



**PUBLIC SERVICE RAIL TRANSPORT  
IN THE EUROPEAN UNION: AN OVERVIEW**

NOVEMBER 2011

*The Voice of European Railways*



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# FOREWORD

Public service transport plays a crucial role in passenger transport in the European Union, both from a political and from an economic point of view as it represented in 2007 a financial volume of more than EUR 20 billion. It is estimated that approximately 90% of domestic passenger transport in the EU is currently provided within the context of public service arrangements, which in many cases represents substantial revenues for railway undertakings. Moreover, public service transport is an undeniably important social policy instrument for public authorities.

The operation and organisation of public service transport differs greatly throughout the EU due to the great variety of needs and traditions. That's why the Community of European Railway and Infrastructure Companies (CER) decided in 2005 to publish a brochure illustrating the different approaches in the European Union. At the time, it was striking to see that the conditions for operating public service contracts were divided into two major groups: the EU15 countries, where public service passenger transport was organised in a straightforward legal framework and where railway operators were considered as commercial companies; and the EU12 countries, where the situation was much more problematic with operators being forced to provide public services while receiving inadequate financial compensation for their operation. In other words, the conditions under which public service transport was provided were complex and it was clear that harmonised rules could not be applied without taking into account the specific political and economic context in each member state.

Six years later, the situation has slightly evolved in two areas: firstly, competition is growing in the EU member states with an increasing number of public service contracts being tendered out. This trend is likely to continue, also taking into account the plans of the European Commission to address the issue more formally by proposing EU legislation in the coming years. Secondly, some progress has been made in some member states with regards to financing of public service requirements. However much more needs to be done to comply with existing legislation.

In this context, CER is publishing the second edition of this brochure which describes the state of the art in the European Union as well as in Norway, Switzerland and Croatia. A general commentary is also included, guiding the reader through the various elements to be taken into account when analysing the provision of public service transport. With this brochure, CER hopes to provide useful guidance to stakeholders in their assessment of the constantly changing legal framework for railway undertakings in Europe.



**Johannes Ludewig**  
CER Executive Director



**Delphine Brinckman-Salzedo**  
CER Senior Legal Advisor

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# OVERVIEW

In the rail transport sector, governments throughout the world co-finance domestic rail passenger transport services as these services are typically not commercially viable. These payments are separate from any financial support to provide and maintain infrastructure. It is estimated that – at least in principle – approximately as much as 90% of domestic passenger-kilometres in Europe today are covered by some form of public service agreement.

In 2007, government payments for public service obligations in the EU27 were worth just over EUR 20<sup>1</sup> billion per year, of which EUR 18.6 billion were awarded in the EU15 and only EUR 1.6 billion were paid in the EU12. Depending on the country, these payments covered approximately 30%-50% of total operating costs related to public service operations (i.e. ticket revenues should in principle cover 50%-70% of operating costs<sup>2</sup>).

Traditionally, government payments were provided in the rail transport sector for three main reasons. Firstly, the provision of a transport service of general interest to all citizens with a view to satisfying the fundamental right to mobility has been an essential political objective pursued by all governments throughout the years. Secondly, securing affordable rail services were an important component of governments' social welfare and regional aid programmes – to allow low-income families, and those living in remote areas, to be mobile<sup>3</sup> and thus also improving the possibility to find employment further away from home in a larger region. Thirdly, with regard to so-called '*external costs*' (CO<sub>2</sub> emissions, damages to the environment, congestion, noise, accident related costs), it makes sense to support an alternative mode of transport like rail that generates considerably lower external costs than road<sup>4</sup>.

In the 1960s it became clear that the traditional form of subsidies was giving poor incentives for both governments and railways. Governments defined the level of service that they expected from the state-owned operator. However, they did not pay for this service up-front – but waited for the annual budget discussion on the overall level of the operating subsidy. This in turn gave poor incentives for the state-owned railway company: rather than concentrating on generating new sources of revenue, or trying to reduce costs, it was often easier to focus the attention on the annual budget negotiations with the government.

The core piece of European legislation on this topic at the time was Regulation 1191/69<sup>5</sup>.

<sup>1</sup> In 2007, the European Commission published data on government contributions to railways broken down by type of payment (public service obligations, rail infrastructure financing, etc.) covering the years 1996-2004. This data shows that on average, 42% of total government payments to the rail sector were spent on public service obligations in EU15, and 73% in EU12 (this high number is due to very low levels of rail infrastructure financing in EU12). Since then, unfortunately only aggregated tables have been made public by the Commission. The 2007 figures presented in this report are extrapolations based on the historic allocation of government payments (i.e. 43% in EU15 and 72% in EU12) and applied to the 2007 data. The figures should therefore be viewed with caution.

<sup>2</sup> As mentioned in the brochure, in certain countries, there may be a difference between the amount supposed to be covered by public authorities in principle, and the effective payments made.

<sup>3</sup> This principle also applies to public road transport.

<sup>4</sup> It should be noted, however, that despite the laudable efforts developed in this direction, many efforts still need to be made to effectively create a level playing field between different transport modes.

<sup>5</sup> Regulation 1191/69 on action by member states concerning the obligations inherent in the concept of public service in transport by rail, road and inland waterways, as amended by Regulation 1893/91.

It was designed to improve transparency and efficiency, and clarify the conditions under which public authorities could impose public service obligations upon their incumbent companies while financing such obligations. In other words, the overall aim of the text was to put limits to what public authorities could impose upon companies deemed to operate as commercial companies in the internal market and to determine how such obligations should be financed. This first regulation was amended in 1991 by Regulation 1893/91, and replaced in 2007 by an entirely new piece of legislation (Regulation 1370/2007) focusing on the compliance of any public financing of transport services with state aid rules.

The original public service Regulation 1191/69 helped railway companies by ensuring that governments had to specify – up-front – what level of service they required, and that they would then agree with the selected operator on what this would cost. As a result, politicians were confronted with the financial consequences of their political choices on the one hand. Operators, on the other hand, were facing strong incentives to meet the cost and service targets listed in the contract.

Overall, most EU15 member states effectively based themselves on the EU legal framework for the daily operation of their public rail services. Several others – predominantly new EU members from Central and Eastern Europe – applied it in law only. In practice, in these new EU member states in particular, railway companies still struggle today to finance loss-making passenger services. Closing such services proved politically unacceptable, upsetting local and national politicians, trade unions and local residents. Without adequate funding, railways often had to substitute the role of the Member State by using their own revenues from the profitable freight sector to cross-finance the (agreed) losses made by the ‘public service’ passenger sector<sup>6</sup>. If revenues from freight activities would not have been available, the consequence would have been the piling up of debts. At the same time, in several member states, governments introduced domestic legislation going beyond the requirements of the current legal framework, often aiming to introduce greater competition for (and/or in) the provision of passenger services, i.e. in order to lower costs and to improve service quality.

In 2000, the European Commission voiced its concerns about the fact that this regulation, last modified in 1991, was not reflecting current needs as it did not fit in with the overall Commission policy of opening up markets. The Commission made several attempts to modify this text<sup>7</sup>, but failed to gain support from the Council of Ministers as the successive proposals focused essentially on opening the market of public service transport to competition. In parallel, heads of state and government expressed their attachment to the broader notion of services of general interest (SGI), which covers a wider range of services than mere public service transport operations.

This preference was expressed at several European summits (Nice in December 2000; Laeken in December 2001 and Barcelona in March 2002) and resulted in the publication of a Green Paper and of a White Paper on services of general interest<sup>8</sup> in which the European Commission discussed and reiterated its attachment to the social dimension of such services, whilst recognising that they must be adequately financed. A new Communication from the European Commission confirming these principles is currently underway. This line of thinking is formally confirmed in the Lisbon Treaty which contains an article providing a

<sup>6</sup> The second part of the brochure shows that this can still be the case today in certain countries.

<sup>7</sup> In 2000 and 2002, the European Commission attempted to review the legal framework, COM (2000)7 as amended by COM (2002)107.

<sup>8</sup> European Commission Green Paper on Services of General Interest, COM (2003)270, and Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a White Paper on services of General Interest, COM (2004)374.





new legal basis for the adoption of legislation related to economic and financial conditions of services of general economic interest<sup>9</sup>.

Finally, a new proposal revising the 1969 public service legal framework was put forward by the European Commission in 2005<sup>10</sup>, aiming to outline the conditions under which public financing of passenger rail services could be seen as compatible with European state aid rules. The regulation was adopted in 2007<sup>11</sup>, repealing the one from 1969.

It is interesting to note there is a shift in the concerns of European institutions over the years. In the early seventies, European leaders aimed to protect railway companies from the abusive attitude of public authorities who imposed public service obligations on state-owned incumbent companies without financing them properly. Today policy-makers concentrate their attention on competition rules with a view to avoiding any financial over-compensation of companies. The question is whether this change in focus genuinely reflects the actual conditions for providing public rail transport in the enlarged European Union. Can the focus on dealing with the risk of over-compensation adequately respond to the reality in all EU countries, or on the contrary, does it contribute to further deepening the gap between EU member states?

This report does not take a position on such matters. The aim is rather to review the state of the art in Europe today, 40 years after the European institutions decided to address public service transport by rail. The report describes in **Part 1** the legal, political and economic context in which public services are currently operated, the general contents of the public service contracts, the manner in which they are awarded in order to serve as a reference tool for all stakeholders. **Part 2** contains individual country reports describing the legal framework surrounding public services in greater detail.

<sup>9</sup> Article 14 of the Treaty on the functioning of the European Union: "Without prejudice to Article 4 of the Treaty on European Union or to Articles 93, 106 and 107 of this Treaty, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Union and the member states, each within their respective powers and within the scope of application of the Treaties, shall take care that such services operate on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfill their missions. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish these principles and set these conditions without prejudice to the competence of member states, in compliance with the Treaties, to provide, to commission and to fund such services."

<sup>10</sup> Proposal for a Regulation of the European Parliament and of the Council on public passenger transport services by rail and road, COM(2005) 139.

<sup>11</sup> Regulation 1370/2007 on public passenger transport services by rail and by road and repealing Council Regulations 1191/69 and 1107/70.

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## 1 Legal context: from Regulation 1191/69 to Regulation 1370/2007

In order to be able to fully assess the complexity of the political and economic context of public service passenger transport, one first needs to understand the basic legal framework, in particular as the latter has changed in focus over the years.

### 1.1 First steps towards the fair provision of public service transport: Regulation 1191/69

Regulation 1191/69 was drafted with the specific objective of protecting railway undertakings from the tendency of national authorities to impose public service obligations without necessarily assuming the financial consequences of such decisions. This was a legacy from the past when public authorities used their monopolistic position to shape the political and economic environment at national level.

Regulation 1191/69, as amended by Regulation 1893/91, defined the conditions under which public authorities could intervene in order to obtain the level of public transport they considered as sufficient. The regulation was quite confusing in its wording. However, it foresaw two different ways to reach the objective:

- **Conclusion of a public service contract** between public authorities and transport operators when the public authorities wished to implement social and environmental factors as well as town and country planning, or when they wished to offer particular fares to certain categories of passengers.

The regulation broadly described the elements that should be included in the contract but did not provide rules for the calculation of the level of compensation.

- However, for urban, sub-urban or regional passenger transport services, public authorities could still **unilaterally maintain or impose public service obligations**, provided they respected certain conditions laid down in the regulation itself.

These obligations could be foreseen outside of a contract. While the regulation outlined in great detail the calculation method to be applied in order to finance such obligations, the absence of a contract nevertheless entailed the risk of weakening the position of railway undertakings at a time when a European competitive railway market was in the process of being set up.

Regulation 1191/69 foresaw a strict separation of accounts between services subject to public service obligations – and as such benefiting from public funding – and other commercial services operated outside of any public intervention.



Public funding was considered to constitute state aid, as defined under Articles 93 and subsequent of the Rome Treaty (now Articles 107 and subsequent of the Lisbon Treaty). In practice, this meant that the state compensation had to be notified to the European Commission for approval, prior to its implementation. However, the regulation provided a global exemption to such procedural requirements under the condition that the public funding fully complied with the text of the regulation itself (so-called '*block exemption*' in European jargon).

Finally, the regulation did not specify the way in which contracts had to be awarded. National authorities could freely choose to award them through an invitation to tender or to directly negotiate them with the railway company of their choice.

## 1.2 The turning point: the Altmark judgement

The 1969 legal framework fitted the political and economic situation of the six members of the Community at the time. Rapidly, however, the changing political and legal framework, in particular the shaping of a proper European rail transport policy in 1991<sup>12</sup> and later on the adoption of successive railway packages<sup>13</sup>, rendered Regulation 1191/69 ill-adapted to the sector as it did not reflect the reality of the market anymore.

<sup>12</sup> Adoption of Directive 91/440 on the development of the Community's railways.

<sup>13</sup> Adoption of the First Railway Package in 2001, the Second Package in 2004 and the Third Package in 2007. See CER European Railway Legislation Handbook, (second edition) for more details on the evolution of European legislation over the past decade, [www.cer.be](http://www.cer.be).

The European Commission attempted to revise the text several times in the early years after 2000 by using it to open up the market to competition. Indeed, the freight market had just been fully opened to competition and there were plans to tackle international passenger traffic. As public service transport has represented over the years close to 90% of the domestic market, it seemed to be the appropriate text to achieve the full opening of the passenger rail market to competition. This proved, however, to be a mistake as the text never succeeded in gathering sufficient political support in the Council. Member states were not politically ready at the time to open this market to competition.

The issue appeared to have reached a deadlock until the European Court of Justice rendered the *Altmark* judgement<sup>14</sup> in which the basic principles of a new legal framework could be found.

The **Altmark Trans** case opposed two bus companies on the conditions under which a German regional authority awarded a regional public transport contract to one of them. One of the most important aspects of the case relates to four conditions enumerated by the Court which, if respected, make the state's financial support fall outside the Court's definition of 'state aid'. These conditions are the following:

- the company to whom the contract is awarded must be in charge of the execution of public service obligations, which must be clearly determined in advance;
- the calculation method serving to determine the level of compensation must be set out in a clear and transparent manner;
- the level of the compensation must not exceed what is strictly necessary to effectively compensate costs incurred including a 'reasonable profit'; and
- in case the contract is awarded outside of a competitive tendering procedure, the level of compensation must be determined by a comparison with an analysis of the costs which a typical, well-run transport undertaking would incur.

If these four conditions are met, the compensation granted for public service contracts will not be considered state aid and therefore, will not need to be notified to the European Commission for prior approval.

Even though, from a technical legal point of view, the *Altmark* case does not apply to compensation of public services falling within **the scope of 1191/69** (as the starting point was a case not abiding by those rules), the European Commission took the ruling into account while drafting its proposal for a new regulation.

### 1.3 Overhaul of the legal framework: Regulation 1370/2007

While the 1969 regulation had, as essential object, to lay down the conditions under which public service transport had to be organised, the focus of the new 2007 text is on the 'state aid' nature of the financing of such services and how such financing must be organised in order to be compatible with EU legislation. The orientation of the text has therefore moved from a transport policy text to a competition law text.

<sup>14</sup> Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v. Nahverkehrsgesellschaft Altmark GmbH* [2003] ECR 2003, I-7747.

Regulation 1370/2007 lays down the conditions under which competent authorities have to compensate public service operators for the costs incurred when operating services in which public service obligations have been imposed or contracted. The text deals with road and rail transport. For the sake of clarity, this chapter outlines the rules applicable to rail only.

In this regard, two important elements are foreseen in Article 1 of the regulation:

- This article lays down amongst other principles the basic rule that any public service obligation **has to be compensated** (compensation covering the costs incurred in return for the discharge of public service obligations). The level of compensation and method of compensation is dealt with in other parts of the text.
- The compensation can take the form of a direct financial influx and/or the award of exclusive rights<sup>15</sup>.

The regulation applies to both national and international passenger traffic, which is wider than what the previous framework foresaw.

Article 3 indicates very clearly that the provision of public service transport must occur within the framework of a *'public service contract'*. While the previous framework left some space for interpretation, the new one is crystal clear in setting a legal basis for any commercial relation between a public authority and an operator.

The regulation outlines in a rather detailed manner the mandatory content of the contracts with a view to securing transparency and non-discrimination in the provision of public service transport. Basically, the obligations and the cost of their provision must be determined in advance in the contract.

The manner in which public service contracts can be awarded was a major point of discussion in the decision-making process during which conflicting views on the issue of compulsory tendering were expressed. The basic principle, the text is that public service contracts must be awarded further to a competitive tendering procedure, with the exception of possible direct awards to internal operators. In practice, this means that public authorities may directly award contracts to railway companies operating within a delimited region; so-called *'internal operators'*. However a last change was introduced at the very last moment with regard to transport by rail whereby, unless prohibited by national law, competent authorities may decide to make direct awards (Article 5(6)). This political concession was essential to allow the text to be adopted in 2007.

The text of the regulation and its Annex then detail how public service operations must be compensated in order to avoid any over-compensation that would be incompatible with EU state aid rules. As in the 1969 framework, where the compensation complies with the regulation, it is deemed to be compatible with EU law and therefore exempted from any prior notification to the European Commission Directorate General for competition.

To date, there has been one application of the new framework in a Danish case for which the European Commission adopted a Decision in 2010<sup>16</sup>.

<sup>15</sup> Exclusive rights are defined as rights entitling a public service operator to operate certain public passenger transport services on a particular route or network or in a particular area, to the exclusion of any other such operator.

<sup>16</sup> European Commission Decision C 41/08. An appeal on this decision was brought before the European Court of Justice. The decision should be delivered within the upcoming two years.

## First application of Regulation 1370/2007

Based on two complaints introduced respectively by Gråhundbus<sup>17</sup> and by Dansk Kollektiv Trafik, the European Commission investigated several public service contracts concluded between the Danish state and the incumbent Danish rail undertaking, DSB and its subsidiary DSB S-tog a/s, for which it had expressed some doubts regarding their compatibility with EU state aid rules. It based its analysis on the criteria laid down in the Altmark Trans judgment and on Regulation 1370/2007<sup>18</sup>. The Commission looked into greater detail into the following main issues of concern:

- whether the parameters determining the financial compensation were established in advance in an objective and transparent manner;
- whether the level of the compensation was limited to the amount necessary to cover all or part of the costs incurred in discharging public service obligations, taking into account the relevant revenues and a *'reasonable profit'*;
- there was a general need for clarifications as the contracts at stake were negotiated contracts.

In its Decision, the Commission found that the contracts and the associated compensation were compatible with EU law: the Commission found that there had been no over-compensation and that the maximum profit set at 6% was reasonable for the contracts at stake. However, it made this decision dependent upon the implementation of a refund mechanism<sup>19</sup> for the remaining duration of the contracts.

It is quite striking to see how the Commission based its entire assessment of the compatibility of the contracts with EU law on the new public service Regulation 1370/2007, while the latter did not exist when the said contracts were negotiated and concluded<sup>20</sup>. In this regard, it should be noted that the Decision in question gives a good overview of how the Commission interprets EU law and other state aid guidelines when assessing a railway-specific issue. The European Court of Justice is the sole body competent to determine whether this interpretation is correct.

One of the two complainants challenged the Commission Decision in front of the European Court of Justice. One of the main issues for this – still pending – Court ruling is the question of the applicable legal framework.

<sup>17</sup> A private undertaking providing passenger transport services by bus.

<sup>18</sup> It should be noted that Regulation 1370/2007 had not entered into force when the contracts were concluded. Nonetheless, contrary to what was argued by DSB, the Commission based its assessment on the new Regulation considering that it was *'applicable at the time when the Commission [took] its decision'*. Moreover, the Commission added that the *'assessment rules in Regulation 1370/2007 correspond in terms of content to those in regulation 1191/69, as set out and interpreted by the Commission in its decision initiating the procedure'*. Finally, it adds that *'in the present case, the application of Regulation 1191/69 would not have led to a different conclusion'*.

<sup>19</sup> See article 2 of the Decision for a description of the main characteristics of the refund mechanism.

<sup>20</sup> While some consider that this may consist in a retroactive application of EU law contrary to EU General Principles of Law, the Commission considers it common practice to take decisions based on applicable law at the moment of its decision. This aspect will certainly be looked into by the Court of Justice.

## 2 State of play and trends

### 2.1 Introduction

Over the past decades, passenger transport by rail has been organised according to two regimes: ‘*open access*’ and ‘*regulated access*’:

- ‘*open access competition*’ i.e. competition in the market, on the tracks, and
- ‘*regulated competition*’, i.e. competition for the market, for the tracks, through contracted services.

In 2011, these two models coexist in the member states surveyed for this report and they are both likely to allow for the development of competition between operators. In other words, these models are not mutually exclusive but complementary ways to introduce competition<sup>21</sup>.

The concept of regulated competition should be applicable to services which require a contractual basis with a public authority due to the involvement of public service obligations. The degree of competition in such a regulated market will depend on how contracts are effectively awarded. As demonstrated later in this report, competition is effectively developing throughout the Union, based on competitive tendering or negotiated procedures. This trend is deemed to grow in the future, provided that the sensitive question of financing of contracts is adequately addressed. No tendering procedure is likely to be successful if it is common knowledge that the awarding authority does not respect its part of the financial deal.

This chapter describes how public services are dealt within the 28 countries included in the survey<sup>22</sup>. It is based on information gathered through interviews with CER member companies in the countries concerned. These include long-established companies as well as new market entrants.

The review proved to be challenging. The degree of information provided varies from country to country. The major trends are nevertheless described in this part, while details per country can be found in Part II of the report.

In broad terms, the review demonstrates the richness of the EU. There is a diversity of organisational models reflecting the will to serve the needs of a diverse population living in often very different geographical contexts with different needs.

<sup>21</sup> This issue is developed in great detail in the CER Position Paper on Market opening of domestic passenger traffic and further European integration of railway markets, published on 4 February 2010. See also [www.cer.be](http://www.cer.be)

<sup>22</sup> Countries surveyed include all EU member states (with the exception of Cyprus and Malta which do not have a railway network) as well as Norway and Switzerland (Members of the European Economic Area-EEA) and Croatia.





## 2.2 General framework for the organisation of public service operations

There are similar patterns for the organisation of public service rail passenger traffic in the countries surveyed. There are three categories:

- public service operations organised purely at national level (at central government level);
- public service operations organised at regional or local level; and
- public service operations organised through the cooperation of both national (central government) authorities and local (decentralised) ones.

The level at which public service operations are dealt with is not tackled in Regulation 1370/2007. The European text simply indicates that competent authorities are '*any public authority or group of public authorities of a member state or member states which has the power to intervene in public passenger transport in a given geographical area or any body vested with such authority*'. It is therefore left entirely to the member states, in application of the principle of subsidiarity, to decide how to organise public service transport.

It appears that the level at which public service operations is mainly dealt with often depends upon the size of the country. In large countries, regional or local authorities will often be in charge of, for example, regulating public service operations and negotiating and concluding contracts, as they have a better understanding of the specific needs of their regional or local population. However, over the years, the trend has been for central governments to get increasingly involved in public service transport by rail in parallel to those powers and competences exercised by decentralised authorities.



**Figure 1 Level at which public service transport is organised**

National level	Regional/local level	Mix
Austria, Belgium, Bulgaria, Croatia, Denmark, Estonia, Greece, Hungary, Ireland, Latvia, Luxemburg, Norway, Portugal, Romania, Slovakia, Slovenia, Spain	Germany	Czech Republic, Finland, France, Great Britain, Italy, The Netherlands, Lithuania, Poland, Sweden, Switzerland

When exclusively managed at central level (see figure 1 above), public service contracts and the framework financial conditions for the operation of services are negotiated and concluded with the central government and paid from the state budget. In most countries, the law only regulates general principles, leaving detailed aspects to be enshrined in the contract.

If the competence is shared between national and regional authorities (see figure 1 above), it is often the case that the trunk network is managed centrally while regional traffic is in the hands of decentralised competent authorities. Given that most public service transport obligations are typically required in and around major cities, regional authorities have a fair share of responsibilities in their hands. In some cases (Great Britain), the cost of the services provided are also shared between the authorities, with a maximum of 50% of the overall cost falling upon the centralised authority and the rest to be borne by the decentralised authorities.

Finally, in Germany only, public service rail transport is entirely in the hands of decentralised authorities. However, it should be noted that the German state nevertheless intervenes by allocating a global financial envelope to the decentralised authorities for passenger public service transport<sup>23</sup>. Its role is however limited to this financial aspect, with the 'Länder' being entirely competent as regards notably the scope of the public transport services required.

Most of the railway companies in the new EU member states are still organised on a national basis.

<sup>23</sup> These schemes are further developed in the country reports.

## 2.3 Operators on the market

### Operators on the market for international public service passenger traffic

The rail passenger market went through a major overhaul in 2007 with the adoption of Directive 2007/58 opening up the market for international passenger traffic including cabotage to competition as of 1 January 2010. Indeed, member states may restrict access to their network where the international traffic is likely to affect the economic equilibrium of the related public service contracts. Directive 2007/58 provides that national regulatory bodies are to assess whether the economic equilibrium of a public service contract would be compromised by an international passenger service affecting cabotage in a member state<sup>24</sup>. In this context, the European Commission adopted an Interpretative Communication outlining how it sees the powers of the regulatory bodies on this particular aspect<sup>25</sup>.

As the opening of the international passenger market to competition is quite recent, no application likely to affect the equilibrium of public service contracts has yet been reported.

International traffic across borders is often already operated under public service obligations in those regions where there are many cross-border commuters. For example, such agreements exist across the borders of Luxembourg with cooperation agreements concluded with the Belgian operator, and with the French operator. These contracts have a complex calculation method whereby each operator finances the share corresponding to the number of national passengers making use of the service. In parallel, other commercial (non-subsidised) international lines already exist on those market segments that are viable (Thalys and Eurostar).

### Operators on the market for domestic public service passenger traffic

EU legislation does not impose the opening of the domestic rail passenger market to competition. In a number of countries, therefore, the historical company is the only company active on this market. Moreover, it should be recalled that approximately 90% of the domestic traffic is provided under public service obligations.

European Commission Vice-President Siim Kallas, responsible for transport, announced in the recent Transport White Paper<sup>26</sup> his intention to address the opening of the domestic market in the years to come.

<sup>24</sup> Directive 2007/58, Article 8.

<sup>25</sup> The Interpretative Communication from the Commission to the European Parliament on Certain Provisions of Directive 2007/58/EC was published on 28 December 2010 in the Official Journal. It sets out the Commission's views on the implementation of Directive 2007/58/EC of 23 October 2007 which regulates opening of the market for international rail passenger transport services, and in particular on the two following points:

- How to determine whether the principal purpose of a rail service is to carry passengers travelling on an international journey
- How to assess whether the economic equilibrium of public service contracts is compromised by the new service.

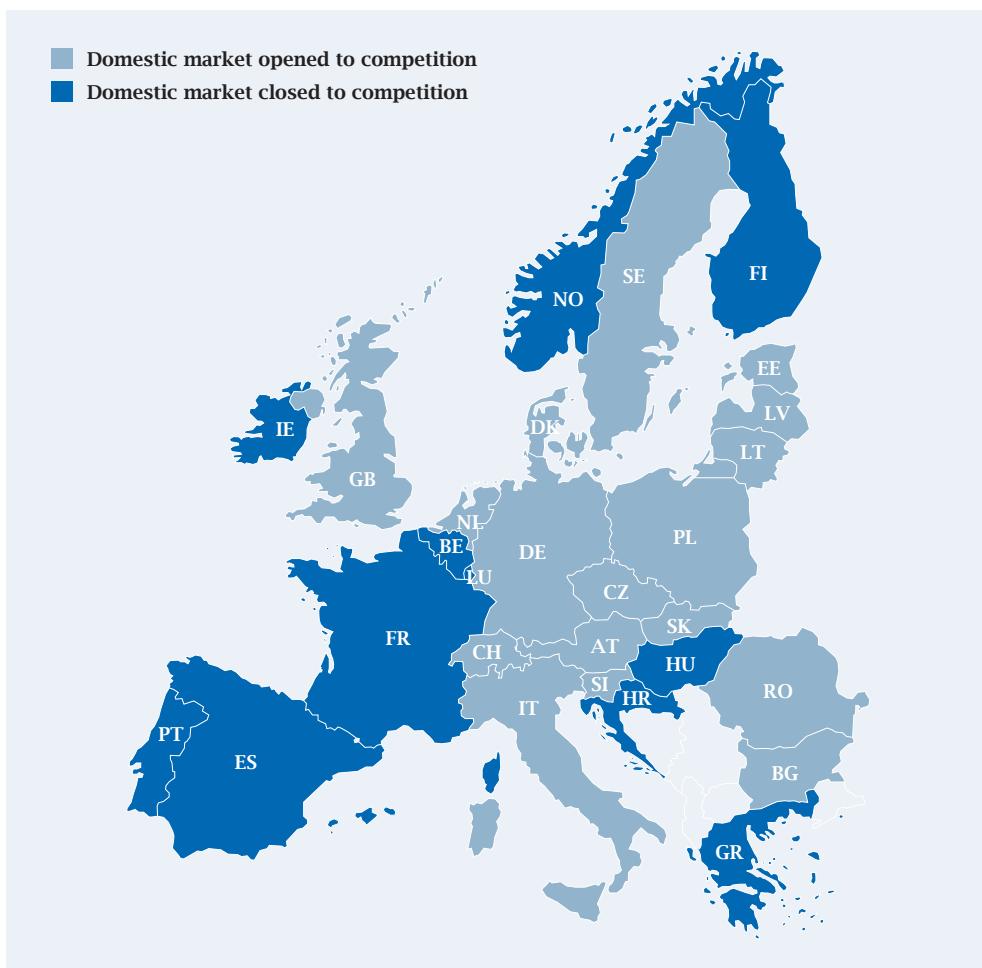
According to the Communication, the regulatory bodies may be responsible for determining the principal purpose of a service in specific cases. They should act and take decisions in co-operation with their counterparts in the other member states, in particular on whether the economic equilibrium of public service contracts is compromised.

The assessment should be based on an objective method and predetermined criteria. Approval by the relevant regulatory body is a prerequisite for limitation of the right of access by member states. Commission Interpretative Notices bind only the Commission itself. They provide guidance on how it will interpret its own legislation when assessing whether member state have properly transposed EU legislation.

<sup>26</sup> 'Open the domestic rail passengers market to competition, including mandatory award of public service contracts under competitive tendering', European Commission White Paper - Roadmap to a Single European European Transport Area - Towards a competitive and resource efficient transport system, COM(2011) 144.

It should however be noted that an increasing number of countries have opened their domestic passenger market to competition over the past years (figure 2). Some started this process a long time ago (chronologically: Sweden in 1992/1993, Germany in 1994, Great Britain in 1995, Denmark in 2000 and Italy in 2001) and that others have followed more recently (Czech Republic, Bulgaria, Estonia, Latvia, Lithuania, Netherlands, Poland, Romania and Slovakia). In other countries the legislation is unclear in this regard (Switzerland<sup>27</sup> in particular) or the legislation formally opened the market to competition but contracts have since then always been directly awarded to national operators (see Romania<sup>28</sup> and Austria<sup>29</sup> in particular).

**Figure 2 Domestic passenger rail traffic formally open to competition for passenger services<sup>30</sup> in 2011 – prior to any European initiative**



<sup>27</sup> It is in the process of being discussed with a view to clarify it. In practice, current public service rail transport contracts are directly awarded by the competent authorities to the operator of their choice. SBB, the historical company, is the main operator. BLS is currently the second operator on the Swiss network.

<sup>28</sup> In Romania, some contracts are awarded to companies operating on private sidings. CFR Calatori, the national carrier has been systematically awarded the rest of public service operations for the country.

<sup>29</sup> In Austria, the market was formally opened to competition in 1999. However, contracts have been directly awarded to ÖBB and to other railway undertakings for different contract periods. It is expected that the next round of contracts could be tendered out.

<sup>30</sup> Markets opened either through competitive tendering or through open access.

It should be stressed that, while some countries (Great Britain, Germany and Sweden) adopted national legislation opening up the market many years ago, in most of the other EU countries this development is very recent. This partly explains why, to date, few competitors have effectively entered the markets that were only recently opened. Furthermore, other practical and technical difficulties, for example the availability of a rolling stock leasing market, have prevented market opening from reaching its full potential.

In the new EU member states, while the rail freight market has been open to competition for quite some time, the process is much slower for the passenger market. In these countries, the issue is often complicated by the fact that public service obligations are often inadequately compensated. It is therefore unattractive to new entrants. In practice, the opening of the market in those countries produces no economic effect as only the historical company responds to the call for tender (because it must), and so the competent authorities directly grant the contract to the historical company. This is particularly the case in Bulgaria, Estonia, Latvia, Lithuania, Romania and Slovakia<sup>31</sup>.

In Great Britain, Sweden and Germany, where the regional and local passenger rail market was opened in the first half of the 1990s, competition and new entrants have progressively settled down. In Great Britain in particular, all public service transport is currently put to competition (through systematic tendering of contracts: franchise agreements), and approximately 21 private operators are well established on the market. In Germany, almost 22% of the total train-kilometres were in the hands of competitors of DB REGIO AG in 2010<sup>32</sup>. In Italy, where the process is more recent, Trenitalia, the incumbent company, competes with approximately 21 operators on the domestic passenger market. In the Czech Republic, the incumbent company competes with 5 new entrants. More examples can be found in the country reports in Part II.

In other countries the opening of the international market to competition has triggered intensive discussions on the question of opening the domestic market as well. This is the case in Switzerland where the legislation is unclear and in France where, to the contrary, regional authorities have a legal obligation to negotiate public service contracts with the historical operator, SNCF. In that context, the French government has launched a wide process of discussion in April 2009 in order to study the conditions under which regulated competition on regional rail traffic could be introduced. French Senator Francis Grignon has been charged by the French Minister of Transport to address the issues at stake<sup>33</sup> while consulting all relevant stakeholders. The next step of the discussions will take the form of a large stakeholder debate at national level by the beginning of 2012 (the so-called “*Assises du ferroviaire*” which will cover the question of competition but also the issue of governance between railway undertakings and the infrastructure manager and the issue of the financing of the rail system, among other topics). To summarise, the debate on the introduction of regulated competition in France is well underway.

<sup>31</sup> Other CEE member states face similar problems but to a lesser extent.

<sup>32</sup> DB Competition Report, 2011.

<sup>33</sup> Many aspects of the French legal system need to be addressed in this context. In this context, the French Economic, Social and Environmental Committee was asked to draft a report on both technical and social aspects relating to the operation of public service rail passenger traffic in France. One aspect relates to the fact that SNCF staff working time and conditions are laid down in a French state regulation (décret/1999), based on a law dating back to 1940. New entrants are however not in the scope of the 1940 law, and therefore may define working rules within the context of social dialogue, which would lead to a different regulation on the French market than the current piece of regulation SNCF has to abide by. As a result, if this situation is not dealt with, there would be two different legal and regulatory conditions on working conditions on the same rail market. This could lead to discriminatory situations likely to have a direct impact on competition, all the more so as new entrants and SNCF would have different economies on working conditions which are not the result of their management skills but of regulation. Choice during tenders on price would then be twisted by this situation, instead real value for money criteria on operators' skills.

## 2.4 Definition of public service requirements

Public service obligations are generally considered to constitute '*obligations which the transport undertaking in question, if it were considering its own commercial interests, either would not assume or would not assume to the same extent (or under the same conditions)*'. In other words, public service operations are per definition not commercially viable.

Regulation 1370/2007 provides a very general definition of public passenger services: they cover '*services of general economic interest*' provided to the public on a '*non-discriminatory and continuous basis*'. It belongs nevertheless to national public authorities to decide which services should fall within that category.

There is a general similarity in the scope of public service requirements throughout the countries surveyed. Tariff obligations and service frequency are, generally speaking, the two public service requirements that are most commonly applied.

The main public service obligations that are currently requested from operators in the EU include:

- **Tariff obligations** covering tariff reductions for certain categories of passengers. In certain cases the legislation leaves a certain margin of manoeuvre to the operator to increase tariffs. In general, the margin of manoeuvre is limited in the sense that railway companies cannot increase prices beyond a level set by the authorities;
- **Service frequency** including services between large cities, during peak hours and stopping patterns;
- **Quality requirements** are generally included – whether explicitly in the section relating to public service obligations – or indirectly through '*bonus-penalty*' systems. This constitutes an increasingly important aspect of the economic implications of the contract as quality has a price, and this price needs to be fairly negotiated between the parties.

Quality requirements typically include:

- punctuality performance;
  - seat reservation;
  - services to passengers with reduced mobility;
  - client information, including the level of information to be provided in the stations, on board or as general communication;
  - requirements relating to ticket sales in train stations and on trains themselves;
  - cleanliness of rolling stock;
  - number of seats available during peak and off-peak hours;
  - presence of staff on the trains;
  - characteristics of rolling stock.
- **Marketing** of public service transport possibilities/availability at specific tariff levels is often imposed by the allocating authority;
  - **Service reliability** - including data on the effective circulation of foreseen trains and obligations to ensure a substitute mean of transport in case of a rolling stock breakdown.



In some cases, the awarding authorities go far beyond what is reasonable by drafting extremely detailed terms of reference containing increasingly stringent specifications regarding personnel deployment, the quality of products offered, operations management and the quality and features of the vehicles. This does not lead to price reductions and does not leave much leeway for the tenderers to make competitive offers.

## 2.5 Scope of public service transport by rail

Public service transport in the rail sector within the scope of Regulation 1370/2007 includes any passenger rail transport agreed with public authorities for which a contract is drawn up. In other words, and in application of the subsidiarity principle, member states remain free to decide which type of passenger services needs to be enshrined into a public service contract, whether local, regional or long-distance traffic.

