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PROPOSAL

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Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

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Brussels, 30.1.2013
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2013/0028 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Regulation (EC) No 1370/2007 concerning the opening of the market for
domestic passenger transport services by rail**

(Text with EEA relevance)

{SWD(2013) 10 final}

{SWD(2013) 11 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

In its 2011 White Paper on transport policy adopted on 28 March 2011¹, the Commission put forward its vision of a Single European Railway Area with an internal railway market where European railway undertakings can provide services without unnecessary technical and administrative barriers.

Several policy initiatives have recognised the potential of rail infrastructure as a backbone for the internal market and a driver of sustainable growth. The European Council conclusions of January 2012 highlighted the importance of unleashing the growth potential of a fully integrated Single Market, including measures with regard to network industries. The Commission Communication on Action for Stability, Growth and Jobs adopted on 30 May 2012 stressed the importance of further reducing the regulatory burden and barriers to entry in the rail sector. Likewise, the Commission Communication on strengthening the governance of the Single Market², adopted on 6 June 2012, stressed the importance of the transport sector.

In the last decade, three legislative ‘railway packages’ have aimed at opening up national markets and making railways more competitive and interoperable at EU level. Regulation 1370/2007 on public passenger transport services by rail and by road, published in December 2007, set out a framework for awarding public service contracts and compensating for public service obligations but not a common approach to awarding contracts for rail passenger transport. Despite the new EU legislation, the modal share of rail in intra-EU transport has remained modest.

1.2 Problems to be addressed

Stakeholders consider that, under the current legal framework, rail passenger services are underperforming in terms of quality of service and operational efficiency. 54% of respondents to the 2012 Eurobarometer survey were not satisfied with their national and regional rail systems. Within the Consumer Scoreboard 2011³ the overall satisfaction of train passengers was 6.7/10, well below of the most consumer goods and services. Among consumers rail services score worse than all other transport modes (urban transport and airlines in particular scored better) and are ranked 27th out of 30 services markets. There are considerable gaps in operational efficiency between the best and the worst performing railway systems. These gaps reflect significant differences in asset utilisation such as rolling stock and infrastructure as well as labour productivity. These operational efficiency gaps lead to a substantial need of public funding compared to other economic sectors (leaving infrastructure funding aside) as many railway undertakings are loss making.

There are a number of obstacles to improving railway companies’ quality of service and operational efficiency. These relate first of all to access to the market for domestic passenger services and the lack of competitive pressure. In many Member States this market is closed to competition, which not only limits growth, but creates disparities between those Member States that have opened their markets and those that have not. Different national approaches to

¹ White Paper : Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system ; COM(2011)144

² Better Governance for the Single Market ; COM(2012)259

³ http://ec.europa.eu/consumers/consumer_research/cms_en.htm;

opening of the market for domestic passenger transport services by rail prevent the emergence of a genuine Internal Market for rail passenger services.

However, the overwhelming majority of domestic passenger services is not provided on a commercial basis, and is therefore performed under public service contracts. Given that no common EU rules on the award of such contracts apply, some Member States have introduced competitive tendering for these contracts, while others award them directly. This patchwork of regulatory systems in the EU makes it difficult for railway companies to exploit the full potential of operating in a Internal Market. Therefore, this legislative package also covers competition for public service contracts, barriers to competition such as the availability of suitable rolling stock for potential bidders for such contracts, and non-discriminatory access to information systems and integrated ticketing systems where they benefit the passenger.

1.3 General Objectives

The main objective of the European Union's transport policy is to establish an internal market for transport contributing to a high degree of competitiveness and the harmonious, balanced and sustainable development of economic activities. The 2011 Transport White Paper stated that rail should account for the majority of medium-distance passenger transport by 2050. This 'modal shift' would contribute to the 20 % reduction of greenhouse gas emissions provided for in the Europe 2020 Agenda for smart, sustainable and inclusive growth⁴. The White Paper concluded that no major change in transport would be possible without the support of an adequate rail infrastructure and a smarter approach to using it.

The overall objective of this proposal, as part of the Fourth Railway Package, is to improve the quality of rail passenger services and to enhance their operational efficiency, thereby improving the competitiveness and attractiveness of rail vis-à-vis other modes and developing further the Single European Railway Area.

