Basic information

2013/0028(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Opening of the market for domestic passenger transport services by rail: award of public service contracts. 4th Railway Package Amending Regulation (EC) No 1370/2007 2000/0212(COD) See also 2013/0015(COD) See also 2013/0016(COD) See also 2013/0029(COD) See also 2013/0013(COD) See also 2013/0014(COD) **Subject** 2.40 Free movement of services, freedom to provide 2.40.02 Public services, of general interest, universal service 2.60 Competition 3.20.02 Rail transport: passengers and freight 3.20.11 Trans-European transport networks	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
TRAN Transport and Tourism	VAN DE CAMP Wim (PPE)	13/10/2014
	Shadow rapporteur LIBERADZKI Bogusław (S&D) ZĪLE Roberts (ECR) TELIČKA Pavel (ALDE) MALTESE Curzio (GUE /NGL) DELLI Karima (Verts/ALE) LUNDGREN Peter (EFDD)	

Former committee responsible	Former rapporteur	Appointed
TRAN Transport and Tourism	GROSCH Mathieu (PPE)	06/03/2013

Former committee for opinion	Former rapporteur for opinion	Appointed
EMPL Employment and Social Affairs	DAERDEN Frédéric (S&D)	25/03/2013

	ENVI Environment, Public Health and Food Safety	The committee decided not to give an opinion.	
	ITRE Industry, Research and Energy	The committee decided not to give an opinion.	
	IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.	
	REGI Regional Development	ESTARÀS FERRAGUT Rosa (PPE)	19/02/2013

	Council configuration	Meetings	Date
Council of the European Union	General Affairs	3484	2016-09-20
	Transport, Telecommunications and Energy	3377	2015-03-13
	Transport, Telecommunications and Energy	3335	2014-10-08
	Environment	3491	2016-10-17

	Commission DG	Commissioner
European Commission	Mobility and Transport	BULC Violeta

European Economic and Social Committee

European Committee of the Regions

Key events

Date	Event	Reference	Summary
30/01/2013	Legislative proposal published	COM(2013)0028	Summary
07/02/2013	Committee referral announced in Parliament, 1st reading		
17/12/2013	Vote in committee, 1st reading		
16/01/2014	Committee report tabled for plenary, 1st reading	A7-0034/2014	Summary
25/02/2014	Debate in Parliament		
26/02/2014	Decision by Parliament, 1st reading	T7-0148/2014	Summary
26/02/2014	Results of vote in Parliament		
08/10/2014	Debate in Council		Summary
13/10/2014	Committee decision to open interinstitutional negotiations after 1st reading in Parliament		
13/03/2015	Debate in Council		Summary

12/07/2016	Approval in committee of the text agreed at early 2nd reading interinstitutional negotiations	PE610.556 GEDA/A/(2016)011308	
20/09/2016	Debate in Council		
18/10/2016	Council position published	11198/1/2016	Summary
27/10/2016	Committee referral announced in Parliament, 2nd reading		
05/12/2016	Vote in committee, 2nd reading		
07/12/2016	Committee recommendation tabled for plenary, 2nd reading	A8-0373/2016	Summary
12/12/2016	Debate in Parliament		
14/12/2016	Decision by Parliament, 2nd reading	T8-0497/2016	Summary
14/12/2016	Results of vote in Parliament		
14/12/2016	Final act signed		
14/12/2016	End of procedure in Parliament		
23/12/2016	Final act published in Official Journal		

Technical information	
Procedure reference	2013/0028(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Amending Regulation (EC) No 1370/2007 2000/0212(COD) See also 2013/0015(COD) See also 2013/0016(COD) See also 2013/0029(COD) See also 2013/0013(COD) See also 2013/0014(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 091
Mandatory consultation of other institutions	European Economic and Social Committee European Committee of the Regions
Stage reached in procedure	Procedure completed
Committee dossier	TRAN/8/06749

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE514.572	18/06/2013	
Amendments tabled in committee		PE519.505	23/09/2013	
Amendments tabled in committee		PE519.535	23/09/2013	
Committee opinion	REGI	PE514.699	16/10/2013	

Committee opinion	EMPL	PE516.641	20/11/2013	
Committee report tabled for plenary, 1st reading/single reading		A7-0034/2014	16/01/2014	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0148/2014	26/02/2014	Summary
Committee draft report		PE592.266	21/10/2016	
Text agreed during interinstitutional negotiations		PE610.556	24/10/2016	
Amendments tabled in committee		PE594.057	16/11/2016	
Committee recommendation tabled for plenary, 2nd reading		A8-0373/2016	07/12/2016	Summary
Text adopted by Parliament, 2nd reading		T8-0497/2016	14/12/2016	Summary