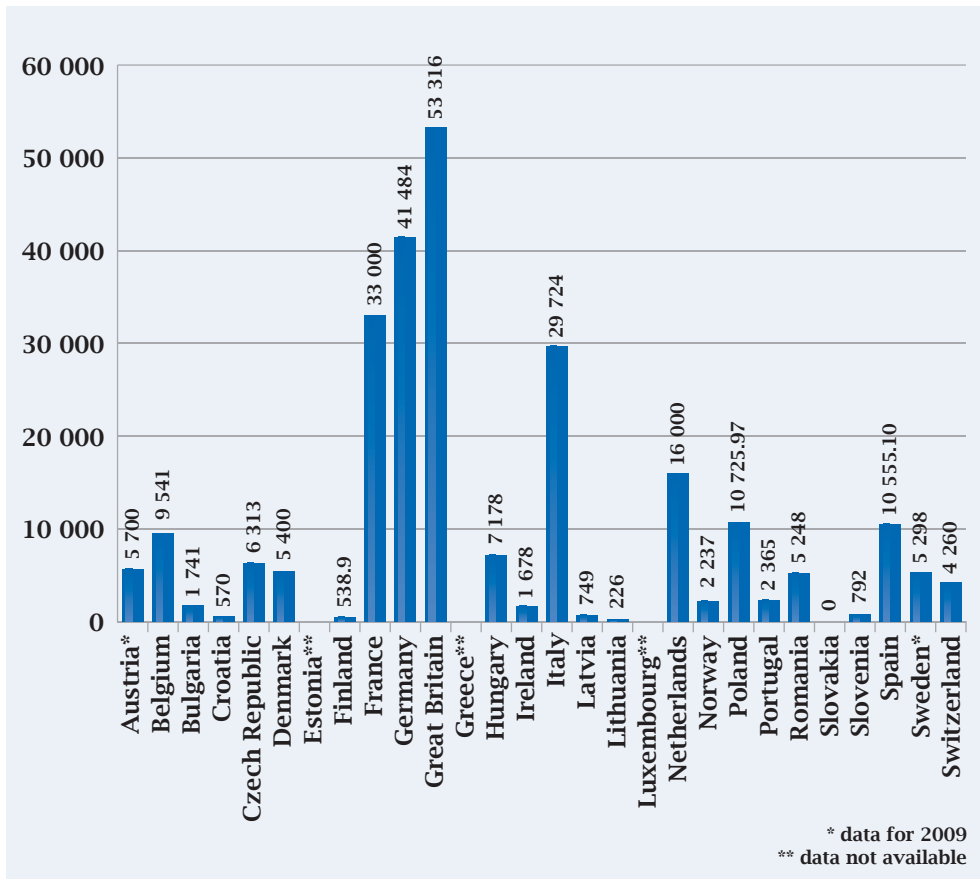
A whole range of different options can be found throughout Europe. Whilst quite a number of states limit public service transport to local and regional services, others also provide public service transport on long-distance journeys. This remains a political choice depending on the geography, the characteristics of the rail network, the train service and the travel market.

Public expectations (and the funding requirement) vary widely: from lightly-used but long-distance rural links (in Sweden for example) to intensively-used commuter service capacity at peak periods (around larger cities). In the United Kingdom, for example, franchise awards (and, in most cases, public service funding) apply to local, regional and long-distance services. In Finland, long-distance public transport services are provided in less populated areas. In Germany, only local and regional public transport is financially supported; in the case of rail the coverage is defined as the transport of passengers in urban, sub-urban or regional traffic.

In smaller countries, such as Belgium, Czech Republic, Denmark, Estonia, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Slovakia, Slovenia and Switzerland, almost the entirety of internal passenger transport falls within the category of public service transport. This is often due to the size of the country and the density of the population - thus the need to offer widespread services to commuters throughout the country.

The regulation applies to both national and international public transport services for passengers by rail and other track-based modes, and by road. Some countries have public service lines operating across their borders to important cities in neighbouring countries to which their citizens commute on a daily basis. These contracts can either be exclusively managed by the competent authority in one member state or be shared between the related member states (e.g.: contracts along the French and Luxembourgish borders).

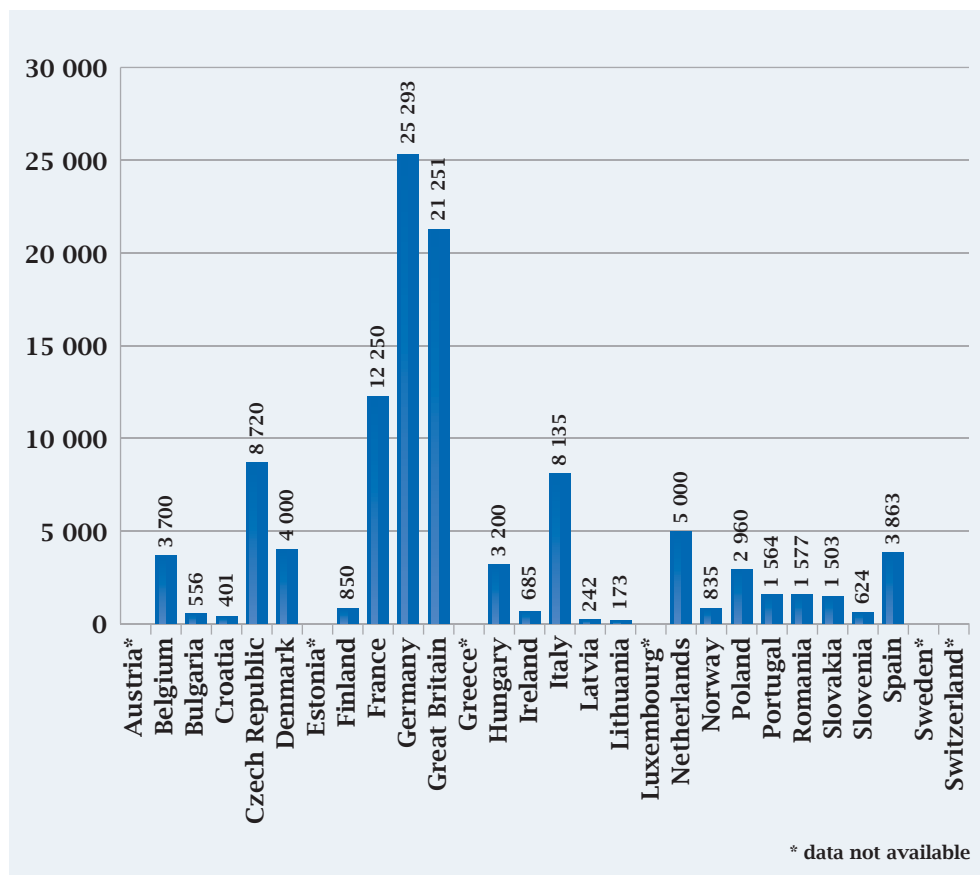
**Figure 3 The chart represents the scope of PSO national and regional in terms of million passenger-kilometers operated by the main operator<sup>34</sup> in each country concerned in 2010**



<sup>34</sup> The data on Great Britain and Sweden are based on the whole of ATOC's and ASTOC's PSO operations



**Figure 4** The chart represents the scope of PSO national and regional in terms of trains operated per day by the main operator<sup>35</sup> in each country concerned in 2010



Public service transport has always represented the major part of the passenger rail market and this share is expected to grow with increasing road congestion and environmental concerns. As mentioned earlier, approximately 90% of the domestic passenger rail market falls under public service obligations.

At the time when railway undertakings were in a monopolistic situation, member states had to resort to public services as an instrument of urban and regional policy without necessarily measuring the financial consequences of such a policy, which eventually ended up as debt. Today, with the restructuring of most railway companies and a general trend towards liberalisation in most sectors of the economy, the situation is evolving. In some countries, a number of very lightly-used services are being either strongly supported financially or simply withdrawn, because the cost of operating them is completely out of proportion with any public service benefit. In other countries, parts of the network were rationalised for this reason. Finally, the development of high-speed rail, generally not falling under public service obligations, is also changing the economic landscape.

<sup>35</sup> The data on Great Britain and Sweden are based on the whole of ATOC's and ASTOC's PSO operations



In Central and Eastern Europe the situation is different. In many cases, public authorities continue to request heavy public service obligations on a large part of the network with the duty to maintain continuity of services, without adequately compensating such obligations. As a result, some of the railway companies concerned have to run the services at a loss, and end up cross-financing from freight to passenger transport or piling up debts.

A completely different development is that public service contracts are increasingly concluded in an integrated manner, taking into account other modes of transport (in particular bus traffic). This is the case in the Netherlands, Luxembourg, Slovenia (from 2013) and to some extent in Austria. In the Netherlands, for example, the combination of train and bus enables the optimisation of public transport. For instance, train and bus lines are being rearranged in such a way that the bus lines function as *'feeder lines'* and the railway lines function as the backbone of the public transport system. In other cases, one of the requirements in the contract is to secure the coordination of schedules to oblige the rail operator to make all endeavours to create a coherent public transport system with coordination between buses, urban transport and trains. This is the case in Denmark and Switzerland in particular.

Finally, Regulation 1370/2007 does not apply to freight transport, contrary to what was foreseen in older legislation. However, the regulation provides a transition period of three years during which freight public service transport can still benefit from the old public service regulation (Article 10). Beyond that period, any public service transport for freight will have to be notified to the European Commission under the Treaty state aid rules for prior approval. In practice, there have been very few freight services provided under public service obligations. In the past, some of these services have for example included night trains delivering food supplies or other essential goods to particularly remote regions.

## 2.6 Contract

### Level at which the contract is concluded:

Regulation 1370/2007 clearly states that, where a competent authority decides to grant the operator of its choice an exclusive right and/or compensation, of whatever nature, in return for the discharge of public service obligations, it shall do so within the framework of a public service contract. This is a major difference compared to the former regulation which left some doubts in some cases.

The type of public authorities with which the contract has to be concluded is not defined at EU level. The text cites '*competent authorities*' which must then be defined at national level. This will depend upon which authority is competent for which type of traffic. In other words, contracts will be concluded with the transport ministry for centrally managed services and with decentralised authorities, whether regional or local, for the rest of the traffic.

### Legal form of the contract:

The legal form of the contract is very flexible. In practice, it can be almost any document, provided it contains clearly and explicitly the obligations, payment method and calculation. This has the advantage of facilitating the implementation in each member state's legal system.

Nevertheless, the use of the word '*contract*' is of political importance: it conveys a clear message to public authorities that, whatever the legal form of the document, it should be negotiated between the parties and not simply imposed upon the railway undertaking. Interestingly, at the time the first CER public service brochure was drafted, a number of member states, especially in the EU12 region, had organised their public service transport operations through the adoption of a statutory act. Its content was implemented, often on an annual basis, through the adoption of decrees. Today, some countries have retained the statutory act for the general framework conditions such as the definition of the public service obligations in general terms. However, in all countries surveyed except Greece, one or more contracts were subsequently concluded with a railway operator.

The regulation foresees an exemption to the conclusion of a contract when the public service obligation consists in maximum tariff obligations for all passengers or certain categories of passengers. In other words, such tariff obligations may not be formalised within a contract; they will have to be formalized in the form of a so-called '*general rule*'<sup>36</sup>.

It should be stressed that the compensation for such tariff obligations – whether in a '*general rule*' or a contract - must be adequate (explicit reference to the prohibition of over-compensation; implicit reference to the prohibition of under-compensation).

### Contents of the contract:

All elements relating to the provision of public services (level of financing, details about the services, etc.) can either be provided in the framework legislation regulating public services in general or in the specific contracts concluded in the member states with the relevant authorities. In practice, as noted above, the large majority of countries surveyed have included all details relating to the operation of public service transport in a contract rather than in a legislative act.

<sup>36</sup> A "general rule" consists in a measure which applies without discrimination to all public passenger transport services of the same type in a given geographical area for which a competent authority is responsible. Such general rule will concern tariff obligations. This notion was included in the regulation to take into account the current legal diversity in the member states and therefore allow for full flexibility when complying with the regulation.

The contract must contain at least the following elements:

- A clear definition of the public service obligations and the geographical areas concerned;
- Establish in advance and in a transparent manner the parameters for the calculation of the public service compensation and the nature and extent of the exclusive right, if any;
- Determine the arrangements for the allocation of costs connected to the provision of public service transport;
- Determine the arrangements for the allocation of revenue from the sale of tickets (whether they are allocated to the railway undertaking or whether they are paid back to the public authority);
- List quality standards, if any;
- Describe subcontracting details, if any;
- The duration of the contract or general rule;
- Lay down social rules as regards the transfer of employees.

## 2.7 Awarding of public service contracts

The EU public service regulation foresees two general ways of awarding public service contracts: either through competitive tendering<sup>37</sup> or through direct award.

### Principle: competitive tendering

In principle, Regulation 1370/2007 provides that contracts for public passenger transport services by rail and road should be awarded following competitive tendering rules.

In other words, such contracts should be awarded in accordance with either national or European public procurement rules, depending on the size of the contracts in question. However, the regulation foresees an exemption for the heavy rail sector. Tramway and bus transport services must only be awarded in accordance with EU public procurement rules<sup>38</sup> if such contracts do not take the form of service concessions<sup>39</sup> as defined in the public procurement directives.

Contracts awarded following competitive tendering rules in the heavy rail sector must however comply with the rules laid down in the public service regulation itself. Broadly speaking, the regulation provides that the procedure shall be:

- open to all operators;
- fair;
- observe the principles of transparency and non-discrimination; and
- may involve negotiations in accordance with the above principles.

<sup>37</sup> This is the principle laid down in the regulation.

<sup>38</sup> Directives 2004/17 or 2004/18 relating to European public procurement rules.

<sup>39</sup> Service concessions are defined in Directive 2004/17 on 'coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors' as a contract for which the services consist solely in the right to exploit the service or in that right together with payment, Article 1.

## Exemption: direct award

The regulation foresees several possibilities for directly awarding public service contracts, namely outside of classical competitive tendering procedures.

- **In-house provision of services:** a public authority or a group of public authorities can decide to provide public service transport themselves or to directly award the contract to their own operator under condition:
  - The operator is controlled in practice by the public authority in question (even though 100% control is not required).
  - The operator only provides services in the geographical area of the competent authority, with the exception of outgoing lines or other ancillary activities that enter the territory of another competent authority.
  - The operator does not take part in competitive tenders related to services to be provided outside the said territory. It is only two years before the end of its directly awarded contract that the operator may participate in other tender procedures, provided his current contract will not be renewed.

These conditions are cumulative.

- **Small value contracts:** contracts with an annual average value of less than EUR 1 000 000 or contracts concerning the annual provision of less than 300 000 km of public passenger transport services can be directly awarded.
- **Contracts awarded to small and medium-sized enterprises (SMEs):** contracts concluded with SMEs can be awarded directly. An SME is defined as a company operating not more than 23 vehicles. In this case, the above thresholds can be extended to EUR 2 000 000 or the annual provision of less than 600 000 km of public passenger services.
- **Disruption of service:** in case of disruption of service or imminent risk of such disruption, the public service contract may be directly awarded or extended for a maximum of two years.
- **Heavy rail:** public authorities may decide to directly award contracts for heavy rail.

Today in the European Union, public service transport contracts are being awarded according to one of the following procedures:

- direct negotiation with only one operator;
- direct negotiation with several operators following a restricted procedure;
- full competitive tendering within the framework of a formal open or restricted procedure.

In the past, member states awarded contracts directly to the incumbent company. However, in an increasing number of member states national or regional authorities are awarding public service rail transport contracts further to tendering procedures. When doing so, the contracting authority states clearly and in advance in a transparent manner the criteria according to which the contract will be awarded. The price proposed by the competing bidders is usually the most important criteria, whereas the quality aspect often does not receive sufficient attention.

Figure 5 Overview of contract awarding procedures in Europe in 2011

Country	Formal award procedure	Comment
<b>Austria</b>	Direct negotiation and competitive tendering	Current contracts awarded directly. The next contracts should be tendered.
<b>Belgium</b>	Direct negotiation	
<b>Bulgaria</b>	Competitive tendering	Only one company participated in the tender.
<b>Croatia</b>	Unclear legislation	<i>De facto</i> direct award.
<b>Czech Republic</b>	Direct negotiation and competitive tendering depending on the contract	Objective is to award an increasing number of contracts following the tendering procedure. However, given the importance of traffic concerned and the shortage of applicants, it was not possible to switch to competitive tendering at once.
<b>Denmark</b>	Direct negotiation and competitive tendering	In 2010 approximately 23% of public services were put to tender. Political decision to put one third of the overall domestic passenger traffic to tender by 2014.
<b>Estonia</b>	Competitive tendering	Given the state and the size of the market and different technical specifications on the network which don't attract applicants, only one company participated in the tendering procedure.
<b>Finland</b>	Direct negotiation	It is expected that the new round of contracts will be awarded with some form of competition.
<b>France</b>	Direct negotiation	There is a legal obligation for contracting authorities to negotiate all public service contracts with the incumbent operator.
<b>Germany</b>	Direct and public negotiation and competitive tendering	37,1% of the volume of the public service contracts performed in 2011 were at least awarded once through competitive tendering.
<b>Great Britain</b>	Competitive tendering	All franchises put to tendering (except for the East Coast Franchise currently in a transition phase. It will be tendered out in the near future).
<b>Greece</b>	Direct negotiation	
<b>Hungary</b>	Direct negotiation	
<b>Ireland</b>	Direct negotiation	
<b>Italy</b>	Direct negotiation and competitive tendering	Competitive tendering has to date been used by some regional authorities for part or all of their services (Veneto, Lombardia, Liguria, Emilia-Romagna and Piemonte).
<b>Latvia</b>	Competitive tendering	Only one company participated in the tender.
<b>Lithuania</b>	Competitive tendering	Contract <i>de facto</i> directly awarded to the national operator as no other companies participated in the tender.
<b>Luxemburg</b>	Direct negotiation	

Country	Formal award procedure	Comment
<b>Netherlands</b>	Direct and public negotiation and competitive tendering	Trend going towards increased tendering of regional traffic.
<b>Norway</b>	Direct negotiation and (gradual) competitive tendering	One pilot service put to tender in 2002. Situation may change after elections in 2013.
<b>Poland</b>	Direct negotiation and competitive tendering	Most regional authorities award their contracts following competitive tendering procedures. In practice, the company Regional Services which is a direct competitor of PKP InterCity, obtains the contracts.
<b>Portugal</b>	Direct negotiation and competitive tendering	One sub-urban line tendered.
<b>Romania</b>	Direct negotiation	
<b>Slovakia</b>	Direct negotiation and competitive tendering	Tendering not applied due to shortage of applicants.
<b>Slovenia</b>	Direct negotiation	
<b>Spain</b>	Direct negotiation	
<b>Sweden</b>	Direct negotiation and competitive tendering	Direct negotiation is legally allowed but all contracts are currently tendered.
<b>Switzerland</b>	Direct negotiation and competitive tendering	Only 2 'cantons' used tendering procedure. Legal basis for public tendering is not clear.

To summarise, today twelve member states have the possibility to award public service contracts either on a negotiation basis or through a competitive tendering procedure. While the table above shows that the single contract or most of the regional contracts are awarded directly in a number of cases, there are political commitments to move towards an extended competitive tendering procedure in the next round of contracts. Ten member states have recourse to the direct negotiation procedure for the time being. Finally, to date, four countries have a clear legal obligation to award public service contracts following a full competitive tendering procedure. Out of these four countries, three apply direct award *de facto*, as there is only one participant in the tendering process.



The progression of competitive tendering in Europe for rail public service transport operations is nevertheless visible. In Norway, for example, a small local service was the first one put to tender. The aim of the authorities is to gain experience from the procedure before progressively generalising it to the entire network<sup>40</sup>. In the Netherlands, regional lines are progressively put to competitive tender as the old contracts come to an end. Competitive tendering is being progressively introduced for regional transport services (so-called regional network), while contracts for the national network (so-called trunk network) continue to be granted on the basis of a negotiated procedure. Other examples can be found in the country reports in Part II of the report.

As noted earlier there are a number of member states notably among the new member states where the tendering procedure is in place but systematically leads to the incumbent operator *'winning'* the tender. This is in some cases due to the fact that no other company responds to the tenders because it is known ex-ante that the financial compensation will be inadequate. The incumbent company is also not in a position to pull out due to the principle of continuity of service.

<sup>40</sup> The Norwegian government decided to award three services following competitive tendering as pilot projects. They concern the Gjøvik route, the Sørlandsbanen between Oslo, Kristiansand and Stavanger and the Oslo-Bergen main line will thereafter be put to tender. Additional information on this procedure may be found in the Norwegian report in Part III.



## 2.8 Contract negotiation

In principle, and as in the case of the conclusion of any commercial contract, parties should negotiate its content and come to an agreement on their mutual obligations (service provision on one side and payment on the other). The reality can be different when it comes to the provision of public service transport.

When the contract is tendered out, the situation may appear easier. The operator submits its proposal along the lines of the Terms of Reference. After the submission of bids there are usually negotiations to determine how specific requirements from both sides can be met. This is done in order to find the best equilibrium for both parties. In some cases some requirements from the competent authority can eventually be revised in light of the cost they generate compared to the added value from the service.

When there is no public bid and the contract is directly negotiated between the parties, the railway undertaking submits to the competent authority a detailed analysis of the price of running the service. This price takes into account the revenues generated by the service and all costs it will produce. This is a situation where some form of disequilibrium in the negotiation may appear. When a direct negotiation is carried out with the incumbent company, it may be difficult for the latter to effectively discuss the terms of the services required. Consequently, competent authorities often use the direct award procedure to impose their conditions, whilst not fully compensating the cost of the services required. This has been the case in many new EU member states and often still is.

## 2.9 General payment conditions

Payments are generally made on a monthly basis and are regular. Italy, France and Finland handle payments on a yearly basis. Payments are however unreliable in some member states. This then leads to liquidity shortages and other problems for the operators in question (see chapter 3 and individual country reports in Part II below for more details).

**Figure 6 Payment conditions in the different member states**

Country	Interval	Regularity	VAT
Austria	Monthly	✓	No
Belgium	Monthly	✓	No
Bulgaria	Monthly	✓	Not available
Croatia	Quarterly	✓	No
Czech Republic	Monthly	✓	Yes
Denmark	Monthly	✓	No
Estonia	Monthly	✓	No
Finland	Yearly	✓	Not available

Country	Interval	Regularity	VAT
France	Monthly	✓	Yes
Germany	Monthly	✓	Not available
Great Britain	Monthly	✓	No
Greece	Every third month	✗	Not available
Hungary	Monthly	✓	Not available
Ireland	Monthly	✓	No
Italy	Yearly	✗	No
Latvia	Monthly	✓	No
Lithuania	Monthly	✓	No
Luxembourg	Monthly	✓	Yes
Netherlands	Quarterly	✓	Yes
Norway	Quarterly	✓	No
Poland	Monthly	✓	No
Portugal	discretionary	/	Yes
Romania	Monthly	✗	No
Slovakia	Quarterly	✗	No
Slovenia	Monthly	✓	No
Spain	Monthly	✓	Yes
Sweden	Regular instalments <sup>41</sup>	✓	No
Switzerland	Regular instalments <sup>42</sup>	✓	Yes

With regard to the fiscal treatment of the compensation paid, no clear pattern can be discerned on the application of value added tax (VAT) (see figure 6). In some member states, railway undertakings are exempted from VAT for public service transport compensation. In other countries VAT is imposed but can be eventually claimed back. This depends upon the specificities of the legal system in question.

<sup>41</sup> The frequency at which payments are made vary from contract to contract.

<sup>42</sup> The frequency at which payments are made vary from contract to contract.

**Figure 7 Overview of the application of EU Regulation 1371/2007 regarding passenger rights and the application of penalty systems for railway undertakings**

Country	Full application of Reg 1371/2007	Penalty system applicable to PSO	Exemption for some articles of Reg 1371/2007	Full exemption for all non-mandatory articles of Reg 1371/2007
Austria		✓	✓	
Belgium		✓	✓	
Bulgaria		✓		✓
Croatia				✓
Czech Republic		✓	✓	
Denmark	✓	✓		
Estonia		✓	✓	
Finland		✓	✓	
France		✓		✓
Germany		✓	✓	
Great Britain		✓		✓
Greece				✓
Hungary		✓	✓	
Ireland		✓		✓
Italy	✓	✓		
Latvia		✓		✓
Lithuania	Not available	Not available	Not available	Not available
Luxembourg		✓		✓
Netherlands	✓	✓		
Norway	✓	✓		
Poland		✓	✓	
Portugal	Not available	Not available	Not available	Not available
Romania		✓		✓
Slovakia		✓	✓	
Slovenia	✓	✓		
Spain		✓	✓	
Sweden	✓	✓		
Switzerland	Not available	✓	Not available	Not available

Source: Table on exemptions to EC Regulation 1371/2007 by CER and CIT (International Rail Transport Committee) updated by information provided by CER member companies.

The same applies whether the railway undertaking is paid against an invoice or not.

Penalties may also be included in the form of a *'bonus/malus'* system or through other forms of penalty systems.

It is regrettable that, in most cases, penalties are foreseen rather than bonuses for good performance. The deployment of positive incentives would help to foster service quality and performance and could also be used to encourage positive innovation.

In this context, the quality of the infrastructure plays a major role as it has a direct impact on the performance and quality of services an operator can offer. It is often difficult to account for the effective price of *'quality'* when calculating the level of compensation necessary. With the application of the passenger rights regulation 1371/2007<sup>43</sup>, operators may be facing increasing costs in cases of delay or cancellation. When such disruptions of service occur because of the infrastructure, railway operators often have very few means to obtain reimbursement of the fines they had to pay to passengers. This is why a number of member states have opted for broad exemptions from the application of the passenger rights regulation (figure 7).

As a result, costs are higher for those companies not benefitting from such exemptions, such as those operating in Denmark, Italy, the Netherlands, Slovenia and Sweden.

## 2.10 Duration of public service contracts

Regulation 1191/69 did not address the question of the duration of the public service contract; i.e. it does not set a minimum or maximum duration. It simply requires that the contract duration is specified. As a result, some contracts concluded under the old regime were concluded for quite a long period and are still in application.

In contrast, the new 2007 regulation fixes the maximum duration for public service contracts to 15 years. However if the contract is awarded directly (i.e. outside of a competitive tendering procedure), the maximum duration is brought down to 10 years.

There are however various possibilities to extend the duration of contracts:

- up to 50% of the duration of the initial contract to take into account the depreciation of assets or the particular geographical situation (outermost regions).
- Any longer duration justified by the need to amortize heavy investments (exceptional infrastructure, rolling stock or vehicular investment) must be notified to the Commission. This extension possibility is limited to contracts awarded following a competitive tendering procedure.

In order not to destabilise the market, Regulation 1370/2007 provides for a large transition period during which existing contracts can continue to be applied within a reasonable period. In particular, existing contracts are to remain in place where the termination of the services at stake would entail adverse economic consequences. The continuation of such contracts is submitted to the European Commission for monitoring and approval.

The acceptable duration of the contract will vary depending on the date and the procedure according to which it was awarded. The validity rules can be summarized as follows:

<sup>43</sup> Regulation 1371/2007 on rail passenger rights and obligations.



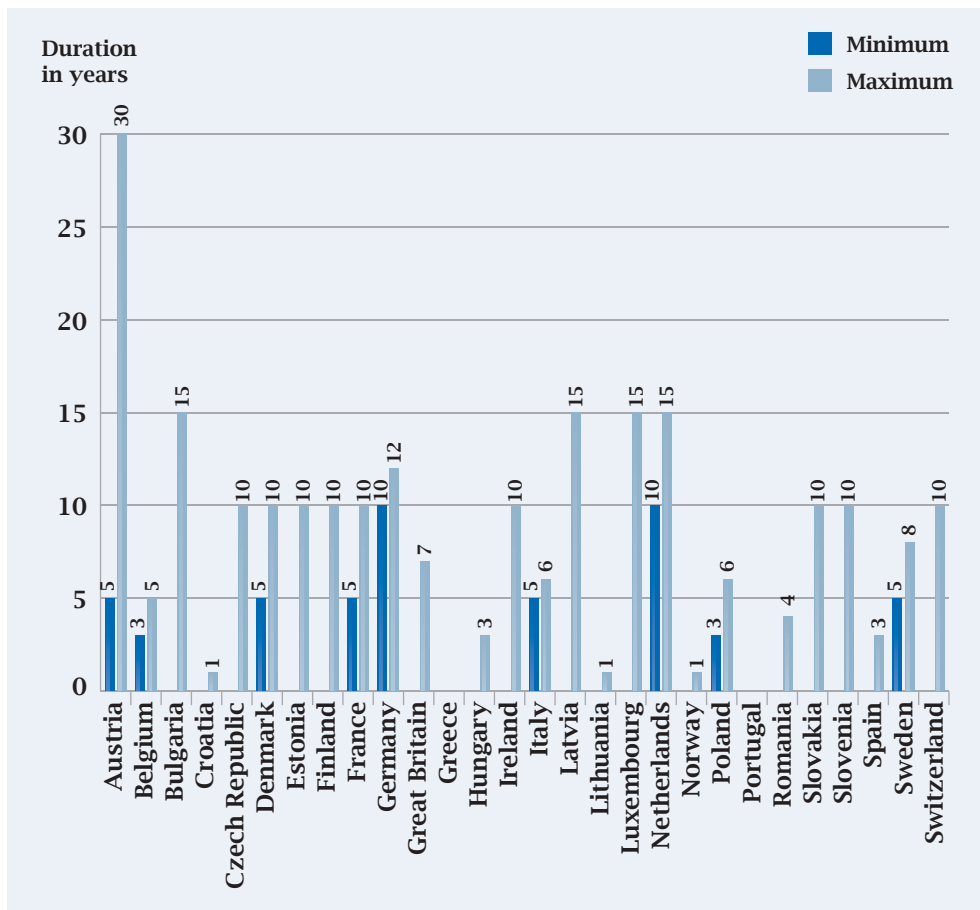
Figure 8 Overview of contract duration throughout the EU

Date of contract awarded	Award procedure	Duration of validity
<b>Before 26 July 2000</b>	Competitive tendering	Until their expire
<b>Before 26 July 2000</b>	Direct award	Until expiration but no longer than 30 years
<b>As of 26 July 2000 and before 3 December 2009</b>	Competitive tendering	Until expiration but no longer than 30 years
<b>As of 26 July 2000 and before 3 December 2009</b>	Direct award	Until expiration provided it is of a limited duration as foreseen in the regulation

Figure 9 below shows that there are different situations in the EU. In the EU15, contracts generally have a minimum duration of two to ten years with a majority of contracts having a fixed duration. The length of the contracts is generally linked to the importance of investments that need to be made by the operating company.

In Austria, for example, the contract for the trunk network was awarded for a ten years period, while regional contracts can be awarded for up to thirty years. This is however the case only for one regional contract concluded in Austria.

**Figure 9 Overview of contract duration throughout the EU**



In the new member states there has been a notable change in the duration of public service contracts since 2005, when the first edition of this brochure was published. At the time, most of the contracts were awarded for a one year period. This was probably due to the fact that contracts were inexistent and that public service transport was organised differently and paid from the central budget as any other expenditure. 'Contracts' or arrangements were therefore entirely dependent on the annual outlook for the national budget. Today, the situation has evolved with an increasing number of longer-term contracts, allowing some investments and reasonable planning aimed at improving passenger services. However, some countries still retain short-term arrangements (Croatia, Hungary, Lithuania and Norway in particular), with the financial and management consequences explained above.



## 2.11 Rolling stock

The quality of passenger services and their capacity to trigger modal shift will depend on the reliability of the service as well as on its quality. In this regard, the quality of rolling stock in general, and its age in particular, can play a major role in the overall quality of the service provided to the passenger.

In this field there are great discrepancies in Europe with companies in many new member states operating passenger public service transport in old and even very old rolling stock. In Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia, a large part of the rolling stock is over thirty years old. On a more positive note, it should be noted that some of these countries are in the process of renewing their fleet (Czech Republic, Slovakia and Slovenia).

Companies operating services in the EU15 also face similar problems. This is particularly the case for companies operating in Belgium, Finland, Italy and Sweden. With regard to the Swedish case, it is interesting to note that the *'reconditioning/refurbishment'* of the old fleet is of such a quality that passengers do not make the difference when compared to new rolling stock.

In most cases the rolling stock is the property of the railway undertaking operating services. When financing of rolling stock forms part of the public service contract, and thus where it is financed partially through the contract, it remains attached to the services rather than to the company, unless the duration of the contract corresponds to the amortization of the rolling stock in question. The technical characteristics of the new trains in terms of speed, number of seats or level of comfort is often defined in the contracts alongside the conditions for the use of the trains on specified routes.

## 2.12 Involvement of the regulatory body or other authorities in public service contract discussions

In 2010, railway regulatory bodies were set up in all EU member states<sup>44</sup>. These bodies are often in charge of licensing issues and, in conformity with Directive 2007/58, regulatory bodies are to assess whether the economic equilibrium of a public service contract would be compromised by an international passenger service affecting cabotage in a member state<sup>45</sup> as outlined in section 2.3.

Today, as illustrated in figure 10, in some member states, the regulatory body (or another body) has specific powers with regard to the operation of public service contracts.

**Figure 10 Overview of basic powers exercised by regulatory bodies or other bodies at national level relating to the provision of public service transport**

Countries	Involvement of the regulatory body or other entity in public service issues
<b>Austria</b>	Contracting authority on behalf of the ministry Control of quality criteria
<b>Czech Republic</b>	Guarantees the eligibility of an applicant for a PSO contract
<b>Germany</b>	Regulates access fees to stations Regulates elements of train access fees to infrastructure ( <i>'regional factor'</i> ) Information and coordination of construction measures (track works especially) Market monitoring
<b>Hungary</b>	Controls quality criteria set out in the contract
<b>Norway</b>	Monitors the rail market Acts as an appeal body
<b>Slovakia</b>	Regulates the maximum price level in passenger transport Regulates the maximum level of track access charges for PSO Awards licences and makes inspections
<b>Slovenia</b>	Controls the implementation of PSO contracts

In the recast of the First Railway Package<sup>46</sup> which was in the process of being discussed in the European Parliament and in the Council of European Transport Ministers at the time this brochure was published, the EU institutions were planning to extend the powers of the regulatory body to a certain extent with regard to public service contracts/operations.

<sup>44</sup> Some member states set up the rail regulatory body recently under the pressure of the European Commission infringement procedures launched back in 2009.

<sup>45</sup> Directive 2007/58, Article 8.

<sup>46</sup> Commission proposal for a directive of the European Parliament and of the Council establishing a single European railway area (recast), COM (2010)475.



### 3 Public service financing: the ‘heart of the matter’

The financial aspect of a public service contract constitutes the heart of the matter, whether from a business/economic perspective, a purely legal one or, more importantly, from a political perspective. Its content is dictated by political decisions based on national and/or decentralized social welfare and environmental policies. In theory, these political objectives should be supported by an adequate financial framework. Too often, however, short-term budgetary discretion has an important impact on rail transport, as can be seen from the individual country fiches included in Part 2 of this report.

The basic principle set in Regulation 1370/2007 is that the costs incurred by public service obligations must be properly compensated: there must be neither over-compensation nor under-compensation. These principles can be found throughout the regulation.

- *‘To this end, this Regulation lays down the conditions under which competent authorities, when imposing or contracting for public service obligations, **compensate** public service operators **for costs incurred** and/or grant exclusive rights in return for the discharge of public service obligations’ (Article 1(1) second para.)*
- *‘Public service contracts and general rules **shall** [...]
 
  - (c) determine the **arrangements for the allocation of costs** connected with the provision of services. [...], (Article 4(1) c relating to the ‘mandatory content of public service contracts and general rules’)*
- *‘In order to avoid overcompensation or **lack of compensation**, quantifiable financial effects on the operator’s networks concerned shall therefore be taken into account when calculating the net financial effect [of the compensation]’, (Annex Point 3)*

and

- *‘the costs of the public service **must** be balanced by operating revenues and payments from public authorities’, (Annex Point 5, third indent).*

In principle, compensation is subject to discussions between the parties, whether the contract is awarded following a tendering process or whether it is directly negotiated with a determined operator.

In principle the process is supposed to operate as follows. The public authority outlines its expectations according to its political objectives and the applicants try to provide the most competitive business offer in a **tendering process**. The price of the offer plays an important role, but not an exclusive one: quality and performance are increasingly important criteria as well as own initiative (out of the budget) criteria. The price is supposed to include a *‘reasonable profit’*.

The regulation requires full transparency of the payment conditions and separation of accounts (as well as in other EU rail legal texts<sup>47</sup>). The objective pursued by the European Commission with this text is to ensure that member states do not make use of public service contracts to provide undue state aid to railway undertakings. In other words, public money granted for public service transport obligations cannot flow back to non-subsidized commercial activities. The national regulatory body is, in general terms, empowered to monitor separation of accounts in

<sup>47</sup> Directive 91/440 as successively amended in particular.



application of EU law. In this context, it must ensure that no such overcompensation has been granted. It should also monitor that no under compensation is granted either.

When the public service contract is **awarded directly**, the compensation must comply with the rules laid down in the annex of Regulation 1370/2007. It should be noted that the main principles of the annex correspond to those that should be applicable in any normal and fair tendering process:

- The compensation may not exceed the net financial effect<sup>48</sup> equivalent to the total of the effects, positive or negative, of the public service obligation costs and revenue of the operator;
- In order to avoid cross-subsidies, the accounts of the operator must remain strictly separated. In particular, the annex requires that *'costs are balanced by operating revenue and payments from public authorities, without any possibility of transfer of revenue to another sector of the public service operator's activity'*;
- *'Reasonable profit'* is defined as the rate of return on capital that is normal for the sector in a given member state and that takes account of the risk, or absence of risk, incurred by the public service operator by virtue of the intervention by the public authority.

<sup>48</sup> The effects shall be assessed by comparing the situation where the public service obligation is met with the situation which would have existed if the obligation had not been met. The net financial effect can be calculated as follows:

- Public service obligations' costs
- Minus any positive financial effects generated within the network operated under public service obligations
- Minus ticket revenues (where applicable) or other revenues generated by the public service transport
- Plus a *'reasonable profit'*

Finally, the method of compensation must promote the maintenance or development of effective management by the public service operator and the provision of high quality transport.

The economic equilibrium of public service contracts is to be determined by the financial structure of the contracts. There are two basic types of Public Service financing mechanisms, the so-called '*net*' and '*gross*' contracts:

- in a '*net*' contract, revenues generated by ticket sales go to the operator as part of its payment for the services required by the public authority. This form of contract is increasingly used in the EU as it provides a strong, natural incentive for the operator to increase ridership and customer satisfaction. It is also often regarded as an appropriate basis for the distribution of responsibilities between the public authority and the operator, leaving the latter some freedom for product and quality innovation. It is also a way for the public authority to have the operator take on the risk of changes in ridership;
- in a '*gross*' contract, ticket revenues go fully to the public authority, which then pays the operator to carry out the required services. This form of contract is often used, when the public authority wishes to retain the full responsibility for the customers. It can go together with certain economic incentives for the operator.