1.4 Specific Objectives

This proposal encompasses common rules on the award of public service contracts for passenger transport by rail, together with accompanying measures to increase the success of competitive tendering procedures.

The objective of mandatory competitive tendering for public service contracts is to intensify competitive pressure on domestic rail markets, in order to increase the quantity and improve the quality of passenger services. Competitive tendering for rail contracts can also ensure better value for money spent on public transport services. Common rules on the award procedure contribute to creating more uniform business conditions for railway companies. These proposals have to be seen in connection with the proposed amendments to Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast)⁵, which introduce open access rights for railway undertakings and strengthen provisions on non-discriminatory access to the rail infrastructure.

⁴ Communication from the Commission : Europe 2020 ; A strategy for smart, sustainable and inclusive growth, COM(2010) 2020

⁵ OJ L 343 of 14.12.2012, p. 32

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

In order to support the Commission in the impact assessment process, an external consultant was asked to prepare a support study and to undertake a targeted consultation. The study started in December 2011 and the final report was delivered in September 2012.

To gather the views of stakeholders, a broad mix of targeted consultation methods was preferred to an open consultation. Between 1 March and 16 April 2012, tailored questionnaires were sent to 427 rail-related stakeholders (railway undertakings, infrastructure managers, public transport ministries, safety authorities, ministries, representative bodies, workers' organisations etc.). The views of passengers were collected through a Eurobarometer survey of 25 000 respondents evenly spread over the 25 Member States with railways. The network of the Committee of the Regions was used to reach local and regional authorities.

Consultations were complemented by a stakeholder hearing held on 29 May 2012 (with some 85 participants), a conference (with some 420 participants) on 24 September 2012 and by interviews with specific stakeholders throughout 2012. Commission staff met representatives from Community of European Railways (representing railway companies), the European Passenger Transport Operators, the European Transport Workers Federation, the European Passengers' Federation, the European Rail Infrastructure Managers and UITP — the International Association of Public Transport). Dedicated meetings with stakeholders were also organised in France, Germany, Netherlands, Poland, Sweden and the United Kingdom.

The majority of respondents (60%) agreed that additional new open access rights, compulsory competitive tendering or a mix thereof could stimulate market integration. Open access for domestic rail passenger transport subject to an economic equilibrium test assessing its possible impact on the viability of public service contracts was the most popular option (55% of respondents). The current arrangements were viewed very negatively (with only 20% supporting them). Workers representatives expect that any opening of the market for domestic passenger transport services by rail will result in worse working conditions and more strikes.

Regarding compulsory competitive tendering, 45% of respondents favoured flexible options akin to those of the negotiated procedure for public procurement and transitional periods for gradually putting all public service contracts out to tender (80% of respondents).

The majority of respondents (60%) agreed that the creation of rolling stock leasing companies would help to improve access to rolling stock and a large majority (75%) called for full access to technical information to be provided by the infrastructure manager. As regards integrated ticketing, there was a preference for non-binding provisions or enabling clauses for voluntary agreements rather than compulsory measures at EU level or at Member State level.

The Sectoral Social Dialogue Committee on railways was consulted on 26 March and 19 June, in particular on the options and the assessment of their social impact.

Based on the external study mentioned above and on the conclusions of the consultation process, the Commission made a qualitative and quantitative assessment of the impacts of the various options for modernising the existing regulatory framework.

The impact assessment showed that a combination of the following would fare best in terms of economic, environmental and social impacts, generating a net present value of between €21 and €29 billion from 2019 to 2035:

- broadly defined open access rights subject to a test of their impact on the economic equilibrium of public service contracts;
- competitively awarded public service contracts;
- voluntary national integrated ticketing systems; and
- an obligation on Member States to ensure non-discriminatory access to suitable rolling stock for railway undertakings which want to participate in a public tender procedure.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1 Definition of competent local authority (Article 2, point c)

This amendment increases legal certainty by specifying that a ‘competent local authority’ covers urban agglomerations or rural districts, not large parts of the national territory.

