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*Plenary sitting*

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**A8-0373/2016**

7.12.2016

**\*\*\*II**

## **RECOMMENDATION FOR SECOND READING**

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  
(11198/1/2016 – C8-0425/2016 – 2013/0028(COD))

Committee on Transport and Tourism

Rapporteur: Wim van de Camp

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**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 (11198/1/2016– C8-0425/2016 – 2013/0028(COD))**

**(Ordinary legislative procedure: second reading)**

*The European Parliament,*

- having regard to the Council position at first reading (11198/1/2016 – C8-0425/2016),
  - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Lithuanian Parliament, the Luxembourg Chamber of Deputies, the Netherlands Senate and the Netherlands House of Representatives, the Austrian Federal Council and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to the opinion of the European Economic and Social Committee of 11 July 2013<sup>1</sup>,
  - having regard to the opinion of the Committee of the Regions of 8 October 2013<sup>2</sup>,
  - having regard to its position at first reading<sup>3</sup> on the Commission proposal to Parliament and the Council (COM(2013)0028),
  - having regard to Article 294(7) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 76 of its Rules of Procedure,
  - having regard to the recommendation for second reading of the Committee on Transport and Tourism (A8-0373/2016),
1. Approves the Council position at first reading;
  2. Approves the statement annexed to this resolution;
  3. Notes that the act is adopted in accordance with the Council position;
  4. Instructs its President to sign the act with the President of the Council, in accordance with Article 297(1) of the Treaty on the Functioning of the European Union;
  5. Instructs its Secretary-General to sign the act, once it has been verified that all the procedures have been duly completed, and, in agreement with the Secretary-General of the Council, to arrange for its publication in the *Official Journal of the European Union*;

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<sup>1</sup> OJ C 327, 12.11.2013, p. 122.

<sup>2</sup> OJ C 356, 5.12.2013, p. 92.

<sup>3</sup> Texts adopted of 26.2.2014, P7\_TA(2014)0148.

6. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

## **ANNEX TO THE LEGISLATIVE RESOLUTION**

### **Statement by the European Parliament on the transfer of staff**

According to Recital 14 and Article 4, paragraphs 4a, 4b and 6, 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.

## **EXPLANATORY STATEMENT**

### **1. The market pillar of the Fourth Railway Package**

The market pillar of the Fourth Railway Package comprises three legislative proposals:

1. A proposal to amend Directive 2012/34/EU establishing a single European railway area, as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure;
2. A proposal to amend Regulation 1370/2007 concerning the opening of the market for domestic passenger transport services by rail;
3. A proposal to repeal Regulation 1192/69 on common rules for the normalisation of the accounts of railway undertakings.

### **2. The Commission proposal for the amendment of Regulation 1370/2007**

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. This should improve the competitiveness and attractiveness of rail vis-à-vis other modes of transport and develop further the single European railway area.

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.

The Commission proposal is closely linked to the proposed amendments to Directive 2012/34/EU establishing a single European railway area, which introduce open access rights for railway undertakings and strengthen the provisions concerning the governance of infrastructure management in view of enhancing non-discriminatory access to the rail infrastructure.

### **3. Interinstitutional negotiations**

Following the adoption of Parliament's 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, Parliament's negotiating team reached an agreement with the Council Presidency on 19 April 2016.

The text of the agreement was presented to the Committee on Transport and Tourism (TRAN) and approved on 12 July 2016. On the basis of the Committee's approval, the Chair of the TRAN Committee, in his letter to the Chair of the Committee of Permanent Representatives (COREPER I), indicated that he would recommend to the Plenary to approve the Council's position at first reading without amendments, provided that it is in conformity with the agreement reached between the two institutions. Following legal-linguistic verification, the Council adopted its position at first reading on 17 October 2016 in accordance with the agreement.

#### 4. Main elements of the agreement

##### (a) Specification of public service obligations (PSO)

Competent authorities (CA) will have an obligation to clearly define specifications of PSOs in public passenger transport and the scope of their application, including geographical areas concerned. This includes the possibility for CAs 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. The PSO specifications must also be **consistent with the policy objectives stated in public transport policy documents** of the Member States. This new obligation is **applicable to all modes of land transport** covered by the Regulation.

##### (b) Compensation of the net financial effect of the PSO operation

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**. Moreover, compensation will have to be set at a level **ensuring financial sustainability** of the provision of public passenger transport in accordance with the requirements laid down in the public transport policy in the long term.