While a '*gross*' contract is rather straightforward in economic terms, in a '*net*' contract the business plan of the operator's contract is heavily dependent on ticket revenues.

In a '*net*' contract, any revenue which is removed from such a contract as a result of the entry of a '*new*' competitor will disturb the economic equilibrium of the contract (also called '*cherry picking*'). This could lead to unforeseen and damaging economic consequences for the operator, and may eventually lead to higher total costs for society (the consumer in particular) and deteriorating public services (under public contract).

In some cases, '*cherry picking*' is an element of the contract. It may be fully foreseen and it is then for the operator to calculate the degree of risk he can bear. This must be taken into consideration when calculating the level of compensation.

### 3.1 Current state of the art: too much under-compensation

Public service obligations are to be compensated either through **direct financial input**, including a '*reasonable profit*' and/or through the award of **exclusive rights**. In practice it appears that most operators benefit from financial compensations while the exclusive rights are not necessarily provided. In reality, and as long as competition has not effectively developed on the domestic passenger market in question, exclusive rights are often *de facto* provided.

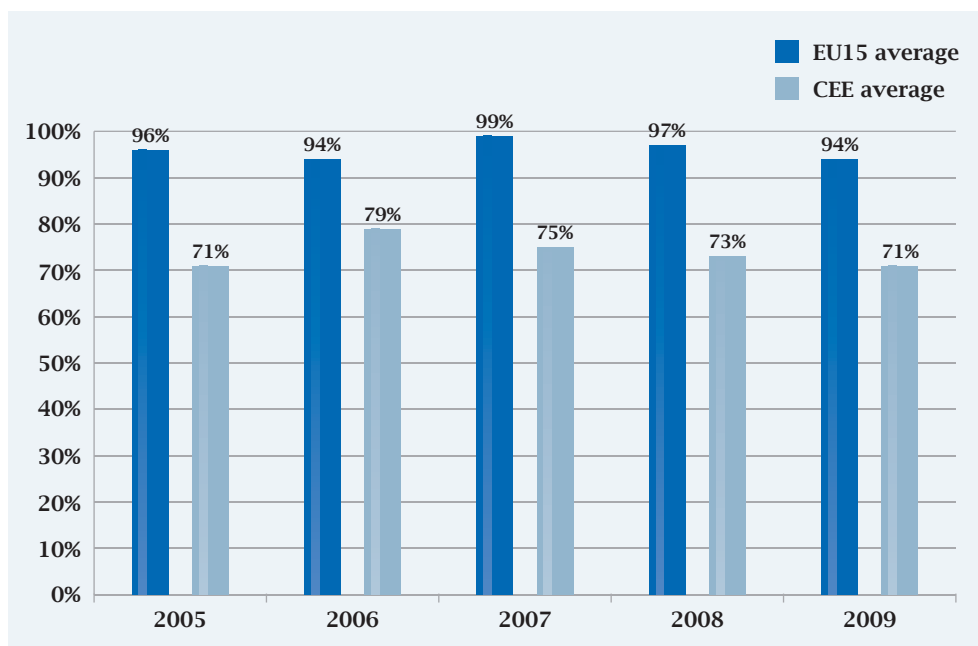
As mentioned in chapter 2.3, the domestic rail passenger market is in the process of being opened to competition by some member states prior to any EU obligation to do so. In 16 countries so far, competitors have effectively entered the market. In Germany in particular, the market share held by the largest new entrants is of 21,6% of train-kilometres in 2010 and it is increasing every year. In other countries<sup>49</sup>, however, market opening is realised only *de jure*, as the competent authority systematically '*awards*' public service passenger rail transport obligations to the incumbent operator. It is interesting to note that in most of these countries public service obligations are poorly compensated, thus explaining the lack of new entrants.

<sup>49</sup> See in particular the CEE countries where the operators recently made important losses in their public service operations.

Regulation 1370/2007 requires in its Annex that the ‘costs of the public service must be balanced by operating revenues and payments from public authorities, without any possibility of transfer of revenue to another sector of the public service operator’s activity’<sup>50</sup>.

Data collected by CER shows that, in practice, too many member states are still under-compensating the public service obligations they require. The data, which is presented in figure 11 below, shows that on average, only 71% of net expenses<sup>51</sup> related to public service obligations were compensated by public authorities in Central and Eastern European countries in 2009. Even in the EU15, where it is often assumed that operators are fully compensated for their public service obligations, the data shows that this is not the case. In 2009, on average 94% of net expenses related to public service obligations were compensated by government in EU15.

**Figure 11 Average state compensation in EU15 and EU12  
(as % of difference between expenses and ticket revenues)**



It should be recalled that 2009 was a year in which public budgets were particularly strained as a result of the economic crisis. Considering that, at the time of writing, the European sovereign debt crisis continues to deepen and national budgets are put under increasing pressures, governments will be even more tempted to neglect their public budget obligations in the near future. This problem is reviewed in more detail in section 3.3.

It is interesting to note that in some countries (the Netherlands and Norway in particular) infrastructure charges for public service transport are very low or even non-existent in some cases as a deliberate policy decision taken by the awarding authority to help balance the costs incurred by the services. In many countries, track access charges for public service transport operations are lower in order to limit the level of public service compensation.

<sup>50</sup> Annex to Regulation 1370/2007, (5) third indent.

<sup>51</sup> Net expenses refers to total expenses related to PSOs minus revenue generated from ticket sales related to PSOs.



The consequence is that the infrastructure manager has to compensate for that loss by increasing the level of freight access charges, which in turn negatively affects the competitiveness of rail freight services.

The question of *'reasonable profit'* is also an important issue. What constitutes *'reasonable profit'* is not precisely defined in Regulation 1370/2007. It will obviously depend upon the degree of risk the company operating the services is going to face and, in theory, it should be the object of a real negotiation between the parties. *'Reasonable profit'* is foreseen in a majority of contracts. It is quite striking to see from the country reports in this brochure that in eight of these country reports a *'reasonable profit'* is (formally) foreseen in the contract but when looking at the compensation levels, these contracts are not adequately honoured. The inclusion of the *'reasonable profit'* in the financial part of the contract is therefore a pure formality.

The Commission considered in its Danske Statsbaner Decision<sup>52</sup> that a 6% *'reasonable profit'* was acceptable given all the other circumstances of the financing of the specific contract. It should be stressed that the level of *'reasonable profit'* applicable in that case correspond to the overall economy of the contract. It is therefore difficult to consider this figure as a principle likely to be applicable in all cases. The level of *'reasonable profit'* will vary to a certain extent in each case, depending on specificities of the case, and in particular on the degree of risk the operator will be taking. It will also vary on what is generally considered as a *'reasonable profit'* in the country in question. In other words, there is no objective point of reference to what *'reasonable profit'* must be throughout the EU. Other Commission decisions and potential court cases will be unveiled in the coming years that will hopefully bring more clarity on how to interpret this concept.

<sup>52</sup> European Commission Decision C 41/08.

The European Commission is contemplating the possibility of drafting guidelines in which it will outline its interpretation of the new regulation and in particular of its financial aspects. The European Court of Justice will, as always, remain the sole judge.

## 3.2 The problem of under compensation

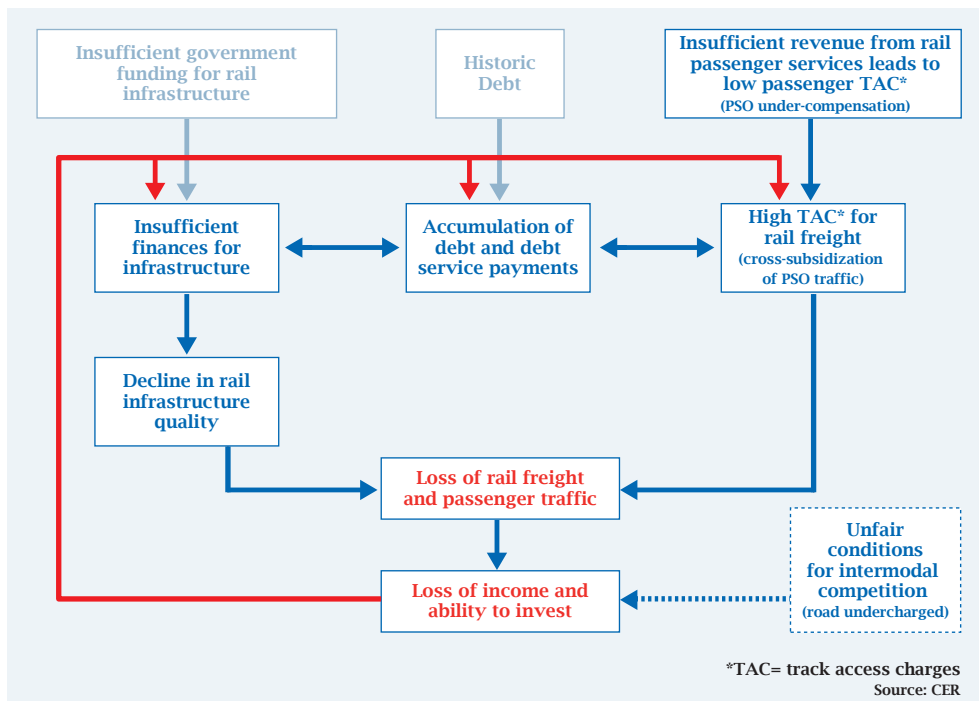
As mentioned in the section above, CER data shows that public service obligations in the EU and in particular in the CEE countries are not adequately compensated, resulting in unacceptable losses forcing operators into short term borrowing. CER notes that 70%-75% of the losses made by operators on public service traffic are currently compensated by public authorities in the CEE countries. This translates into significant shortfalls: one CEE railway company reported that this shortfall is EUR 100 million annually.

The financial pressure created by the economic crisis has further reduced the available resources in public budgets. As a result, transport ministries in the CEE countries are announcing budget cuts of up to 50% on public service contracts, without any reduction in the level of services required by government. The situation is also acute in the western part of Europe where railway undertakings face similar though less severe difficulties.

### Issues of concern

It is common knowledge that the large majority of public service obligations required by public authorities in the EU12 are not fully compensated. As most (in some countries nearly all) rail passenger transport is for public service, the size of losses on public service obligations inevitably leads passenger rail companies into a downward spiral of financial losses and falls in competitiveness, as shown in figure 12.

**Figure 12 Consequences of public service under-compensation**





- **Some obligations are simply implicit and not explicitly required by public authorities:** railway undertakings sometimes continue to provide services not covered by a public service contract in anticipation of political problems if they close them.
- **Compensation through commercial revenues:** losses are compensated through the allocation of revenues from freight to public service passenger operations (these are cross-subsidies) which eventually affects the viability of commercial freight activities. While this could be a commercial choice of a healthy railway undertaking, it is illegal when imposed by a public authority or where an authority's inactions give a railway undertaking no choice but to cross-subsidise.
- **Quality implications:** railway undertakings, particularly but not exclusively, in the new member states, suffer from chronically insufficient renewal of their rolling stock. The average age of rolling stock used for public service transport in the new member states is 30 years (see section 2.11 above), which gives an idea of the quality of service for passengers.
- **Low availability of rolling stock: ageing rolling stock** is costly to manage due to recurrent breakdowns and the lack of spare parts. This affects the overall capacity offered to clients.
- **Modal shift:** the low reliability and quality of service results in modal shift to less environmentally friendly transport modes such as road.
- **Competitiveness:** all the difficulties enumerated above affect the overall competitiveness of these railway undertakings compared to new entrants or to railway undertakings that are properly compensated.

Any competitive tendering of a public service which is known in advance to be under-compensated cannot succeed in any meaningful way. Tendering can be realised in formal terms, but positive effects from competition for the market can only occur if there are competing bids. From an economic point of view there are obvious solutions to this problem.



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## AUSTRIA



### 1. Organisation of public service operations in Austria<sup>1</sup>

The organisation of public services in Austria is regulated by several texts:

- Regulation (EC) 1370/2007 which is directly applicable;
- Law of 1999 (*Öffentlicher Personennah- und Regionalverkehrsgesetz - ÖPNRV-G*, the so-called *Eisenbahngesetz*) on short-distance and regional public passenger transport.

Other texts also apply such as the law on road services (*Kraftfahrlineingesetz*) and the public procurement law (*Bundesvergabegesetz*).

In Austria, public services are on the one hand organised centrally, by the Ministry of Transport, which defines the basic supply of public service transport for the rail market. On the other hand, governments of the federal states and municipalities may define additional supply of public service passenger transport on the rail market and are also responsible for public services on the bus market.

The railway law *Eisenbahngesetz* of 1999 formally opens the domestic passenger rail market to competition. However, it should also be noted that legal texts foresee the direct award of public service contracts. It is expected to change towards competitive tendering from 2013 onwards– (see section 6 below).

International passenger traffic, including cabotage opened in 2010, in accordance with EU legislation. No path request having an impact on existing public service contracts has, however, been made so far.

### 2. Operators on the market for public passenger service transport

There are a few railway operators on the Austrian passenger rail market. The largest one, ÖBB-Personenverkehr AG, is a limited company wholly owned by the ÖBB-Holding AG. The republic of Austria is the shareholder of the ÖBB holding company.

Other operators operating under public service obligations include: Salzburg AG, Steiermärkische Landesbahnen, Zillertaler Verkehrsbetriebe AG, Innsbrucker Verkehrsbetriebe und Stubaitalbahn GmbH, Achenseebahn AG, Montafonerbahn AG, Wiener Lokalbahnen

<sup>1</sup> Country report describing the situation in 2009, when the data was gathered.



AG, Graz Köflacher Bahn und Bus GmbH, Niederösterreichische Schneebergbahn GmbH, Raab-Oedenburg-Ebenfurter Eisenbahn AG and Stern & Hafferl Verkehrs GmbH. These companies are not competing with ÖBB-Personenverkehr as they either operate on their own network or are so-called *'internal operators'* operating within the geographical scope of competence of a federal state or municipality.

### 3. Definition of public service requirements

Public service contracts are concluded essentially for local or short-distance traffic. Long-distance is only partially under public service contract, while international traffic is provided outside of public service obligations.

While international passenger services are open to competition including cabotage on the domestic market, no operator has made use of this possibility since the entry into force of the EU legislation opening the international passenger market to competition.

Public service obligations for rail traffic usually consist in:

- tariff obligations;
- quality requirements (including for rolling stock);
- continuity obligation.

Quality criteria included in some of the current contracts include customer satisfaction, punctuality, cleanliness and certain additional services.

## 4. Scope of public service transport by rail

The entirety of local and regional passenger transport as well as partly long-distance traffic is covered by public service contracts.

Public service transport represented in 2009 approximately 5.7 billion passenger-kilometres. All other passenger traffic (international transport, long-distance transport apart from those bits that fall under public service requirements, airport shuttle) does not benefit from public service contracts, and it represented approximately 5.4 billion passenger-kilometres in 2009.

## 5. Contract

The basic public service obligations in the rail market are included in one single contract for the entirety of Austria. Supplementary public service transport negotiated by regions is included in other individual contracts (this includes bus traffic in addition to rail traffic). They will concern either the entirety of the passenger traffic for the region or simply a set of lines for which the region considers public service obligations must be taken care of.

Public service operations are organised through the conclusion of private law contracts freely negotiated between the parties to the contract. Negotiations take place on the correlation between the costs of the services required and the level of compensation proposed. In this context, the parties discuss the level of passenger services required by the passengers themselves and quality criteria.

In some cases, it may occur that the railway company continues to provide the public service obligations after the initial contract has come to an end and before the new contract has been signed due to the necessity for continuity of transport services.

## 6. Awarding of public service contracts

The public service contracts currently in force in Austria were directly awarded to ÖBB and to other railway undertakings. However, legislation foresees the possibility to tender contracts.

The contract on basic supply allows tendering of trains and parts of networks upon contractual notice of cancellation (2 years).

It is expected that the next round of contracts could be tendered out. The current contracts are expiring between 2013 and 2030.

## 7. Contract negotiation

In practice, the railway undertaking submits to the Ministry of Transport an offer for the public services requested that describes the cost it will incur and the part that will not be covered by revenue generated through the operation of the service. National authorities compensate the costs not covered by the revenues.

Generally speaking, though, national authorities remain the strongest party to the contract leaving little room for effective negotiation to get the full difference of costs and income of the public services.



Public service contracts concluded with regions are somewhat more flexible as there is more scope for real negotiation at this level. The railway operator negotiates in particular quality criteria (and their cost). Based on surveys or direct passenger requests, they suggest additional services in the interest of passengers.

Costs incurred for public service contracts are compensated only through the granting of financial compensation. In practice, the operator having concluded the public service contract will often benefit from a *de facto* exclusivity on the lines concerned as it will have won the contract. In other words, while '*cherry picking*' is allowed, no request has been made so far.

The level of compensation of public service obligations varies from line to line, service to service according to the calculation of costs and revenues for each line. However, it should be noted that the financial risk of ticket revenues is born by the operator at stake.

## 8. Calculation of the level of compensation

Compensation levels are clearly determined in advance.

The level of compensation is the result of the difference between the foreseen costs and revenues.

The calculation of the overall costs for the service in question as a whole will be based upon the following costs:

- staff;
- energy;
- infrastructure charge;
- maintenance and repair of vehicles;
- rolling stock;
- installations necessary for operating passenger transport services;
- (historic) debt payment;
- sales/marketing costs.

Optionally, and on a case by case basis, additional costs can be included.

A '*reasonable profit*' may also be included in the contract. This is however not systematic for each contract.

## 9. General payment conditions

Payment is made by regular instalments at determined intervals (usually monthly). Payment is made automatically from the state budget without any invoice being sent in advance by the railway undertaking. However, in the case of public service contracts concluded with regions, the railway undertaking will be paid on the basis of an invoice sent to the regional authorities.



A yearly monitoring system is instituted whereby the parties to the contract meet to discuss the achievements made during the past year. This includes a monitoring of the quality targets met by the railway undertaking. In some contracts, there exists a *bonus/malus* system whereby the railway undertaking may obtain premiums or be sanctioned depending upon whether it has managed to reach quality targets laid down in advance in the contracts (essentially punctuality, cleanliness and cancellation of trains).

The Austrian government has decided to exclude urban, suburban and regional traffic from the Passenger Rights Regulation 1371/2007. Penalties for delays will have to be paid to customers holding annual tickets, though. The liability waivers for operators in case of delays due to third parties (among which the infrastructure manager) are inexistent: the operator is generally obliged to take legal redress in case of fault of third parties. Given that the infrastructure is not in the expected shape due to a lack of financing, these liability rules can create important costs for operators.

Any state or regional compensation for public service obligations is exempted from all tax imposition.

It should be noted that if the railway undertaking makes a deficit on the public service contract, it will have to cover it from its own budget. Indeed, the competent public authority does not cover any deficits made by railway undertakings for the operation of public service contracts.

## 10. Duration of public service contract

The duration of public service contracts varies depending upon each specific case. In general terms, public service contracts for the national territory are concluded every year, based on a 5 years commitment to contract (sort of framework agreement).

Contracts concluded with regional authorities can be valid for 5 years or up to 30 years depending upon the region and the investments made by the railway undertaking, especially in rolling stock.

The duration of the contract on public service obligation for the basic supply of public services with ÖBB is 10 years.

## 11. Rolling stock

In general terms, rolling stock used in public service transport is owned by the operator and can be financed within the contract itself. The average age of current passenger coaches and locomotives is of 15 years.

## 12. Involvement of the regulatory body or other authority

The rail regulator acts on behalf of the Austrian Ministry of Transport as contraction party to the contract covering the whole Austrian territory and controls the stipulated quality criteria.





## 1. Organisation of public service operations in Belgium

The organisation of public services is regulated in Belgium by the following pieces of legislation:

- Law of 21 March 1991 reviewing some public enterprises (*loi portant réforme de certaines entreprises publiques économiques*<sup>1</sup>);
- EC Regulation 1370/2007.

The Belgian law of 1991 clarifies the nature of public service operations that may be entrusted to public companies in Belgium. It provides, among other items, for:

- the tasks to be undertaken by the public enterprise to execute public services it has been allocated;
- tariffs applicable to public service missions;
- conduct rules *vis-à-vis* the consumer;
- setting the basic principles relating to the level of public financial compensations and payment modalities, whilst taking due account of revenues generated by the operation of public service operations;
- the sanctions to be applicable in case one of the parties to the contract does not respect its obligations<sup>2</sup>.

It should be noted that the scope and the detailed financing aspects in particular of public service obligations are not enshrined in the law of 1991 but are the object of negotiations between the parties and are eventually detailed in the contract itself.

Public service transport is managed centrally by the Belgian federal authority which is competent for all railway transport and financing matters.

The domestic passenger rail market is currently not open to competition. New entrants currently operate international lines on a commercial basis (Thalys and ICE).

The Belgian market for public service transport covers all domestic traffic and represents 100% of domestic passenger traffic in the country. In other words, local, regional and long-distance traffic is considered as public service transport with clear traffic and tariff obligations. This is mainly due to the size of the country and number of commuters crossing the country on a daily basis to reach their workplace.

International passenger traffic is open to competition. However, as this report was drafted, no operator had yet made use of the cabotage possibilities. The possibility of offering cabotage on the Belgian market is however limited given that the entirety of the domestic passenger traffic falls under public service obligations.

<sup>1</sup> This law foresees as a principle that the state engages into a contract for public service obligations with its public enterprises.

<sup>2</sup> It should, however, be noted that even if an obligation is not respected by one of the parties to the contract, the rest of the obligations must nevertheless be executed. The injured party may receive damages to compensate this, notwithstanding the possible sanctions provided for explicitly in the contract. In practice this means that if the railway operator for example is not properly compensated for the operation of public service operations, it is nevertheless obliged to execute such obligations. The railway operator will then be entitled to receive damages – in theory.

## 2. Operators on the market for public passenger service transport

The Société Nationale des Chemins de Fer Belges (SNCB) is the passenger rail operator on the Belgian market. It is a company with limited liability (public law company). It underwent a complete restructuring in 2005. As of 1 January 2005, SNCB was split into three autonomous public companies holding each one a separate contract (*contrat de gestion*) with the state:

- the **Holding company** in charge of general services, real estate and historical estate and the management of the staff of the entire group;
- **SNCB** in charge of passenger and freight transport (national and international);
- **Infrabel**, the infrastructure manager.

SNCB is the sole operator on the domestic passenger rail market in Belgium. On international commercial routes, however, competition has developed with various operators having entered the market: Thalys and DB/ICE operate commercial international traffic in cooperation with SNCB, and since 2010, Eurostar International Ltd operates international traffic through Belgium.

## 3. Definition of public service requirements

Public service obligations usually consist of:

- a set of obligations for domestic passenger transport (these obligations detail the type of train to be used for the specific traffic, number of minimum trains-kilometres per day, degree of comfort required, scope of information to be provided to the customer, level of quality, access, etc.);
- quality criteria;
- a set of tariff obligations (level of tariffs, scope for increase in level, etc.);
- all tariff reductions that must be applied (linked to social criteria, family, public, patriotic, etc.) that are totally or partially compensated by the state;
- obligations with regard to the management of rail infrastructure;
- investments that are imposed (and financed by the state);
- rules to be followed in case of investment (procedure to be followed, submission of projects to public authorities prior to any decision, etc.).

Quality criteria are an important part of the discussions. The key criteria relate to punctuality, chances for the passenger to get a seat, cleanliness, passenger information in trains and stations, complaint management.

## 4. Scope of public service transport by rail

National passenger transport in Belgium is run as a whole under public service contracts, whereas cross-border services (including Thalys and ICE) are generally run on a commercial basis.

Thus, all lines that go through Belgium and to which 'international' passengers accede do not fall in the public service category (i.e.: Thalys).



Public service transport in Belgium is provided with approximately 3 700 trains per day, which represents 2 351.6 million passenger-kilometres per year.

## 5. Contract

Public service obligations are currently included in one single civil law contract – the *contrat de gestion* for the whole territory – that covers the following types of services:

- public service passenger transport within the territory;
- acquisition, building and maintenance, management and financing of rolling stock;
- services that need to be performed to satisfy some *needs of the Nation*;
- cross-border passenger services until the first stop across the border.

When this brochure was drafted, the contract applied in Belgium had been concluded under the former regime, i.e. Regulation 1191/69 and will be running until its end in 2012. Its content and duration complies with the prescriptions foreseen in the new Regulation 1370/2007.

## 6. Awarding of public service contracts

The currently applicable contract was negotiated directly with SNCB.

## 7. Contract negotiation

Discussions in Belgium take the form of a negotiation between parties. In practice, the railway company presents its business case with regard to the extent of public service operations to deliver on a yearly basis and submits a detailed cost assessment to the Ministry of Transport. In this cost assessment, the railway company includes quality criteria based on passenger surveys/requests and a *'reasonable profit'*. The parties then negotiate the level of compensation in comparison with the public services to be provided.



## 8. Calculation of the level of compensation

Compensation levels are clearly determined in advance.

The level of compensation is the result of the difference between the foreseen costs and revenues.

The compensation is awarded in the form of both financial influx and exclusive rights on the entire network (with a view to limit the overall level of financial support).

A *'reasonable profit'* is foreseen in the contract. Its level will differ depending upon the level of risks borne by the operator concerned.

While compensation levels have been reasonable over the past years, it should be noted that SNCB has made some important losses in 2009 and 2010.

As a bonus, the railway undertaking may increase tariffs applied on public service lines on the condition that the railway undertaking proves that:

- such increase follows the general index;
- quality of service in terms of punctuality has increased.

## 9. General payment conditions

Payment is made by regular instalments at determined intervals: a monthly payment is made for capital expenditures, while operational expenditure is paid on a monthly basis for four consecutive months and the balance is then paid in two instalments during the remaining eighth months. Payment is based on an invoice sent to the Ministry of Transport.

The railway company and the infrastructure company bear all risks in relation to the execution of the contract. This means that they will have to cover any deficit developed during the execution of the contract.

## 10. Duration of public service contract

The public service contract is usually concluded for a duration of between three to five years. The currently applicable contract was concluded under the former regime in 2008 and runs until 2012.

## 11. Rolling stock

Rolling stock used in the public service contract is financed through the contract itself and remains allocated exclusively to the operation of the contract.

A large majority of the fleet is reasonably old. In 2012, 11% of all seats will be 20 years old or above.

## 12. Involvement of the regulatory body or other authority

No authority other than the Ministry of Transport is involved in public service contracts.



## 1. Organisation of public service operations in Bulgaria

Public service in railway transport is regulated in Bulgaria through Regulation 1370/2007 which is directly applicable and by the Bulgarian Regulation for the Assignment and Execution of the Obligations for Performing Public Service Transport, in force since 1 January 2002, the so-called Railway Act.

Public service transport is managed centrally by the Ministry of Transport.

The entire rail passenger market is opened to competition:

- most of the domestic passenger traffic falls under the public service contract;
- long-distance passenger transport operated by long-distance and intercity trains is operated on a commercial basis;
- international passenger transport by rail is operated on a commercial basis. No new operator has made use of the possibility of cabotage since the opening of the international passenger market to competition in 2010.

## 2. Operators on the market for public passenger service transport

There is currently only one operator, BDZ EAD, in charge of the entire public service passenger market in Bulgaria.



### 3. Definition of public service requirements

Public service obligations are defined in the aforementioned Railway Act as well as in the contract concluded with the Ministry of Transport.

Public service obligations relate essentially to:

- obligation to transport on the entire network;
- tariff obligations (especially with certain categories of population);
- important quality standards. These relate to:
  - regularity and punctuality;
  - hygiene. Cleaning intervals according to type (rough, basic, external, full basic) are determined precisely in the contract;
  - monitoring through customer surveys at regular intervals;
  - providing the necessary capacity;
  - qualification of personnel – personnel must meet the minimal requirements such as politeness, competence, reliability, ability to cope with difficult situations, wear the proper uniform and badge with the name, well-maintained appearance, etc.;
  - treatment of complaints – within two years at the latest, a system for submitting complaints must be introduced.

### 4. Scope of public service transport by rail

The domestic passenger rail market is opened to competition. 94% of domestic passenger transport (urban, suburban, regional and interregional) is defined in the Bulgarian law as public service transport.

Public service transport in Bulgaria is provided with 556 fast and ordinary passenger trains per day, which represents an average of 77 000 passengers per day (1 741 million passenger-kilometres per year).

### 5. Contract

The Ministry of Transport started concluding contracts for the provision of public service transport in 2004. The second contract is currently underway: it was concluded in June 2009 and entered into force on 1 January 2010. It was concluded in compliance with Regulation 1191/69 applicable at the time.

This single contract covers public service transport for the entire country.

The contract is in the form of a template drafted by the Ministry of Transport to which the operator has to adhere. There is no real negotiation between the parties.

The contract establishes the rights and obligations of the parties, the legal, financial and technical conditions of the use of railway infrastructure as well as the definition of the public services and their financing from the central budget.

## 6. Awarding of public service contracts

While the first public service contract was awarded directly to BDZ, the second one was put to tender. As far as BDZ knows, only one company – BDZ-Passenger Transport – participated in the tender.

## 7. Contract negotiation

Public service transport is solely compensated through financial influx. However, as the contract is unique and as it covers the entire territory, the operator benefits from a *de facto* exclusivity. Moreover, ‘*cherry picking*’ is prohibited.

The level of compensation of public service contracts is defined in the contract for the contracted period with yearly reviews.

The contractor elaborates yearly and three-year forecasts for the necessary compensations and delivers these to the contracting authority and to the Ministry of Finance, not later than 30 June the previous year.

Each year, in the course of the budget procedure, the contracting authority presents to the Ministry of Finance a proposal for the amount of compensations, for discussion and inclusion in the draft Law for the State Budget of the Republic of Bulgaria.

The amount of compensations, determined by the Law for the State Budget for the corresponding year is included in the Council of Ministers Ordinance for implementation of the State Budget of Bulgaria.

## 8. Calculation of the level of compensation

The level of compensation is the result of the difference between the foreseen costs and revenues.

The calculation of the overall costs for the service in question as a whole will generally be based upon the following costs:

- staff;
- energy;
- infrastructure charge;
- maintenance and repair of vehicles;
- rolling stock;
- installations necessary for operating passenger transport services;
- (historic) debt payment;
- other fixed costs.

The compensation level does take into account a ‘*reasonable profit*’ granted to the operator.



## 9. General payment conditions

The compensation for executing the obligation for transport is paid to the operator by the Ministry of Finance against an invoice issued up to the 15th day of the running month, according to the coordinated annual schedule.

The compensation for free tickets and for tickets at reduced prices for travelling within the country is paid on a monthly basis depending on the services provided that are subject of the contract and after presenting documents showing the transport service rendered.

A penalty system is in place in Bulgaria. For the major indicators (train-kilometres, passenger-seats, train-hours) admissible deviations of +/-5% are foreseen. For every 0.1% violation of the major indicators according to the categories of trains, the compensation to be given is reduced by 0.05%. Trains delayed by more than 60 minutes are not compensated when they depart. In cases of proven failure to meet the minimal requirements of hygiene, the compensation may be reduced by up to 2%.

It should be noted that the poor quality of infrastructure generates damages for the operator, which in turn needs to compensate passengers. These costs are entirely born by the operator as there are little ways of recourse of the operator against the infrastructure manager.

## 10. Duration of public service contract

The current contract was signed in 2009 and entered into force on 1 January 2010. It was concluded for 15 years. This duration is considered satisfactory.

## 11. Rolling stock

Rolling stock is put at the disposal of the operator for the execution of the contract and must be returned at the expiry of the contract. 96% of the rolling stock currently used is older than 30 years, which affects the overall quality of the services concerned.

The fleet should be renewed with the support of European Commission funds, which were unfortunately blocked when this report was drafted.

## 12. Involvement of the regulatory body or other authority

The Bulgarian regulatory body does not play any role, beyond its powers foreseen in existing EU legislation, with regard to public service transport.



## 1. Organisation of public service operations in Croatia

Public service transport is organised centrally by the Ministry of the Sea, Transport and Infrastructure. It is based on Article 39 of the Railway Act (Official Gazette 123/03, 30/04, 79/07 and 75/09) which defines services of general economic interest for rail transport.

It is organised in line with Regulation 1370/2007 despite the fact that Croatia is not a member of the European Union.

The Ministry of Transport is in charge of determining the scope of public service operations and concluding related contracts with operators. Almost the entirety of the domestic passenger traffic falls under public service obligations. Operations on the domestic market are not open to competition for the time being but there are plans to open this market to competition once this will be made mandatory at EU level.

The international commercial passenger market was opened to competition in January 2010, in line with the requirements of Directive 2007/58. However, for the time being, no requests of cabotage have been made on international routes which would be likely to impact existing public service operations.

## 2. Operators on the market for public passenger service transport

There is for the time being only one operator of public service transport by rail in Croatia, HZ Putnicki prijevoz d.o.o.: the national carrier.

## 3. Definition of public service requirements

Public service obligations usually consist in:

- tariff obligations;
- service quantity;
- service quality given by certain punctuality, regularity and passenger development objectives;
- planned or foreseen service disruptions are regulated through the agreement with the infrastructure manager.

All of these criteria are imposed by the Ministry of the Sea, Transport and Infrastructure. The railway operator remains free to add further quality criteria to its services to help achieve its objective of passenger development. In practice, however, the financial margin of manoeuvre of HZ is so limited that it cannot improve the services as it would wish.



## 4. Scope of public service transport by rail

Almost the entirety of domestic passenger rail traffic falls under public service obligations. In 2011, more than 70% of the trains were used for the operation of public service obligations. They relate essentially to all urban, suburban and regional services. Some marginal long-distance lines also fall under public service obligations.

The contract covers only rail transport services. Separate agreements are concluded with related companies with regard to other modes of transport. It is only exceptionally that bus services are included in the contract when planned or unplanned maintenance disrupts rail services.

In terms of revenues, public service transport represents about 85% of HZ's passenger rail traffic revenue.

## 5. Contract

Public service operations are defined by the Ministry of Transport in a contract concluded with the sole operator. It is a single contract covering the entirety of the territory of the Republic of Croatia.

The quality of services (essentially punctuality requirements) are imposed by the Ministry of Transport on a yearly basis. They are however, together with other quality criteria, not directly included in the contract. The contract focuses on the necessary key parameters and the realisation of the prescribed timetable.

## 6. Awarding of public service contracts

Public service transport contracts are *de facto* awarded directly to HZ as there is no competition on the market for the time being. The legislation in this regard is however unclear. It may need to be amended once compulsory tendering will be required at EU level.

## 7. Contract negotiation

Upon concluding a contract, the operator proposes and identifies elements required for the realisation of the obligations. The Ministry of Transport defines in parallel according to its own analysis the level of services of general interest it wishes and their related and estimated costs. Further to a discussion between both parties, an agreement is concluded on the final level of compensation to be paid for the services required. The correlation between the two is not necessarily fair for the operator.

Compensation is provided by direct financial influx. The operator bears the risks related to ticket sales. Even though '*cherry picking*' is in theory possible, there has to date not been any cases of '*cherry picking*' affecting directly the economy of a public service line. In practice, due to the absence of any competition on the market, HZ has exclusive rights for the operation of its public service traffic.





## 8. Calculation of the level of compensation

Compensation levels are determined in advance. They are included in the contract.

The level of compensation is the result of the difference between the foreseen costs and revenues.

The calculation of the overall costs for the service in question as a whole is based on all direct and indirect transport costs, namely:

- amortisation and maintenance costs;
- train traction;
- power;
- track access charges;
- administrative costs;
- staff costs.

No '*reasonable profit*' is applied in the contract.





## 9. General payment conditions

Payment is made monthly upon the terms of payment decided in the agreement. The amounts received are not submitted to VAT.

The Ministry of Transport has the right to retain partially or totally the payment of the public service compensation in case the operator is unable to reach or maintain the level of high performance indicators agreed in advance.

The poor quality of infrastructure significantly affects the quality of traffic operations. This creates regular financial risks for the operator which sees its passenger levels decrease while the compensation for the public service requirements remains unchanged.

In order to limit the level of compensation to be paid by the operator to passengers the government has decided not to apply the passenger rights regulation in the Republic of Croatia. Delays are handled in accordance with the State Act on Transport Contracts in Railway Transport and accompanying subordinate legislation and internal tariffs.

## 10. Duration of public service contract

The contract is concluded on a yearly basis following the railway timetable. This is not felt to be satisfactory as it does not allow any longer term investment or quality improvement due to financial instability.

## 11. Rolling stock

The rolling stock used for the public service operations is the property of the operator. It is not financed through the public service contract: the operator has to finance it separately and amortisation costs are also not included in the contract.

## 12. Involvement of the regulatory body or other authority

The regulatory body is the Rail Market Regulatory Agency. The basic legal framework for the work of this agency is the Act on Rail Market Regulation Agency. It has no powers whatsoever related to the conclusion, negotiation or running of the public service contract.



## 1. Organisation of public service operations in the Czech Republic

Public service operations in the rail sector are regulated in the Czech Republic by the Act on Public Service in Passenger Transport and on amendments of other acts adopted in April 2010. The act entered into force on 1 July 2010. Regulation 1370/2007 is fully reflected in the act. It sets, amongst others, rules relating to the respective responsibility applicable to the state, the regions and municipalities. Another important point relates to the possibility for synchronised public financing - through notably the Ministry of Transport and the region, neighbouring regions, the region and the municipality, etc – or both public and private financing.

The government together with the Ministry of Transport are directly in charge of determining the scope of public service rail transport to be provided in the country. Long-distance and interregional public transport services are dealt with by the Ministry of Transport while the fourteen administrative regions (*kraj*) take care of regional and local transport.

International passenger traffic, as well as domestic passenger traffic, have been opened to competition since 2008. New entrants have entered the domestic passenger market. As regards international traffic, no request including cabotage having an impact on existing public service contracts has been made to date.