Council of the EU

Document type	Reference	Date	Summary
Council statement on its position	12859/2016	07/10/2016	
Council position	11198/1/2016	18/10/2016	Summary
Coreper letter confirming interinstitutional agreement	GEDA/A/(2016)011308	24/10/2016	
Draft final act	00048/2016/LEX	14/12/2016	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2013)0028	30/01/2013	Summary
Document attached to the procedure	SWD(2013)0010	30/01/2013	
Document attached to the procedure	SWD(2013)0011	30/01/2013	
Commission response to text adopted in plenary	SP(2014)446	20/05/2014	
Commission communication on Council's position	COM(2016)0689	24/10/2016	Summary

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2013)0028	27/03/2013	
Contribution	ES_PARLIAMENT	COM(2013)0028	29/03/2013	
Contribution	PL_SEJM	COM(2013)0028	18/04/2013	
Contribution	CZ_SENATE	COM(2013)0028	01/07/2013	
Contribution	IT_CHAMBER	COM(2013)0028	31/10/2014	
Contribution	IT_SENATE	COM(2013)0028	08/11/2014	

Contribution	DE_BUNDESRAT	COM(2013)0028	03/12/2014	
Contribution	IT_SENATE	COM(2013)0028	03/12/2014	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CofR	Committee of the Regions: opinion	CDR0027/2013	08/10/2013	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Regulation 2016/2338
OJ L 354 23.12.2016, p. 0022 Summary

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**.

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

2013/0028(COD) - 14/12/2016 - Text adopted by Parliament, 2nd reading

The European Parliament adopted at second reading following the ordinary legislative procedure, a 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.

Parliament **approved the Council position at first reading** without amendment.

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.

Parliament also approved a statement (annexed to the legislative resolution) stipulating 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.

It should be noted that a proposal to reject the Council proposal, tabled by the EFDD, Greens/EFA, ENF and GUE/NGL groups, was rejected by plenary by 330 votes to 354 with 23 abstentions.

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

2013/0028(COD) - 14/12/2016 - Final act

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

LEGISLATIVE ACT: Regulation (EU) 2016/2338 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.

CONTENT: the overall objective of this Regulation amending Regulation (EC) No 1370/2007 is to improve the quality of rail passenger transport services and to increase their operational efficiency.

The completion of the single European railway area should contribute to the development of rail transport as a credible alternative to other modes of transport, in particular in terms of price and quality.

The Regulation is closely related to the Directive amending Directive 2012/34/EU on the governance of the railway infrastructure.

The main elements of the amending Regulation are as follows:

Mandatory competitive award for public service contracts: the Regulation lays down 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. 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;
- where their average annual value is estimated at **less than the ceilings** outlined in the Regulation (EUR 7.5 million/year or less than 500 000 kilometres).

Specification of public service obligations (PSOs): the competent authority shall lay down specifications for public service obligations in the provision of public passenger transport services and the scope of their application. This includes the possibility to group cost-covering services with non-cost-covering services. The specifications shall be consistent with the policy objectives stated in public transport policy documents in the Member States.

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. This assessment shall take into account the presence of rolling-stock leasing companies, or of other market actors providing for the leasing of rolling stock, in the relevant market. Competent authorities may decide to take appropriate measures to ensure effective access to suitable rolling stock.

Rights and social standards: in the performance of public service contracts, public service operators shall comply with obligations applicable in the field of social and labour law established by Union law, national law or collective agreements.

Transition period: the competitive tendering of public service contracts will start from **25 December 2023**.

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 24 December 2017 until 2 December 2019 may continue until their expiry date but shall not exceed 10 years.

ENTRY INTO FORCE: 24.12.2016.

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

2013/0028(COD) - 24/10/2016 - Commission communication on Council's position

The Commission adopted a communication on the position of the Council on 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 general objective of the Commission proposal 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. These measures are accompanied by provisions to ensure favourable framework conditions for competitive tendering procedures, including rules on the access to rolling stock.

This proposal is part of a comprehensive package of six legislative proposals to deliver better quality and more choice in rail services in Europe.

Comments on the common position: the Commission considered that the Council position **supports the main objectives of the Commission proposal** of improving the quality and efficiency of public transport services by rail through introducing the principle of mandatory competitive tendering of public service contracts in rail. It equally supports proposed provisions ensuring favourable framework conditions for competitive tendering procedures.

