

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

2013/0028(COD) - 30/01/2013 - Legislative proposal

PURPOSE: to improve the quality of rail passenger transport services and their operational efficiency (**fourth railway package**).

PROPOSED ACT: Regulation of the European Parliament and of the Council (amendment of Regulation (EC) No 1370/2007 on public passenger transport services by rail and by road).

PARLIAMENT’S ROLE: Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: in its [White Paper on transport policy of 28 March 2011](#), the Commission announced its intention to complete the internal railway market, allowing railway undertakings of the Union to provide all types of rail transport services without unnecessary technical and administrative barriers.

In the last decade, three legislative ‘railway packages’ have aimed at opening up national markets and making railways more competitive and interoperable at EU level. Despite the new EU legislation, **the modal share (6%) of rail in intra-EU transport has remained modest**.

Regulation 1370/2007 on public passenger transport services by rail and by road set out a framework for awarding public service contracts and compensating for public service obligations but not a common approach to awarding contracts for rail passenger transport. Given that no common EU rules on the award of such contracts apply, some Member States have introduced competitive tendering for these contracts, while others award them directly. This patchwork of regulatory systems in the EU makes it difficult for railway companies to exploit the full potential of operating in an Internal Market.

This proposal forms part of the [Fourth Railway Package](#) put forward by the Commission. It should result in the **competitive tendering of public service contracts** with a view to improving the quality of rail passenger services and enhancing their operational efficiency, thereby improving the competitiveness and attractiveness of rail vis-à-vis other modes and developing further the Single European Railway Area.

IMPACT ASSESSMENT: the impact assessment showed that a combination of the following would fare best in terms of economic, environmental and social impacts, generating a net present value of between EUR 21 and EUR 29 billion from 2019 to 2035: (i) broadly defined open access rights subject to a test of their impact on the economic equilibrium of public service contracts; (ii) competitively awarded public service contracts; (iii) voluntary national integrated ticketing systems; and (iv) Member States must ensure non-discriminatory access to suitable rolling stock for railway undertakings which want to participate in a public tender procedure.

LEGAL BASIS: Article 91 of the Treaty on the Functioning of the European Union.

CONTENT: this proposal to amend Regulation (EC) No 1370/2007 encompasses common rules on the award of public service contracts for passenger transport by rail, together with accompanying measures to increase the success of competitive tendering procedures. The main elements of the proposal are as follows:

- **A flexible and transparent procedure as to how competent authorities define public service obligations and the geographical scope of public service contracts.** Competent authorities must: (i) establish public transport plans defining the objectives of public passenger transport policy and supply and performance patterns for public passenger transport; (ii) justify the kind and extent of public service obligations they intend to impose on public transport operators and the scope of the public service contract with a view to achieving the objectives defined in the public transport plans; (iii) ensure appropriate consultation of interested parties, (e.g. passenger and employee organisations and transport operators).
- **Compulsory provision by competent authorities** of operational, technical and financial information about passenger transport covered by a public service contract to be put out to tender.
- **Specific limits** for the direct award of small volume contracts and direct awards to small or medium-sized enterprises.
- **Mandatory competitive award of rail contracts:** competent authorities will not have the option of deciding whether to award a public service contract for rail directly or based on a competitive tender. The general rule of competitive tendering will also apply to rail.
- **Access to rail rolling stock:** Member States must ensure **effective and non-discriminatory access to suitable rail rolling stock** for operators wishing to provide public passenger services by rail.
- **A 10-year transition period up to 2 December 2019** applied to competitive tendering procedures.

The proposal has to be seen in connection with the [proposal to amend Directive 2012/34/EU](#), which introduce open access rights for railway undertakings and strengthen provisions on non-discriminatory access to the rail infrastructure.

The fourth railway package also includes the proposals to recast Directive 2004/49/EC (rail safety) and [Directive 2008/57/EC](#) (interoperability), as well as a proposal enhancing the tasks of the [European Railway Agency](#).

BUDGETARY IMPLICATIONS: there are no implications for the Union budget.