## 2. Operators on the market for public passenger service transport

There are currently six railway companies operating public passenger transport services in the Czech Republic. They are the following:

- České dráhy (ČD a.s.) joint stock company;
- Veolia Transport;
- Viamont joint stock company;
- RAILTRANS plc. (one train per year on the line Ústí nad Labem – Praha – Kutná Hora);
- Jindřichohradecké místní dráhy joint stock company (this company operates on narrow gauge);
- Arriva (FS).

It should be noted that when data was gathered for this publication, RegioJet a.s. and the French company Keolis had signed up a contract on railway traffic operation. However, both companies have been inactive so far.

All of these companies also operate regional services which cross the border between the Czech Republic and Germany except for RAILTRANS and Jindřichohradecké místní dráhy. They all operate services falling within the scope of a public service contract.



### 3. Definition of public service requirements

Public service obligations are defined in the Railway Act mentioned above and in the public service contract concluded with the railway operator. These obligations include:

- obligations on tariffs and obligatory discounts for social groups of the population;
- obligations on tariffs and obligatory discounts for pupils and students;
- service frequencies in regions (regional transport);
- service frequencies throughout the country (long-distance transport);
- quality criteria.

Quality is an important element of the negotiation. Public authorities, whether at centralised level or at decentralised level, increasingly set high quality criteria, which are then taken into account when calculating the overall costs of the services to be provided. Usual quality criteria relate to:

- observing the timetable (95%);
- train connections (95%);
- credibility of operating rolling stock in duty rosters;
- equipping and fitting up rolling stock;
- washing and cleaning rolling stock;
- etc.

### 4. Scope of public service transport by rail

Almost all passenger traffic in the Czech Republic (urban, suburban, regional, interregional and long-distance traffic) falls under public service contracts.

According to the train traffic diagram (TTG) 2010/2011, public service transport in the Czech Republic is provided on average with 6 813 trains per day, which represents 445 700 passengers per day (6 552.8 million passenger-kilometres per year). Overall, the public service market represents approximately 96.1% of the overall passenger rail market.

### 5. Contract

Public service operations are organised through the conclusion of contracts, with the competent authorities which are responsible for the organisation of the award procedure and the definition of required public service obligations.

Each contract is concluded for a specific set of lines. While most of the contracts cover several lines, a limited number of them are concluded for a single line.

**ČD, a.s.** has concluded two contracts for long-distance transport that imply a single line: Pardubice – Liberec and Plzeň – Most. As regards regional transport, **Veolia** has two single line contracts: Milovice – Vrbno pod Pradědem and Šumperk – Kouty nad Desnou, **Jindřichohradecké místní dráhy** has a single line contract for the narrow gauge Nová Bystřice – Jindřichův Hradec – Obrataň, and **Arriva** operates a cross-border line Liberec – Hrádek nad Nisou – Zittau (Germany) – Varnsdorf – Rybníště.

To date, ČD a.s. has concluded fourteen contracts with the administrative regions and three contracts with the state. Other operators on the Czech market have concluded six contracts with the administrative regions but none with the state.

When this brochure was drafted, all existing contracts were concluded under the former regime, i.e. Regulation 1191/69 and will be running until their end, in conformity with the new Regulation 1370/2007.

EuroCity and InterCity trains are operated at the railway undertaking's own risks.

Contracts concerning '*fast trains*', i.e. express train, fast train, semi fast train covering long-distance, regional and interregional traffic, are concluded with the Ministry of Transport. Contracts concerning local trains are concluded with administrative regional authorities.

Since 2005, administrative regions are free to decide the share of public budget allocated to bus and rail transport.

In general terms, the contract concluded is a private law contract.

## 6. Awarding of public service contracts

Public service transport contracts are awarded either directly or through competitive tendering. The objective pursued by public authorities is to award an increasing number of contracts through competitive tendering in the upcoming years. Given the importance of traffic concerned and the shortage of applicants, it was not possible to switch to competitive tendering at once.

It is worth noting that some of the existing contracts contain a clause whereby part of the transport volumes ordered as public service obligations (with a maximum cap of 75% of the volumes) can be gradually provided by another operator chosen by the authority before the end of the initial contract<sup>1</sup>.

## 7. Contract negotiation

The level of compensation of public service contracts varies from contract to contract, according to the calculation of costs and revenues for each line. '*Cherry picking*' is in principle possible in the Czech Republic but on a limited number of lines as contract payment is usually done through the allocation of financial input and the provision of exclusive rights on the lines concerned. It should be noted that the operator will however bear the risks of the contract, especially in case of shortage of revenues from ticket sales.

In practice, the railway company determines its business case with regard to the extent of public service operations to deliver on a yearly basis and submits a detailed cost assessment to the Ministry of Transport or the administrative regions. In this cost assessment, the railway company includes quality criteria based on passenger surveys/requests and a '*reasonable profit*'. The parties then negotiate the level of compensation in comparison with the public services to be provided.

<sup>1</sup> The existing contracts were fixed with the state and the administrative regions for ten years and will remain in force until the end of TTG 2018/2019. The contract on long-distance traffic operation that was awarded by the state includes a clause according to which, for the duration of the contract, a market opening of 75% may be enabled. Similar clauses can be found in contracts fixed with the administrative regions too, i.e. Jihomoravský region 55%, Jihočeský region 30% and also Plzeňský and Ústecký regions admit the possibility.



For many years, however, compensation has been insufficient to effectively cover the shortfall in revenues from public service passenger transport. The shortfall is cumulated year after year. Since 2009, the compensation levels have been satisfactory.

ČD a.s., the historical company, has however to bear the '*historical debt*' deriving from years of under compensation.

## 8. Calculation of the level of compensation

Compensation levels are clearly determined in advance. The amount can be renegotiated in case the price of input increases.

The level of compensation is the result of the difference between the foreseen costs and revenues.

The calculation of the overall costs for the service in question as a whole will generally be based upon the following usual costs:

- energy and fuel use;
- direct material for output of motive power engines;
- board staff (driver and other mobile staff);
- railway police (safety and security);
- cost generated from the rolling stock (amortisation and interests);
- shunting services;
- assistance to passengers with reduced mobility;

- controlling the service;
- track access charges;
- fixed costs;
- variable costs;
- other passenger related costs.

A 'reasonable profit' is included in the contract. Its level will differ depending upon the level of risks borne by the operator concerned.

## 9. General payment conditions

Payment is made monthly, with reviews made on a quarterly and yearly basis. There is no VAT applied on the public compensation since it is considered a state aid to the operating results. State aid to pupils and students fares generates VAT in a reduced rate.

The state of the infrastructure in the Czech Republic is not optimum which eventually affects the quality of services provided by railway operators. As a result, the Czech authorities have decided to apply for derogations from the Passenger Rights Regulation 1371/2007 for domestic traffic to avoid operators having to pay excessive compensation levels to passengers for delays/cancellations imputable to the poor quality of infrastructure on the network.

The operator is however likely to pay penalties to the awarding authority in case it does not respect its obligations, in particular as regards the timetable, train connections, rolling stock types used for given traffics, etc.

## 10. Duration of public service contract

Current contracts have been concluded for a duration of ten years, which can be a source of problems in case of rolling stock amortisation.

## 11. Rolling stock

Operators generally own the rolling stock they use for the public service contract. A marginal part of rolling stock depreciation is taken into account in the calculation of the level of compensation of the contract.

In 2010, 43% of ČD a.s. rolling stock was more than 30 years old. However, a major renewal of the fleet is foreseen in 2011-2014 with the support of European funds.

## 12. Involvement of the regulatory body or other authority

The rail safety authority in the Czech Republic exercises the duties of safety and regulatory body. Beyond its functions as currently foreseen in EU law, it is in charge of guaranteeing the eligibility of the applicant for a public service contract.



## 1. Organisation of public service operations in Denmark

The organisation of rail public services in Denmark is mainly regulated by the following pieces of legislation:

- Railway Act (No 1249, last changed 11 November 2010);
- Act on the Independent Public Corporation DSB and on DSB S-tog A/S (No 1184, last changed 12 October 2010);
- EU Regulation 1370/2007 on public passenger transport services by rail and road.

Danish legislation and its implementation distinguish between three types of rail passenger services:

- **'negotiated' traffic**, i.e. public services carried out by an operator based on a negotiated contract with the relevant competent authority;
- **'tendered' traffic**, i.e. public services carried out by an operator based on a contract with the relevant competent authority, which has been put out to competitive tendering;
- **'free' traffic**, i.e. non-public service traffic.

There has been free access for all duly licensed EU railway undertakings to the Danish rail network for freight traffic since 1999 and for passenger traffic since 2000. This access is utilized by a number of Swedish daily long-distance trains running to and from Copenhagen with a few prolonged to/from Odense.

The present international traffic to and from Germany is integrated with the domestic long-distance traffic and covered by a negotiated public service contract in Denmark. The cross-border regional traffic between the eastern part of Denmark and the southern part of Sweden via the Øresund fixed connection is covered by tendered public service contracts with the Danish and Swedish competent authorities.

It should be noted that Danish public service traffic is gradually being opened to competition through public tenders. This trend is expanding.

Public service transport on rail in Denmark is organised by the Danish Ministry of Transport and *Trafikstyrelsen* (public transport authority).

The latter is an agency under the Danish Ministry of Transport which prepares and organises tenders and concludes/manages contracts for the operation of **tendered** public service rail transport. It currently deals with two contracts already in force. Additional contracts, which will be tendered, are under preparation.

In parallel, the Danish Ministry of Transport is the competent authority for **negotiated** public service contracts. There is currently one contract with DSB concerning national rail services (long-distance and most regional traffic) and one contract with DSB S-tog concerning the metropolitan train services (*S-Bahn*) in the Greater Copenhagen area. Both of these contracts expire in 2014.



## 2. Operators on the market for rail public passenger service transport

DSB has been an independent public corporation since 1 January 1999. Formally, the state monopoly granted to DSB came to an end on 1 January 2000. It is wholly owned by the Danish Ministry of Transport.

Since 2000, political decisions have been taken to gradually open up the market and put the services on a number of railway lines out for open, competitive tendering:

- Arriva won in 2002 the right to provide a portion of the regional public transport services in the west of Denmark and subsequently re-won a similar contract in 2009. These contracts are net contracts;
- a joint undertaking between DSB and First Group plc (DSBFirst) won in 2008 the right to provide the regional public transport services in eastern Denmark and southern Sweden, including the region's transnational public transport links. Both contracts with the Danish and the Swedish competent authorities are gross contracts.

## 3. Definition of public service requirements

The rail public service contracts in Denmark prescribe in great detail the quantitative and qualitative requirements of the operator and its financial compensation.

The minimum service level of each line and station (in trains/stops per hour/day) is fixed together with the minimum number of direct connections between major centres. The minimal seating capacity is prescribed through upper limits on standing passengers (overcrowding) per line, duration, and time of day.

The contracts also contain specific requirements on cleaning, passenger comfort, accessibility (PRM), passenger information before and during the journey, and ticket and season card availability. *Bonus/malus* arrangements in the contracts depend both on the quality of the delivered services (punctuality, overcrowding, cleanliness etc) and on extensive outside surveys of passenger satisfaction.

Public service operators have to comply with the general common ticketing system in Denmark and cooperate with bus operators and other rail operators. Fares are regulated within strict limits depending on inflation for net contracts.

Quality criteria are as mentioned included in all contracts. At the outset, the criteria are defined by the competent authority. The final set of criteria and their precise wording and requirements, however, is a result of negotiations before the signing of the contract – both for tendered and negotiated contracts.

A number of these criteria are defined in great detail in the contracts. For example, with regard to **ticketing**, the contracts lay down ticket prices in the greater Copenhagen; the allowed increase in overall ticket prices (which has to be approved by the Ministry of Transport); the need for prior notification (at least 21 months) of changes in sales system and/or price structure; conditions related to free transport for children; social elements etc. With regard to **seating availability**, the contracts provide that all passengers shall have a seat available on 90% of the trains during rush hours and 95% of the trains running outside rush hours. In cases where the load factor is above 100%, the operator's planning may allow max 20% standing passengers for a max of 30 minutes.





In addition train operators often add further quality criteria on their own initiative as a commercial gesture to improve the service and increase performance. Some of these additional quality criteria are based on a direct positive business case (such as additional services to first class passengers), while other criteria are believed to increase general ridership and are therefore considered to be commercially viable *per se*.

#### 4. Scope of public service transport by rail

Almost the entirety of passenger transport in Denmark is run under public service contracts. This includes the Øresund region cross-border train services running under public service contracts with the Danish and the Swedish competent authorities, and the cross-border traffic to Germany, the Danish part of which is run as an integrated part of the domestic long-distance traffic covered by a public service contract with the Danish competent authority.

Public service transport in Denmark is currently provided with about 500 000 passengers per day and approximately 4 000 trains per day.

Passenger transport by rail can be divided in four types of transport:

- S-trains (Greater Copenhagen area) and the Metro system which are stand-alone networks;
- regional transport organised by regional authorities which award their contracts to *'internal operators'*: this is the case currently for fourteen so-called *'private'* railways which are smaller, regional railways spread all over the country. Despite their name, they are all owned mainly by the regional transport authorities;
- regional transport organised by the state authorities;
- long-distance transport (intercity trains).



All four types of passenger transport are covered by public service contracts.

At present, the market for public service rail services is divided in the following manner:

- approximately 80% of long-distance and regional services (including the '*private*' railways) are negotiated;
- approximately 20% of regional services are tendered out;

The public service bus system is organised separately from the rail system. However, despite the contractual non-integration, both national law and individual contracts prescribe a minimum level of system integration, such as common ticketing systems, customer information etc. As an example, in the Greater Copenhagen region one can travel on the same ticket on Metro, S-train, all regional trains and all bus services.

## 5. Contracts

Public service operations are organised through the conclusion of legally binding contracts freely negotiated between an operator on the one side and the relevant competent authority on the other side (the public transport authority, the Ministry of Transport, a regional authority or the metro company).

As a result, there is a multiplicity of contracts (see sections 1 and 2), including 5 major ones:

- one contract is an agreement between DSB and the Danish Ministry of Transport covering a very large part of the Danish territory, i.e. long-distance and a large part of the regional traffic;
- another contract covers S-trains in the Greater Copenhagen area;
- Arriva has been awarded a contract (which was recently renewed) for regional services in the western part covering approximately 15% of the Danish traffic;
- DSBFirst has won a contract for the Øresund cross-border regional services that covers approximately 8% of the Danish traffic;
- in addition there is the Copenhagen Metro contract.

The purpose of the main contracts is to establish a clear framework for performance so as to guarantee the state the best possible result in terms of rail passenger transport for the financial resources made available to rail transport and to ensure that the relevant company has a sound financial situation.

Most contracts were awarded under the old regime (i.e.: under the application of EC Regulation 1191/69). Even though the contracts were concluded before the entry into force of Regulation 1370/2007, all contracts comply with this new regulation. This was confirmed officially by the European Commission at least for those contracts it reviewed in its 2010 Decision<sup>1</sup>. It should be however noted that when assessing the compatibility of some of these contracts with EU law, the European Commission surprisingly applied retroactively the new legislation (EU Regulation 1370/2007).

<sup>1</sup> Commission Decision of 24 February 2010 concerning public transport service contracts between the Danish Ministry of Transport and Danske Statsbaner (Case C 41/08), ECOJ L 7/1.



## 6. Awarding of public service contracts

As already outlined above, there are in practice two types of public service contracts that may be either granted on the basis of a negotiation or of a call for public tendering. The Ministry of Transport has the authority to invite tenders for contracts for public service transport, which will then be handled by the transport authority.

In December 2010, approximately 23% of public service traffic was put to tender in Denmark. Moreover, there has been a political decision (see section 2) to put one third of the overall domestic passenger traffic to tender by 2014.

## 7. Contract negotiation

When the contract is tendered out, the operator submits its proposal along the lines of the terms of reference. After the submission of bids there are usually negotiations to determine how specific or complex requirements from both sides can be met. This is done in order to find the best equilibrium for both parties.

When there is no public bid and the contract is negotiated between the parties the railway undertaking submits to the Ministry of Transport a detailed analysis of the economy in running the lines considered. This takes into account the revenues generated by the service and all costs it will produce and will then be negotiated with the Ministry of Transport.

There are separate contracts for the different forms of services. No cross-subsidisation between the different traffics and full separation of accounts, according to standard accounting procedures, must be applied.



## 8. Calculation of the level of compensation

Financial compensation is provided in all contracts currently running in Denmark. The law does not provide for the right to grant exclusive rights. However, public service traffic has timetabling priority over free traffic in cases of lack of capacity.

As there are no exclusive rights, '*cherry picking*' is authorised. For the time being it has not had any relevant impact on current operations.

As regards the compensation, three out of the current five major contracts are so-called '*net*' contracts, while the other two are '*gross*' contracts but with incentives for increased ridership and improved quality.

In the '*net*' contracts the operator bears the full ticket revenue risk. There are also very narrow limits for ticket price increases - in general only in line with inflation.

There are other financial risks of importance - also in the case of gross contracts, e.g. energy prices, labour costs, defects of the infrastructure etc. Usually, the contract provides for how these risks are distributed between the operator and the competent authority. Usually they are born by the operator.

The calculation of the overall costs for the service in question as a whole will generally be based upon the following usual costs:

- energy and fuel use;
- maintenance of rolling stock;
- on-board staff (drivers and other mobile staff);
- cost generated by the rolling stock (amortisation and interest);
- shunting services, heating and cleaning;
- assistance to passengers with reduced mobility;
- track access charges;
- other passenger related costs.

A '*reasonable profit*' is included in most contracts. Its level is negotiated between the parties. Some of the most important contracts currently foresee a maximum '*reasonable profit*' of 6%<sup>2</sup>.

## 9. General payment conditions

Payment is made by regular instalments on a monthly basis, which is considered reasonable.

There is no VAT on public service contract payment.

A penalty system is foreseen where the operator has to pay a fine - with a cap - to the authorities in cases where punctuality of the actual trains operated falls below a certain level. The lower the punctuality is, the larger the fine is, until the cap is reached. A similar system is used in cases of cancellation, where the operator has to pay a fine - again with a cap - when cancellations go above 1%. Even more emphasis is put on customer satisfaction (i.e.

<sup>2</sup> See Commission Decision C 41/08.

the fine is higher, but again with a cap) where an obligatory fine is to be paid when customer satisfaction falls below a certain level.

In most cases these *malus* rules are accompanied by mirrored *bonus* rules.

Finally, the Passenger Rights Regulation 1371/2007 fully applies in Denmark to all traffic with no exemption. In this regard, quality of infrastructure plays a major role in public service operation. There are a number of examples of unsatisfactory quality of infrastructure, which from an operator's point of view is felt as a severe business constraint: speed limitations (both permanent and temporary), closing down a section or a track for a period for maintenance, (old fashioned) signalling systems limiting capacity on congested network parts, and - above all - failures of signals, points, tracks, catenaries etc. In the contracts between the operators and the infrastructure manager it is laid down how the infrastructure manager shall pay a fine to the operators in cases where the infrastructure manager cannot provide the agreed minimum quality (but usually without compensating the operators fully for what they had to pay to passengers by virtue of the EU passenger rights regulation).

## 10. Duration of public service contract

The duration of public service contracts varies between five and ten years, which is felt to be reasonable given the necessary return on investment required by each specific contract.

Except for the Metro, the major contracts in Denmark were all concluded before the entry into force of the new PSO regulation on 3 December 2009.

The main data for the 4 contracts are the following:

- the DSB contract concerning long-distance and regional traffic, ends 31 December 2014 (started 1 January 2005);
- the DSB S-Train contract ends 31 December 2014 (started 1 January 2005);
- the Arriva (renewed) contract ends 12 December 2018 (started 2010, - contract, however, signed under the former legislation);
- the DSBFirst contract ends in 2015 (started 11 January 2009 - in addition, there is a clause which gives the possibility of a 2 year prolongation of the contract).

The contract awarded to Arriva runs over five years with an option to extend it to eight years in total.

## 11. Rolling stock

Rolling stock is generally owned by the operator of the service. Renewal or refurbishment is foreseen within the public service contract. The contract provides in such case for the obligation to make the rolling stock available to operators who win tenders on certain routes.

## 12. Involvement of the regulatory body or other authority

Up till now, the rail regulator (*Jernbanenævnet*) has played no role in relation to public service contracts.



## 1. Organisation of public service operations in Estonia

Public service transport is organised in Estonia by the new Railway Act which entered into force on 31 March 2004 and by the Public Transport Act, which can be found at <https://www.riigiteataja.ee/ert/act.jsp?id=13275324>

Regulation 1370/2007 is directly applicable and serves as a complementary basis for the operation of public service contracts.

Public service transport is managed by the Ministry of Economic Affairs and Communications which places public service 'orders' determining, on a yearly basis, the lines that must be served, the frequency applied to such services, etc. Local governments (counties) or local public authorities have a share of responsibility in this process (by indicating to the Ministry of Economic Affairs and Communications the specific needs of the population in their geographic territory). However, passenger transport in Estonia is rather limited nowadays. The number of passengers transported has seriously dropped since the late 90's due to the growth of the car market and enhanced competition from the bus sector. This trend is continuing.

According to the Railway Act, the passenger transport market is fully open to competition. In practice, however, there is no competition as the market is not attractive enough for new entrants.

Public service transport evolves on the basis of a long-term national development plan approved by the public authority. The long-term national public transport development includes:

- data concerning the calculated need for subsidies for specific purposes prescribed in the state budget for the support of public transport which arises from the planned changes to the role of public transport and to the revenue base of the budget;
- a list of legal, economic, social and technical measures to improve the competitive position of public transport;
- a list of other factors which influence the development of public transport.

## 2. Operators on the market for public passenger service transport

To date, there are three passenger companies operating passenger transport (the companies settled down during the period 2000-2001), two of which operate passenger services under public service contracts and the third company operates international lines.

- AS Edelarauttee is a privatised rail operator operating inter-city passenger trains and owns a small portion of Estonian infrastructure. It operates rather old passenger trains;
- the state-owned AS Elektriarautee which provides suburban services in and around Tallinn on the electrified network in Estonia. In 2012, new trains will be available and AS Elektriarautee will then operate both electric trains on the suburban network as well as diesel trains;
- AS GoRail, a private operator active on the international market. It operates a daily passenger train linking Tallinn to Moscow and it is planning to re-open the Tallinn-St Petersburg connection in future.



The two first companies operate public service transport as defined by public authorities whereas AS GoRail operates exclusively international passenger transport outside of any public intervention (so-called *'free traffic'*). The public service market represents 99.9% of the market. There is no competition in the passenger market due to its size and the costs for the establishment and maintenance of new rail infrastructure, which constitutes a serious deterrent.

### 3. Definition of public service requirements

Public service obligations include:

- the obligation to operate services; i.e. to provide high-quality and continuous public transport services and, if necessary, additional services. This also includes an obligation to return the public transport vehicles and line facilities or routes which were transferred to the carrier on a contractual basis after the public transport services have been withdrawn;
- the obligation to carry; i.e. obligation to carry passengers under the terms and conditions and for tariffs prescribed by a contract of carriage;
- tariff obligations approved by state authorities.

Quality criteria play an important role in the negotiations. The Ministry of Economic Affairs and Communications requires a whole set of criteria, however, the operators generally add other criteria on a commercial basis to try to (re-)attract more passengers in their vehicles. The future renewal of the entire fleet foreseen for 2012 will certainly contribute to this objective.

### 4. Scope of public service transport by rail

Public service rail passenger transport may be provided for all national rail services (international traffic is not covered but currently represents 0.01%: daily connection from Tallinn to Moscow). The fact that almost the entire network is covered by public service transport is due to the size of the country.

### 5. Contract

There are currently three public service contracts concluded in Estonia between the Ministry of Economic Affairs and Communications and a railway undertaking: one contract concluded with AS Elektriarautee; and two contracts concluded with AS Edelarauttee (one for operations on Edelarauttee's own network and the other for operations on state owned network).

Each contract details:

- a clear description of the overall services required including the specific public service requirements together with the calculation of the distance to be travelled;
- the provision of public transport vehicles and line facilities for the provision of transport services and requirements concerning their use and their return to the authorities;
- the amount of compensation paid for public services requirements;
- the calculation method used to assess the level of compensation that will be granted;
- a penalty system;

- details about monitoring requirements and details about how and when the information must be submitted to the Ministry of Economic Affairs and Communications;
- provisions concerning the procedures for the expiry, termination and amendment of the contract;
- the period of validity of the contract;
- conditions for insuring passengers and property;
- other conditions where necessary.

The contracts are based on a mixture between public and private law (especially as regards liability issues).

## 6. Awarding of public service contracts

The Railway Act provides that public rail transport services must be awarded following a public tendering procedure (published and organised in conformity with national public procurement rules). However, given the state of the market for the time being, public service contracts are directly negotiated with the current operators. Further, the existence of different technical specifications on the network (electrified/non-electrified network) already limits the choice of competitors on the market. Finally, the size of the market is such that it is not likely to attract competition in the coming years.

## 7. Contract negotiation

When awarding its public service requirements, the Ministry of Economic Affairs and Communications enters into discussions with each of the operators for the related market. Negotiations are generally essentially centred on the amount of compensation for the services provided. As mentioned above, quality is also an issue of concern as passengers have been favouring the car to the train since the late 90's.

No '*cherry picking*' is allowed in order to maintain some financial security to the operators concerned. Finally, the operator bears limited risks. If there is a huge fluctuation as for example in fuel prices or passenger volumes, the public authority may then share the risk and provide additional compensation.

## 8. Calculation of level of compensation

The level of compensation is the result of the difference between the foreseen costs and revenues for the services required. In practice however, the Ministry of Economic Affairs and Communications informs the railway operator of the amount of public money available which forms the basis for the discussion on the effective range of services that can be provided for the foreseen amount of money. A '*reasonable profit*' is generally foreseen in each contract.

## 9. General payment conditions

The compensation of public service obligations is paid through the allocation of financial input. A *de facto* exclusivity on lines derives from the specific situation in Estonia; i.e. small network with different technical specifications (electrified network/ privately owned





network) etc. Payment is made on a monthly basis. The amounts received as public service compensation are not submitted to VAT and there are no treasury issues.

As mentioned above a penalty system is foreseen in case of failure by a railway undertaking to provide public rail transport services for passengers as required. It is punishable by a fine.

Finally, the state of the infrastructure has a direct impact on the quality of the services. When delays are imputable to the infrastructure, the infrastructure manager responsible will compensate the operator, which in turn will compensate passengers.

## 10. Duration of public service contract

The Public Transport Act provides that a public service contract with a carrier may be entered into for a term of up to ten years which is considered satisfactory as it allows operators to plan sufficiently in advance and to foresee additional quality criteria, etc.

## 11. Rolling stock

All rolling stock is owned by the companies. The entire fleet is over 30 years old. Tenders are launched to renew the entire fleet in 2012.

## 12. Involvement of the regulatory body or other authority

The regulatory body deals essentially with safety related issues relating to public service contracts.

The competition board is also involved in public service contracts as it issues activity licences.



## 1. Organisation of public service operations in Finland

The organisation of public services is regulated in Finland in the following pieces of legislation:

- Regulation 1191/69 as amended and Regulation 1370/2007;
- Act on Public Transport of 2009 (2009/869 of 13 November 2009). This act was adopted to accommodate some of the new requirements;
- Railway Act 8.4.2011/304;
- Act of Helsinki Metropolitan Council.

The Ministry of Transport and Communications has been appointed the sole responsible body for public services in the field of railways. In the Helsinki metropolitan area a municipal authority *Helsingin Seudun Liikenne* (Helsinki region transport, <http://www.hsl.fi/EN/Pages/default.aspx>) is responsible to arrange all public transport (urban and suburban). *Helsingin Seudun Liikenne* bears the commercial risks of rail services in that area.

The Finish domestic passenger market has been recently open to competition. As a result, the national monopoly granted to the VR Group has ended. Existing legislation is in the process of being adapted.

There are currently five basic public passenger transport contracts in Finland (described in greater detail below):

- public service contract covering long-distance and urban/suburban traffic concluded with the Ministry of Transport and Communications;
- a long-distance service agreement awarded by the Ministry of Transport and Communications;
- a service agreement covering night train service between the cities of Rovaniemi and Kemijärvi (train originates from Helsinki) awarded by the Ministry of Transport and Communications;
- the Helsinki urban area contract awarded by the Ministry of Transport and Communications;
- the Helsinki urban area commuter traffic contract.

## 2. Operators on the market for public passenger service transport

VR Group is a wholly state-owned company. It is currently the only operator in Finland. It therefore enjoys a legal exclusivity in domestic traffic and *de facto* exclusivity on all rail traffic.

VR Group is subject to state's general ownership strategy as a non-listed company. There is no plan of listing purposes or other privatisation of this company.



### 3. Definition of public service requirements

The definition of public service requirements is made by the Ministry of Transport and Communications and *Helsingin Seudun Liikenne* (HSL) for their respective contracts.

The definition of services differs from one contract to the other. They can be defined by:

- an identification code of each train included to the contract;
- volumes.

A performance scheme is generally included in each contract.

Quality criteria are included in each contract.

The long-distance contracts include punctuality as an important quality criterion. A bonus is given for good quality, a penalty for '*bad service*'<sup>1</sup>. In addition, the rolling stock used must be as agreed: in other words, VR Group cannot in principle change the type or model of passenger cars or trains without prior agreement from the Ministry of Transport and Communications. This can, however be done for a short period of time in case of need (breakdown, maintenance, etc).

The HSL contracts cover a number of different quality criteria agreed in advance.

### 4. Scope of public service transport by rail

The Helsinki metropolitan area is covered by a business contract. A large part of local and regional passenger transport services outside of the Helsinki metropolitan area are covered by public service obligations.

In long-distance passenger services, public service operations cover up to 1/3 of long-distance volumes.

### 5. Contract

Public service operations are organised through the conclusion of commercial law contracts negotiated between the parties being subject to Regulation 1191/69, Regulation 1370/2007 and additional national state-aid legislation.

The following services, based on 5 different contracts, fall under public service obligations:

- (Long-distance and urban/suburban) Public Service Agreement / Ministry of Transport and Communications:
  - for long-distance traffic the contract covers the years 2009-2019;
  - for suburban traffic (from Helsinki to Riihimäki, Lahti and Karjaa) the contract runs until 31 December 2017;
  - the Ministry of Transport and Communications defines - on a yearly basis and for each route - the minimum level of service which falls under public service obligations. This was done for the first time - in the context of this contract – during summer 2010;
  - in return VR is awarded exclusive rights on those parts of the network for which they are offering services (excluding the Helsinki metropolitan area which is covered by a separate contract).

<sup>1</sup> The notion of '*bad service*' is defined in the contract itself.



- Long-distance service agreement awarded by the Ministry of Transport and Communications:
  - current agreement in force covers the years 2007-2011;
  - the agreement lists those services (e.g. at a certain time of the day or at certain intervals) that should be offered on the specified parts of the networks. On a number of routes this covers all the daily services, e.g. Joensuu–Pieksämäki;
  - the compensation is based on an estimation of the loss that the covered service would cause if offered by VR, approximately EUR 30 million per year;
  - if the loss is greater than expected, the compensation will not increase. If VR loss is less than expected, VR is then obliged to return the surplus;
  - the contract does not include a profit.
- Kemijärvi night train service agreement awarded by the Ministry of Transport and Communications:
  - current agreement in force covers the years 2007-2011;
  - the agreement includes one daily night train service in both directions (Helsinki-) Rovaniemi-Kemijärvi with a car-carrying wagon operating once a week;
  - the agreement includes facilities in Kemijärvi;
  - the compensation is based on an estimation of the loss that the covered service would cause if offered by VR, approximately EUR 1.3 million per year (2011);
  - if the loss is greater than expected, the compensation will not increase. If VR loss is less than expected, VR is then obliged to return the surplus.

- The Helsinki urban area contract awarded by the Ministry of Transport and Communications:
  - this separate contract is agreed on a yearly basis. At the moment it covers Hki-Karjaa and Hki-Lahti (it also used to cover Hki-Riihimäki, which has now become a commercial traffic run by VR).
- Helsinki urban area commuter traffic:
  - compensation for services and rolling stock. Income from ticket sales go to the awarding authority. In actual facts, the service includes 4 different contracts:
    - rolling stock (a leasing contract);
    - maintenance;
    - operations, including driving, ticket sales and control, energy supply and track access;
    - station services (security and ticket sales).

(In the future the introduction of competition would probably mean that only the operations part of the agreement/contract would be offered for tendering.)

- The majority of the rolling stock used is owned by VR, the rest by a rolling stock company owned jointly by VR Group and the metropolitan area cities/municipalities. In the long run the 'old' rolling stock currently owned only by VR will be replaced by new rolling stock from the joint company. This will mean that with time the current maintenance agreement will also be replaced by the agreement for maintenance of the rolling stock owned by the joint company.

## 6. Awarding of public service contracts

Public service contracts are currently granted directly to the sole railway undertaking, VR Group Ltd, on the market.

There is currently no tendering obligation provided in the national legislation however it is expected that the next round of contracts will be awarded following some form of competition (tendering, concession, franchising or open access).

## 7. Contract negotiation

There is an agreed amount for compensation provided for public service. This amount is defined in advance and it meets the other requirements stated in the European Court of Justice ruling on the Altmark-case with regard to the level of compensation and with Regulation 1370/2007. A performance scheme is also applied.

In practice, the railway undertaking submits to the ministry an offer for the public services that describes the cost it will incur and the part that will not be covered by passenger revenue generated through the operation of the service.

The level of railway services bought depends on state budget available for this purpose for road and rail. It is therefore an important political issue. Due to scarcity of money there is a real negotiation process on the level of public services offered and the amount of services bought by the state.

Based on the contract, the ministry buys services up to the cost and reasonable margin not covered by the estimated passenger revenues. This single contract covers the whole network, and services are defined by an identification code of each train included into the contract.

In the first contract mentioned above, compensation is granted in the form of exclusive rights. This means that the financial risk is born by VR. If, for example, the ministry sets the minimum level or amount of public services higher than what the rest of the commercial traffic is able to sustain, the financial risk is born by VR. Or if, inversely, passenger volumes go down and VR, again, cannot cover losses incurred by public service obligation through income from their commercial traffic, it will nevertheless have to bear the risks.

In the second agreement awarded by the ministry, it is stated that the compensation is fixed and it cannot be increased in case of higher losses than expected. Therefore the financial risk is born - again - by VR.

The respective authorities however bear the risk in the other contracts.

## 8. Calculation of the level of compensation

In public service contracts there is an agreed amount for compensation which is defined in advance. Therefore all the revenues and the cost incurred and reasonable margins are reflected in the agreed price.

## 9. General payment conditions

Payment is done on a yearly basis with adaptations of the level of compensation for the two contracts where the risk is born by the awarding authority.

All contracts contain penalty schemes. In the HSL metropolitan area, public service contract penalties are foreseen for cancelled services, if the operator uses a lower number of passenger cars than agreed, as well as when cleaning, commercial appearance and technical condition do not meet the quality criteria agreed.

Delays are taken into account in public service contracts. In urban/suburban traffic, i.e. the contract awarded by the HSL, passengers can rely on national legislation giving them the right to recover, from the operator, expenses incurred by delays. This right applies to delays from around 20 minutes (and in principle covers all traffic and is applied in parallel with the passenger rights regulation for long-distance services).

In case of delays, the operator is in principle always liable, but could try to get redress through other means based on national legislation. VR contract with the infrastructure manager does not really specify situations where the infrastructure manager would be liable to compensate the operator for expenses it incurs (e.g. compensation to passengers for delays) due to delays caused by infrastructure failure. Delays due to severe weather conditions are compensated.

## 10. Duration of public service contract

It is up to the parties to determine the duration of public service contracts. Contract duration is in average 10 years. This length is considered satisfactory as it allows the operator to improve its services and make long term planning.



## 11. Rolling stock

Rolling stock for long-distance traffic is owned by the operator. In the metropolitan area traffic the majority of the rolling stock is owned by VR Group, the rest is owned by a joint VR Group and HSL rolling stock company. A majority of the fleet is older than 30 years. It is partially being overhauled through the contracts, without any EU funding.

## 12. Involvement of the regulatory body or other authority

Beyond its powers foreseen in existing legislation, the regulatory body is not involved in the provision of public service transport. The Consumer Rights Agency is the competent authority for the passenger rights regulation.



## 1. Organisation of public service operations in France

The organisation of regional rail passenger transport is regulated in France by the Law LOTI<sup>1</sup> and the Law on Solidarity and Urban Renewal<sup>2</sup>, adopted in 2000, and today integrated together with all railway legislation and pieces of regulation into the Transport Code (*Code des Transports*).

All competencies with regard to the definition, negotiation and financing of public service obligations are transferred to:

- the regional authorities (*Conseils régionaux*) in the field of regional rail passenger transport;
- a public body called *Syndicat des Transports d'Ile de France* (STIF) in the field of rail passenger transport in the Greater Paris area (Paris, suburb and region Ile de France), which includes, since 1 July 2005, representatives of the region (*Conseil régional d'Ile de France*) and of the eight Ile-de-France local authorities (*Départements*) including the City of Paris. The region takes on the chairmanship of the STIF.

STIF and the regions are denominated 'organizational authorities' (*Autorités Organisatrices*), which are the equivalent of the competent authorities mentioned in the public service regulation.

Moreover, since 1 January 2010, the French state has more formally become the competent authority for the intercity conventional trains (average and long-distance) and decided to award a public service contract on this specific leg.

23 contracts are thus currently awarded in France for public rail passenger service transport, one per region, one by the STIF, one by the French state and one by the competent authority of Corsica.

Competent authorities finance these public service operations through their own budget, which aggregates:

- a global envelope from the national budget (heritage of the state public service compensation for rail now decentralised since 2002);
- their own envelope rose either through their own revenues or through debts.

## 2. Operators on the market for public passenger service transport

There is currently only one main operator on the French rail market and the regions currently have a **legal obligation** to negotiate public service contracts with this specific operator: SNCF.

<sup>1</sup> *Loi d'Orientation des Transport Intérieurs (LOTI)* of 30 December 1982.

<sup>2</sup> *Loi Solidarité et Renouveau Urbain*, n°2000-1208 of 13 December 2000.