Although the Council position does not go as far as the Commission would have wished on a number of points, it should be pointed out that it is a **meaningful step forward** compared to the current Regulation (EC) No 1370/2007 for a number of reasons:

Mandatory competitive award for public service contracts: the Council position upholds the Commission's proposal as it introduces mandatory tendering of public service contracts in rail as a general principle by eliminating the possibility to directly award the public service contract in rail without any further justification. Even though it allows for several exemptions, these exemptions are restrictive, precise and objectively formulated and contain some safeguards to prevent an abusive circumvention of the principle of competitive award.

Moreover, the text ensures that when directly awarded contracts are awarded under the exemption linked to specific market structures, the public service contracts will have to pursue the objectives of the proposal, i.e. the improvement of quality and efficiency of public transport services by rail.

Definition of public service obligations (PSOs): the Council position does not go as far as the Commission proposal, however, the Commission recognises that it still contains clearer rules on the definition and specifications of PSOs. The text also sets general criteria for competent authorities when defining PSOs, while allowing for flexibility when required.

Information to bidders: the Council position also ensures the fair and transparent provision of relevant information to all bidders, which safeguards equal treatment during the tendering procedure. This new provision is in line with the Commission's proposal.

Upper limits on the value of direct awards: the Council position sets these upper limits higher. However the Commission considered that they still correctly reflect the logic of permitting direct awards if the cost of organising a tender procedure outweighs the expected benefits.

Access to rolling stock: the Council position deleted the obligation for competent authorities to ensure that non-discriminatory access to rolling stock is guaranteed. On the other hand, it set up an obligation for competent authorities to assess in view of a competitive award procedure whether measures are necessary in order to ensure non-discriminatory access to rail rolling stock and to publish this assessment.

The Council position also offers a toolbox of measures that the competent authorities can use to ensure access by operators to the rolling stock.

Rights and social standards: the Commission noted that the Council position upholds relevant European Union and national social standards that must be respected when there is a change of public service operator executing a public service contract.

Entry into force: compared to the proposal, the Council position introduced a longer transition period postponing the deletion of the possibility of unconditional direct awards. This postponement will delay the beneficial effects of the new rules, however it will also allow Member States to prepare the market for these changes.

Directly awarded contracts based on the exception for rail transport: the Commission proposed that directly awarded contracts based on the exception for rail transport should expire at the latest by 31 December 2022. It regretted that the Council position allows these contracts to run until their expiry. That will mean that public service contracts for rail directly awarded before the end of the transition period could continue until December 2032, which is a long transition period. The Council position guarantees the protection of existing contractual rights.

In conclusion, the Commission considered that despite the shortcomings of the Council position, the introduction of new and clearer provisions described above will provide more legal certainty. In a spirit of compromise, **the Commission accepted the position adopted by the Council** thus allowed the European Parliament to adopt the final text in a second reading.

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 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 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.

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.

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

2013/0028(COD) - 16/01/2014 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Transport and Tourism adopted the report by Mathieu GROSCH (EPP, BE) on the proposal for 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 parliamentary committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should be to amend the Commission's proposal as follows:

Multimodal and sustainable public transport plans and public service obligations: these plans should promote social and territorial cohesion. The requirements for these transport plans **should not go beyond what is necessary**. Detailed requirements should remain at the **discretion of the competent authority** in accordance with the principle of subsidiarity. Transport plans should consist of:

- basic requirements to be fulfilled by public transport offer, including, inter alia, accessibility for persons with disabilities, and modal and intermodal interconnections at main connecting hubs;
- for public rail passenger transport, efficiency criteria including inter alia modal share of public transport, punctuality, cost-efficiency, frequency of services, customer satisfaction and the quality of rolling stock;
- quality and safety standards as well as control aspects regarding the rolling stock, infrastructure and services, including information;
- principles of tariff policy, such as the use of social tariffs;
- applicable rules regarding passenger rights, social and employment conditions, environmental protection and the establishment of environmental objectives.

Volume of public service contracts for rail passenger transport: the Commission proposed that the volume of public service contracts should not exceed 10 million train-kms or one-third of the total national public rail passenger transport volume under public service contract. Members suggested that this volume **should be from 1 to 4** depending on the volume of the national public rail passenger transport volume under public service contract: (i) does not exceed 20 million train-km; (ii) is between 20 and 100 million train-km; (iii) is between 100 and 200 million train-km; (iv) is over 200 million train-km.

