

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

2013/0028(COD) - 07/12/2016 - Committee recommendation tabled for plenary, 2nd reading

The Committee on Transport and Tourism adopted the recommendation for second reading contained in the report by Wim VAN DE CAMP (EPP, NL) on the Council position at first reading with a view to the adoption of a regulation of the European Parliament and of the Council amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail.

The committee recommended the European Parliament to approve the Council position at first reading without amendment.

As a reminder, the proposal is part of the market pillar of the Fourth Railway Package which comprises three legislative proposals.

The general objective of the Commission proposal for an amendment of Regulation (EC) 1370/2007 is to improve the quality of rail passenger services and to enhance their operational efficiency.

To attain the general objective, the Commission proposed to introduce mandatory competitive tendering for public service contracts to intensify competitive pressure on domestic rail markets. The aim is to enhance the efficiency and to improve the quality of rail passenger services. These measures are accompanied by provisions to ensure favourable framework conditions for competitive tendering procedures, including rules on the access to rolling stock.

Following the adoption of Parliaments first reading position on 26 February 2014, interinstitutional negotiations (aimed at an early second reading agreement) took place, from October 2015 to April 2016, under the Luxembourg and the Dutch Presidencies of the Council. After six rounds of trilogues, Parliaments negotiating team reached an agreement with the Council Presidency on 19 April 2016.

The explanatory statement accompanying the recommendation recalled the main achievements of the European Parliament in the framework of the conclusion of the overall agreement with the Council:

- competent authorities will have an obligation to clearly define specifications of public service obligations (PSOs) in public passenger transport and the scope of their application, including geographical areas concerned. This includes the possibility for competent authorities to group cost-covering with non-cost covering services. When defining the specifications, the CAs will have to respect the principle of proportionality, in accordance with Union law;
- competent authorities will have to ensure that the specifications of public service obligations and the related compensation of the net financial effect of public service obligations achieve the objectives of the public transport policy in a cost-effective manner;
- public service operators will have to comply with applicable obligations in the field of social and labour law established by Union law, national law or collective agreements when carrying out the public service obligations;
- the public service operators and infrastructure managers will be under an obligation to provide the competent authority with information that is essential for the tendering of future public service contracts (PSC), including information on passenger demand, fares, costs and revenues and infrastructure specifications. This information has to be made available to interested parties when they are preparing their bids, while ensuring the legitimate protection of confidential business information;
- when a competent authority receives only one offer following the publication of the intention to award a public service contract, it can follow a simplified procedure implying negotiations with the sole bidder;
- the award of public service contracts in rail has to be done through competitive tendering. The Regulation however includes exceptions from this principle allowing for direct award or a simplified procedure:
 - i. in case of exceptional circumstances;
 - ii. when the average annual value or annual provision of public passenger transport services by rail falls below the thresholds defined in the Regulation (EUR 7,5 million/annum or 500.000 km);
 - iii. when the competent authority considers that the direct award is justified by relevant structural and geographical characteristics of the market and network concerned, in particular its size, demand characteristics, complexity of the network, its technical and geographical isolation and the services covered by the contract¹, and where such a contract would result in an improvement in quality of services and/or cost efficiency compared to the previously awarded public service contract;
- the competent authority may decide before launching the tender procedure to limit the number of lots of a public service contracts to be awarded to the same railway undertaking;
- the competent authority will have to assess as part of the preparation of a tendering procedure the situation as regards access to rolling stock for all potential bidders and to publish the assessment;
- entry into force and the period of transition: the Regulation shall enter into force 12 months after the date of its publication. The new rules on competitive award of public service contracts and the performance exemption will apply from 3 December 2019. However, Article 5(6) allowing for direct award without any limitations will cease to apply only 6 years after the entry into force. The contracts awarded under Article 5(6) may continue until their expiry date but no longer than 10 years.

The committee also approved a statement (annexed to the legislative resolution) which stipulated that Member States must fully respect [Directive 2001/23/EC](#) relating to the safeguarding of employees' rights in the event of transfers of undertakings and are entitled to go beyond the application of this Directive taking additional measures for staff protection in compliance with Union law, such as requiring a mandatory transfer of staff even if Directive 2001/23/EC would not apply.