Very few private railway companies, such as Veolia Transport, operate passenger regional rail services on the French territory either:

- as a **subcontractor** of SNCF, for operations on the French National Network (*Réseau Ferré National – RFN*);
- or directly with local authorities, under public service contracts, for operations **outside of the French National Network** (*Réseau Ferré National*).

These operations remain marginal as the domestic rail passenger market is not opened to competition by virtue of the LOTI law. The scope of the law is however currently intensively discussed with a view to fully align it with Regulation 1370/2007. Some changes in this regard have already taken place with, in particular, the decision to open the light rail market to competition in 2039, in line with Regulation 1370/2007.

Intermodal competition is also growing with the development of urban and *'inter-departmental'* road services. In other words, French public authorities have already taken political and legal steps to open up two out of the three sectors of activity covered by the European Union law on public services. The opening of the last sector - public service rail transport - is in the process of being discussed. The French government has launched a wide process of discussion in April 2009, in order to study the conditions through which regulated competition on regional rail traffic could be introduced in France. French Senator Francis Grignon has been charged by the Minister of Transport to address the issue while consulting all stakeholders (the French state, competent authorities, UTP, SNCF, Veolia, the infrastructure manager RFF, consumer associations, the French Economic, Social and Environmental Council, etc.) and to submit a report to the government, both on social and technical aspects.

This report was published in May 2011 with precise recommendations on all aspects (common working rules for the sector; transfer of personnel from one operator to the other when a tender is lost; access to train sets; maintenance and stations; distribution and ticketing, etc.).

The government has asked for a large stakeholder debate at national level by the beginning of 2012 (so-called *'Assises du ferroviaire'* covering the aspect of competition but also governance between railway undertakings and infrastructure managers and financing of the rail system for instance). It has also required the French Economic, Social and Environmental Committee to draft a formal report on both technical and social aspects relating to the operation of public service rail passenger traffics. Finally, it has asked a dedicated high level group to specify legal provisions on social matters<sup>3</sup>.

The debate on the introduction of regulated competition in France is therefore underway. The reform of the current legal system will therefore depend upon the outcome of the follow up to the Grignon report, in connection with parallel discussions on the EU public service regulation.

In conformity with EU legislation, the international passenger market is opened to competition since 2010. However, no further competition has developed on the territory (cabotage) further to the opening of international passenger traffic to competition in 2010.

<sup>3</sup> SNCF staff working time and conditions are laid down in a French state regulation (décret/1999), based on a law dating back to 1940. New entrants are however not in the scope of the 1940 law, and therefore may define working rules under social dialogue, which would lead to a different regulation on the French market than the current piece of regulation SNCF has to abide by. As a result, if this situation is not dealt with, there would be two different legal and regulatory conditions on working conditions on the same rail market. This could lead to discriminatory situations likely to have a direct impact on competition, all the more so as new entrants and SNCF would have different economies on working conditions which are not the result of their management skills but of regulation. Choice during tenders on price would then be twisted by this situation, instead of real value for money criteria on the operators' skills.



### 3. Definition of public service requirements

The definition of public service obligations varies from a regional authority to another, depending upon its specific needs and contractual specifications. However, such obligations can be generally categorised as follow:

- characteristics of servicing;
- tariffs<sup>4</sup>, in consistency with the national tariff system;
- service quality;
- client information.

Common quality criteria currently included in such contracts are:

- punctuality;
- cleanliness and comfort of coaches;
- effective circulation of foreseen trains;
- quality of services in train stations;
- client information.

The quality of services varies from one region to the other, depending upon the specificities required by the competent authority. SNCF nevertheless monitors the general levels of quality in a constant manner with a view to maintain and enhance it permanently, beyond what is requested in the contracts. For example, SNCF offers partial repayment of the fare if and when responsible for a delay exceeding 30 minutes.

<sup>4</sup> Regional tariffs, including tariff reductions for social reasons - so-called social tariffs, which apply to the entirety of national passenger services (regional and long-distance services) - are defined on a national basis to allow ticketing throughout France. In addition, the regions themselves define specific social tariffs on their territory, and, sometimes, specific commercial offers or tariffs.

It should however be noted that infrastructure maintenance (whether scheduled or unscheduled) currently affects the quality of service. Moreover, the poor state of infrastructure in more rural areas has consequences on the general speed of trains.

## 4. Scope of public service transport by rail

Public service contracts are granted for regional services throughout the territory. With roughly EUR 7 billion in 2009, rail public services represent 46% of the turnover generated by SNCF rail passenger services, 11 000 trains per day and 4 million passengers per day. Traffic has been growing by 40% on average in the regions since 2002, and by 27% in Ile de France.

Veolia Transport operates marginal lines (one in Brittany and one in the Provence Alpes Cote d'Azur region).

## 5. Contract

Competent authorities and the railway operator – SNCF – are linked by a contract similar to a concession. It is a contract governed by public law on the basis of national regulations. Since 2002, contracts have all been awarded twice, with a renewal procedure allowing the authorities and SNCF to renegotiate contractual requirements.

Each contract between SNCF and competent authorities specifies which services are subcontracted by SNCF if any (the rail services provided by Veolia Transport in the past were an example of such subcontracted services).

In 2010, 20 regional contracts concluded between SNCF and the respective regions covering regional transport were in force. The contract concluded with the Alsace region is based on the new EU Regulation 1370/2007. All other contracts are and remain based on the former EC regulation until their termination which varies from one contract to another.

End of contract	Number of contracts
2018	2
2017	1
2016	5
2015	1
2014	5
2013	3
2012	2
2011	3

It should however be noted that all of these contracts were concluded in line with the spirit of the 2007 EU regulation.

The competent authority determines the quality levels, ticket prices and train schedules but the operator has the possibility to suggest improvements or propose innovative options. However, the competent authority remains free to take these proposals on board.



## 6. Awarding of public service contracts

As mentioned above, there is currently a legal obligation for the competent authority to negotiate all public service contracts with SNCF (Loti law). Public service rail transport contracts are therefore currently directly negotiated with SNCF. Depending upon the outcome of the discussions launched further to the Grignon Report, the situation may change in the future.

## 7. Contract negotiation

The level of compensation of public service operations varies from region to region. In practice, the competent authority determines the level of public service obligations for all the regional lines within its territory. SNCF proposes a service covering the public service obligations. The competent authority compensates costs generated by any public service obligation that are not covered by revenues.

Current common quality criteria included in such contracts include:

- punctuality criteria;
- cleanliness and comfort of coaches;
- effective circulation of foreseen trains;
- quality of services in train stations;
- client information.

If there are changes in the conditions of application of the contract, the conditions can be re-negotiated by the parties.

## 8. Calculation of the level of compensation

The mechanism applied to compensation levels is determined in advance.

The level of compensation is the result of the difference between the foreseen costs and revenues.

## 9. General payment conditions

All payments are based on an SNCF invoice.

All receipts and compensations are submitted to a 5.5% VAT, which is then recovered by SNCF.

## 10. Duration of public service contract

Currently, the duration of contracts concluded for the provision of public service transport in France varies between 5 and 10 years. The average duration is of about 8 years.

## 11. Rolling stock

Rolling stock has been financed either by SNCF or, in most cases today, by the competent authorities (sometimes via leasing companies).

With a view to the opening up of regional traffic outside Paris (which is the scope of the Grignon report) and according to contractual specifications (with justified financial compensation – depending on each case) all types of rolling stock could be placed at the disposal of the region.

Currently, 27% of the fleet is more than 30 years old and 35% is under 10 years old. However, recent orders for renewal have been placed. The renewal of the fleet is done within the context of the public service contract.

## 12. Involvement of the regulatory body or other authority

The regulatory body is in charge of ensuring that non-discriminatory access to the market is in place, and active. In application of Directive 2007/58, the regulatory body is in charge of assessing whether the economic equilibrium of public service contracts is likely to be affected by any potential international passenger traffic including cabotage.



## 1. Organisation of public service operations in Germany

The organisation of public services is regulated in Germany in the following pieces of legislation:

- Regulation 1370/2007;
- *Allgemeines Eisenbahngesetz (AEG)*;
- *Regionalisierungsgesetz des Bundes*;
- *Regionalisierungsgesetze der Länder*;
- Regulation 1191/69;
- *Vergabeverordnung*.

In Germany, public services are organised in a decentralised manner since 1996. Regional rail passenger transport services are ordered by the competent contracting authority (*Aufgabenträger*) in the individual federal states (*Länder*) on the basis of discretionary awards or tender procedures, with a significant increase in recent years. The *Länder* and other decentralised authorities are exclusively competent to determine public service obligations and to conclude contracts with railway operators. Therefore the German Ministry of Transport is not involved in the conclusion of those contracts. The ministry will be consulted, if any issues of principle arise. It is responsible to propose the legal frame, which parliament is then to decide upon.

Some decentralised authorities may keep the entirety of the responsibilities for public service contracts in their hands, while others may decentralise even further such tasks by granting them partially or totally to local authorities.

Today, Germany has one of the most liberalized rail passenger transport markets in Europe. The Railway Reform of 1994 opened the access of the rail network to third parties. The rail passenger transport market is open to foreign railway undertakings on the basis of reciprocity and railway undertakings licensed in Germany have open access rights to the rail passenger transport market.

Public service contracts for transport services are awarded on a non-exclusive basis, so that in theory it is possible to offer purely commercial transports in competition with those services which are operated under a public service contract (*'cherry picking'* principle).

## 2. Operators on the market for public passenger service transport

DB AG is a private stock company wholly owned by the federal state. The state monopoly granted to the German railways came to an end with the privatisation of Deutsche Bundesbahn and Deutsche Reichsbahn on 1 January 1994 (Railway Reform). In a second step in 1996, the so-called *Regionalisierung* gave to regional authorities the competence to define the scope of public services necessary and to award contracts. Furthermore, regional authorities were granted financial support with this *Regionalisierungsgesetz* for such public service operations.



Competitors have entered the German market essentially after the Railway Reform (even though some were already present beforehand but this was marginal at the time) and are running a certain number of lines.

Some of the most important competitors of DB Regio include Veolia Transport, Nederlandse Spoorwegen (NS), Schweizerische Bundesbahnen (SBB/CFF/FFS), Société Nationale des Chemins de Fer Français (SNCF), Danske Statsbaner (DSB) and Arriva/Netinera. DB Regio is the largest operator on the market for public service operations. The volume of the regional railway market was about 634 million train-kilometres in 2010<sup>1</sup>. The market share of competitors of DB Regio was of 21.6% (train-kilometres) in 2010.

Veolia Transport and Arriva/Netinera in particular held approximately respectively a 7% and 3.3% market share in regional passenger transport in Germany in 2010. SBB/CFF/FFS, DSB (Vias), SNCF (Kéolis) and NS (Abellio) operate more marginal services (Kéolis: 1.8%; SBB/CFF/FFS: 0.3%; Abellio: 0.8% market share in regional passenger transport).

### 3. Definition of public service requirements

The decentralised authorities are sole responsible for the definition of public service obligations. Generally, such obligations consist in:

- tariff obligations (usually for gross cost contracts);
- service frequency requirements;
- quality, especially punctuality;
- rolling stock characteristics;
- marketing;
- train staff.

It should however be noted that the quality of the infrastructure is affecting the overall quality of public service traffic – predominantly with regard to punctuality and speed. This may have a serious consequence on the contract as the EU Passenger Rights Regulation 1371/2007 applies in Germany to public service transport. Failure on the infrastructure side falls into the risk sphere of the railway undertaking. They will therefore have to bear the consequences of that delay, in accordance with the provisions of the EU passenger rights regulation.

### 4. Scope of public service transport by rail

The entirety of urban, suburban, regional and interregional rail traffic in Germany is undertaken through public service contracts concluded with the public authority responsible for the geographic territory concerned.

Public service rail transport represented in 2010 approximately 47 billion passenger-kilometres. All other rail passenger traffic (long-distance and international transport) does not benefit from public service contracts.

<sup>1</sup> DB Competition Report, 2010.



## 5. Contract

Public service operations are organised through the conclusion of contracts, with the competent authorities which are responsible for the organisation of the award procedure and the definition of required public service obligations.

There is no general standard for the contract of public service obligations. Each *Aufgabenträger* has its own contract design which has to comply with the legal requirements of EU law (Regulation 1191/69 and, since December, 2009 Regulation 1370/2007) and German public law.

In some cases, the contract concluded with the *Aufgabenträger* will relate to the entirety of public service lines in the relevant area. However, in most cases the contracts cover a bunch of lines. Currently, some *Aufgabenträger* are making attempts at tendering public service contracts for smaller portions of the geographic area in their competence, thereby enhancing competition on these contracts.

Contracts running in 2010 in Germany are based either on the former regime (Regulation 1191/69) or on the new one (Regulation 1370/2007) depending upon when they were concluded.

## 6. Awarding of public service contracts

The *Aufgabenträger* can either freely negotiate public service contracts or place them through competitive tenders.

However, if the authority is satisfied with the quality provided by the operator, the *Land* has the possibility to extend the duration of the contract for a limited period of time, without any tendering procedure. Examples have occurred in the past.





A flood of contracts up for award is expected over the next three to five years. In 2010, DB Regio (together with its subsidiaries) had to cope with an average of around 14 competitive award procedures simultaneously and the situation is expected to be similar in 2011. In 2010, the ordering authorities awarded contracts for approximately 62 million train-kilometres, of which DB Regio won the contracts for 38.5 million train-kilometres, a share of 62%, exclusively in competitive procedures. The three transport contracts which were awarded directly in 2009 all went to competitors of DG Regio<sup>2</sup>.

## 7. Contract negotiation

The level of compensation of public service obligations varies from contract to contract, service to service according to the contract. Each public authority will define its priorities and apply them to all operators within its geographic scope of competence.

The price incurred for public service contracts is compensated by direct financial influx. Compensation levels must be clearly determined in advance.

In practice, the railway undertaking submits to the railway authority an offer for the public service operations requested. Often, it is provided in the contract that the revenue generated through the operation of the service remains with the railway undertaking (so-called '*net cost contract*'). The railway undertaking therefore takes the risk of the revenues, which can be at the same time an opportunity for the railway undertaking.

In other cases, the *Aufgabenträger* can also decide to conclude so-called '*gross cost contracts*', i.e. contracts whereby all revenues generated by the services are given back to the authority by the railway operator. In such case, the contract is paid through a fixed amount agreed upon conclusion of the contract.

In some cases, the public authority can consider that a '*learning process*' is necessary. In such case, it concludes first a '*gross cost contract*' for a few years during which both, the railway company and the authority can assess the reality of the costs of the transport services at stake. Thereafter, based on the experience gained, the authority switches to a '*net cost contract*'.

Due to the necessity for continuity of transport services, it may occur that the railway undertaking continues to provide the public service obligations after the initial contract has come to an end and before the new contract has been signed.

## 8. Calculation of the level of compensation

Compensations are determined in the offer proposed and on the contract signed after a competitive tendering.

## 9. General payment conditions

Payment is made by regular instalments at determined intervals (usually monthly).

A yearly monitoring system is instituted whereby the parties to the contract find out the achievements made during the past year. This includes a monitoring of the quality target met by the railway undertaking. A system of bonus/penalty exists within the contract, whereby

<sup>2</sup> See DB Competition Report 2010.



the railway undertaking can obtain premiums or be sanctioned depending upon whether it has managed to reach quality targets laid down in advance in the contracts. Quality targets can be measured either upon objective criteria or customer surveys.

## 10. Duration of public service contract

The duration of public service contracts varies between 2 to 12 years. In general terms, their duration is more or less of 10/12 years as the railway operator is required to make investments (i.e.: provide its own rolling stock).

## 11. Rolling stock

Rolling stock used in public service contracts can be owned by the operator but can also be owned by the *Land* and/or leased by a rolling stock leasing company. However, the awarding authority may require the rolling stock to be tailored to the services provided (colour and logo of the rolling stock being specified by the awarding authority, etc).

## 12 Involvement of the regulatory body or other authority

The rail regulator has competence on specific points with regard to public service operations:

- access fees to stations;
- elements of train access fees to infrastructure (*'regional factor'*);
- information and coordination of construction measures (track works especially);
- market monitoring.

# GREAT BRITAIN (ENGLAND, SCOTLAND AND WALES)



## 1. Organisation of public service operations in Great Britain

Public services are organised in Great Britain by the Department for Transport (DfT) which took over this role from the Strategic Rail Authority (SRA) which was abolished in 2005. There are two exceptions to this:

- in Scotland the Scottish Executive has a decision making role for Scotrail operations;
- two regional authorities award tenders (concessions) in England (London and Merseyside).

The state authorities have set up the following institutions to take care of the operation of rail services:

- **The Department for Transport**, which:
  - defines the nation's (unified) Strategic Policy for Rail e.g. investment, safety targets, commercial and regulated fares policy;
  - implements the government's policies;
  - specifies the required outputs from the rail network and its operation;
  - provides funding for franchises and grants to support infrastructure maintenance and renewal;
  - awards and manages franchises;
  - sponsors improvements and enhancements.
- **The Office of Rail Regulation (ORR)**, which has a dual function both as economic and safety regulator:
  - determines the funding required, within overall limits set by DfT (i.e. Statement of Funds Available), including the level of track access charges commensurate with such funding (which may include a level of grant aid) for the infrastructure supplier (Network Rail) to deliver the outputs specified by the DfT;
  - oversees the track, station and depot access regime to ensure that Network Rail or any other service provider does not abuse its monopoly power with respect firstly to the train operators in general and secondly by unequal treatment between train operators (e.g. in granting access rights or in train regulation etc.);
  - determines the policy on moderation of competition rules;
  - monitors and has jurisdiction regarding breaches of competition law in relation to rail;
  - manages licences;
  - oversees and enforces safety legislation;
  - awards 'Safety Cases'.

The ORR's main powers and functions are derived from the Railway Acts of 1993 (including subsequent amendments) and 2005 and the Health & Safety at Work Act 1974 for which they are the enforcing authority.





## 2. Operators on the market for public passenger service transport

In Great Britain train operations, recent statistics show that the franchised operations carried approximately 53.3 billion passenger-kilometres whilst open access operators carried around 0.4 billion passenger-kilometres, i.e. respective share of 99.3% and 0.7%.

In 2011, there were 21 domestic passenger operators in the Great Britain passenger rail market of which 19 operate the 17 Franchises and 2 concessions.

**The franchised/concession operators are:** Arriva Trains Wales, c2c Rail, Chiltern Railways, CrossCountry, East Coast, East Midlands Trains, First Capital Connect, First Great Western, First Scotrail, First TransPennine Express, LondonMidland, London Overground Rail Operations, Merseyrail, National Express East Anglia, Northern, Southeastern, South West Trains, Southern.

**The 'open access' operators presently are:** First Hull Trains, Grand Central and Heathrow Express.

In Great Britain, open access is permissible as well as competition for the market through the Great Britain franchising system. The latter is broadly equivalent to the '*continental*' public service system for which subsidies can be payable but a franchise can also run on a commercial footing, whilst still being subject to some public service obligations, within its portfolio of operations and pay a premia to the government/franchising authority – see below.

Franchised operations are split between those which pay a premium to government or receive subsidy. At present that split is about 1/3 - 2/3 with those receiving subsidy carrying 45% of passenger-km. However, it should be noted that a direct grant payment is made from government to the infrastructure manager which leads to lower access charges and therefore higher premia from or lower subsidy to railway undertakings.

Although originally provided for, open-access passenger services are very limited and almost all of the rail passenger transport is organised through franchises for which public service obligations have been imposed. This is because on the routes where open-access operators would wish to operate services, capacity constraints have led to the need to prioritise the use of capacity. As there has only been enough capacity generally to satisfy the rights to access of existing franchises and freight operators, there has only been a limited possibility of open access to passenger operators. The regulator's policy has been to limit abstraction of demand by such open-access services where this affects franchised services.

### 3. Definition of public service requirements

The public service obligations generally imposed by the DfT include:

- service frequencies;
- service duration (first train – last train);
- stopping patterns (including maximum times between stations);
- maximum tariff limitations (usually in the form of limits on the rise of the weighted 'basket' of fares linked to the inflation rate).

Quality criteria form an important part of the requirements imposed by the awarding authority. For example, for franchises, the following criteria will be required:

- service performance;
- queuing times (ticket offices);
- opening of ticket offices;
- information;
- capacity of train services;
- franchises have bespoke service quality standards and are required to have a service quality management and audit system and report against the standards.

Concessions have similar quality requirements as well as very specific service quality and audit regimes.

It should be noted that some qualitative items (inter-available/through ticketing; impartial retailing etc.) are imposed through licence conditions.

### 4. Scope of public service transport by rail

All passenger traffic throughout the country is likely to be covered by way of a franchising system. The franchises relate to heavy rail transport only rather than metro or light rail services. Franchises actually cover the majority of operations: there are currently 17 Franchises awarded throughout the country. Two urban areas (London and Merseyside) are covered by concessions.

In 2010, no competition had yet developed through cabotage on international passenger services since the opening of this market largely because of difficulty in securing paths for competing passenger services through the Channel Tunnel.



## 5. Contract

Public service operations in Great Britain are managed through the granting of franchises. Currently all franchises were awarded by means of a competitive tendering procedure with the exception of one contract (East Coast) which was awarded directly to a government subsidiary following the default by the preceding franchisee. Whilst the majority of franchised contracts, or concessions for rail were awarded prior to the entry into force of Regulation (EC) 1370/2007 they broadly comply with the spirit of the conditions laid out in the regulation (e.g. definition of service obligations; duration of contracts; expression of quality standards in tenders; duration).

The DfT maintains a standard (albeit subject to policy changes) template franchise agreement that is used as a base each time a specific franchise is granted to a railway undertaking. The terms and conditions of the standard franchise agreement and individual agreements with each railway undertaking are approved by the Office of Rail Regulation.

Within the constraints of the prevailing standard template and templated track access agreement, the franchise agreements are negotiated between the DfT and the railway undertaking that will have been selected through a public tendering procedure. In practice, the railway undertaking agrees with the DfT the conditions and price according to which it will be running the service. These conditions will be based on those already tightly defined in the tender initially submitted to the DfT authority during the competition process.

Whilst the tendering is open to all, the commercial content of the terms and conditions agreed with the winner remain confidential to the DfT although other elements of the franchise are published on the public register.

## 6. Awarding of public service contracts

All franchises are granted through a public tendering procedure with one direct award for the East Coast franchise to a government subsidiary pending a new competitive tendering process.

As a principle, there is intense competition between bidders for the franchises. All bidders therefore attempt at submitting the most advantageous bid providing for value for money and efficiency in the overall operation of the services required.

There is, however, limited public transparency on the process by which the award of the franchise to a preferred bidder takes place in practice. Each franchise “bid” remains confidential between the bidder and the DfT and the DfT is not required to make public its records of decision making or negotiations. However, consideration is being given to the possibility of enhanced quality deliverables as criteria for award in the future rather than the overall focus on cost at present.

## 7. Contract negotiation

Compensation for the public service obligations imposed is provided through financial changes over the franchise period. This will vary over time and may be positive or negative (e.g. in demand) depending upon the balance of services

The level of compensation of public service operations varies from franchise to franchise. e.g. franchises which operate a high level of commercially viable (Inter-City or heavily-used commuter type) services will tend to attract an increasing premium payment from the franchisee to the government over the franchise period whereas franchises where public service obligations predominate (regional or rural services) the financial profile will tend towards one of declining subsidies.



Franchises that are granted for a package of services that are by definition loss-making will therefore enjoy a greater degree of protection through the regulatory body's '*primarily abstractive*' test for any competing open-access services. In any case, because of the loss-making nature of these services, the rights will be of little overall value and of little commercial interest to open-access operators; but application of a '*primarily abstractive test*' is still necessary to prevent '*cherry picking*' of those journeys in the service package that can be assessed to be profitable for other '*commercial*' operators. The test will assess the impact of any open-access services on the equilibrium of the franchise (PSO contract) and on the level of state financial compensation.

Franchises that are granted for a package of services in which there exists a potential for profit and thus will be valued much more highly in revenue generation terms will therefore be prepared to pay significant and usually increasing premiums to the state for the award of the contract.

In general the Great Britain Inter City and long-distance regional franchises tend to command a premium, London commuter services are now moving towards premium payment or at least are breaking even whilst regional and rural services tend to require a subsidy.

All franchises benefit from a specific fiscal regime whereby the financial compensation granted by national authorities is exempt from VAT. Where the franchise purchases goods or services that include VAT, they may reclaim the VAT from the government as is the case with other VAT-registered businesses.



## 8. Calculation of the level of compensation

In financial terms the Great Britain situation has a mix of models. The Great Britain franchise process does not directly specify a level of public service '*compensation*'. Individual franchises are structured on the basis of bids for either a level of compensation through a subsidy payment or a situation where railway undertakings pay a premium to the authority.

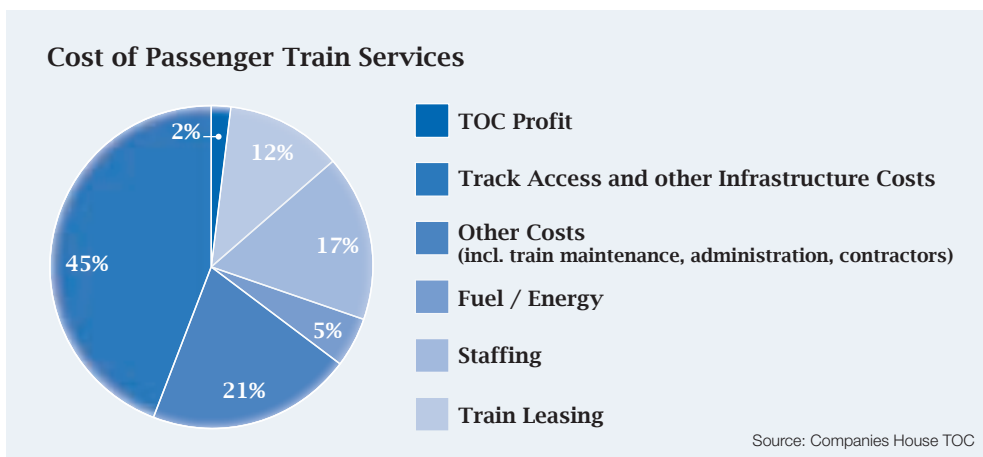
In many cases, the terms of the franchise will, over time, move from a subsidy payment to the railway undertaking to a premium payment from the railway operator to government over the period of the franchise.

In most cases franchisees take a level of revenue risk which is moderated/protected through what are termed '*cap and collar*' arrangements to protect railway undertakings against significant falls in demand/revenue levels and/or to allow a degree of '*profit sharing*' where growth/revenue levels exceed predictions. Historically, '*Cost plus*' franchise contracts have also been put in place in exceptional circumstances with the railway undertaking working on a management contract basis. In the two concession models the awarding authority takes on most of the revenue risk based on a gross cost contract.

There is a degree of protection on access rights in order to deliver the franchise contract but open-access operations are allowed where these are deemed by the regulatory body not to be primarily abstractive. Historically, at the advent of the franchise system, there was a degree of protection on abstractive competition through what was termed '*moderation of competition*' (MOC). This placed limitations on some open-access operations in the past. The present situation is that the application of MOC has now all but ceased and the test is now based on assessing whether a new access path is '*primarily abstractive*' when compared against existing paths.

It should be pointed out that in the Great Britain model there is no award of '*exclusive rights*' as defined in Article 2 (f) of EC Regulation 1370/2007. Theoretically, given available capacity and the open-access request not being deemed as '*primarily abstractive*' from existing franchised services, there is the ability to run services on the same route(s). In other words '*cherry picking*' is in theory possible, however the combination of restrictions in capacity and the '*primarily abstractive*' test still limits the ability for this to occur.

The Great Britain model for franchised operations is based on an '*all in*' fee. Therefore, no specific breakdown is provided. However a modelled breakdown for all of the train operating companies added together is as follows:





The more general benefit of the Great Britain style tendering system is that competitive tendering (on an all-in price) is the best way to ensure the correct and best value price is put on a public service contract, whatever its terms.

## 9. General payment conditions

The payment conditions are agreed in advance and are included in the franchise agreement. As a principle, payment is made each four weeks. It is based on the subsidy/premium profile agreed in the franchise agreement including the adjustments for performance etc. There are generally speaking no specific problems with payment. However, the franchise is also supported by a performance bond and cash liquidity requirements which can be forfeited if the franchisee runs into difficulty.

If the overall contract delivery is below standard there is an enforcement process which can result in the operator being '*called in*' to explain any reasons for the poor performance. If this continues, penalties could be applied but, in general, these normally take the form of the defaulting operator committing to a number of improvements or investments in part as compensation to passengers for the poor performance.

Thus the contractual process works on a basis of:

- identification of breach;
- '*call in*' (identification of remedy, prevention in future, etc.);
- further breaches normally accompanied by a requirement for compensation (or further, additional investment at the cost of the franchisee);
- the final remedy is suspension/termination of franchise.

Therefore, franchisees found to be in breach of their conditions or defaulting on the prescribed levels of performance are required to mitigate the effects and commit to provide additional passenger benefits (e.g. additional investment in passenger-facing areas) by way of compensation. Failure to improve may result in the loss of the franchise/concession.

For franchises with little or no public service obligation element, it is assumed that good or poor performance will be reflected in the franchisee's passenger revenue.

In the event a railway company really does not achieve its expectations and suffers important losses, the DfT has three options:

- either to take the franchise back and put it through a new tendering procedure;
- renegotiate the payment profile (i.e. provide additional funding) to take account of the fact that the assumptions underpinning the initial franchise agreement are no longer valid;
- put the franchise on a '*life support*' (a '*cost plus*' x% funding regime or '*management contract*') until it is due to be re-tendered.

In practice, both the first and the third option have been evident where franchises fail or do not deliver. Whilst option 1 cannot usually be enacted quickly (the bidding and award process can take up to 2 years) the ability of a state-managed body (Directly Operated Railways) to immediately run the service until the franchise process is concluded strengthens the position of the competent authority. Under option 2 the incumbent franchise is in a stronger position because they face no competition from those other organizations who may have bid less optimistically in competition for the franchise.



Finally, the Great Britain model has a passenger compensation regime in place as part of the franchise/concession which provides for passenger compensation in the event of excessive delays greater than the tiered thresholds as set out in the franchise agreement. These vary by franchise and are publicised in a specific *'Passenger Charter'* applicable to that operator. In general the Great Britain scheme is more generous to passengers than the provisions set out in the EU passenger rights regulation.

For the passenger, delays caused by infrastructure problems are compensated exactly the same as delays due to the operator. For the more recently agreed franchises, compensation is payable even for delays caused by third parties; for older franchises the operator is excused. In all cases the passenger is compensated by the railway undertaking (railway undertakings).

For the management of operational performance between railway undertakings and the infrastructure manager, there is an *'internal'* performance regime (between railway undertakings and the infrastructure manager) which attributes delay causation and, based on attribution, the level of delay, route affected (i.e. level of passenger numbers), etc. the system will calculate any cash flows due to or from the parties (negative/positive). This process is contracted through a specific section in the track access contract and its application is commonly known as the *'star model'* as the management and cash flows are all carried out by and via the infrastructure manager. There are no bilateral performance contracts between railway undertakings (e.g. if railway operator 'a' delays railway operator 'b', a cash flow will go from operator 'a' via the infrastructure manager to operator 'b').



## 10. Duration of public service contract

A franchise is generally concluded for the duration of seven years but some longer contracts exist under previous franchising regimes. New government policy is to award contracts on a longer basis. These longer contracts, where they exist, have allowed strategic investment and based on this, ATOC wishes to see contracts of 15 - 20 years duration.

## 11. Rolling stock

Franchised passenger operations are operated by vehicles owned by leasing companies with some minor exceptions. The TfL London Overground concession operation was based on the provision of the majority of rolling stock directly purchased by the authority but this has now been transferred to a leasing arrangement via an investment bank with the authority as lessee.

Rolling stock funded through private finance and leased by railway undertakings will therefore be part of the franchise's overall business package. However, the more recent proposals for a new fleet of InterCity rolling stock (InterCity Express Programme – IEP) have been managed by the state (Department for Transport) which will also fund the programme via a leasing arrangement.

Approximately 1.6% of the total rolling stock fleet used for public service operations is 30 years old or above, while approximately 35% is less than 10 years old.

## 12 Involvement of the regulatory body or other authority

The rail regulator is involved in the overall franchise system but only in terms of some related licensing conditions (e.g. mandating provision of 'network' benefits, ticket and settlement agreements etc. These relate to inter-available tickets, impartial retailing etc.). The regulator does not play a part in the award of the public service contract itself - that is within the sole control of the governmental authority (DfT; Scottish Ministers) or the concession authority (TfL; Merseyside).

In a selected number of large conurbations outside London the local transport authority, via their executive, did have a limited degree of involvement in the ability to support services (top-up) but this has now ceased except in specific cases where they may fund infrastructure improvements and service improvements via DfT. However, these authorities are still active in promoting local multi-modal fares and funding concessionary fares schemes.

In London, the transport authority is also able to fund service improvements on top of the base franchise services and as such can have some degree of involvement in the franchise specification. It should be noted that this is only with regard to national franchised services within a closely specified area and whilst it has funded some service improvements in the past this does not apply at present. TfL is the sole specifier for its own local rail concession operating on the national network. It also has a significant influence in the network-wide fares system for London and the concessionary fares schemes due to the interavailability of tickets. In Wales, the Welsh Assembly Government can also fund service improvements and pays for the franchised services but, with the exception of some specific services, this is by way of a 'pass-through' from central government at present.



## 1. Organisation of public service operations in Greece

Public service rail transport in Greece is organised by state authorities. The regions have no competence whatsoever with the definition or determination of public service obligations and necessities.

For the time being, the contents, delimitation and definition of public service is not regulated in great detail. The sole legal basis regulating public passenger service transport in Greece is Regulation 1370/2007.

Public service transport should be provided in future following prescriptions included in a contract negotiated with the national carrier, TRAINOSE.

An attempt at reforming the system was made in 2005 and following years but unfortunately did not lead to many changes with regard to public service transport.

The Greek market for domestic public passenger service transport is not open to competition.

## 2. Operators on the market for public passenger service transport

TRAINOSE is the only company that operates public service passenger transport in Greece.

## 3. Definition of public service requirements

The obligations which are imposed from the competent Ministry of Transport and Communications are tariff, schedules, rolling stock, and special treatment for special categories of people.

## 4. Scope of public service transport by rail

TRAINOSE is the only railway undertaking that serves suburban, local, regional or long-distance passenger transport in Greece.

## 5. Contract

Despite several attempts made to reform the system, no contract has been concluded with the Ministry of Transport and Communications and the Ministry of Economy and Finance, relating to public service passenger rail transport.

## 6. Awarding of public service contracts

Public service requirements are imposed upon TRAINOSE, with very little financial compensation. No competition is therefore likely to develop on the Greek market.



## 7. Contract negotiation

According to current legislation, public service operations are to be compensated through financial compensation. However, the level of compensation is largely insufficient. TRAINOSE has therefore been compelled over the past years to provide the required passenger services based solely on ticket revenues and compensate the losses by borrowing in the market.

In 2009 and 2010, however, the situation changed somewhat due to an important increase in ticket sales which generated improved revenues over these two specific years.

Given the overall circumstances, no competition has – and is likely – to develop on the market, thereby providing to TRAINOSE a *de facto* exclusivity on the market. This however, is far from sufficient to compensate the costs of the services required by public authorities. As a result, TRAINOSE suffers from an ever increasing debt.

In 2006, the Ministry of Transport and Communications instructed TRAINOSE to contract a public loan to cover the costs of public passenger service transport. The situation has not evolved since.

Eventually, the deficit of TRAINOSE will have to be covered by the Greek state budget.

## 8. Calculation of the level of compensation

In principle, the level of compensation is the result of the difference between the foreseen costs and revenues. Elements that are taken into account to determine the cost of the public services include the following costs:

- staff (driver and other mobile staff);
- infrastructure charges;
- cost generated from the rolling stock (maintenance, repair, amortisation and interests);
- shunting services;
- installations necessary for operating passenger transport services;
- VAT<sup>1</sup>.

## 9. General payment conditions

In principle, the compensation amount should be paid in advance from the Greek state to the enterprise in four equal instalments. If the deficit of the enterprise for the provision of the public service transport requested for the period considered is higher than the compensation already paid, the state is to proceed to an additional payment. If the compensation amount that the enterprise has received is higher than the deficit suffered due to the supply of public service, the enterprise is obliged to return the difference without interest. However, in practice, these rules do not apply as public authorities have not been in a position to finance the public service obligations they required.

No penalty scheme is foreseen given the particular circumstances applicable in Greece.

<sup>1</sup> The railway undertaking will have to pay VAT on revenues generated by the sale of tickets. This VAT forms full part of the costs incurred by the railway undertaking. As the costs must be calculated prior to the effective implementation of the service, the railway undertaking will base itself on the average VAT paid the previous year to determine the amount of VAT that must be taken into account in the overall cost of the services.



Finally, Greek authorities applied for a 5 year exemption from the Passenger Rights Regulation 1371/2007 for domestic traffic. Delays are therefore treated according to internal regulations.

## **10. Duration of public service contract**

No contract has been signed in Greece for the provision of public passenger transport.

## **11. Rolling stock**

Rolling stock used for public passenger transport is the property of TRAINOSE.

## **12. Involvement of the regulatory body or other authority**

The rail regulatory body in Greece does not have any powers relating to the provision of public passenger service transport.



## 1. Organisation of public service operations in Hungary

Public service in railway transport is regulated in Hungary through Regulation 1370/2007 and the Railway Act CLXXXIII/2005. Its implementation is provided for by Government Decree of 271/2007.

Public service transport is managed centrally by the government and the Ministry for National Development. However, the local municipalities are involved in the organisation.

The majority of passenger transport (local, regional and long-distance) is public service transport. The following services do not belong to public services:

- international passenger transportation on international trains;
- national passenger transportation on non-public railway lines (traffic on narrow-gauge lines, children's railway);
- non-scheduled national passenger transport on national public railway lines (special trains).

To date, the opening of international passenger traffic to competition has not affected public service transport in Hungary.

The timetable for the passenger transport carried out as public service and the alternative timetables are elaborated by MAV-START and GYsEV, the two exclusive rail passenger operators on the Hungarian market. The timetable is then approved by the Ministry for National Development. Before the publication of the timetable for passenger transport carried out as public service, its content should be agreed with local public authorities and road passenger transporters.