3.2 Specifications on how competent authorities define public service obligations and the geographical scope of public service contracts (Article 2, point (e) and new Article 2a)

This Article provides a flexible but formalised and transparent procedure for defining public service obligations and the geographical scope of public service contracts, if competent authorities consider that public intervention is necessary to ensure a politically desirable level of mobility in the territory under their responsibility. It requires competent authorities to establish public transport plans defining the objectives of public passenger transport policy and supply and performance patterns for public passenger transport. It also requires competent authorities to justify the kind and extent of public service obligations they intend to impose on public transport operators and the scope of the public service contract with a view to achieving the objectives defined in the public transport plans. They must apply criteria based on general Treaty principles such as appropriateness, necessity and proportionality, as well as economic criteria such as cost-effectiveness and financial sustainability. This Article also requires the competent authority to ensure appropriate consultation of interested parties, e.g. passenger and employee organisations and transport operators. For rail transport, it requires independent rail regulatory bodies to ensure legal review of the procedure. In addition, it sets a threshold for the maximum volume of passenger transport by rail under each public service contract, in a flexible manner, in order to ensure effective competition while taking account of the varying size and administrative structure of rail passenger markets in Member States.

3.3 Provision of operational, technical and financial information about passenger transport covered by a public service contract to be put out to tender (Article 4(6) and new Article 4(8))

This new provision in Article 4(8) obliges competent authorities to provide certain operational, technical and financial data to potential bidders for a public service contract so that they can make a well-informed bid and hence ensure enhanced competition. The amendment of Article 4(6) clarifies that competent authorities have to clearly indicate in the tender documents whether they require public service operators to comply with social standards or criteria.

3.4 Upper limits for the direct award of small volume contracts and direct awards to small or medium-sized enterprises (Article 5(4))

This provision introduces specific upper limits on the value of direct awards for small volume contracts for rail transport. The existing limits are geared to transport by bus and track-based transport modes other than rail. The proposed limit for rail follows the logic of permitting direct award if the cost of organising a tender procedure outweighs the expected benefits. The corresponding limit in terms of train-kilometres reflects the average unit cost of rail transport provision.

3.5 Mandatory competitive award of rail contracts (Article 5(6) and Article 4)

Deleting Article 5(6) denies competent authorities the option of deciding whether to award a public service contract for rail directly or based on a competitive tender. The general rule of competitive tendering will also apply to rail.

3.6 Restrictions on award (new Articles 5(6))

In order to enhance competition after the introduction of competitive tendering for rail contracts, this provision enables competent authorities to decide that contracts for rail passenger transport covering parts of the same network or package of routes will be awarded to different railway undertakings. To this end, the competent authorities may decide to limit the number of contracts to be awarded to the same railway undertaking following a competitive tendering procedure.

3.7 Access to rail rolling stock (new Article 5a and new Article 9a)

Introducing an obligation on Member States to ensure effective and non-discriminatory access to suitable rail rolling stock for operators wishing to provide public passenger services by rail addresses a major barrier to effective competition for public service contracts. In Member States where there are no well-functioning leasing markets for rail rolling stock it is up to competent authorities to take measures to ensure access to rolling stock in order to open up the market. However, as the situation and needs may vary from country to country, the new provision leaves competent authorities broad scope to choose the most appropriate ways of achieving the objective, while indicating the most frequently used measures. The details of the procedure and measures to ensure access to rolling stock shall be defined in implementing acts based on the examination procedure referred to in Article 9a of this Regulation.

3.8 Publication of certain information on public service contracts (Articles 7(1) and 7(2))

This provision obliges competent authorities to include information about the starting date and duration of public service contracts in their annual reports on public service obligations as well as in their prior information notices on envisaged tender procedures. This additional information and the obligation on Member States to facilitate access to the annual reports published by competent authorities will increase transparency regarding the public service contracts awarded and likely new awards, and hence help transport operators prepare for future tender procedures.

3.9 Transition period applied to competitive tendering (Article 8(2))

This provision makes it clear that the ten-year transitional period to 2 December 2019 applies only to Article 5(3) on the obligation on competent authorities to organise a competitive tendering procedure. All other provisions of Article 5 (e.g. on the option of making a direct award to an internal operator, for a small-volume contract or as an emergency measure, and legal review of the award decision) are immediately applicable.