Compulsory content of public service contracts: the competent authorities should require the selected public service operators to grant staff **working conditions on the basis of binding national, regional or local social standards** and/or to implement the compulsory transfer of staff in case of change of operator.

Public service operators would have to comply with the applicable representative collective agreements and ensure decent employment and working conditions.

Award of public service contracts: competent authorities responsible for establishing transport plans should be able to decide to proceed to the direct award of public service contracts concerning public rail passenger transport services, subject to certain conditions.

In particular, the public transport plan should contain requirements applicable for the entire duration of the contract concerning the following: (i) evolution of passenger volumes; (ii) punctuality of services; (iii) cost-efficiency in terms of capital productivity; (iv) frequency of train operations; (v) customer satisfaction; (vi) quality of rolling stock.

The award of public service contracts concerning transport by road and other track-based modes such as metro, tramways or tram-train systems should comply with the Regulation from **3 December 2019**.

By **3 December 2022**, the competent authorities responsible for establishing the public transport plans should be entrusted with all powers necessary for awarding public service contracts.

Public service contracts for public passenger transport by rail that do not comply with the Regulation, directly awarded before 3 December 2022, should in any event expire at the latest 10 years from the entry into force of the Regulation.

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

2013/0028(COD) - 26/02/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 386 votes to 206 with 78 abstentions, a legislative resolution on the proposal for 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.

Parliament's position adopted at first reading under the ordinary legislative procedure amended the Commission's proposal as follows:

Market-opening: Parliament stressed that the completion of the opening of the Union railway market should be seen as **essential** in order to enable rail to become a credible alternative to other modes of transport in terms of price and quality.

Multimodal and sustainable public transport plans and public service obligations: the Commission proposal provided that competent authorities shall establish and regularly update public passenger transport plans covering all relevant transport modes for the territory for which they are responsible.

Parliament stated that these plans should promote social and territorial cohesion. The requirements for these transport plans **should not go beyond what is necessary**. Detailed requirements should remain at the **discretion of the competent authority** in accordance with the principle of subsidiarity. Transport plans should consist of:

- basic requirements to be fulfilled by public transport offer, including, inter alia, accessibility for persons with disabilities, and modal and intermodal interconnections at main connecting hubs;
- for public rail passenger transport, efficiency criteria including inter alia modal share of public transport, punctuality, cost-efficiency, frequency of services, customer satisfaction and the quality of rolling stock;
- quality and safety standards as well as control aspects regarding the rolling stock, infrastructure and services, including information;
- principles of tariff policy, such as the use of social tariffs;

applicable rules regarding passenger rights, social and employment conditions, environmental protection and the establishment of environmental objectives.

The **specifications** of public service obligations and the related **compensation** of the net financial effect of public service obligations shall achieve the objectives of the public transport plan in a cost-effective manner and shall financially sustain the provision of public passenger transport in the long term.

Volume of public service contracts for rail passenger transport: Parliament asked that the volume of a public service contract for passenger transport by rail which will be awarded on the basis of a competitive tendering procedure should be set in a way that **facilitates competition between small bidders, new entrants and the incumbent operator** for such contracts while allowing competent authorities some flexibility to optimise the volume according to economic and operational considerations.

The Commission proposed that the volume of public service contracts should not exceed 10 million train-kms or one-third of the total national public rail passenger transport volume under public service contract. Members suggested that this volume should be **from 1 to 4** depending on the volume of the national public rail passenger transport volume under public service contract: (i) does not exceed 20 million train-km; (ii) is between 20 and 100 million train-km; (iii) is between 100 and 200 million train-km; (iv) is over 200 million train-km.

Compulsory content of public service contracts: competent authorities shall make available to all interested parties relevant information for the preparation of an offer under a competitive tender procedure, whilst protecting business secrets

They should require the selected public service operators to grant **staff working conditions on the basis of binding national, regional or local social standards** and/or to implement the compulsory transfer of staff in case of change of operator.

Public service operators would have to comply with the applicable representative collective agreements and ensure decent employment and working conditions regardless of the award procedure.

Award of public service contracts: until the end of the transitional period referred to in Article 8(2), Member States and, if permitted by national law, competent authorities may exclude from competitive tendering procedures for the award of public service contracts by rail organised by the competent authorities in their territory, any railway undertaking or operator or any subsidiary directly or indirectly controlled by a railway undertaking or its holding company under certain specified conditions.

Competent authorities responsible for establishing transport plans should be able to decide to proceed to the **direct award** of public service contracts concerning public rail passenger transport services, subject to certain conditions.