The Railway Act regulates infrastructure access, market opening and public service obligations in compliance with EU legislation.

## 2. Operators on the market for public passenger service transport

There are currently two railway companies present on the Hungarian market: MAV START and GySEV. MAV START is 100% owned by the state and it is the major passenger rail transport operator in Hungary. GySEV is a small company owned by the Hungarian and Austrian state. It operates a small number of regional public passenger service lines in the western part of the country and an intercity service to Budapest. The cross-border services with Austria are operated by Raaberbahn, the Austrian subsidiary of GYSEV.

## 3. Definition of public service requirements

Public service obligations are defined in the aforementioned Railway Act as well as in the contract concluded with the competent organizations.





The framework public service contract contains the rights and obligations of the parties, as well as content of the contractual conditions to be determined in special annexes on a yearly basis. The main obligations are as follows:

- tariff obligations and compulsory discounts for social groups of the population;
- service frequencies;
- the content of public service activities and timetable;
- seat-kilometre performance to be reached by the service provider (only applicable to contracts concluded with MAV START);
- planned revenues from fares of the service provider;
- compulsory quality indicators to be reached such as punctuality, cleanliness of rolling stock and passenger areas in stations, provision of information for passengers, elimination of physical obstacles for persons with reduced mobility, etc. (only applicable to contracts concluded with MAV START).

Quality criteria are an important part of the contract. They are thoroughly discussed with the ministry.

#### 4. Scope of public service transport by rail

Almost the entirety of the national network is covered by public service transport obligations. There are two parallel systems covering respectively coach and rail (separate contracts).

Public service transport provided by MAV START with 3 200 trains per day, transporting 400 000 passengers per day (7 178 million passenger-kilometres per year). GySEV provides public service transport with 129 trains per day, transporting 10 000 passengers per day (183 000 passenger-kilometres per year).





Overall, the rail public service market represents approximately 95% of the overall passenger rail market in the country.

## 5. Contract

The Ministry of National Development concluded a contract with MAV START on the detailed conditions and on the method of financing of passenger transport carried out as public service. The approval of the Ministry of Finance is needed for such contract to be valid.

GySEV concluded a three-year contract with the Hungarian competent authority (Ministry of National Development).

## 6. Awarding of public service contracts

Public service contracts are directly negotiated between the Ministry of National Development and railway companies.

## 7. Contract negotiation

The contracts in force between the Hungarian state and MAV START and GySEV were signed on 29 January 2010. They were concluded under the new public service regime established by Regulation 1370/2007 and the Railway Act. The contracts establish the rights and obligations of the parties, the legal, financial and technical conditions of the use of railway infrastructure as well as the definition and partial financing of the public services from central budget.

During the negotiation process, the railway undertaking determines the conditions under which it is able to provide the services (financial conditions and quality criteria). The negotiating power of the railway undertaking remains however limited.

Payment is provided in the form of financial compensation and provision of exclusive rights. The operator bears some risks as any additional unforeseen losses in ticket revenues will not be covered at the end of the contract.

## 8. Calculation of the level of compensation

According to the Railway Act, financing is organised as follows:

- compensation of losses made from ticket sales (difference between reduced-rate and full-fare for domestic tickets);
- additional compensation covering other activities/costs required in the public service contract (partial financing of basic passenger services in the form of supplementation of revenues; this support also includes the monthly compensation of other services ordered by the state, for example students can travel free by train after a visit to certain museums);
- exclusive rights provided on all lines covered by the public service contract with no possibilities for *'cherry picking'*.



The basis of the contract is that the Hungarian state – as a customer of public service operations – determines the volume and quality level of public services, the number of trains and the quantity of capacity to be allocated.

According to the public service contract, the planned justified costs not covered by revenues are calculated by MAV START and GySEV and then approved by the Hungarian state. The amount, the accuracy, the method of calculation as well as registration of the actual costs can be checked by the customer.

Justified costs are based upon the following costs:

- Primary costs:
  - material-type expenditures;
  - payments to personnel;
  - costs of amortisation;
  - other.
- Additional costs:
  - infrastructure access charges;
  - shunting services;
  - central management.
- The content of revenues:
  - fares and other revenues from passenger transportation;
  - consumer price subsidies;
  - 'reasonable profit';
  - other revenues.

The historical debt deriving from previous unpaid (or inadequately paid) public service obligations falls upon MAV Co, the mother company.

GySEV receives an adequate compensation for the services provided.

## 9. General payment conditions

According to the contract, payment is planned on a monthly basis upon presentation of a monthly report.

Delays in services are compensated in accordance with Regulation 1371/2007 and Government Decree of 271/2007. Delays due to third parties (i.e. due to failure of the infrastructure manager) can be compensated separately by the public authority after approval of such additional costs.

## 10. Duration of public service contract

The current contract was signed in 2010 for three years. This duration provides MAV START with a predictable financial framework. However a five-year contract or even a longer term would be more satisfactory as it would allow MAV START to propose higher quality services upon which returns would be achieved throughout the contract. The contract concluded with GySEV is revised on a three-year basis.

## 11. Rolling stock

27% of the rolling stock used by MAV START in the public service contract is its own.

73% of the fleet is owned by different companies (essentially owned by Deutsche Leasing and MAV Co).

Overall, 57% of the total fleet used is over 30 years old or above, while only 5% is less than 10 years.

## 12. Involvement of the regulatory body or other authority

The national transport authority does not play any role with regard to public service contracts. Their task is to check the fulfilment of the passenger rights. However, the regional transport offices (RKI) act on behalf of the Ministry of National Development and control the quality parameters set out in the contract.



## 1. Organisation of public service operations in Ireland

Public service transport in Ireland is organised centrally by the Department of Transport. It is based upon EU Regulation 1370/2007 and national law (see <http://www.nationaltransport.ie/psc.html>).

The national transport authority, on behalf of the Department of Transport, concludes a single contract with the national operator IrishRail covering the entire country. All rail passenger traffic falls under public service obligations.

## 2. Operators on the market for public passenger service transport

The Irish national rail company – IrishRail – is a limited liability company set up under the Companies Act as provided for in the Transport Act of 1986. Córas Iompair Éireann, a statutory body wholly owned by the Department of Transport and reporting to the Minister for Transport is charged with managing all public transport services in Ireland. Córas Iompair Éireann holds 100% of the issued share capital of IrishRail which is one of its subsidiaries.

The principal activities of IrishRail are national rail passenger and freight services, road freight and catering businesses and the management of Rosslare Europort.

## 3. Definition of public service requirements

Public service obligations usually consist of:

- tariff obligations and other financial requirements;
- service quantity (reliability requirements);
- service quality (punctuality, reliability, customer information, cleanliness, disabled customers, handling complaints, etc.);
- operational requirements (safety, planned or foreseen service disruptions etc.);
- review, reporting and monitoring of public service obligations;
- provision and maintenance of railway infrastructure.

Quality criteria are mutually agreed by the parties to the contract and actually form the major part of the discussions.

## 4. Scope of public service transport by rail

The entirety of passenger rail transport is submitted to public service obligations as provided in the contract concluded between IrishRail and the national transport authority. This contract covers all rail public service obligations.



Public service transport in Ireland in 2010 has provided 685 trains per day, which represents 105 000 passengers per day (38 226 million passenger journeys per annum and 1 678 million passenger-kilometres per year). Public service obligations cover the total of rail services.

## 5. Contract

Public service operations are determined and negotiated between IrishRail and the national transport authority. They are enshrined in a contract detailing all obligations and targets to be met. Payments were historically based on the latter criterion but steps were taken to formally link public service obligation payments with service level, performance and delivery.

The new contract concluded under the new EU public service regime follows these principles.

## 6. Awarding of public service contracts

The contract is directly awarded with IrishRail for the entirety of the territory. There is no tendering of public service passenger rail transport in Ireland for the time being and no plans to change the awarding procedure for the time being.

## 7. Contract negotiation

The compensation of public service obligations is paid through the allocation of financial input and exclusivity on the lines on the entire territory. *'Cherry picking'* is therefore not applicable.

## 8. Calculation of the level of compensation

Compensation levels are clearly determined in advance. Details about payment conditions are enshrined in the contract.

Costs taken into account to calculate the level of compensation include costs relating to:

- staff;
- energy;
- infrastructure charges;
- maintenance and repair of vehicles;
- installations necessary for operating passenger transport services;
- (historic) debt payment.

The level of compensation is the result of the difference between the foreseen costs and revenues. Exclusive rights are *de facto* provided as the entirety of public service transport is granted to one single operator (apart from one international line operated in cooperation).

A *'reasonable profit'* is granted to IrishRail. It should however be noted that any over compensation (i.e. beyond the agreed *'reasonable profit'*) must be reimbursed to the authority. Regular monitoring is conducted to this end by the national transport authority.



## 9. General payment conditions

Payment is made by regular instalments at determined intervals (usually monthly) to IrishRail channelled through Coras Iompair Eireann's banking facilities. All payments are exempt of VAT.

A monitoring system is instituted to review and monitor the principles laid down in the agreement. Monitoring takes place on a quarterly basis. Moreover, a penalty system is in place in case quality targets are not met. If the performance of IrishRail does not reach the expectations, the national transport authority may threaten to hold back part of the compensation.

It should be noted that if the railway company makes a deficit on the service provided, it will have to cover it from its own budget. However, given that IrishRail is a wholly owned company, any deficit will eventually have to be covered by the state budget.

## 10. Duration of public service contract

Further to intense negotiations between the parties, the current contract was concluded for a 10 year duration. This time length is considered by IrishRail as necessary in order to be able to fulfil all obligations including quality obligations requiring investment on behalf of the national transport authority.

## 11. Rolling stock

Rolling stock is entirely owned by IrishRail and currently, almost 75% was renewed/refurbished less than 10 years ago. Most of the rolling stock has been Exchequer funded in the recent years with EU assistance.

## 12. Involvement of the regulatory body or other authority

The rail regulator is not involved in the public service contract. The national transport authority is sole competent.



## 1. Organisation of public service operations in Italy

The legal basis for the financing and the award of public service obligations in Italy is Regulation 1370/2007. The regulation is reflected in Italy:

- for **regional** public services in the Decree no. 422/1997, amended in 2009 in order to reflect, *inter alia*, the introduction of Regulation 1370/2007;
- for **national** public services in the Law no. 166/2002, amended in 2007.

All public service operations were financed by the state until 2001. Since, in application of a general devolution of powers from central to local authorities (Italian constitutional Law n. 3/2001), public services for most regional services are financed by regional authorities. This legal framework made regions responsible for planning regional transport activities.

Long-distance public passenger services (also called national universal services) and some residual regional services are awarded by the state (Ministry of Transport and Infrastructures).

All public service transport is granted through the conclusion of public service contracts assigned in compliance with the regulation.

In Italy both regional and long-distance domestic transport services are open to competition since 2001<sup>1</sup>. Access for foreign railway undertakings and their domestic subsidiaries is subject to reciprocity clause.

Despite the fact that the performance and quality of infrastructure in Italy is not optimal (which eventually affects the quality of services provided by railway operators) no derogations to the Passenger Rights Regulation 1371/2007 were requested to date by the Italian state.

## 2. Operators on the market for public passenger service transport

There are currently several companies operating public passenger transport services in Italy:

- Trenitalia, fully owned by Ferrovie dello Stato Italiane, which covers all long-distance public service passenger traffic and most of regional services;
- Trenord, owned by Trenitalia and F.N.M. S.p.a. with a share of 50% each, running public services in Lombardy;
- other 20 railway undertakings, mainly owned by regional authorities (also called '*internal operators*') operate some regional and local services.

<sup>1</sup> Law no. 388/2000.





### 3. Definition of public service requirements

Public service obligations usually consist in tariff imposition and time schedules or traffic level for regional services and long-distance rail links between North and South Italy.

These obligations are specified in greater detail in the public service contract concluded with the operator.

Quality criteria are also defined precisely in the public service contracts.

As for **regional services**, the main quality criteria included in public service contracts relate to:

- punctuality;
- reliability;
- seat composition/offer;
- information to passengers (in the station, on board, general communication);
- cleanness and comfort (in stations and on board);
- rolling stock;
- additional services (ticket offices, etc.).

The economic value of service contracts is based on the hourly cost of the train service, calculated on the basis of the following parameters:

- charge for the use of infrastructure;
- transport services;
- additional services.

Each region chooses the minimum quantity and quality standards of services to be provided on the basis of a catalogue.

The quality standards foreseen in the service contract for **long-distance** services negotiated with the state are:

- punctuality;
- reliability;
- cleanness and comfort;
- rolling stock.

The quantity of services to be provided is decided by the state on the basis of public financial means. The service contract foresees a price mechanism based on a price cap system linked to the achievement of quality standards.

### 4. Scope of public service transport by rail

Public service contracts cover:

- regional and local services, especially for commuting;
- long-distance service, (e.g. including tariff obligations for specific categories of passengers such as military staff for example).





Public service transport in Italy is provided with 8 135 trains per day, which represents 30 billion passenger-kilometres per year. These figures are distributed as follows between regional and long-distance services:

#### **Regional services**

- 8 000 trains per day
- 22.7 billion passengers-kilometres per year

#### **Long-distance services**

- 135 trains (for those included in public service contracts)
- 7 billion passengers-kilometres per year

## **5. Contract**

Public service obligations are granted through the conclusion of a public service contract between the parties, i.e. the railway undertaking and regional or national authorities, to cover the extra costs needed in order to ensure the public service requirements. In other words, there are several contracts: each region has one or more contracts. In some cases smaller parts of the network are the basis for a competitive award of contract. The state, however, awards a single contract for the services falling under its jurisdiction.

Contracts are in the process of being renewed/re-awarded and in such case they will be fully compliant with the new regime.

Contracts cover essentially public passenger transport services by rail. They can also include some marginal road transport legs, but only as substitute traffic for rail for services where it is more economically sound to have the routes serviced by buses.

## 6. Awarding of public service contracts

In conformity with Regulation 1370/2007, contracts may be awarded either directly or through competitive tendering. So far, competitive tenders have been used by regional authorities for all or part of the relevant services in Veneto, Lombardia, Liguria, Emilia-Romagna and Piemonte.

National public service contracts have been assigned through direct award.

## 7. Contract negotiation

Negotiations take place between the railway operator and the awarding authority. In practice, the company determines its business case with regard to the extent of services required by the authority and presents a detailed cost assessment. The financial plan is then negotiated between the parties in light of the extent and level of quality required.

Costs incurred for public service contracts for a regional network of services or a section of the railway network are compensated through a mixed system of direct financial influx and the granting of exclusive rights. There is therefore no possibility of *'cherry picking'* the most profitable bits of a public service contract. However most contracts are so-called *'net'* contracts meaning that the operator will keep the ticket sale revenues and therefore bear the related risk.

Qualitative constraints (e.g. on punctuality, cleanliness, air conditioning and other standards) and penalties for breach of the contracted quality standards are typically included in the agreements.

Compensation of public service obligations covers the extra costs of running the services in question.

## 8. Calculation of the level of compensation

With regard to both national and regional public services, the estimated costs are calculated, on a yearly basis, based on Regulation 1191/69 for some contracts and on Regulation 1370/2007 for the newer ones, and are subject to a subsequent monitoring. If the monitoring shows that financing has exceeded costs, the exceeding cost will be deducted from the financing for the following year.

The financial plan included in the public service contract with the state is related to the actual availability of public funds and, particularly within the current crisis, does not give full guarantee of payment.

## 9. General payment conditions

Payment is made on a yearly basis. It is however, not always done in a regular manner, thereby causing financial problems to the operators.

Penalties are applicable to the operator when quality criteria are not met.



Penalties are applied on all criteria. For example, as regards the requirement to provide information on the train, Trenitalia is committed to guarantee the following on regional services:

- the diffusion, on trains equipped with loudspeakers, of information concerning the train stops;
- in the event of delays or prolonged stops, the rapid and efficient diffusion of information in regards to the situation, where possible by loudspeaker, or directly by on board personnel. The penalty is not applied if the train is making up for the delay on the route in question. In the event of announcement by the train conductor, delays of over 10 minutes are taken into account.

In case of delays due to external factors such as acts of God (landslides, floods, etc.) or orders from a competent authority, etc. penalties will not apply.

## 10. Duration of public service contract

**National public service contracts** concluded by the state for specific services have a minimum duration of 5 years.

**Regional public service contracts** concluded at regional level have a variable duration depending upon what has been negotiated between the parties. The new contracts have a minimum of 6 years, which is an improvement compared to the past, when contracts were concluded on a yearly basis.

## 11. Rolling stock

Rolling stock is owned by Trenitalia. Only a part of rolling stock depreciation is taken into account in the calculation of the level of compensation of the contract, as it is calculated according to civil code rules, which do not correspond to contract duration.

A relevant amount of Trenitalia's rolling stock was more than 30 years old and more than 15 years old in 2010, as detailed below. Renewal is done with regular periodicity, also in connection to specific public contracts.

	> 30 years	>15 years
<b>Blocked trains</b>	47%	61%
<b>Engines</b>	22%	46%
<b>Coaches</b>	10%	80%

## 12. Involvement of the regulatory body or other authority

The rail regulatory body is not involved in the process of the conclusion of public service contracts in Italy.



## 1. Organisation of public service operations in Latvia

Public service transport is regulated in Latvia in the Public Transport Services Law (adopted on 14 June 2007, with amendments) and as regards the railway transport – in the Railway Law (adopted 1 April 1998, with amendments). The text of the Public Transport Services Law has been amended so as to reflect the content of Regulation 1370/2007.

Public service operations in rail transport are dealt with in a centralised manner by the state, the Road Transportation Directorate – *VSI Autotransporta direkcija*.

The domestic passenger rail market is opened to competition, as well as the international passenger traffic (since January 2010 in application of Directive 2007/58). There has been however to date no international traffic including cabotage operated in Latvia having an impact on existing public service contracts.

## 2. Operators on the market for public passenger service transport

JSC Pasazieru vilciens, a state owned joint stock company, is the national passenger rail transport undertaking in the country. Thus the public service contract was directly awarded to JSC.

## 3. Definition of public service requirements

Public service obligations are essentially defined in the public service contract concluded with the operator. They are very wide ranging and include:

- tariff obligations (including limitations to possible tariff increases);
- service frequencies;
- technical specifications for the services required;
- service quality in general (delay, information, etc.);
- alternative services in case of exceptional interruption of services (in cases of *force majeure*);
- availability of appropriate sales staff both on trains and in train stations;
- availability of appropriate rolling stock;
- quality criteria (information, various services such as support of staff, luggage space, temperature in coaches, rapid treatment of complaints, etc.).

Quality is an important element of the negotiation. It is therefore negotiated in great detail. However, as mentioned below, the railway undertaking has little negotiation power. In practice, the price paid for the quality criteria required does not correspond to the reality. The negotiation is therefore limited to what JSC is able to provide under normal working conditions.



## 4. Scope of public service transport by rail

Due to the size of the country, the public service passenger market represents 100% of the overall passenger rail market since 1 January 2005.

Public service transport represents approximately 242 trains per day and 57 000 passengers transported per day (749 million passenger-kilometres per year).

## 5. Contract

Public service operations are organised through the conclusion of a single contract covering the entire network. The contract is concluded with the state, the Road Transportation Directorate – *VSI A Autotransporta direkcija*, which is responsible for the organisation of the award procedure and the definition of required public service obligations. The current contract was concluded in 2009, based on Regulation 1370/2007. This contract covers exclusively rail transport.

Since 2005, the government concluded longer term public service contracts with JSC. Indeed, until 2005, public service operations were provided on a yearly basis.

## 6. Awarding of public service contracts

Public service contracts are provided following a competitive tendering procedure.

Since JSC is a 100% state owned company, the public service contract was directly awarded to JSC.

## 7. Contract negotiation

The compensation of public service obligations today is paid through the allocation of financial input. In practice, JSC benefits from exclusivity on the lines as no competitor has yet entered the market despite the fact that it is fully open to competition. Moreover, no *'cherry picking'* has occurred as no international service including cabotage has been requested since the opening of the international passenger market.

In practice, the Ministry of Transport determines the extent of public service operations to be delivered on a yearly basis and the operator submits a detailed cost assessment to the ministry. In this cost assessment, the railway company includes a *'reasonable profit'*. The parties then negotiate the level of compensation in comparison with the public services to be provided. These negotiations remain however rather limited.

## 8. Calculation of the level of compensation

Compensation levels must be clearly determined in advance. Compensation can be renegotiated on a case-by-case basis if particular costs in the cost structure exceed certain pre-agreed levels. On the other hand, the operator bears ticket sales revenue collection risk.

The level of compensation is the result of the difference between the foreseen costs and the foreseen revenues.



The calculation of the overall costs for the service in question as a whole will generally be based upon the following costs:

- staff;
- energy;
- infrastructure charge;
- maintenance and repair of vehicles;
- rolling stock depreciation;
- installations necessary for operating passenger transport services;
- interest payments;
- other fixed costs – mainly administrative costs.

The calculation of the overall revenue generated by the service will generally be based on the following production data:

- number of passenger-kilometres;
- number of passengers per particular line;
- ticket sales per passenger-kilometre.

Track access charges are not lower for public service obligation traffic.



## 9. General payment conditions

Payment is made monthly upon the terms of payment decided in the agreement. The payments are made directly without JSC having to send out an invoice.

The amounts received as public service compensation are not subject to VAT.

The state of infrastructure in Latvia is not optimum which eventually affects the quality of services provided by railway operators. This is particularly a problem as regards the general condition of stations. As a result, the Latvian government decided to apply for all derogations from the Passenger Rights Regulation 1371/2007 for domestic traffic to avoid operators having to pay excessive compensation levels to passengers for delays/cancellations imputable to the poor quality of infrastructure on the network, amongst others.

The operator is however likely to pay penalties to the awarding authority in case it does not respect its obligations, in particular as regards the timetable, train connections, rolling stock types used for given traffics, etc.

## 10. Duration of public service contract

The current public service contract was concluded in 2009 for a duration of 15 years. 7.5 years may be added to that contract if requirements relating to new rolling stock are fulfilled by the operator.

This contract duration is satisfactory and diverges greatly from previous contracts that were concluded for extremely short durations. However, the current contract duration will not allow the amortisation of existing rolling stock used for the services in question.

## 11. Rolling stock

All rolling stock is owned by JSC Pasazieru vilciens.

In 2011, 22% of the electric trains and 20% of diesel-engine trains were older than 30 years. The rest of the fleet was older than 16 years.

## 12. Involvement of the regulatory body or other authority

The authority in charge of public passenger service transport is the *VSAI Autotransporta direkcija*. The rail regulatory body is the competent institution for freight public service transport, if there would be any. Currently, there is no such freight public service transport.



## 1. Organisation of public service operations in Lithuania

The organisation of public service transport operations is regulated in Lithuania in the following pieces of legislation:

- Regulation (EC) No 1370/2007;
- Law on Basics of Transport Activity of 2002 with subsequent amendments (consolidated version in force since 4 July 2006);
- Railway Transport Code of 2004 with subsequent amendments (consolidated version in force since 8 June 2006);
- Law on Transport Privileges of 2000 with subsequent amendments (consolidated version in force since 12 May 2009);
- Government Decree no. 478 of 28 April 2000 on implementation of Law on Transport Privileges with subsequent amendments (consolidated version in force since 7 December 2008);
- Government Decree no. 1132 of 4 September 2003 on organization of tender for selection of carriers (operators) for public services obligations and conclusion and termination of contracts on public services with subsequent amendments (consolidated version in force since 19 December, 2010);
- Government Decree no. 716 of 7 June 2010 on the approval of the procedure of compensation for the loss incurred by the public service obligations.

In accordance with the government decree, the Ministry of Transport and Communications is authorised to implement the functions of competent authority provided for by Regulation (EC) No 1370/2007. Therefore public rail service operations are organised centrally in Lithuania by the Ministry of Transport and Communications.

Local governments also play a role in determining the scope of public service rail transport by providing input on their specific needs directly to the Ministry of Transport and Communications. This role remains however limited.

The entire national and international passenger network is open to competition. However, to date, no new entrant has found an interest in entering the Lithuanian market as public service transport is not adequately compensated.

## 2. Operators on the market for public passenger service transport

Lietuvos Geležinkeliai (LG) is 100% owned by the state and is the only passenger rail transport operator. As passenger operations in Lithuania are generally speaking loss making, the market is not attractive for competitors despite the fact that the market is fully opened to competition.





### 3. Definition of public service requirements

Public service obligations are defined in the Law on Basics of Transport Activity (Article 2). They comprise:

- obligation to operate – an obligation imposed upon a carrier to take all necessary measures to ensure the provision of a transport service satisfying fixed standards of continuity, regularity and capacity;
- obligation to carry – an obligation imposed upon a carrier to accept and carry passengers or goods at specified rates and subject to specified conditions;
- tariffs obligation – an obligation imposed upon a carrier to apply, in particular for certain categories of passengers, for certain categories of goods, or on certain routes, rates approved by state or municipal authorities which are contrary to the commercial interests of the carrier.

The law on transport privileges also defines compulsory discounts on national railway journeys for particular social groups of the population.

### 4. Scope of public service transport by rail

Public service passenger transport is provided in Lithuania to approximately 9 540 passengers per day (225.6 million passenger-kilometres on an annual basis). This is provided with 173 trains per day.

### 5. Contract

Since 2004 LG concludes renewable annual contracts with the Ministry of Transport and Communications with regard to the provision of public service obligations for the entire country.

These contracts define the subject and scope of the agreement, nature of the public service obligations, the parties' rights and obligations, liability issues, date of expiry, etc. The substantial difference is the amount of financial compensation.

Under the contract LG undertakes to carry passengers on defined routes at specified rates with proper rolling stock.

### 6. Awarding of public service contracts

The law on the Basics of Transport Activity prescribes that public service contracts shall be awarded to any company through the competitive tendering procedure. However, a draft law introducing a direct negotiation procedure is currently being discussed.

### 7. Contract negotiation

In practice, LG meets on a yearly basis with the Ministry of Transport and Communications to discuss the scope of the public service obligations. In this process, LG has obtained the authorisation to close down some lines due to the degree of the losses they generate. This remains, however, exceptional.

## 8. Calculation of the level of compensation

The level of compensation should be calculated in accordance with provisions of Regulation (EC) No 1370/2007 and a formula provided in the government decree.

The formula for the calculation of the overall compensation for public services is based upon the following criteria:

- number of rail trips;
- the length of route;
- average number of wagons on train set;
- foreseen costs;
- foreseen revenues;
- compensation for application of compulsory discounts;
- profitability level (maximum 5%).

The compensation formula was adopted on 7 June 2010.

## 9. General payment conditions

According to the contract, compensation of public service obligations today is paid through the allocation of financial input and a *de facto* exclusivity on the lines.

The level of compensation due to cover the **difference between the full ticket price and the compulsory discounted price** for certain categories of passengers on national railway journeys is the following:

- 63% in 2009;
- almost 100% in 2010;
- 70% in 2011 (estimated).

The **effective level of compensation of losses** resulting from provision of public passenger services is the following:

- 0.3% in 2009;
- 0.2% in 2010;
- 0.1% in 2011 (estimated).

In accordance with the public service contract payment is made on a monthly basis upon presentation of an invoice by LG to the Ministry of Transport and Communications.

The amounts received as public service compensation are not submitted to VAT<sup>1</sup>.

<sup>1</sup> The railway undertaking will have to pay VAT on revenues generated by the sale of tickets. This VAT forms full part of the costs incurred by the railway undertaking. As the costs must be calculated prior to the effective implementation of the service, the railway undertaking will base itself on the average VAT paid the previous year to determine the amount of VAT that must be taken into account in the overall cost of the services.



## 10. Duration of public service contract

Public service contracts are concluded for one year. This is not satisfactory as it does not allow any return on investment, or any long term planning for the operator.

## 11. Rolling stock

The railway operator is due to own its rolling stock fleet when operating public service transport.

Currently, LG's fleet is rather old and needs substantial renewal: +/- 63% of the fleet is between 20 and 35 years old.

## 12. Involvement of the regulatory body or other authority

The rail regulatory body does not have any competences with regard to the provision of public service contracts.



## 1. Organisation of public service operations in Luxembourg

Public service operations in Luxembourg are organised on a national level with centralised state authorities. The related contracts are based on national and European legislation (Regulation 1370/2007).

Other pieces of legislation applicable at national level include:

- the modified law of 28 March 1997 approving:
  - the Rail Agreement concluded with Belgium and France on 17 April 1946;
  - CFL statutes;
  - the financial support provided to CFL and the monitoring thereof done by the state;
  - modifications to the 1995 law relating to the management of rail infrastructure.
- the Law on Public Transport of 29 June 2004.

98.9% of the domestic traffic is covered by public service requirements. In other words, it covers all short- and long-distance traffic. However, given the size of the country, the notion of '*long-distance*' traffic has little meaning.

The market for domestic passenger services has not been open to competition for the time being.

Despite the opening of international traffic to competition, there has been no new operator entering the market. In fact, there is no real scope for national cabotage due to the small size of the country and the very low tariffs applicable to public service transport (which covers almost the entirety of the domestic network).

## 2. Operators on the market for public passenger service transport

CFL is currently the only operator in Luxembourg. It cooperates with companies from neighbouring countries on cross-border passenger services.

## 3. Definition of public service requirements

Public service obligations are defined in the contract concluded with the national authority. These obligations include amongst others:

- tariff obligations and compulsory discounts for social groups of the population;
- service frequency and timetabling;
- quality criteria (safety, punctuality, continuity of service, passenger comfort, cleanliness, passenger information, attitude of personnel, handling of complaints, etc).



Quality criteria are an important element of the contract. They are thoroughly discussed with the authorities.

Public service contracts represent roughly 98.9% of the overall passenger traffic based on train-kilometres.

## 4. Scope of public service transport by rail

The contract covers rail and regional bus lines operated by the railway operator in an integrated manner.

## 5. Contract

Public service transport is operated under a public service contract negotiated between CFL and national authorities. It is a commercial law contract. It was concluded on 1 January 2010 and will be running until 31 December 2024, in accordance with Regulation 1370/2007.

## 6. Awarding of public service contracts

Contracts are directly awarded by the state.

## 7. Contract negotiation

The Ministry of Transport determines the terms and conditions of the contract, which is signed by CFL. There is not much scope for negotiation. Discussions take place, however, with regard to the level of compensation provided in relation to the scope and quality of services required.

## 8. Calculation of the level of compensation

Public service operations are compensated by financial input only with a *de facto* exclusivity on most of the national network.

The full cost coverage principle is applied including a '*reasonable profit*', with the help of CFL analytical accounting system, which allows CFL to calculate the precise cost of all operations concerned by public services. In this way all costs involved with public service operations are taken into consideration.

The compensation level of public service operations when comparing the turnover generated through the sale of tickets with the overall cost of public service operations invoiced to the state amounts to more than 50%.

## 9. General payment conditions

CFL gets advance payments on a monthly basis (in accordance with the approved budget) and there are no treasury problems.

At the end of the year the finance department of CFL sends a final calculation whereby the remaining expenses are invoiced to the state.



The payments are based on an invoice sent by CFL, VAT included.

A penalty system is foreseen when the operator does not comply with performance criteria and the 20 quality standards laid down in the contract. Any delays due to infrastructure or third party failure, apart from *force majeure* cases, will be at the cost of the railway undertaking.

## 10. Duration of public service contract

The current contract was concluded under the new EU public service rules for a duration of 15 years.

## 11. Rolling stock

Rolling stock used in public service contracts belong to the operator. The large majority of the fleet is less than 10 years old. Amortization of rolling stock is however covered in the public service contract.

## 12. Involvement of the regulatory body or other authority

The rail regulator has no competences with regard to public service transport apart from those provided by Directive 2007/58.



## 1. Organisation of public service operations in the Netherlands

The organisation of public services is regulated in the Netherlands in the following pieces of legislation:

- **Law on Passenger Transport 2000** (*Wet Personenvervoer 2000*, 'WP2000') relating to all forms of public passenger transport. It used to cover bus, tram, but excluded train. However, since the adoption of the Concession Law (below) it covers rail transport;
- **Concession Law**, which was an amendment to the 'WP2000', which came into force on 1 January 2005.
- **The Decision on Passenger Transport 2000** (*Besluit personenvervoer 2000*, 'BP2000'), which was adopted in application of the 'WP2000'. It describes in greater details public service contracts;
- **Railway Act** (*Spoorwegwet*, 'Sw'), which, amongst others, sets rules for the access to the railway infrastructure, the network statement, track access charges, etc. (in line with Regulation 2001/14).

These pieces of legislation are in line with Regulation (EC) 1370/2007 and are in fact stricter in some regards (i.e.: contract duration is stricter under the Dutch law. It should, however, be noted that there is currently a debate in the Dutch Parliament to harmonise the 'WP2000' with 1370/2007, with a view to make the Dutch law less stringent compared to EU law).

Public services are in principle organised both centrally by the Ministry of Transport with regard to the exploitation of the so-called '*trunk network*' (national) and the high speed rail network, and by the regional authorities with regard to regional transport services. There is close coordination between central and decentralised authorities in particular due to the fact that, so far, financing is provided through the state budget. Regions take care of regional particularities that must be included in the concession.

The domestic market for rail services is open to competition (competition '*for*' the market or also known as '*regulated competition*'). By law, all public transport is operated on the basis of a concession.

Cross-border services are operated by the Nederlandse Spoorwegen (NS) via commercial groupings (amongst others: Thalys, NMBS & NS (Benelux train), DB Regio & NS (e.g. IC-Berlin and ICE-Frankfurt). Other railway companies exploit cross-border services next to NS, for example Arriva which exploits cross-border services Groningen-Nieuweschans-Leer (Germany) on the basis of an international public service contract, as well as DB Regio / Prignitzer Eisenbahn which exploits the Enschede – Dortmund line.



## 2. Operators on the market for public passenger service transport

The high speed network was publicly tendered and awarded by the Ministry of Transport to High Speed Alliance (HSA) which is a subsidiary of NS (90%) and KLM (10%). The concession has a duration of 15 years, with no possibility to extend the concession.

The national railway network (*'trunk network'*) was directly awarded to NS by the Ministry of Transport. The concession runs till the end of 2014.

Finally, regional lines have been either directly awarded or have been publically tendered by regional authorities. The major players are: Transdev / Veolia (market share 60-70% in 2010); Arriva / DB (market share 10-20% in 2010); NS (market share 10-20% in 2010); QBuzz (market share 10-20% in 2010); Syntus (market share 0-10% in 2010) in the market for competitive public transport<sup>1</sup>. These railway operators operate only regional lines.

## 3. Definition of public service requirements

Public service obligations vary in each contract (concessions) depending on the specific needs. They may consist in:

- tariff imposition with a certain margin of manoeuvre that is left to the operator to increase such tariffs. The margin of manoeuvre is subject to negotiation between the parties;
- minimal frequency of trains during peak hours to major cities;
- services to passengers with reduced mobility;
- other requirements.

Quality criteria are set by the competent authorities, but are discussed with consumer interest groups.

The quality of the infrastructure is of key importance to the provision of high quality public service transport. In some concession areas the (lack of) quality of the infrastructure is the cause for a fierce debate, but overall the quality of the railway infrastructure is at a reasonable high standard in the Netherlands, especially when compared to other parts of Europe.

## 4. Scope of public service transport by rail

Public service contracts are concluded for either train, metro, tram or bus services or for a combination of those. There are so-called multimodal concessions throughout the country. In the main cities concessions include a combination of metro, tram and bus. In the northern, eastern and southern part of the country one finds combinations of train and bus concessions.

<sup>1</sup> The relevant market is the market for contestable public transport and includes concessions covering (urban and regional) bus services and possibly also including tram and metro services, concessions containing regional railway services and the concession for high speed services. It excludes the urban transport system of the three major cities (Amsterdam, Rotterdam and The Hague) as well as the trunk network.

Source: Decision Netherlands Competition Authority, Transdev-Veolia merger, 9 December 2010. See [http://www.nmanet.nl/Images/6957BCV\\_tcm16-142149.pdf](http://www.nmanet.nl/Images/6957BCV_tcm16-142149.pdf)





The combination of train and bus enables the optimisation of public transport. For instance the rearrangement of train and bus lines (e.g. according to the herringbone-principle), whereby the bus lines function as feeder lines and the railway lines function as the backbone of the public transport system.

Only national passenger service is covered by public service contracts, which represents approximately 95% of the total rail passenger traffic. The remaining is the international passenger traffic.

When this report was drafted, the piece of legislation implementing Directive (EC) 2007/58 allowing cabotage services in the Netherlands within the context of an international traffic was about to come into force. The law implementing 2007/58 was adopted at the end of 2010, but awaited completion of some elements of lower regulation. These aimed, amongst others, to describe and define in greater detail the notion of an '*international passenger service*' and to outline the method to be applied when assessing whether the economic equilibrium of public service contracts is compromised.

## 5. Contract

Public service operations are organised through the conclusion of two types of contracts, depending upon the service:

- public service operations for the **trunk network** which are included in one **single concession agreement** (public/private law contract with a domination of public law) for the entire trunk network;
- public service operations for **regional transport** which are included in **individual contracts** concluded for one specific line or a set of lines depending on the needs of the 19 regional authorities.

All public service contracts are publically available.

In practice, the competent authority determines the public service conditions for specific lines. The railway undertaking proposes a service covering the public service conditions for a given price. The price is then subject to negotiations between the parties.

## 6. Awarding of public service contracts

All public service contracts are awarded through either a competitive tendering procedure or through direct negotiation.

Recently, **regional public service** contracts have been increasingly awarded through competitive tendering procedures. This procedure is not applicable yet to the entirety of regional rail transport services. As the existing contracts come to an end, they will then be awarded through a tendering process. The idea is to grant all contracts (bus and regional rail) in future through tendering process.

The concession for the **trunk network** was granted directly to NS through direct negotiation, in accordance with Dutch law (*'WP2000'*). The law also states that in 2015 for the trunk network the contract can be either directly awarded or tendered.

All existing contracts were concluded before the entry into force of the new EU regulation. However all contracts are compliant with 1370/2007 and, as stated above, the Dutch law is currently stricter than EU legislation.

## 7. Contract negotiation

The level of compensation of public service operations varies from line to line, service to service.