3.10 Transition period for existing directly awarded rail contracts (new Article 8(2a))

This provision introduces an additional transitional period for public service rail contracts that are directly awarded between 1 January 2013 and 2 December 2019. Those contracts may remain in place until they expire but only up to 31 December 2022 at the latest. This gives those railway undertakings that have been directly awarded a public service contract sufficient time to adapt and prepare for competitive tendering procedures.

3.11 Adaptions of provisions of Regulation 1370/2007 related to the exemption of state aid notification and the conditions of state aid compatibility due to Treaty requirements

In its proposed draft amendments to Regulation (EC) No 994/98 (Enabling Regulation)⁶, the Commission proposed also an amendment of Regulation (EC) No 1370/2007 bringing, in accordance with the procedures foreseen in Articles 108(4) and 109 of the Treaty, aid for the coordination of transport or reimbursement for the discharge of certain obligations inherent in the concept of a public service as referred to in Article 93 of the Treaty under the scope of the Enabling Regulation. The Commission currently expects a consequential, future block exemption Regulation to reproduce the substance of the current exemption, except to the extent that Regulation 1370/2007 is amended by this legislative proposal relating to the rail sector.

⁶ Proposal for a COUNCIL REGULATION amending Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid and Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road, COM(2012) 730 final of 5.12.2012

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee⁷,

Having regard to the opinion of the Committee of the Regions⁸,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Over the past decade, the growth of passenger traffic by rail has been insufficient to increase its modal share in comparison to cars and aviation. The 6% modal share of passenger transport for rail in the European Union has remained fairly stable. Rail passenger services have not kept pace with evolving needs in terms of availability and quality.
- (2) The Union market for international passenger transport services by rail has been opened to competition since 2010. In addition, some Member States have opened their domestic passenger services to competition, by introducing open access rights or tendering for public service contracts or both.
- (3) In its White Paper on transport policy of 28 March 2011⁹ the Commission announced its intention to complete the internal railway market, allowing railway undertakings of the Union to provide all types of rail transport services without unnecessary technical and administrative barriers.
- (4) When competent authorities organise their public passenger transport services they need to ensure that public service obligations and the geographical scope of public service contracts are appropriate, necessary and proportionate to achieve the objectives of the public passenger transport policy in their territory. This policy should be set out in public transport plans leaving scope for market based transport solutions. The process of defining public transport plans and public service obligations should be made transparent to relevant stakeholders including potential market entrants.

⁷ OJ C , , p. .

⁸ OJ C , , p. .

⁹ White Paper : Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system ; COM(2011)144

- (5) To ensure sound financing to meet the objectives of public transport plans, competent authorities need to design public service obligations to attain public transport objectives in a cost-effective manner taking account of the compensation for the net financial effect of those obligations and they need to ensure long-term financial sustainability of public transport provided under public service contracts.
- (6) It is particularly important that competent authorities comply with these criteria for public service obligations and the scope of public service contracts if the market for public passenger transport by rail is to run smoothly, because open access transport operations need to be well coordinated with those under public service contract. For this reason, the independent rail regulatory body should ensure that this process is correctly applied and transparent.
- (7) A maximum annual volume of a public service contract for passenger transport by rail needs to be set to facilitate competition for such contracts while allowing competent authorities some flexibility to optimise the volume according to economic and operational considerations.
- (8) To facilitate the preparation of tenders, and hence enhance competition competent authorities need to ensure that all public service operators interested in making such a submission receive certain information on the transport services and infrastructure covered by the public service contract.
- (9) Certain upper limits for the direct award of public service contracts need to be adapted for rail transport to the specific economic conditions under which tender procedures take place in this sector.
- (10) The establishment of an Internal Market for passenger transport services by rail requires common rules on competitive tendering for public service contracts in this sector to be applied in a harmonised manner in all Member States.
- (11) In view of creating framework conditions for enabling society to fully reap the benefits of effective opening of the market for domestic passenger transport services by rail it is important that Member States ensure an adequate level of social protection for the staff of public service operators.
- (12) Where the market does not ensure it under suitable economic and non-discriminatory conditions, public service operators' access to rail rolling stock needs to be facilitated by competent authorities through adequate and effective measures.
- (13) Certain key features of upcoming tender procedures for public service contracts need to be fully transparent to enable a better organised market response.
- (14) Consistent with the internal logic of Regulation (EC) No 1370/2007, it should be made clear that the transitional period until 2 December 2019 refers only to the obligation to organise competitive tendering procedures for public service contracts.
- (15) Preparing railway undertakings for mandatory competitive tendering for public service contracts requires some extra time to allow effective and sustainable internal restructuring of companies to which such contracts were directly awarded in the past. Transitional measures are therefore necessary for contracts directly awarded between the date of entry into force of this Regulation and 3 December 2019.

