

Opening of the market for domestic passenger transport services by rail: award of public service contracts. 4th Railway Package

2013/0028(COD) - 18/10/2016 - Council position

The Council adopted its position at first reading with a view to the adoption of a Regulation amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail.

The main objectives of the proposal are to improve the quality of domestic rail passenger transport services in cases where such services are offered as a public service and to enhance the operational efficiency of these services.

Competitive tendering: the Council considered that competitive tendering should be the preferred option when public passenger services by rail are procured. However, to effectively attain the main objectives of the proposal, derogations to the principle of competitive tendering, i.e. direct awards, should be allowed in certain cases and subject to specified conditions.

Directly awarded: unless prohibited by national law, the competent authority may decide to award public service contracts for public passenger transport services by rail directly:

- where it considers that the **direct award is justified by the relevant structural and geographical characteristics of the market and network concerned**, and in particular size, demand characteristics, network complexity, technical and geographical isolation and the services covered by the contract, and
- where such a contract would result in an **improvement in quality of services or cost-efficiency**, or both, compared to the previously awarded public service contract

Where the competent authority decides to award a public service contract directly, it shall lay down **measurable, transparent and verifiable performance requirements**. Such requirements shall be included in the contract. The performance requirements shall in particular cover punctuality of services, frequency of train operations, quality of rolling stock and transport capacity for passengers.

The competent authority shall periodically assess whether the railway undertaking has achieved its targets for meeting the performance requirements as set in the contract and shall make its findings public. Such periodic assessments shall take place at least every five years.

In the event of a disruption of services or the immediate risk of such a situation, the competent authority may take **emergency measures**. The emergency measures shall take the form of a direct award or a formal agreement to extend a public service contract or a requirement to provide certain public service obligations.

Specifications of public service obligations (PSO): the Council position sets clear rules for the definition and specifications of PSO. The text also sets out **general criteria** to be used by competent authorities to define public service obligations. These specifications should, where possible, generate positive network effects, inter alia in terms of improved quality of services, social and territorial cohesion or the overall efficiency of the public transport system.

Upper limits on the value of direct awards: the de minimis thresholds for directly awarded public service contracts were adapted by the Council.

Unless prohibited by national law, the competent authority may decide to award public service contracts directly:

(a) where their average annual value is estimated at **less than EUR 1 000 000** or, in the case of a public service contract including public passenger transport services by rail, less than EUR 7 500 000; or

(b) where they concern the annual provision of **less than 300 000 kilometres** of public passenger transport services or, in the case of a public service contract including public passenger transport services by rail, **less than 500 000 kilometres**.

Access to rolling stock: with a view to launching a competitive tendering procedure, competent authorities shall assess whether measures are necessary to ensure effective and non-discriminatory access to suitable rolling stock. The assessment report shall be made **publicly** available. Competent authorities may decide, in accordance with national law and in compliance with State aid rules, to take appropriate measures to ensure effective and non-discriminatory access to suitable rolling stock.

Rights and social obligations: with a view to an appropriate integration of social and labour requirements into procedures for the award of public service contracts for public passenger transport services public service operators should, in the performance of public service contracts, comply with obligations in the field of social and labour law that apply in the Member State where the public service contract is awarded and that result from laws, regulations and decisions, at both national and Union level, as well as from applicable collective agreements.

Transition period: the new system will be introduced gradually. Competitive bidding for public service contracts will start seven years after the legal acts are published. Public service contracts for public passenger transport services by rail directly awarded on the basis of a procedure other than a fair competitive procedure as of the date of entry into force of this amending Regulation until 2 December 2019 may **continue until their expiry date**.