Railway undertakings quote the price they consider necessary to accomplish the service required. They have every right to include in such price what they calculate to be a *'reasonable profit'*. The overall quote is then negotiated with the national or regional authorities.

Compensation of public service obligations is made in the following manner:

- **for the trunk network:** through the sole granting of exclusive rights; no subsidies are provided and in fact a concession fee is to be paid by the concession holder (NS) to the national authority (EUR 20 million both in 2011 and 2012, EUR 30 million both in 2013 and 2014);
- **for the regional network:** through both the granting of exclusive rights and direct financial flows from the regional authorities to the concession holders.

It should however be noted that charges for the use of infrastructure are reasonably low in the Netherlands as the main core of such costs are taken up by the state. Charges are non-discriminatory.

Should there be any deficit above the compensation granted by the state, the railway operator may wish to renegotiate the conditions.

As the system in the Netherlands is that of competition *'for'* the market, no *'cherry picking'* is allowed.

## 8. Calculation of the level of compensation

Compensation levels must be clearly determined in advance. It is only in rare cases that a renegotiation of the compensation level may take place. This was apparently the case in the southern part of the Netherlands (Limburg) where Veolia operates the so called *Heuvelland-lijn*.

The level of compensation is the result of the difference between the foreseen costs and revenues. All relevant costs to operate a train service and all relevant revenues from operating train services are taken into account. In a public tendering procedure there is no limitation to the different types of costs and/or revenues. In the case of direct award of a contract, the parties negotiate all relevant costs and revenues.

During the awarding process, negotiations take place between the competent authority and the bidders. All criteria are debated, some of them even heavily discussed.

## 9. General payment conditions

Payment is made by regular instalments at determined intervals (usually quarterly). The instalments are considered satisfactory.

The contract is submitted to VAT, and this VAT is recovered. From a fiscal point of view, payment is considered as normal income.

If the operator does not respect its quality criteria, the Ministry of Transport or the relevant regional authority may apply penalties, if they are foreseen in the contract.

A compensation scheme for delays was already foreseen in the Netherlands prior to the adoption of the EU passenger rights regulation. It is much stricter than current EU rules.

## 10. Duration of public service contract

The maximum duration of a public service contract depends on whether it is multimodal (and thus includes bus) or unimodal (railway only). The duration of a multimodal contract is in principle 8 years, for unimodal railway contracts this differs but tends to be between 10 to 15 years.

## 11. Rolling stock

Most of the rolling stock used by NS is leased. Its age varies greatly. Other operators also tend to lease their rolling stock. In tendering procedures the regional authorities often require or give a special attention to contractors proposing to use new rolling stock.

## 12. Involvement of the regulatory body or other authority

The Netherlands competition authority, more specifically its transport unit, has no role regarding the provision of public service transport for the time being.

The Ministry of Transport or a local authority (the competent authority) has a supervisory role over the concession.



## 1. Organisation of public service operations in Norway

Public service transport is organised centrally by the Ministry of Transport. It is based on two major political aims, namely to:

- ensure a minimum level of public transport to and from outlying districts;
- support health and environmental issues through a reduction in number of traffic accidents and relief of road congestion.

It is organized fully in line with Regulation 1370/2007 which is implemented in Norwegian legislation by Regulation No. 1673/December 2010. As part of the European Economic Area Agreement Norway aligns its transport legislation with EU law.

The Ministry of Transport is in charge of determining the scope of public service operations and of concluding related contracts with operators. Almost the entirety of the domestic passenger traffic falls under public service obligations due to its specific geographical aspect. Operations on the domestic market are not open to competition for the time being.

The international commercial passenger market was opened to competition in January 2010 (in line with the requirements of Directive 2007/58). However, for the time being, no requests have been made on international routes including cabotage which would be likely to have an impact on existing public service operations.

## 2. Operators on the market for public passenger service transport

The following rail operators are in the passenger market:

- NSB AS a limited company 100% owned by the state is the major passenger rail transport operator;
- the Airport Express Train named Flytoget, a limited company 100% owned by the state, operates the line to/from Oslo/Asker to the Gardermoen airport in Oslo;
- OfofbanenAS, passenger transport on Ofofbanen (subcontractor for NSB).

## 3. Definition of public service requirements

Public service obligations usually consist in:

- tariff obligations (determine the average level of yearly increase in tariffs);
- service quantity is determined on a yearly basis on every line;
- service quality given by certain criterion such as punctuality, regularity and passenger development objectives;



- planned or foreseen service disruptions which are regulated through the agreement with the infrastructure manager;
- marketing – NSB is responsible for both income and cost and must therefore market its services.

NSB reports on its performance and the fulfilment of its obligations three times a year.

All of these criteria are discussed with the Ministry of Transport and the related compensation duly assessed (see below). NSB remains free to add further quality criteria to its services to help achieve its objective of passenger development.

## 4. Scope of public service transport by rail

Almost the entirety of domestic passenger rail traffic falls under public service obligations due, amongst others, to the specific geographic structure of the country. Indeed, long-distance passenger traffic can constitute a key social parameter for populations situated in the northern part of the country.

It should be noted that all modes of transport are covered by public service obligations (bus, boat, aviation and rail). Each mode is organised within a separate contractual agreement with the Ministry of Transport.

In terms of revenues, public service transport represents about 85% of NSB passenger rail traffic revenue. Public purchase represents about 40% of NSB total revenues.

## 5. Contract

Public service operations are defined by the Ministry of Transport in a contract concluded with the operator. With regard to rail transport in particular, public service transport is based on a framework agreement and on two other agreements detailing specific aspects of the first agreement:

- the basic principles are put in a basic agreement. A new basic agreement has just been concluded in 2011. The previous one was concluded in 1997;
- a **long term agreement** concluded for a duration of 4 years (from 2011– 2015) lays down the price requirements, i.e. the level of compensation necessary for the provision of public service rail transport and the level of services provided;
- a **purchase agreement**, negotiated on a yearly basis determines with greater precision the level of services on each line that is covered by the public service obligations. This agreement is concluded on a yearly basis as it depends directly on state budget. The purchase agreement also includes a detailed price agreement.

The quality of services (essentially punctuality requirements) is negotiated on a yearly basis and is monitored every four months.

The long term agreement and the purchase agreements are the object of enhanced discussions and negotiation between the parties.

## 6. Awarding of public service contracts

Public service transport contracts are awarded directly to NSB AS.

In 2002, the Norwegian government decided to put a line to tender: the regional line from Oslo to the city of Gjøvik (the so-called Gjøvikbanen line). The decision to put the Gjøvikbanen line to public tendering was based on the wish to gain experience from the opening up of a small line before potentially opening up the rest of the network to competition. This decision has been put on hold for the time being but all of the political parties in the opposition are in favour of competitive tendering. The situation could therefore possibly change in 2013, when the Norwegian Parliament will change.

## 7. Contract negotiation

The negotiation process is transparent and fair: the company makes its business case based on the public service obligations and various parameters requested by the government. Eventually, it appears that all lines are unprofitable (none is likely to compensate part of the losses made on others). Discussions take place on payment levels in relation to such obligations. The compensation of public service obligations today is paid through the allocation of financial input and exclusivity on the lines. These contracts are however so-called '*net contracts*' meaning that NSB keeps the ticket revenues with the risks attached to such revenues.

## 8. Calculation of the level of compensation

Compensation levels must be clearly determined in advance. They are included in the purchase agreement and in the long term agreement.

The level of compensation is the result of the difference between the foreseen costs and revenues.

The calculation of the overall costs for the service in question as a whole will be based upon the following costs:

- on-board staff (driver and other mobile staff);
- cost generated from the rolling stock (amortisation and interests);
- shunting services and cleaning services;
- administrative costs for the management of the public service contract;
- interest rate of capital involved;
- energy (electricity/diesel);
- sales and marketing;
- maintenance;
- installations necessary for operating passenger transport services;
- servicing of (historic) debt.

The production data is not included in the contract, just the level of services provided and the level of regularity and punctuality promised.

A '*reasonable profit*' is applied in the contract.



In Norway infrastructure charges are set very low (zero for passenger traffic) as a deliberate policy to balance the costs of using roads. The infrastructure manager is financed through the annual state budget.

The only line with access charges is the Gardermoen line which was built to provide sufficient infrastructure for a high speed service to the airport. The infrastructure charges cover operations and maintenance of this line.

VAT paid on ticket sales currently amounts to 8% - which is much less than normal VAT which is currently 25%.

## 9. General payment conditions

Payment is made quarterly upon the terms of payment decided in the agreement. The amounts received are not submitted to VAT.

There is a system of bonus-penalty put into place in case the quality targets are not met for some services. It is based on regularity, the volume of seats/trains provided and number of passengers transported. In principle, the penalty is applied if the regularity is lower than 99%. NSB is not penalised in cases where the regularity targets are not met due to failure of infrastructure. The quality of infrastructure is the single most important factor for the quality of deliveries. It is therefore a top priority in the country.

In case of delays, passengers can claim a refund of 50% of the ticket price if the train is delayed by more than 60 minutes on the Oslo-Trondheim, Oslo-Bergen, Oslo-Kristiansand/Stavanger and Trondheim-Bodø lines. On all other trains, customers can claim a refund of 50% if the train is delayed by more than 30 minutes. Season ticket holders are issued refund on the ticket cost in accordance with the above principles but divided by the number of



days the season ticket is valid for. The maximum total refund for a season ticket is limited to 50% of the ticket's purchase price.

However, passengers will not be compensated if the delay or train cancellation is due to circumstances beyond the control of NSB or the national rail administration, such as extraordinary weather conditions or acts of God, statutory order and prohibitions, strikes, lockouts, etc.

## 10. Duration of public service contract

The purchase agreement is concluded on a yearly basis. However, planning can be organised efficiently based upon the long term agreement and the objectives of which are generally followed.

## 11. Rolling stock

Rolling stock used for public service operations is the property of the operator.

## 12. Involvement of the regulatory body or other authority

As of January 2009, the Inspectorate has a regulatory body function to monitor railway market and to act as an appeal body to rail companies if they believe they have been unfairly treated. This applies to public service operations.





## 1. Organisation of public service operations in Poland

Public service transport is regulated in Poland in a series of texts. Apart from Regulation 1370/2007 which is directly applicable, a selection of the most important Polish legal acts relating to passenger railway transport, which were adjusted to the EU law include:

- Act of 16 December 2010 on public transport;
- Railway Act of 28 March 2003;
- Regulation of the Minister of Infrastructure of 27 February 2009 on the conditions of access to and use of rail infrastructure;
- Act of 29 January 2004 Public Procurement Law;
- Act of 20 June 1992 on the rights to discounts in means of collective transport.

In Poland, public service transport is organised at two levels:

- **centrally** by the Ministry of Infrastructure as regards long-distance/interregional and international public service traffic. The current transport operator is PKP Intercity;
- in a **decentralised** manner by the 16 individual regional authorities called *Voivodship Marshalls*. *Przewozy Regionalne* (the company called Regional Services) is 100% owned by the *Voivodships*. Other operators are also active at decentralised level (Koleje Mazowieckie – KM sp. z o.o.; PKP SKM w Trójmieście Sp. z o.o.; Arriva RP Sp. z o.o.; Koleje Dolnośląskie S.A.; Szybka Kolej Miejska Sp. z o.o.; Warszawska Kolej Dojazdowa sp. z o.o.; Koleje Wielkopolskie sp. z o.o.). They may participate in tendering procedures on the decentralised market. Recently, Arriva RP Sp. z o.o. won a ten year contract for passenger services in the Kujawsko - Pomorskie *Voivodship*.

The principles of transport organization in Poland within the framework of public service obligations were laid down in the Railway Act of 28 March 2003 on railway transport (Journal of Laws 03.06.789 of 17 May 2003).

Public service transport is organised by the *Voivodships* (16 of them) and by the Ministry of Infrastructure. The *Voivodships* are competent for regional traffic within their geographical sphere of competence while the Ministry of Infrastructure is competent for interregional traffic and long-distance traffic.

International passenger traffic is open to competition in Poland since December 2009. However, to date, no new entrant has applied to access the infrastructure for passenger transport (apart from transit requests).

Long-distance commercial passenger traffic is also open to competition for certified domestic entities. The market for domestic long-distance public service is governed by a single public service contract concluded with the ministry.





## 2. Operators on the market for public passenger service transport

Public service rail transport on the Polish passenger market is executed by:

- **PKP Intercity (IC)** for long-distance/inter regional and international public service traffic (concluded with the Ministry of Infrastructure). These contracts are concluded with the ministry only. There are 2 kinds of contracts concluded between IC and the ministry: one for international services (up to 2013) and one for national services (up to 2020). It should however be noted that the ministry can grant a contract to any operator who meets required conditions (as long as it is an entity registered in Poland);
- the company called **Regional Services** which is fully owned by the 16 *Voivodships*. Framework contracts for 3 to 6 years are concluded with Regional Services and services are effectively organised on the basis of annual agreements deriving from the framework contract;
- **other regional railway operators** (entities registered under Polish law).

## 3. Definition of public service requirements

Public service obligations are defined in the 2010 Act which makes direct reference to the definition provided in EU Regulation 1370/2007.

These obligations include:

- obligations on tariffs and obligatory discounts for social groups of the population;
- obligations on tariffs and obligatory discounts for pupils and students;

- service frequencies in regions (regional transport);
- service frequencies throughout the country (long-distance transport);
- quality criteria.

Public authorities, whether at centralised level or at decentralised level (*Voivodships*), increasingly set high quality criteria, which are then taken into account when calculating the overall costs of the services to be provided. Discussions between the operator and the public authority relating to quality criteria take place on a yearly basis.

**Quality criteria discussed with the company Regional Services relate to:**

- punctuality on the 90-95% level;
- delivering proper level of security, hygienic conditions, comfort and due service;
- delivering proper information, station announcement included;
- information on the timetable;
- ticketing service (at ticket desks, in trains, in other places agreed by operators);
- information on prices;
- in case of rolling stock breakdown ensuring a substitute mean of transport;
- setting special seats in coaches for parents with small children, pregnant women and disabled people;
- delivering smoking spots according to existing legislation.

**Quality criteria discussed with the company PKP Intercity relate to:**

- punctuality on the 85% level;
- delivering proper level of security, hygienic conditions, comfort and due service;
- delivering proper information, station announcement included;
- information on the timetable;
- ticketing service (at ticket desks, in trains, in other places agreed by operators);
- information on prices;
- setting special seats in coaches for parents with small children, pregnant women and disabled people;
- delivering smoking spots according to existing legislation;
- regularity;
- hygienic conditions.

As in both cases, punctuality is a major concern and that infrastructure quality is not optimum due to a lack of financing, the Polish government decided to opt for a permanent exemption from the passenger rights regulation for urban, suburban and regional services and to adopt other major exemptions. It should be noted that the poor quality of infrastructure has led to impose maximum train speeds of 20-40 kilometres per hour, which has as consequence to provoke reverse modal shift. Indeed, subsidised bus operations run along the lines of many inter-city trains. There is therefore no longer a competitive level playing field.

In addition to these criteria and in order to enhance passenger development, the operator makes additional price reductions for services on certain lines or urban agglomerations. These reductions must however be discussed and agreed by the public authority organising the service.

## 4. Scope of public service transport by rail

Until 2005, only regional services were carried out on the basis of a public service contract. Since 2006, regional services (including urban and suburban traffic), interregional and international traffic fall under public service contracts, except for those national services requiring a seat reservation.

Overall, the services performed under public service obligations take 77% of PKP Intercity operations and 90.5% of Regional Services operations.

### Intercity (2010):

Passengers for 2010		
Services	Number of passengers	% share
Commercial	8 508 567	22.95%
PSO	28 570 073	77.05%

Passengers for I-VII 2011		
Services	Number of passengers	% share
Commercial	4 980 873	23.43%
PSO	16 278 257	76.57%

Passenger-kilometres (in thousands) for 2010		
Services	Number of passenger-kilometres	% share
Commercial	1 753 497	20.90%
PSO	6 634 968	79.10%

Passenger-kilometres (in thousands) for I - VII 2011		
Services	Number of passenger-kilometres	% share
Commercial	989 119	20.47%
PSO	3 843 336	79.53%

### Regional Services (2010):

- 77.6 million train-kilometres = 100%:
- 90.5% - services (ca 70.3 million train-kilometres) - as public service
- 7.3 million passenger-kilometres - (9.5%) - commercial services (InterRegio trains)



## 5. Contract

There is a multiplicity of contracts in Poland as public service transport is organised at two different administrative levels depending on the type of traffic. A framework contract is concluded with the Ministry of Infrastructure for public service obligations relating to interregional traffic and a further one for international traffic for the entire country. Annual contracts are then concluded based on the framework contract.

Different contracts are concluded with the *Voivodship Marshalls* (at least one per *Voivodship* – there are 16 *Voivodships*). These cover all regional traffic (including urban and suburban traffic). Some regions decide to split their public service operations in different pieces with in each case a different contract. For example, certain lines will be the object of a separate contract.

For **Regional Services**, the contracts must be concluded no later than 6 months before the timetable enters into force. For **PKP Intercity**, an annual agreement needs to be concluded not later than 1 month before a given budgetary year starts.

The contracts relate essentially to rail transport. Some are mixed contracts, covering urban transport (bus and metro) with an integrated ticketing system. In such case, the different operators agree their share of the income.

For Regional Services, the existing contracts which were concluded under the former regime are valid until the end of 2010.

For PKP Intercity, the existing contracts (one on national services valid until 2020, and one on international services valid until 2013) have been concluded under the new regime based on Regulation 1370/2007.

In general terms, the contracts concluded are contracts governed by commercial and administration law.

## 6. Awarding of public service contracts

Polish law provides for the possibility to conclude contracts following competitive tenders or following negotiations with a single contractor.

Local *Voivodships* prefer competitive tendering. However, in case a valid application is not submitted, the contract will be directly awarded. Only three to four regions prefer to maintain direct awards as a principle.

interregional and international traffic contracts are awarded either directly or further to a competitive tender by the ministry to the operator of his choice.

In practice, however, PKP Intercity was, at the time the last framework agreement was concluded, the only operator which was able to meet the requirements provided in the contract.

## 7. Contract negotiation

Effective negotiations take place between the railway operator and the competent authority. These relate however essentially to quality criteria and the leverage on the correlation between the costs of the obligations and the level of compensation provided (or likely to be provided).

The level of compensation of public service contracts will vary from contract to contract, according to the calculation of costs and revenues for each line. '*Cherry picking*' is not possible in Poland even though exclusive rights are not provided to the operator. In practice, the fact that '*cherry picking*' is prohibited equals to a *de facto* exclusive right.

Contract payment is made on the basis of a contract concluded between a relevant authority (the ministry or a *Voivodship*) and an operator

## 8. Calculation of the level of compensation

The level of compensation is defined by the local government in the form of a Budget Resolution for a given year, resolved by the local government assembly (*Sejmik*).

The compensation is composed of financial means earmarked by the local government to cover the deficit generated by the public service obligation to carry. The deficit is constituted by the difference between revenue from the sale of tickets and subsidies to statutory discounts and between costs of executing regional transport. However, it should be noted that in each *Voivodship* the deficit is higher than local government compensations.

With regard to PKP Intercity, compensation is calculated according to the compensation calculation guidelines (an annex to the contract). The guidelines are elaborated on the basis of Regulation 1370/2007. Compensation is a payment for an operator for fulfilling agreed tasks. The sum comprises costs, revenues and a reasonable income.

With regard to Regional Services, the existing contracts do not comprise a reasonable income.

The main costs taken into account when calculating the level of compensation for both interregional and regional services relate to:

- staff;
- energy;
- infrastructure charges;

- maintenance and repair of vehicles;
- rolling stock;
- installations necessary for operating passenger transport services;
- other additional fixed costs.

## 9. General payment conditions

Payment is made on a regular basis and it is considered satisfactory by the operators (i.e. it does not lead to liquidity or other financial problems).

As the state of the infrastructure is quite poor in Poland due to limited financing of the infrastructure manager, it affects the quality of services provided to passengers (especially in terms of train speed, delays and cancellations). The government has therefore opted for major exemptions from the passenger rights regulation to avoid additional costs borne by the railway company (see section 3 above). Obviously this does not have a positive impact on the overall image of the railway operator in question and affects substantially its marketing policy and therefore its competitiveness towards other transport modes.

However, there are contractual penalties that will have to be paid by the operator if it does not fulfil its contractual obligations. These relate to the following objectives included in regional contracts:

- punctuality;
- delivering proper level of security, hygienic conditions, comfort and due service;
- facilitating availability to the services for disabled persons;
- delivering proper information on conditions of services;
- information on the timetable;
- ticketing service (at ticket desks, in trains, in other places agreed by operators);
- information on prices;
- delivering a substitute mean of transport;
- running all trains listed in the timetable.

With regard to PKP Intercity, the compensation is delivered monthly and is calculated according to (possibly) imposed penalties.

As regards delays, the following will apply for:

- **regional traffic:** delays over 10 minutes are treated as inadmissible and result in a contractual penalty of a set percentage of the monthly payment;
- **interregional (or in case of PKP Intercity) traffic:** Delays under PSO are treated according to reclamation procedures on the basis of national legislation: Act on service rules and civil law.

In case of delays occurred under PSO, the ministry does not impose penalties towards Intercity.



However, no compensation will be claimed in the following cases:

- if delays are a result of infrastructure works (modernisation, repair, etc);
- if delays are a result of limits provided for defensive matters, security or natural disasters;
- if delays are caused by incidents on lines independent on the operator;
- if delays are caused by a necessity to maintain a change connection with other delayed trains;

## 10. Duration of public service contract

For regional services, the framework agreement is concluded for a period of 3 to 6 years. This framework agreement constitutes the basis for annual public service contracts.

Despite the long framework agreement, the annual periodicity of the contracts render business decisions and economic efficiency of the services provided difficult.

## 11. Rolling Stock

For Regional Services, a part of the rolling stock used belongs to the company, while another part belongs to the *Voivodships*. In average, 62% of electric railway units and 42% of coaches are more than 30 years old. These figures relate to rolling stock owned by Regional Services. The rolling stock owned by the *Voivodships* is mostly entirely new.

PKP Intercity however owns all of its rolling stock. 26% of coaches and 41% of locomotives are older than 30 years.

## 12. Involvement of the regulatory body or other authority

The regulator does not intervene in public service contracts.





## 1. Organisation of public service operations in Portugal

Public service in Portugal is defined centrally by the state.

The regions have, in practice, no real role, although there is legislation stating they may intervene (Law n°159/99, from 14 September 1999 and Law n° 1/2009, from 5 January 2009).

Legal provisions relating to public service are mainly contained in the following legislation:

- the law imposing tariffs limitations on passenger transport lines (Decree-Law n° 8/93, from 11 January 1993 and Decree-Law n° 58/2008);
- the framework law relating to land transport systems (Law n° 10/90, of 17 March 1990);
- Decree-Law n°16/82 of 2 January 1982;
- Decree-Law n° 558/99 of 17 December 1999 amended by Decree-Law n°300/2007, of 23 August 2007.

Different entities will be in charge of awarding the public service contracts, depending on their geographic scope:

- the Secretary of State for Transport is competent for regional transport;
- the Transport Metropolitan Area of Lisbon and Oporto are respectively in charge of suburban transport in their respective region.

## 2. Operators on the market for public passenger service transport

For the time being, there are two railway undertakings operating public service transport in Portugal:

- CP - Comboios de Portugal, E.P.E., a company held at 100% by the Portuguese state;
- Fertagus, a private company.

CP is a state owned enterprise and has been granted a concession for the operation of all public service operations throughout the country. The share of public service passenger traffic transported by CP represents approximately 96%.

Since 1998, Fertagus was granted a concession for one specific line only, 54 kilometres of track long, in the South of Lisbon and crossing the river Tagus (suburban 'eixo Norte-Sul').

No other competitor has been providing international passenger services including cabotage on the Portuguese territory since the opening of the international passenger market to competition with Directive (EC) 2007/58.

## 3. Definition of public service requirements

Suburban and regional passenger traffics are considered to constitute public service transport, while long-distance passenger transport does not fall within that category.





## 4. Scope of public service transport by rail

CP has been operating all suburban and regional passenger traffic as public services on a historical and legal basis (Law n° 88-A/97, of 25 July 1997).

Fertagus is operating under a contract.

Long-distance passenger transport is not considered to be part of the public service obligations.

## 5. Contract

Public service operations are granted in the form of a concession.

## 6. Awarding of public service contracts

The historic company, CP, is required to provide the majority of public service transport (approximately 96% as mentioned above) throughout the country according to Decree-law n° 137-A/2009, of 12 June 2009.

For the time being, the only line granted further to a public tendering procedure is the one granted to Fertagus.

No exclusivity on a public service contract basis is granted except on the lines granted to Fertagus.



## 7. Contract negotiation

The public service obligations are to be compensated through a financial compensation and payments are made on a yearly basis.

## 8. Calculation of the level of compensation

CP has set up a very detailed accounting recollection of all costs incurred in order to obtain the right compensation for the public service they are providing.

Theoretically, the level of compensation is the difference between the foreseen costs and revenues.

Some elements taken into account to determine the cost of the public service obligations include the following:

- on board staff (driver and other mobile staff);
- railway police (safety and security);
- cost generated by the rolling stock (amortisation, maintenance and repair);
- shunting services;
- charges for the use of infrastructure;
- VAT<sup>1</sup>(5%);
- electricity.

## 9. General payment conditions

So far CP has been compensated for the public services it runs in line with what is foreseen in the national budget, as defined by the government.

Decree-Law 58/2008 provides that the operator shall bear the costs of compensation in case of delay for long-distance traffic falling under public service obligations.

## 10. Duration of public service contract

No provision is made as to the duration of the public service contract for the lines operated by CP, but payments are granted until 31 December 2019.

<sup>1</sup> The railway undertaking will have to pay VAT on revenues generated by the sale of tickets. This VAT forms full part of the costs incurred by the railway undertaking. As the costs must be calculated prior to the effective implementation of the service, the railway undertaking will base itself on the average VAT paid the previous year to determine the amount of VAT that must be taken into account in the overall cost of the services.



## 11. Rolling stock

Public service transport is provided with rolling stock belonging to the operator.

In average rolling stock used for regional public service transport is particularly old, while urban and suburban vehicles are in the process of being renewed or refurbished.

	<10 years	10/20 years	> 30 years
<b>CP Lisbon</b>	1%	62%	27%
<b>CP Oporto</b>	81%	0%	16.5%
<b>CP Regional</b>	2.5%	6.5%	81%

## 12. Involvement of the regulatory body or other authority

The regulatory body does not deal with public service contracts beyond what is formally foreseen in Directive 2007/58.



## 1. Organisation of public service operations in Romania

Public service operations in the rail sector are regulated in Romania by the Government Decision n° 1668/2008 as amended and supplemented in the implementation of GEO n°12/1998 on the Romanian railway transport and re-organisation of Romanian national railways. This decision provides for the framework conditions (contractual conditions) under which CFR Calatori provides public service transport operations by rail in the country for the period 2008-2011.

Public service transport is organised in a centralised manner in Romania: the Ministry of Transport is in charge of determining the scope of public service rail transport to be provided in the country and in this context, it is bound to conclude a contract for the operation of the required services with a selected railway operator. Every national operator has only one public service contract for all services provided.

International passenger traffic is open to competition since January 2010 in accordance with the implementation of Directive 2007/58. To date, there has however been no request to enter the market to operate international traffic including cabotage in Romania.

Moreover, it should be noted that the legislation does not prohibit the development of competition on the domestic market.

## 2. Operators on the market for public passenger service transport

CFR Calatori is the only national railway company 100% held by the state operating public rail transport services in Romania. Other operators are also active on the public service obligations market but essentially (although not only) on private sidings, which amount to 18% of the overall network in Romania. Subsidized public service passenger operations exist on these private sidings.

As passenger operations in Romania are generally speaking loss making, and the level of compensation does not correspond to the level of costs, the financial stability of CFR Calatori is compromised every year. The lack of a multi-annual budget for public service transport has an impact on the lack of multi-annual strategies and investments.

## 3. Definition of public service requirements

Public service obligations are defined in the 2008 government decision mentioned above which approved the public service contract concluded for 4 years with the railway operators. These obligations include:

- obligations on tariffs and on discounts for social groups of the population;
- rank of trains for national services;
- service frequencies throughout the country;
- quality criteria.



The minimum comfort criteria of the service operation are related essentially to the commercial speed of trains, on board services, car equipment. These quality criteria are included in an appendix to the contract.

## 4. Scope of public service transport by rail

Public service transport by rail in Romania covers the entirety of domestic traffic.

Public service transport in Romania is provided with 1 577 trains per day which represents 158 000 passengers per day 52.48 million passenger-kilometres in 2010).

Overall, the public service market represents 100% of the overall passenger rail market. There are no international passenger trains entering the country and providing any cabotage.

## 5. Contract

In application of the 2008 Decision, public service operations are organised through the conclusion of a single contract for each passenger railway with the Ministry of Transport, which is responsible for the organisation of the award procedure and the definition of required public service obligations. In 2008 the first multi-annual contract in Romania was approved by a government decision for the provision of public service obligations. The contract took the form of a piece of legislation.

The framework contract is amended annually; both the level of compensation and the obligations imposed are revised once a year depending on the economic and financial situation in Romania. The framework conditions do not comply with the provisions of the new Public Service Regulation 1370/2007.

The contract covers rail transport exclusively. In general terms, the contract concluded is a private law contract.

## 6. Awarding of public service contracts

Public service contracts are awarded directly.

## 7. Contract negotiation

The contract is paid through financial influx. In other words, and in theory, this means that there are no exclusive rights on the territory.

In practice, the railway company determines its business case with regard to the extent of public service operations to deliver on a yearly basis and submits a detailed cost assessment to the Ministry of Transport. The parties then negotiate the level of compensation in line with the public services to be provided through the public service contract. The compensation should cover a 'reasonable profit' of 3-5%, but in reality, such 'reasonable profit' has not been paid recently.

It should be noted however, that the contract is a 'net' contract. In other words, the operator bears all the risks associated to ticket revenues. Due to objective reasons (global state policy on transport modes, economic crisis, current critical state of railway infrastructure, etc.), over the past years, ticket sales have decreased, and so have the revenues. This has not been reflected in the annual revision of the contract.



Eventually this is where the problem lies in Romania as the calculation of the level of revenues is largely estimated, thereby correlatively reducing the level of public compensation. Eventually, CFR Calatori is bound to cover the losses *'in full application of the contractual obligations'*. These losses are accumulated on a yearly basis and pile up for many years now, thereby increasing the company's historical debt and affecting its overall competitiveness on the European market.

## 8. Calculation of the level of compensation

Compensation levels are determined in advance. The compensation is not renegotiated in case the revenues generated by ticket sales are lower than foreseen: CFR Calatori bears all risks.

The level of compensation should be the result of the difference between the foreseen costs and revenues from tickets sales. In reality, the costs have to be cut in order to make compensation enough.

The calculation of the overall costs for the service in question as a whole is generally based upon the following usual costs:

- track access charges;
- human resources;
- rolling stock fleet (maintenance, repairs, amortisation, etc.);
- energy and fuel;
- other passenger related costs.

## 9. General payment conditions

Compensation payment is made monthly, with reviews made on a quarterly estimation of the public service annual compensation, approved by the national authority through the annual budget.

The state of infrastructure in Romania is rather poor which eventually affects the quality of services provided by railway operators. As a result, the Romanian authorities have decided to apply for derogations from the Passenger Rights Regulation 1371/2007 for domestic traffic to avoid operators having to pay excessive compensation levels to passengers for delays/cancellations caused by the poor quality of infrastructure of the national railway network.

## 10. Duration of public service contract

The current contract has been concluded for a four year duration. This duration would be satisfactory if the payment scheme was valid for the entire period (through a four-year budget). However, as the public service contract is reviewed on a yearly basis, it does not allow for any longer term planning or for any valuable investment to improve the quality of services.

## 11. Rolling stock

Operators generally own the rolling stock they use for the public service contract. A marginal part of rolling stock depreciation is taken into account in the calculation of the level of compensation of the contract.

In 2010, 60% of CFR Calatori coaches and 37.2% of locomotives were over 30 years old.

## 12. Involvement of the regulatory body or other authority

The rail regulator in Romania is part of the Ministry of Transport and is therefore not independent from the national authority / railway undertakings / infrastructure manager as imposed by European legislation. Only the Ministry of Transport, one of the contracting parties signing the public service contract as the national authority, and which is also the sole owner of CFR Calatori, the other signing party, deals with public service contracts.







## 1. Organisation of public service operations in Slovakia

The organisation of public service transport in the railway sector in Slovakia has undergone several reforms since the accession of the country to the EU. Today, public service transport by rail is regulated by the Act of the National Council of the Slovak Republic no. 514/2009 Coll. on operating transport on railway infrastructure which came into force on 1 January 2010 and was later amended by the laws no. 433/2010 Coll. and 547/2010 Coll. This law, together with the Act of the National Council of the Slovak Republic n° 513/2009 on the railway infrastructure replaced the 1996 law (Law N° 164/1996) on railway infrastructure and operating transport on the railway infrastructure.

These texts specify the terms and conditions, as well as the content of public service contracts and are fully in line with the Public Service Regulation 1370/2007.

Public service transport is managed centrally, by the Ministry of Transport, Construction and Regional Development. The timetable is however discussed with regional authorities. According to the law, the management of regional services will be in the hands of regional authorities (self-governing authorities of 8 regions in Slovakia) as of 1 January 2012. They will be competent to order regional railway public service transport in line with the specific transport volume needs of their region. However, it should be noted that payment of the contract will be made from the national budget. Regional transport should be in the hands of regional authorities (trains, which are operated within a single region). Other traffic will be managed/organised by the state.) It should however be noted that this process is far from being finalised, and as this brochure went to press, it was difficult to assess whether at all, when and how the competencies will or will not be transferred to the regions.

Both the domestic and international passenger rail markets are open to competition.

## 2. Operators on the market for public passenger service transport

To date, two public service contracts have been concluded:

- between ZSSK and the Ministry of Transport, Construction and Regional Development;
- between RegioJet and the Ministry of Transport, Construction and Regional Development – line Bratislava – Dunajská Streda – Komárno. According to this contract the transport operation will start as of 4 March 2012.

ZSSK is however, the main rail passenger company operating on the domestic market. It is 100% owned by the state.

## 3. Definition of public service requirements

The above mentioned Act no. 514/2009 defines the conditions and content of the public service contract and the duties of the transport operator.

The following elements must be included in the contract for operating public services of passenger rail transport:



- extent of the transport performance;
- the timetable general requirements;
- territory specification;
- subcontracting of transport services (if possible) and its extent;
- tariff conditions;
- exclusive rights – if awarded;
- rules for calculation of the compensation;
- rules for inspection of the transport operator (fulfilling of obligations, calculation of costs);
- penalties – if required;
- validity period of the contract.

The duties of the transport operator according to the law are:

- obligation to carry;
- obligation to operate.

Obligation to carry commits the operator to transport passengers in a non-discriminatory way under the valid tariff conditions.

The obligation to operate commits the operator to provide transport services in line with the law and awarded licence.

Detailed quality criteria are included in the contract between ZSSK and the Ministry of Transport. They cover:

- reliability and punctuality of trains;
- safety;
- cleanliness;
- functionality of heating, lighting, opening of windows and doors, etc.;
- connections;
- speed increases, decreasing of costs, etc.

The quality criteria are the object of a negotiation between the public authority and the operator.

#### 4. Scope of public service transport by rail

The quasi-entirety of the domestic and international traffic in Slovakia falls under public service obligations. Only trains, which are ordered by private persons or companies, are not included in the public service obligations.

Public service transport in Slovakia is provided with 1 503 trains per day, which represents 45 million passengers per year and 31.9 million train-kilometres per year (data from the year 2010).



## 5. Contract

Up until recently, one single contract was concluded between ZSSK and the Ministry of Transport for the entirety of public service transport. The current one is concluded for 10 years (2011–2020). The volume of train-kilometres required and the budget is revised on a yearly basis.

## 6. Awarding of public service contracts

Slovak Law provides that it is possible to award public service contracts either directly or through a competitive tendering procedure.

As mentioned above, there are two public service contracts concluded in Slovakia. Each of them was granted directly to the railway operator.

According to the contract between ZSSK and the Ministry of Transport, the latter may take out part of the transport services to tender them away or to award them directly to another operator. The volume of ordered train-kilometres may be decreased by up to 35% during the contract period in comparison with the year 2011. The decrease between two successive years can be up to 10%. The following reasons for the decrease are possible:

- taking out to tender or direct award,
- moving competencies to regional authorities,
- other reasons (state budget).



## 7. Contract negotiation

In the case of ZSSK, the level of compensation and the calculation method is written in the public service contract. However, it should be noted that ZSSK has constantly suffered from under compensation due to budgetary shortages in the national budget. According to the current public service contract it is possible to have a '*reasonable profit*' in the future. This remains however theoretical due to state budget cuts. For the year 2011 no '*reasonable profit*' is included.

Every year the state sets a maximum amount for the overall compensation of public service obligations, regardless of the real costs engaged in practice. ZSSK has to cover this gap by loans. Uncovered loss is subject to be solved in the future.

Negotiations in practice are therefore rather limited due to major budgetary constraints.

## 8. Calculation of the level of compensation

According to the law, the passenger transport operator is entitled to compensation (including '*reasonable profit*') for demonstrable loss. However, the compensation is limited by the level of financial means allocated in the state budget for the given year.

The demonstrable loss in passenger transport is the difference between economically eligible costs incurred by the operator when fulfilling the obligations resulting from the public service contract and the revenues of the operator gained from the same obligation (including '*reasonable profit*').

Public service transport has never been paid at its true level since the accession of Slovakia to the EU or even before that. ZSSK has been accumulating debt due to the constant shortage of financial means in the national budget.

The calculation of the overall costs for the service in question as a whole is generally based upon the following costs (year 2010):

- traction fuel;
- traction electric energy;
- material;
- direct wages;
- direct depreciation / amortisation;
- direct maintenance and repairs;
- levies;
- fare;
- track access charges;
- other direct costs;
- overheads;
- financial charges.

The charges for the use of infrastructure are the same for passenger and freight traffic (since 1 January 2011).