- (16) Once opening of the market for domestic passenger transport services by rail is achieved, as competent authorities may need to take measures to ensure a high level of competition by limiting the number of contracts that it awards to one railway undertaking, adequate provisions should be provided for.
- (17) In order to ensure uniform conditions for the implementation of Article 5a of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers¹⁰.
- (18) In the context of amendments to the Regulation (EC) No 994/98 (Enabling Regulation)¹¹, the Commission proposed also an amendment of Regulation (EC) No 1370/2007 (COM(2012) 730/3). In order to harmonize the approach to block exemption regulations in the field of State aid and, in accordance with the procedures foreseen in Articles 108(4) and 109 of the Treaty, aid for the coordination of transport or reimbursement for the discharge of certain obligations inherent in the concept of a public service as referred to in Article 93 of the Treaty should be brought under the scope of the Enabling Regulation.
- (19) Regulation (EC) No 1370/2007 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1370/2007 is amended as follows:

1. a) Point (c) of Article 2 is replaced by the following:

"(c) "competent local authority" means any competent authority whose geographical area of competence is not national and which covers the transport needs of an urban agglomeration or a rural district;"
- b) Point (e) of Article 2 is complemented by the following:

"The scope of public service obligations shall exclude all public transport services that go beyond of what is necessary to reap local, regional or sub-national network effects.
2. The following Article 2a is inserted:

¹⁰ OJ L 55, 28.2.2011, p. 13

¹¹ Proposal for a COUNCIL REGULATION amending Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid and Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road, COM(2012) 730 final of 5.12.2012

"Article 2a

Public transport plans and public service obligations

1. Competent authorities shall establish and regularly update public passenger transport plans covering all relevant transport modes for the territory for which they are responsible. These public transport plans shall define the objectives of public transport policy and the means to implement them covering all relevant transport modes for the territory for which they are responsible. They shall at least include:
 - (a) the structure of the network or routes;
 - (b) basic requirements to be fulfilled by public transport offer such as accessibility, territorial connectivity, security, modal and intermodal interconnections at main connecting hubs, offer characteristics such as times of operation, frequency of services and minimum degree of capacity utilisation;
 - (c) quality standards related to items such as equipment features of stops and of rolling stock, punctuality and reliability, cleanliness, customer service and information, complaint handling and redress, monitoring of service quality;
 - (d) principles of tariff policy;
 - (e) operational requirements such as transport of bicycles, traffic management, contingency plan in case of disturbances.

In establishing public transport plans, competent authorities shall have regard in particular to applicable rules regarding passenger rights, social, employment and environmental protection.

The competent authorities shall adopt the public transport plans after consultation of relevant stakeholders and publish them. For the purpose of this Regulation, relevant stakeholders to be taken into consideration are at least transport operators, infrastructure managers if appropriate, and representative passenger and employee organisations.

2. The establishment of public service obligations and the award of public service contracts shall be consistent with the applicable public transport plans.
3. The specifications of public service obligations for public passenger transport and the scope of their application shall be established as follows:
 - (a) they shall be defined in accordance with Article 2 (e);
 - (b) they shall be appropriate to achieve the objectives of the public transport plan;
 - (c) they shall not exceed what is necessary and proportionate to achieve the objectives of the public transport plan.

The assessment of appropriateness referred to in point (b) shall take into account whether a public intervention in the provision of passenger transport is a suitable means of achieving the objectives of the public transport plans.

For public passenger transport by rail the assessment of necessity and proportionality referred to in point (c) shall take into account the transport services provided under Article 10(2) of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast)¹² and consider all information given to the infrastructure managers and regulatory bodies pursuant to the first sentence of Article 38(4) of that Directive.

