained that government is not intervening in the consultation process as its role is limited to including in each year's General State Budget the proposal for updating the fees sent by ADIF.

Government decides on the level of services and on the amount to be paid to RENFE. RENFE cannot change this as it is defined in the Contract agreement between government and RENFE.

During the EDP dialogue visit it was confirmed that the same compensation for the PSO would be paid to private or public companies, although at this stage, there is only one public railway operator and the market will be liberalised only in 2023. When this happens, only one PSO operator would be chosen in a tender process. At that time RENFE will compete with other private operators. Currently, RENFE does not compete with private producers through tendering for the PSO contract.

Therefore, at this stage the fees paid for the same service / product to different operators cannot be compared as in the section of passenger transport currently only one operator exists.

Nevertheless, Eurostat expresses its concern that all entities involved in the consultation process are in fact public entities controlled by government, which also in addition have a majority of its members in the boards of both public entities concerned, i.e. RENFE and ADIF. Because of the above, the situation seems to be rather circular, as the whole process is entirely controlled by government from beginning to end, therefore, casting some doubts on whether this reflects a real market situation. This moreover raises a serious issue concerning the governance of such entities and the implication of the above could also have an impact by itself on the sector classification of such entities in national accounts.

Eurostat takes note that PSO services are provided also by the three Autonomous Communities (Catalonia, Aragon and Extremadura). However, this does not change the issue of control by government in national accounts, as government is to be intended as *general government*, which includes also the Autonomous Communities.

### Charges paid by RENFE to ADIF

The statistical treatment of PSO has direct implications for the delimitation of general government. Depending on whether these payments are treated as sales for the market / non market test, the outcome of the 50 % test might be different.

As explained in your background document and during the EDP dialogue visit, the current infrastructure manager (ADIF) had to prepare a proposal for the charges established in Articles 97 and 98 of the *Rail Sector Act 38/2015*.

As further explained by ADIF, charges are calculated on a cost basis although allegedly the final amount to be paid will depend on the actual use of infrastructure, measured in train/km term.

The charges calculated by ADIF apply the criteria established in the *Rail Sector Act 38/2015* as follows:

- Use of historic costs to identify and quantify the costs incurred by rail infrastructure managers for the provision of services of the access package and for access to infrastructure connecting service facilities;
- Identification among the above costs of those that are non-eligible;
- Identification of the costs that Article 97 of *Act 38/2015* considers recoverable through the mark-up provided for in Mode B (Article 97.5.2.b);
- Establishment of costs directly attributable to the operation of the rail service as the difference between the costs described in the points above.

To calculate the underlying costs of the charge for using lines forming part of the General Interest Railway Network, ADIF has identified activities related to the provision of services of the minimum access package and for access to infrastructure connecting service facilities as follows: capacity management, circulation management, circulation safety, and the maintenance and conservation of the infrastructure. In addition, the mark-up for Mode B (use of railway lines) charges has been applied to the remaining underlying costs corresponding to PSO services.

Eurostat noted that, according to the new system, the subsidies from government are no longer directed to the infrastructure operator (i.e. ADIF), but to the rail operator (i.e. RENFE), which then uses these subsidies to pay the charges to ADIF. Eurostat considers these as indirect subsidies.

Furthermore, Eurostat considers that indirect subsidies should be treated in the same way as those directly obtained from government. The intention of the government is still to compensate the infrastructure manager for the costs incurred and the rail operator is considered simply as an intermediary. Therefore such subsidies should be recorded, in national accounts, as directly paid from government to the infrastructure manager, recognising the principal party to the transaction (*ESA 2010 I.78*)

In order to calculate the amount of compensation to be paid by government to RENFE, the net financial services declared as PSO are calculated in line with the Annex of the Regulation 1370/2007.

Regulation (EC) 1370/2007 on public passenger transport by rail and road lays down the conditions under which the competent authorities can compensate the rail operators for the costs incurred for the discharge of public service obligations (PSO). *The compensation connected with public service contracts awarded directly in accordance with Article 5(2), (4),*

(5) or (6) or with a general rule must be calculated in accordance with the rules laid down in the Annex. The annex to this Regulation defines also the rules that have to be followed in the calculation of the compensation for the PSOs, as follows:

*"The compensation may not exceed an amount corresponding to the net financial effect.... In order to calculate the net financial effect, the competent authority shall be guided by the following scheme:*

- costs incurred in relation to a public service obligation or a bundle of public service obligations imposed by the competent authority/authorities, contained in a public service contract and/or in a general rule,*
- minus any positive financial effects generated within the network operated under the public service obligation(s) in question,*
- minus receipts from tariff or any other revenue generated while fulfilling the public service obligation(s) in question,*
- plus a reasonable profit"*

Based on the legal provisions above, Eurostat considers, at present, that the amounts the rail entities receive as compensation for their performance of passenger transport PSOs, have the nature of subsidies on production (D.39) and not of subsidies on products (D.31) and, as such, cannot be considered as sales when conducting the market/non-market test.

During the EDP dialogue visit, the representatives of ADIF underlined that, as ADIF is a public entity; their goal is not to incur profit, but to have balanced accounts. As a cost model is used for the calculation of PSO, the fees would increase always whenever there would be an increase of costs of ADIF. Consequently, RENFE (and government) would pay higher fees, as ADIF would transfer the increase of costs to government.

In such circumstances, Eurostat does not consider that the price determined by ADIF can be treated as economically significant.

As further explained during the EDP visit, every year ADIF calculates the costs directly attributable to the rail services and proposes charges for the following year. It is an ex-ante model and although it does not allow settlements to be made at the end of the year, Eurostat however understands that any possible deviation (i.e. losses incurred in one year) would be compensated in the following year. The under-compensation would be paid in the next period, which means that ADIF would never incur losses with the PSO over time.

Furthermore, ADIF received under the previous system compensation directly from the government budget (585 million euro) plus the payments related to PSO from RENFE (71 million euro). Under the new system, the amount received for the PSO is almost the same as in the old system, i.e. 637 million euro, with the unique difference compared to the previous system that the whole part is paid by a unit controlled by government (RENFE), which is then compensated by government, instead of being paid directly by government.

Therefore in substance, the new system does not seem to change significantly compared to the previous system.

### ***Conclusions***

In view of the arguments raised above, Eurostat considers that ADIF should continue, at present, to be classified inside the general government sector (S.1311).



## ***Procedure***

This preliminary view of Eurostat is based on the information provided by the Spanish statistical authorities. If this information turns out to be incomplete, or the implementation of the operation differs in some way from the information presented, Eurostat reserves the right to reconsider its view.

We would like to remind you that Eurostat is committed to adopting a fully transparent framework for its decisions on debt and deficit matters in line with Council Regulation 479/2009 and the note on ex-ante advice, which has been presented to the CMFB and cleared by the Commission and the EFC. Eurostat therefore publishes all official methodological advice (ex-ante and ex-post) given to Member States, on the Eurostat web site.

Yours sincerely,

*(eSigned)*

Luca Ascoli  
Acting Director