The revenues depend mostly on the transport performance (number of passenger-kilometres) and the tariff policy for the given period. There is a possibility to have a *'reasonable profit'* in the contract, but in practice it has never been applied.

## 9. General payment conditions

In practice, advance payments are subject to a negotiation every year. There are no problems with delays but rather problems of budgetary shortage in the state budget.

The Slovak Republic decided to apply some of the passenger rights exemptions to its domestic transport for a period of five years. In addition, permanent exemptions from the application of Regulation 1371/2007 are applied for regional, urban and suburban services. However, ZSSK, the rail operator has decided to compensate passengers based on their own scheme for each delay exceeding 60 minutes (applicable only for InterCity and EuroCity trains).

In parallel, an agreement is in the process of being discussed with the infrastructure manager to find a reasonable solution with regard to all delays imputable to infrastructure.

The compensation does not include VAT. (Both costs and revenues are calculated without VAT, and the sum paid by the ordering party is also exempt of VAT.)

## 10. Duration of public service contract

The previous contract was concluded for a duration of three years, with the key parts of the contract (its annexes) being revised on a yearly basis.

The new contracts are concluded:

- between ZSSK and the Ministry of Transport for a duration of 10 years (2011-2020);
- between RegioJet and the Ministry of Transport for a duration of 10 years (operation 9 years 2012 – 2020).

## 11. Rolling stock

ZSSK is currently operating public service transport with its own rolling stock. Depreciation of rolling stock is taken into account in the calculation of the level of compensation of the contract.

Overall, 28% of the total fleet used is less than 10 years old and 30% is more than 30 years old.

## 12. Involvement of the regulatory body or other authority

Beyond its powers in application of current EU legislation, the rail regulatory body plays a certain role with regard to public service operation. It regulates the maximum price level in passenger railway transport as well as the maximum track access charges for all public service operations. In addition, it is the authority awarding licenses and conducting inspections.



## 1. Organisation of public service operations in Slovenia

Public service transport in Slovenia is regulated by the Railway Transport Act and the Decree on Public Service Obligations in Inland and Cross-Border Regional Railway Passenger Transport (Official Gazette of the Republic of Slovenia, No 99/2008) which has incorporated the content of the EU public service regulation. EU Regulation 1370/2007 is fully reflected in the decree.

Public service operations are in general defined in the above mentioned decree.

Public service transport is centrally organised in Slovenia: the state – through the Ministry of Transport and the Slovenian Agency for the Management of Public Railway Infrastructure Investment – manages the organisation of public service transport in the country.

Public service transport is provided throughout the country for almost the entirety of inland and cross-border regional passenger transport: 97% of passenger transport in Slovenia is organised under public service obligations. There is no distinction made between regional and long-distance travel given the small size of the country.

The market for international passenger traffic is open to competition since January 2010 including cabotage. However, the domestic market for passenger traffic is not open to competition yet. To date, there has been no request for international paths including cabotage in Slovenia.

## 2. Operators on the market for public passenger service transport

For the time being, there is only one passenger rail operator on the Slovenian domestic market: SŽ which is 100% owned by the state. It will remain the sole operator on the passenger rail market by law until the end of the restructuring process of SŽ (by the end of 2011).

## 3. Definition of public service requirements

The public service obligations in railway transport are defined in detail on a yearly basis in the contract concluded between the Agency for Rail Transport, on behalf of the state, and the rail operator.

They include:

- passenger transport volume, level of public service;
- obligations on tariffs and obligatory discounts for social groups of the population;
- service frequencies (confirmed timetable);
- financial report (monthly);
- counting passengers on all trains (once per year);
- comparison of prices between public service operators (railways and bus companies once per year or before the price increase);
- quality of passenger services.





Quality criteria constitute an important part of the public service obligations. They relate to safety, comfort, speed, transport capability amongst other. The quality parameters which are specified in the contract are those relating to punctuality (calculated in minutes per 100 kilometres) and customer satisfaction which include staff, schedules, arrangement of train and stations.

#### 4. Scope of public service transport by rail

Almost the entirety of domestic passenger traffic is provided under public service obligations. It covers all of inland and cross-border regional railway passenger transport. Overall, 97% of the national passenger rail market is provided under public service obligations. The other 3% represent special trains, for which no subsidy is received. There is no distinction made between regional and long-distance transport given the small size of the country.

In 2010, there were approximately 624 passenger trains operated per day on the Slovenian territory. This represented in 2010 approximately 43 000 passengers per day (10.86 million train-kilometres per year for inland and cross-border regional passenger transport).

#### 5. Contract

Public service obligations are defined in a statutory manner in the Railway Transport Act and in its implementing decree. On this basis, a contract is concluded between the railway operator and the Rail Agency. It covers only rail transport. Other modes of transport are currently dealt with separately. However, there is a plan to integrate all modes of transport in 2013 in one single contract. If this plan is concretised, all modes of transport may well be organised within one single framework.



A single contract is concluded for the entirety of the territory. The current contract was concluded under the former regime and will run until 2010. When negotiated, however, the main clauses of the contract were aligned with the new public service regime.

It is a contract of public law. The contract is based on the Act of Public Finances, Act of Executing the Budget of the Republic of Slovenia and the Decree on the Manner of Performing the Obligatory Public Services in Inland and Cross-Border Regional Passenger Transport.

## 6. Awarding of public service contracts

Public service contracts are directly awarded for the time being in Slovenia. SŽ is obliged to provide passenger services on the total network and is not allowed to terminate services, which are considered to be commercially non-viable. On certain rare occasions, the railway operator was authorised to exceptionally close down certain limited lines.

Plans to introduce an integrated public service transport system in 2013 could also include changes in the current legal framework.

## 7. Contract negotiation

Up until 2010, public service obligations, their scope and their compensation were not the object of discussions between the operator and the state. It is only recently that some discussion and negotiation has taken place relating essentially to the leverage on the correlation between the costs and the transport requirements imposed.

The compensation of public service obligations is calculated as the net financial effect following the methodology foreseen in the EU regulation. Compensation is to be paid in accordance with the performance provided by the operator.



As compensation is provided through a mixture between direct payments and exclusive rights, no 'cherry picking' is authorised on the national territory so as to avoid any revenue losses to the operator. However, the contract contains a partial risk for the operator as it is based upon the operator's annual business plan. In other words, if the performance is inferior to what was foreseen and agreed with the state, the latter will not compensate the losses in revenues. The risk is therefore borne by the operator.

For many years, however, the compensation that was due to be paid by the state has been insufficient to effectively cover the operation of public service passenger transport. As a result, the operator has seen its historical debt grow substantially. Servicing the historical debt remains an item outside of the public service contract.

## 8. Calculation of the level of compensation

The level of compensation is negotiated annually at the end of the previous year. It is based on train-kilometres. Compensation levels must be clearly determined in advance. There is no possibility to renegotiate the compensation in case of excessive loss compared to the forecast.

The level of compensation is the result of the difference between the foreseen costs and revenues.

The calculation of the overall costs for the service in question as a whole is based upon the following costs:

- staff;
- energy;
- infrastructure charge;
- maintenance and repair of vehicles;
- (historic) debt payment – financial costs for interests on credit for rolling stock and others;
- other fixed costs include depreciation costs, insurance premiums, advertising;
- maintenance of computer equipment and facilities, costs for other services (sales, payments, administration, rentals, transport and postal services, cleaning).

Optionally and on a case by case basis, other costs can be included, such as marketing costs, publicity of specific time schedules, etc.

Overall revenues in inland and cross-border regional passenger transport are composed of:

- revenues from ticket sales;
- subsidy (public service);
- other revenues (promotion, etc.).

A 'reasonable profit' is not foreseen in the compensation but it is mentioned in the regulation.

## 9. General payment conditions

Payment is made on a monthly basis. At the beginning of every month the estimation of passenger transport volume (number of passengers and train-kilometres) is sent to the Agency for the Management of Public Railway Infrastructure Investment.

This is the base for the calculation of monthly payment of subsidiary. The month after, the final report for the past month has to be sent.

The infrastructure in Slovenia is in a sufficient state of quality and does not affect the quality of services.

If the performance of the operator is insufficient, he is asked to pay a penalty for all delays, cancellations or partial cancellations of services, unless these occurrences are due to *force majeure*. Moreover, the Passenger Rights Regulation 1371/2007 is applied to public service transport in Slovenia. However, when delays are due to the infrastructure, the compensation to be paid by virtue of the passenger rights regulation is dealt with by the infrastructure unit of the company. In any case, the operator will deal with all compensations to third parties.

## 10. Duration of public service contract

While public service contracts were concluded on an annual basis for many years, the latest contract signed in 2010 was concluded for a duration of 10 years. This duration is felt by the operator as reasonable as it allows for the organisation of its activity activities within the context of a long term business plan.

## 11. Rolling stock

Rolling stock is entirely owned by SŽ. A marginal part of rolling stock depreciation is taken into account in the calculation of the level of compensation of the contract.

In 2010, 33.1% of vehicles and locomotives were more than 30 years old. 26.6% of the vehicles are 10 years old. It should be noted that the public service compensation covers interests on loans for rolling stock and other credits to carry out PSO, while the principal cost for rolling stock purchase is not included in the compensation amount.

## 12. Involvement of the regulatory body or other authority

The Agency for the Management of Public Railway Infrastructure Investment carries out controls over the implementation of the public service contract. It has no impact on the negotiations and does not, therefore, have a say on the correlation of the level of public service compensation awarded compared to the level of services required.



## 1. Organisation of public service operations in Spain

Currently, the legal framework regarding rail public service operations in Spain consists mainly of the following pieces of legislation:

- the Land Transport Law: Law 16/1987 (30 July 1987) – Articles 17, 20;
- the Rail Sector Law. Law 39/2003 (17 November 2003): Third and Fourth Transitory Dispositions;
- Royal Decree 2387/2004 (30 December 2004), by virtue of which the regulation implementing the Rail Sector Law was approved. Fourth Transitory Disposition;
- RENFE Statutes: Royal Decree: 2396/2004 (30 December 2004) – Second Transitory Disposition, paragraph 4;
- RENFE/State Contract-Program 2006-2010 – Among others, the Contract-Program establishes the compensations that Renfe Operadora should receive regarding the operation of public services;
- Regulation 1370/2007 which has a direct effect into the Spanish legal system
- Agreement of the Council of Ministers of 30 December 2010, establishing the rail passenger services submitted to public service obligations;
- the Public Service Agreement between the state and Renfe Operadora which is currently being drafted.

The 2006-2010 Contract-Program signed between the state and Renfe Operadora has been, until 31 December 2010, the financial, operating and budgetary framework for Renfe Operadora.

From 1 January 2011 onwards, the public service obligations regarding rail passenger services (currently operated by Renfe) are established according to the Agreement of the Council of Ministers of 30 December 2010, which regulates the bases of the public service agreement to be subscribed between the state and Renfe Operadora.

By virtue of the 2003 Law (which entered into force in 2005), the railway network of general interest, as well as all the railway services on the network of general interest, are the exclusive competence of the Ministry of Public Works (*Ministerio de Fomento*).

## 2. Operators on the market for public passenger service transport

In 2011, only Renfe Operadora operates the domestic passenger services **on the Railway Network of General Interest**, including those submitted to public service obligations. However, it should be noted that the 2003 Law refers to liberalization of passenger services and it explicitly sets out that further market opening will be effective as soon as required by EU legislation.

International passenger traffic is open to competition since 2010, according to Directive 2007/58. However, up to date, no international service including cabotage is being operated by third parties in Spain having an impact on existing public service obligations.





### 3. Definition of public service requirements

According to the Regulation 1370/2007, Renfe Operadora's commuter and mid-distance services, as detailed in the appendixes to the Agreement of the Council of Ministers of 30 December 2010, are declared subject to public service obligations.

According to the mentioned Agreement of the Council of Ministers of 30 December 2010, a public service contract regarding commuter services operated on the railway network of general interest has to be signed between the state (through the Ministry of Public Works once the Ministry of Economy and Finance has favourably informed) and Renfe Operadora. This contract has to establish the conditions for executing the public service obligations and the corresponding compensations, including:

- the commitments made by the operator regarding quality ratios; environmental sustainability goals, accessibility for people with reduced mobility, social responsibility, indexes of comfort, cleanliness, customized client's service, indexes of quality and satisfaction perceived by users, which must be duly audited by an external auditor;
- applicable rates, which should cover a minimum percentage of total attributable expenditures, as fixed by the Government Commission for Economic Affairs;
- duration of the contract: three years, that may be extended for a further period of three years. Also, criteria for possible updating have to be fixed;
- explicit recognition of the operator's exclusive rights to operate the services included in the contract during the period of its validity;
- parameters for calculating the compensation for the operator;
- mechanisms and procedures to increase or to reduce the level of services included in the contract;
- incentives and penalties associated with quality of service commitments.
- causes of cancellation of the contract;

Regarding the mid-distance services included in the appendixes to the Agreement of the Council of Ministers of 30 December 2010, which are under the authority of the state and presently operated by Renfe Operadora on the railway network of general interest, a contract between the state and Renfe Operadora has also to be signed, although contracts between Renfe Operadora and the autonomous communities will continue to be in force in the meantime.

Before the end of 2011 (or not later than the end of 2012, if the time frame was extended) mid-distance services to be provided under public service obligations must be defined and decided according to the procedure and criteria established in the Agreement of the Council of Ministers of 30 December 2010. The criteria to be taken into account, among others, are savings in greenhouse gases emissions and external costs, as well as conditions of frequency, quality and fares obligations. Decisions to ensure the economic balance of the operation of those public services will also be agreed.

As a result, a new contract between the state and Renfe Operadora regarding mid-distance services has to be signed to replace the initial one, and it will have to be similar to the contract regarding commuter services.

On top of these public services contracts, the Council of Ministers will define, within the same time frame, public service obligations regarding recurrent journeys on mid-distance



trains running on the railway network of general interest, according to criteria and conditions established in the Agreement of the Council of Ministers of 30 December 2010. Renfe Operadora will be compensated for the discounts granted for those journeys according to the corresponding public service contract.

#### **4. Scope of public service transport by rail**

Public service obligations apply to all Renfe Operadora mid-distance and commuter services on the network of general interest, competence of the state, as listed in the appendixes of the Agreement of the Council of Ministers of 30 December 2010, including mid-distance services on the high-speed lines.

Public service obligations also apply to commuter and regional services in the Catalanian Community which were transferred from the competence of the state through the Royal Decrees 2034/2009 from 30 December and 1598/2010 from 26 November respectively.

Long-distance services are not operated under public service obligations.

#### **5. Contract**

The 2006-2010 Contract-Program signed between the state and Renfe Operadora ended 31 December 2010. From that date onwards, public service obligations regarding rail passenger transport operated by Renfe Operadora are contained in the mentioned Agreement of the Council of Ministers of 30 December 2010. The state and Renfe Operadora are negotiating the public service agreements, according to the Agreement of the Council of Ministers.

## 6. Awarding of public service contracts

Currently, public rail services are granted as described above.

## 7. Contract negotiation

Process as described above.

## 8. Calculation of the level of compensation

The compensation for the public service obligations will be established in the contracts between the state and RENFE Operadora according to the Regulation 1370/2007 and the Agreement of the Council of Ministers.

## 9. General payment conditions

They will be established in the contracts between the state and Renfe Operadora.

## 10. Duration of public service contract

Duration of the contract will be three years and may be extended for a further period of three years.

## 11. Rolling stock

RENFE Operadora operates public service transport with its own rolling stock. There are important investments and the fleet is getting being renewed considerably.

## 12. Involvement of the regulatory body or other authority

The railway regulating committee is not responsible for the public service contracts.

The authorities involved in processes relating to public service transport are the Ministry of Publics Works and the Ministry of Economy and Finance.





## 1. Organisation of public service operations in Sweden

The Swedish railway system has undergone a complete overhaul since 1988 with the adoption of the Transport Policy Act and subsequent pieces of legislation.

Passenger rail traffic in particular was progressively deregulated in Sweden as of 1990, when it became possible for regional authorities to procure train services by competitive tendering. Until then, the state owned company SJ (Swedish Railways) enjoyed a monopoly over all passenger traffic. Since, private operators have entered the market and are now well established in regional traffic. In 1993 the tendering of non-commercial long-distance lines followed.

Even though Regulation 1370/2007 is of direct effect in the Swedish legal system, a government bill was adopted in 2010 setting up a new “Law (2010:1065) on public transport”. This law will come into force on 1 January 2012 and thereby replace the current “Law (1997/734) on responsibility for certain public transport”. A number of changes in other related texts have also been made in the course of 2010.

Currently, local and regional railway services (as well as bus services) are competitively tendered by regional (county-based) public transport authorities, awarding contracts. Non-commercial long-distance services are similarly tendered by a national authority.

When this report was drafted, no competition had yet developed on cabotage along international lines further to the opening of the international passenger market in 2010 (Directive (EC) 2007/58). However, this EU measure triggered the progressive opening of the Swedish domestic market to competition.

The market for commercial passenger railway traffic is completely open for competition since October 2010 (with full effect from December 2011 due to the time-tabling process). Consequently, the national carrier SJ is in the process of losing its remaining exclusive rights on this part of the market.

Public service operations are organised in Sweden both at national and at regional level.

**At national level**, the national public transport agency in charge of public service operations is *Rikstrafiken* (since 2011 a part of the infrastructure manager Trafikverket) – the Swedish transport administration. It deals with (in principle) all long-distance travel of public service nature.

It depends on the Ministry of Transport. Its tasks consist of:

- defining the long-distance travel that falls under public service rules;
- regulation of all long-distance travel that is non-commercial applicable to rail, sea and air travel;
- awarding and management of such contracts with railway undertakings.





**At regional level**, the Regional or County Public Transport Authorities (CPTAs or *Trafikhuvudman*) are in charge of local/urban and regional public service traffic.

Their tasks consist of:

- defining local/regional traffic in the best interest of citizens;
- awarding and managing public service contracts.

The CPTAs play an important role on the market as they contract public service transport. As part of this task, they often provide operators with the necessary rolling stock for the services required.

*Rikstrafiken* and the CPTAs often cooperate to propose public service contracts covering more than one single region. Some CPTAs have also grouped their services to create larger networks of interregional character. They then tender the services in cooperation and manage the contracts and their implementation together. This form of cooperation substantially increased recently. The advantage of this form of contracts is that it allows covering a wider region with both local and cross-regional traffic. Further, administrative burdens are shared by various authorities and the eventual railway undertaking operating the services will be in charge of a wider geographical area. Finally, the CPTAs have created a joint rolling stock company called *Transitio*, allowing them to centralise the administration of their combined fleets of rolling stock to be provided to railway operators for the provision of specific public service transport.

With the new law on public transport, coming into effect in 2012, the CPTAs will be replaced by Regional Transport Agencies more closely linked to the regional political bodies. At the same time, it will become possible for commercial operators (bus and/or rail) to also enter the local and regional markets for passenger transport, complementing (or competing with) the services procured by the new agencies.



## 2. Operators on the market for public passenger service transport

SJ AB is the state-owned passenger rail operator (the former Swedish state railways were split into several company groups in 2001, one of which became in charge of passenger traffic). Since the step-by-step market-opening of the passenger rail market began in 1990, approximately 10 companies have entered the market. The major ones are:

- Citypendeln Sverige AB, later Keolis (no longer operating any railway services);
- Connex Sverige AB, later Veolia;
- Svenska Tågkompaniet AB, subsequently acquired by NSB;
- Arriva Tåg AB (now a subsidiary to DB);
- DSB First AB (a joint venture between DSB and First).

## 3. Definition of public service requirements

Public service obligations requested by the state or by the regional authorities limit themselves mainly to tariff obligations and time schedules.

Quality criteria to be met are defined by the procuring authority and are to be taken as prerequisites when placing bids in tenders.

They usually relate to punctuality, cleaning and staffing.

## 4. Scope of public service transport by rail

All traffic, whether urban, suburban, regional or interregional, which cannot be run under normal commercial terms (i.e. without subsidies), is likely to be contracted out in a public service contract.

In 2010, roughly 45% of all passenger-kilometres produced could be defined as public service traffic.

## 5. Contract

Generally, a contract is concluded per mode of transport along a specified line or a network of lines. Therefore, heavy rail transport is dealt with separately from other modes of transport.

Public service transport is organised through the conclusion of civil law contracts concluded between the parties to the contract, i.e. *Rikstrafiken* or CPTA and the railway undertaking.

In practice, the public authority launches a public bid for a determined route or network of routes. Interested railway undertakings submit their offer for the transport services requested. Generally, the competent authority sets the requirements and applicants submit their bid. There are examples of procuring authorities (such as the one in the county of Värmland) that have worked together with operators to reach a consensus about appropriate incentives to be included in the contract.

There is also an ongoing project called the '*Doubling project*', seeking to double travelling by public transport (all modes) by 2020, and in the long-run, to double the market share.



Contract design and incentives are discussed as important elements of reaching these goals. This project involves representatives of both the procuring authorities and the operators.

Generally, in each county, there is only one contractor operating the local/regional rail services, which may amount to a single line or a network of lines, sometimes reaching into other counties. Long-distance rail services are generally tendered line by line with separate contracts for each line.

The contract concluded by the authorities and the railway companies is essentially divided in two parts: one standard part that regulates the liability issues with regard to passengers and infrastructure and another part on the content which is freely negotiated between the parties.

VAT is applied to this commercial contract. It is, however, a reduced level of VAT at 6%. It may be deduced afterwards by the payer. There is no VAT applied when *Rikstrafiken* is the payer.

As this report was drafted, no new contracts had been awarded referring to the new Regulation 1370/2007 regime.

## 6. Awarding of public service contracts

Even though direct award is not legally forbidden, in practice, public service contracts are currently granted following a public tendering procedure.

The contracting authority has the obligation to clearly state in advance and in a transparent manner the criteria according to which the contract will be awarded. The price proposed by the competing bidders is usually the most important criteria.

In practice, all lines that are not profitable are put to tender either by *Rikstrafiken* or by the CPTAs. All railway companies are then in a position to propose a bid.

## 7. Contract negotiation

Costs incurred for public service contracts are compensated through a system of mixture between the granting of exclusive rights and direct financial influx. In principle, all public service contracts are compensated through the granting of exclusive rights. Additional financial influx will be granted where the exclusive rights will not suffice to pay/compensate the costs incurred by the provision of the services concerned.

Contracts for local and regional rail services are generally of the 'gross cost' type, compensating the operator for its costs (with some margin) but with no revenue-sharing. Contracts for long-distance services are generally of the 'net cost' type, implying that the operator also gets the revenues from ticket fares. In the latter case, the principle is the following:

- the contract will be concluded for a specific line throughout a specified period of time (in general, the entire day);
- exclusivity is granted to the railway undertaking on the agreed line thereby allowing the railway company to run profitable services during the agreed period of time. Revenue generated by these profitable services is passed onto the costs of the other non-profitable services run during the rest of the day;
- a calculation of the total costs incurred (after deduction of revenue generated by the profitable services) will constitute the amount for which financial compensation will be asked.

The current system does not allow ‘*cherry picking*’. However, as domestic passenger traffic is now opened up for competition on-the-track since October 2010 (with full effect from December 2011), any operator will in principle be allowed to start commercial (long-distance) traffic. Moreover, with the adoption and implementation of the new public transport legislation in 2012, any operator will have the right to freely start a new local or regional commercial line, i.e. the county public transport authorities will no longer be able to block such entry. Naturally, this may affect the economic equilibrium of the existing public service contracts for both long-distance and local or regional services. The potential problems related to this have been highlighted but have so far not been addressed. It is likely that in future competitive tenders the bidders will have to take into account the risks associated with potential competition from commercial entry, at least in the case of ‘*net cost*’ contracts (where the operator bears the risks related to revenues from fares). However, it should also be noted that the traffic offered (and procured by) regional public transport authorities may have a cost advantage due to the fact that some parts of their rolling stock have been financed with state grants.

## 8. Calculation of the level of compensation

The level of compensation of public service operations varies from line to line, service to service.

Costs classically taken into consideration relate to:

- staff;
- energy;
- infrastructure charge;
- maintenance and repair of vehicles (daily maintenance only);

Normally there is a system of ‘*bonus/penalty*’ based on performance regimes that is applied in the contracts.

Companies determine the price they consider necessary to cover the cost of the services.

A ‘*reasonable profit*’ may be included in the contract. It will depend entirely on how the railway undertakings have calculated their bids.

## 9. General payment conditions

The level of compensation is agreed in advance, when the contract is concluded following the public tendering procedure.

Payments are made by regular monthly instalments. This is considered to be satisfactory. *Rikstrafiken* may also give an advance payment to help a new operator to establish its organisation and be able to take over from an earlier operator.

Any deficit on the service will not be compensated *a posteriori* by national or regional authorities. This is part of the risk railway undertakings are deemed to take when operating public services.

Contracts usually contain a penalty system linked to the quality criteria to be met. In case quality criteria cannot be met due to infrastructure problems, the operator is exempted from the penalty system. This is probably due to the fact that it is very difficult to get compensation from the infrastructure manager and virtually impossible to get it from a third party. This may change as Sweden is about to implement a performance regime.

It should be noted that Sweden has not asked for any exemptions from the Passenger Rights Regulation (EC) 1371/2007. It should however also be noted that most procuring authorities have their own systems for compensation to passengers when delays or cancellations occur.

## 10. Duration of public service contract

In general, public service contracts are concluded for a duration ranging between 5 to 8 years for railway services, with an option to extend the contract for another 2 years. These contract durations are acceptable, if the authorities do not require any investment in new vehicles.

Older public service contracts that were concluded for a duration of up to 15 years are progressively coming to an end. They will probably be renewed for a more limited duration.

## 11. Rolling stock

100% of the fleet used in contracted services is owned by the competent authorities or related rolling stock companies.

Most of the fleet used in the procured long-distance traffic is rather old (beyond 30 years old). However, as these vehicles have recently been “reconditioned” and modernised, they may not be considered as old by most passengers.

Almost the entire fleet of vehicles used in the procured local and regional services is newer than 20 years and a considerable part is newer than 10 years.

## 12. Involvement of the regulatory body or other authority

The regulator is not particularly involved in the process of public service contracting, beyond what is foreseen in EU law (evaluation of whether cabotage along an international line is likely to affect the economic equilibrium of public service contracts and initial approval of an operator before starting any railway services).

The government and the parliament are mostly important for providing the general framework for public service transport in Sweden. Local and regional politicians then have an important influence on what services are to be procured (and how) in their respective regions as they control the regional public transport authorities.





## 1. Organisation of public service operations in Switzerland

Even though Switzerland is not an EU member state, it does ensure that its legislation is equivalent to that of the EU in all those fields for which bilateral agreements have been concluded. The Overland Transport Agreement is one of the seven bilateral agreements of 1999 (Bilateral I) between the EU and Switzerland, which are mainly liberalization and market opening agreements. Since the agreements are based on the **equivalence of the laws** on both sides, it is in the interest of both parties to maintain this equivalence when there are developments in the law. It is generally necessary to adopt developments of relevant EU law (*acquis communautaire*) in order to maintain equal competitive conditions (for example avoidance of technical barriers to trade). The agreements and their further development are administered by EU/CH mixed committees.

The general legal framework for public transport has been largely reformed in the past decade.

The organisation of public services is regulated by a whole set of legislation applicable either to the entire sector or more specifically to SBB/CFF/FFS:

### Applicable to the entire sector:

- Federal Law of 20 December 1957 relating to railways (LCdF);
- Ordinance of 18 December 1995 relating to the level of participation of the canton regulatory compensations, loans and financial aids granted to regional traffic (KAV);
- Federal Law of 20 March 2009 relating to passenger transport (PBG);
- Ordinance of 4 November 2009 relating to passenger transport (VPB);
- Ordinance of 11 November 2009 relating to compensations in regional traffic (ARPV).

The latest revisions of the legal framework (so called 2 Railway Reform, 1 Package) aimed at bringing the Swiss laws in line with the *acquis communautaire*. It should however be noted that the Swiss legal framework for public service transport was already in line with the principles laid down in Regulation 1370/2007. Nonetheless, the Swiss legislation is in the process of being further amended in order to integrate more precisely, amongst others, the remaining elements of the European public service regulation.

### Specific to SBB:

- Law of 20 March 1998 on federal railways (LCFF) – Last version from 1 January 2010;
- Convention relating to the performance of services between the Swiss Confederation and the limited company of the Federal Railways SBB/CFF/FFS, (currently 2011-2014).



Public service operations are organised both by centralised and decentralised authorities acting jointly. In practice, there is a clear distribution of competencies between the federal authorities and the decentralised ones (the cantons). The basic principles are the following:

- **federal authorities** determine the general transport policy for the country and participate to the financing of public service operations. The federal contribution to the financing varies on a case by case basis. It cannot exceed 50% of the overall costs of the services required;
- **cantons** are competent for negotiating and concluding public service contracts with railway undertakings. They cover the public service costs not covered by federal authorities.

The question of market opening to competition is complex in Switzerland. According to the law, the competent local authority (cantons/cities) could decide to award public service contracts on the basis of a competitive tendering procedure, the legal basis for doing so is not clearly defined and subject to different interpretations. This issue is currently being addressed by the parliament with the second package of the Swiss Railway reform. Nonetheless, it is worth noting that 33% of market share in regional traffic is owned by other railway undertakings than the national carrier SBB/CFF/FFS, such as BLS or SOB for example.

## 2. Operators on the market for public passenger service transport

Passenger rail transport in Switzerland is undertaken by SBB/CFF/FFS (which transported 347.1 million passengers in 2010) and of about 50 private companies.

The largest private railway company in Switzerland is BLS AG. At the end of 2004, BLS assumed the overall system responsibility for the Berne S-Bahn, Switzerland's second-biggest S-Bahn. With this the BLS passenger services, including regional express services as well as the regional services in the Bernese Oberland and Valais, alone now operate on a network of around 700km. In 2010, BLS transported 49.7 million passengers in its trains.

## 3. Definition of public service requirements

Public service obligations are defined in different concessions contracts concluded for specific parts of the network. These obligations include:

- tariffs obligations including compulsory discounts for specific social groups;
- service schedule and frequencies;
- quality criteria.

Quality criteria are a key component of public service contracts (punctuality, cleanliness, security, customer information, etc). It is an important element of the negotiation as quality has a price.

The Ministry of Transport is currently working on minimum quality standards (key parameters) that should be nationwide integrated in the public service contracts.

The level of KPIs relevant for quality is thoroughly discussed with Zürich transport authority, as they have a direct financial impact.





In addition to these criteria, SBB/CFF/FFS has introduced a monthly quality reporting as a commercial gesture, which contents can be adapted on a local basis.

#### 4. Scope of public service transport by rail

The entirety of **regional traffic** is organised through concessions and is covered by public service contracts. The federal government is competent for awarding these concessions.

Regional and interregional services is organised through contracts concluded with the federal government and the cantons acting jointly. 33% of passenger-kilometres are provided under regional traffic. In substance, this means that the entirety of regional traffic is covered by public service contracts. 33% of this traffic is provided by other railway undertakings than the national carrier, SBB/CFF/FFS.

National **long-distance traffic** is entirely organised through a concession in which public service obligations are imposed and is currently granted to SBB/CFF/FFS.

#### 5. Contract

Public service obligations are organised through the conclusion of commercial law contracts freely negotiated between the different parties, i.e. the canton, the confederation and the railway undertaking. In practice, the railway undertaking submits to the canton an offer for the services requested. The price of the service to be paid is freely negotiated between the parties.

It should be noted that the actual concession for passenger transport on a specific perimeter is delivered by the Ministry of Transport based on legislation (PBG), specifying the rights and obligations linked to the exclusive rights.

Strictly speaking, the contracts only cover transport by rail. However, cooperation with other modes of transport (integrated mobility solutions) is well institutionalised and part of the trans-modal objectives that are set at federal level.

Some specificities exclusively apply to SBB/CFF/FFS. The federal transport department (representing the owner of the company) drafts together with the state owned railway company SBB/CFF/FFS the general **convention relating to transport performances** that provides the overall political and strategic objectives for SBB/CFF/FFS including the public service objectives for the upcoming 4 years. The convention includes, for the same period of time, a ceiling for the funds granted for infrastructure. It is approved by the Federal Parliament.

Overall, most of the contracts covering the Swiss territory were concluded in 2009 and are running for a ten year duration. Their content, however, is in line with the content and spirit of Regulation 1370/2007.

## 6. Awarding of public service contracts

The Swiss legislation provides the possibility to grant public service contracts through a public tendering procedure. The legal basis to do so is not clearly defined. This leads to diverging interpretations.

The canton remains free to decide whether to tender or to directly choose its service provider. Since 1996, the year of the introduction of this possibility in the legislation, no contract for public services in the railway sector has been attributed through a public tendering procedure. It has however been applied to public service transport by road within some bus transport contracts.

## 7. Contract negotiation

Public service contracts are freely negotiated between the parties to the contract, i.e. the canton and the railway undertaking. In practice, the railway undertaking submits to the canton an offer for the public service obligations requested. The price of the service to be paid is freely negotiated between the parties.

The railway undertaking can be the driving force for the extension or the introduction of new services. All aspects of the contract are discussed in detail. A special focus is provided on discussions relating to:

- quality criteria;
- the level of passenger services required by passengers themselves;
- the leverage on the correlation between the costs of the obligations required and the level of compensation provided;
- purchasing of new rolling stock;
- marketing requirements;
- the level of customer information.







## 8. Calculation of the level of compensation

The level of compensation must be clearly determined in the contract prior to its effective implementation. It is the result of the difference between the estimated costs and revenues.

The calculation of the overall costs for the service in question as a whole will be based upon the following costs:

- on-board staff (driver and other mobile staff);
- railway police (safety and security);
- cost generated from the rolling stock (amortisation and interests<sup>1</sup>);
- shunting services;
- assistance to passengers with reduced mobility;
- distribution: sale services (staff, offices);
- charges for the use of infrastructure;
- administrative costs for the management of the public service contract;
- VAT<sup>2</sup>.

<sup>1</sup> No reserve is provided for the renewal of rolling stock. The rolling stock is the property of SBB/CFF/FFS.

<sup>2</sup> The railway undertaking will have to pay VAT on revenues generated by the sale of tickets. This VAT forms part of the costs incurred by the railway undertaking. As the costs must be calculated **prior** to the effective implementation of the service, the railway undertaking will base itself on the average VAT paid the previous year to determine the amount of VAT that must be taken into account in the overall cost of the services.

The calculation of the overall revenue generated by the service will be based on the following production data:

- seats offered-kilometres;
- passenger-kilometres;
- gross revenue per passenger-kilometres.

Optionally and on a case by case basis, other costs can be included, such as marketing costs, publicity of specific time schedules, etc.

Costs incurred for public service contracts for **regional services** are compensated through a system of mixture between direct financial influx and the granting of exclusive rights. The principle is the following:

- the contract will be concluded for a specific line throughout a specified period of time (in general, the entire day);
- exclusivity is granted to the railway undertaking on the agreed line thereby allowing it to run profitable services during the said period of time. Revenue generated by these profitable services is passed onto the costs of the other non-profitable services run during the rest of the day;
- a calculation of the total costs incurred (after deduction of revenue generated by the profitable services) will constitute the amount for which financial compensation will be asked.

It should also be noted that there is no *'reasonable profit'* applied to public service contracts. However, in case of particularly performing and efficient management, the railway undertaking may succeed in making some economies of scale, the surplus must be ring fenced, i.e. deposited into a special account. It is prohibited to allocate this surplus freely on other items. It will only be used in case of future unforeseen deficit on another public service contract or when the amount available on the account exceeds EUR 12 million.

The general rule is that of *'net'* contracts: i.e. contracts for which the risk is borne by the operator. The level of compensation can be re-negotiated only after the two-year period.

Indeed, any deficit on the service will not be compensated *a posteriori* by national or cantonal authorities. The only means to compensate potential deficit is through a special fund that will have been constituted by any savings made on previous contracts. Any deficit that may not be compensated by the special fund will have to be covered by the company itself.

In order to limit the financial risks of the operator, no *'cherry picking'* is authorised.

The concession for **long-distance traffic** is, however, only compensated through the granting of exclusive rights. Under Swiss law, long-distance traffic is to be autonomous from a financial perspective. This explains the absence of any financial flows. Therefore, the revenues generated through the exclusive rights must be sufficient to cover the costs of the railway undertaking operation on long-distance traffic.



## 9. General payment conditions

The effective payment is made by regular instalments at determined intervals (this is pre-determined in the contract itself). This is usually provided on a quarterly basis.

Contrary to many other EU member states, the quality of the infrastructure is not an issue. Long-term public transport policy has constantly been oriented towards massive investments in infrastructure. The issue of concern in Switzerland is more that of availability of infrastructure: given the size of the country, the network is largely saturated. The Swiss network shows the highest capacity utilization worldwide. With 92.7 trains per kilometre of track per day, SBB/CFF/FFS according to UIC is top of the international ranking. The complex form of mixed traffic makes heavy demands on operation and maintenance.

There is no penalty system apart from the public service contract with the Zürich transport authority.

ZVW reward/penalty System: in 2010 the Zürich transport authority carried out the fifth review of SBB Services, specifically with regard to the punctuality of services, passenger information about delays, and cleanliness. While the punctuality of the S-Bahn services remained steady at a high level, efforts to improve customer information did not have the desired result. The Review resulted in a penalty of CHF 617 000.

## 10. Duration of public service contract

Concessions are concluded for a ten year period, which is then divided in two year service agreements. The ten year framework agreement is felt to be too short when the railway undertaking has to make important investments in new rolling stock for which amortization can take between 20 to 30 years.

## 11. Rolling stock

The rolling stock used in public service contracts belongs to the operator in question. It is financed through the public service agreement contract which details the amortization, costs, maintenance, etc.

## 12. Involvement of the regulatory body or other authority

A conflict may arise for the Ministry of Transport due to the different duties it has to carry out throughout the decision-making process. The ministry is at the same time the regulator and the regulatory body (Railways Arbitration Commission), grants the railway concessions, is the centralized authority jointly acting with the decentralized ones for the awarding of public service contracts, and represents the interests of the confederation as a shareholder of some of the railway undertakings. In this regard, it has some conflicts of interests which are not appreciated by all operators on the market.







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