##### (c) Social provisions

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 PSO. Directive 2001/23 on the transfer of enterprises will apply to a change of public service operator where such a change constitutes a transfer of undertaking within the meaning of that Directive. Where a CA requires the operators to comply with certain **quality and social standards**, these, including rights and obligations related to transfer of staff, **have to be included in the tender documents and public service contracts**.

##### (d) Provision of information

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.

##### (e) Rail specificities concerning in-house awards

When a contract of public passenger transport services by rail is awarded to an internal operator by a group of local competent authorities, each local CA must have an area of competence that is not national and the PSC awarded may only cover the transport needs of urban agglomerations or rural areas, or both.

##### (f) Simplified non-discriminatory and transparent procedure

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.

(g) Award of public service contracts

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 in case of:

- **Exceptional circumstances:** in the framework of a competitive award, a competent authority may directly award a PSC for up to 5 years in situations, for instance, when the CA already runs a certain number of other competitive tenders which could affect the number and quality of bids it can expect to receive or when the CA needs to change the scope of the PSC.
- **De minimis PSCs:** 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).
- **Performance exemption:** 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 contract<sup>1</sup>, 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 CA will have to publish the substantiated reasoning of this decision. It will also have to define measurable, transparent and verifiable performance requirements and periodically assess and publish whether the operator complies with those.
- The infrastructure manager and operator of the PSC are the same entity and the infrastructure is excluded from the scope of Directive 2012/34/EU with respect to independence requirements of the infrastructure manager.

(h) Limitation of the number of contracts awarded to the same operator

The competent authority may decide before launching the tender procedure to limit the number of lots of a PSC to be awarded to the same railway undertaking. This is to be done with the objective of increasing competition.

(i) Access to rail rolling stock

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. Following this assessment, the competent authority may decide to take measures to ensure access to rolling stock. These measures include: creating a pool of rolling stock, provision of a guarantee for financing of the rolling stock, or commitment to take over the rolling stock at the end of the contract.

(j) Entry into force/transition

The Regulation shall enter into force 12 months after the date of its publication. The new rules on competitive award of PSCs 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.

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<sup>1</sup> This condition is not applicable to Member States where, at the entry into force of this Regulation, the maximum annual volume is less than 23 million train-km and which have only one competent authority at national level and one public service contract covering the entire network.

## **5. Recommendation**

As Council's first reading position is in conformity with the agreement reached during the interinstitutional negotiations, the Rapporteur recommends endorsing it without amendments.

## PROCEDURE – COMMITTEE RESPONSIBLE

<b>Title</b>	Amendment of Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail
<b>References</b>	11198/1/2016 – C8-0425/2016 – 2013/0028(COD)
<b>Date of Parliament's first reading – P number</b>	26.2.2014                      T7-0148/2014
<b>Commission proposal</b>	COM(2013)0028 - C7-0024/2013
<b>Receipt of Council position at first reading announced in plenary</b>	27.10.2016
<b>Committee responsible</b> Date announced in plenary	TRAN 27.10.2016
<b>Rapporteurs</b> Date appointed	Wim van de Camp 13.10.2014
<b>Discussed in committee</b>	10.11.2016
<b>Date adopted</b>	5.12.2016
<b>Result of final vote</b>	+:                      30 -:                      15 0:                      0
<b>Members present for the final vote</b>	Daniela Aiuto, Lucy Anderson, Marie-Christine Arnautu, Inés Ayala Sender, Georges Bach, Deirdre Clune, Michael Cramer, Andor Deli, Karima Delli, Isabella De Monte, Ismail Ertug, Jacqueline Foster, Bruno Gollnisch, Tania González Peñas, Dieter-Lebrecht Koch, Merja Kyllönen, Miltiadis Kyrkos, Bogusław Liberadzki, Peter Lundgren, Marian-Jean Marinescu, Georg Mayer, Gesine Meissner, Renaud Muselier, Jens Nilsson, Salvatore Domenico Pogliese, Tomasz Piotr Poręba, Gabriele Preuß, Christine Revault D'Allonnes Bonnefoy, Dominique Riquet, Massimiliano Salini, David-Maria Sassoli, Claudia Schmidt, Keith Taylor, Pavel Telička, István Ujhelyi, Wim van de Camp, Janusz Zemke, Roberts Ziļe
<b>Substitutes present for the final vote</b>	Daniel Dalton, Maria Grapini, Werner Kuhn, Ramona Nicole Mănescu, Matthijs van Miltenburg
<b>Substitutes under Rule 200(2) present for the final vote</b>	Fabio De Masi, Jeroen Lenaers
<b>Date tabled</b>	7.12.2016