In particular, the public transport plan should contain requirements applicable for the entire duration of the contract concerning the following: (i) evolution of passenger volumes; (ii) punctuality of services; (iii) cost-efficiency in terms of capital productivity; (iv) frequency of train operations; (v) customer satisfaction; (vi) quality of rolling stock.

The competent authority must publish no later than 18 months before the start of the contract how these requirements are to be complied with through the direct award of a public service contract. If a complaint of an interested railway operator or undertaking regarding the direct award of the contract is filed, the regulatory body evaluates the reasons provided by the competent authority and takes a decision no later than two months after the complaint was filed. The duration of such contracts shall not exceed **nine years.**

Transitional arrangements: the award of public service contracts concerning transport by road and other track-based modes such as metro, tramways or tram-train systems should comply with the Regulation from **3 December 2019.**

Public service contracts concerning public passenger transport by rail shall be awarded from 3 December 2022.

By **3 December 2022**, the competent authorities responsible for establishing the public transport plans should be entrusted with all powers necessary for awarding public service contracts.

Public service contracts for public passenger transport by rail that do not comply with the Regulation, directly awarded before 3 December 2022, should in any event expire at the latest 10 years from the entry into force of the Regulation.

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

2013/0028(COD) - 13/03/2015

The Council held a public **policy debate** on two proposals to improve rail services in the EU (fourth railway package). The proposals aim to liberalise passenger services and strengthen the governance of railway infrastructure.

Under the **market pillar**, two Commission proposals are under discussion at the Council:

- the proposal for a 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 (draft Governance Directive);
- the proposal for a Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail (**draft Public Service Obligation Regulation**).

Ministers were requested to express their views on the level of requirements applying to the various functions of infrastructure managers, the role of regulatory bodies and access to rolling stock (trains).

As regards the draft Public Service Obligation Regulation, the debate focused on the following issues:

Liberalisation of the rail market: a large number of ministers stressed that a "one size fits all" approach would not bring appropriate answers to the proposed liberalisation of the rail market. An important factor to be taken into account was the size of the market.

Several Member States argued that there was no evidence that market opening would be beneficial to small markets. On the contrary, they said, it could have negative social and budgetary consequences. Direct award should thus continue for small markets.

Access to rolling stock: Member States thought that any European rules established to ensure effective and non-discriminatory access to rolling stock should neither be too detailed nor too strict. It should be up to each Member State and its authorities to select appropriate measures taking into account their national situation. The presidency asked the question as to what Member States or their competent authorities should do in order to ensure effective and non-discriminatory access to rolling stock while limiting the impact on national budgets.

The presidency stated that it was committed to reaching an agreement with the European Parliament on the technical pillar, while preparing for a **general approach on both market pillar proposals at the June 2015 Transport Council**.

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

2013/0028(COD) - 08/10/2014

Ministers held a **policy debate** on two proposals to improve rail services in the EU. The proposals are part of the "political" or "market" pillar of the fourth railway package.

The Council debate focussed on key issues such as domestic market opening, non-discriminatory access to networks, financial transparency and the awarding of public service contracts.

Encouraging investment and innovation and rendering the railway sector more dynamic and customer-oriented: many ministers agreed with this objective but questioned whether market opening would be the best one to achieve this given that EU countries are very different in terms of their population, geography, markets and national rail systems.

Certain Member States were in favour of market opening but even many of them expressed the need to consider certain aspects such as good preparation, the need to do this progressively or the need for a market analysis or a study on the potential economic or social impact.

Cherry-picking: many Member States said they were against "cherry picking" i.e. commercial companies should not be allowed to choose profitable lines to the detriment of loss-making lines that are in the public interest.

Transition period: a large number of member states were in favour of a transition period for any new market opening measures. Several delegations mentioned the need to let the current contracts run their course.

Governance: a few ministers said that it should be up to the Member States to choose their own model. Some ministers said no additional measures would be necessary in this area. Some others mentioned the need to ensure transparency and oversight.

Public service contracts: most Member States considered it necessary to retain the possibility to award public-service contracts directly. Many delegations mentioned the need for public services to include both profitable and non-profitable lines.

Access to rolling stock: a few ministers said non-discriminatory access to rolling stock should be ensured for railway undertakings, whereas a number of delegations stressed the principle of subsidiarity in this connection. Others said no budget obligations should be created.

A large number of delegations considered it important to make progress on and conclude the **technical pillar** as swiftly as possible.

On the basis of the discussion, the Council will go on working towards a strategic, **shared approach to the political pillar** with a view to agreeing on this shared approach by the December Council.