4. The specifications of public service obligations and the related compensation of the net financial effect of public service obligations shall:
 - (a) achieve the objectives of the public transport plan in the most cost-effective manner;
 - (b) financially sustain the provision of public passenger transport in accordance to the requirements laid down in the public transport plan in the long term.
5. When preparing the specifications, the competent authority shall set out the draft specifications of public service obligations and their scope, the basic steps of the assessment of their compliance with the requirements laid down in paragraphs 2, 3 and 4, and the results of the assessment.

The competent authority shall in an appropriate manner consult relevant stakeholders such as a minimum, transport operators, infrastructure managers if appropriate and representative passenger and employee organisations on these specifications and take their positions into consideration.

6. For public passenger transport by rail:
 - (a) compliance of the assessment and of the procedure set out in this Article shall be ensured by the regulatory body referred to in Art 55 of Directive 2012/34/EU including on its own initiative.
 - (b) the maximum annual volume of a public service contract in terms of train-km shall be the higher value of either 10 million train-km or one third of the total national public rail passenger transport volume under public service contract."

3. Article 4 is amended as follows:

- (a) In paragraph 1, point (a) is replaced by the following:

"(a) clearly define the public service obligations laid down in Article 2(e) and Article 2a with which the public service operator is to comply, and the geographical areas concerned;"

¹² OJ L 343 of 14.12.2012, p. 32

(b) The last sentence of paragraph 1, point (b) is replaced by the following:

"In the case of public service contracts not awarded according to Article 5(3), these parameters shall be determined in such a way that no compensation payment may exceed the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations, taking account of revenue relating thereto kept by the public service operator and a reasonable profit;"

(c) Paragraph 6 is replaced by the following:

"Where competent authorities, in accordance with national law, require public service operators to comply with certain quality and social standards or establish social and qualitative criteria, these standards and criteria shall be included in the tender documents and in the public service contracts."

(d) The following paragraph 8 is added:

"8. Competent authorities shall make available to all interested parties relevant information for the preparation of an offer under a competitive tender procedure. This shall include information on passenger demand, fares, costs and revenues related to the public passenger transport covered by the tender and details of the infrastructure specifications relevant for the operation of the required vehicles or rolling stock to enable them to draft well informed business plans. Rail infrastructure managers shall support competent authorities in providing all relevant infrastructure specifications. Non-compliance with the provisions set out above shall be subject to the legal review provided for in Article 5(7)."

4. Article 5 is amended as follows:

(a) Paragraph 4 is replaced by the following:

"4. Unless prohibited by national law, the competent authorities may decide to award public service contracts directly:

- (a) where their average annual value is estimated at: less than EUR 1 000 000 or less than EUR 5 000 000 in the case of a public service contract including public transport by rail or,
- (b) where they concern the annual provision of less than 300 000 kilometres of public passenger transport services or less than 150 000 kilometres in the case of a public service contract including public transport by rail.

In the case of a public service contract directly awarded to a small or medium-sized enterprise operating not more than 23 road vehicles, these thresholds may be increased to either an average annual value estimated at less than EUR 2 000 000 or to an annual provision of less than 600 000 kilometres of public passenger transport services."

(b) Paragraph 6 is replaced by the following:

"Competent authorities may decide that, in order to increase competition between railway undertakings, contracts for public passenger transport by rail covering parts

of the same network or package of routes shall be awarded to different railway undertakings. To this end the competent authorities may decide before launching the tender procedure to limit the number of contracts to be awarded to the same railway undertaking."

5. The following Article 5a is inserted:

"Article 5a

Rolling stock

1. Member States shall in compliance with State aid rules take the necessary measures to ensure effective and non-discriminatory access to suitable rolling stock for public passenger transport by rail for operators wishing to provide public passenger transport services by rail under public service contract.
2. Where rolling stock leasing companies which provide for the leasing of rolling stock referred to in paragraph 1 under non-discriminatory and commercially viable conditions to all of the public rail passenger transport operators concerned do not exist in the relevant market, Member States shall ensure that the residual value risk of the rolling stock is borne by the competent authority in compliance with State aid rules, when operators intending and able to participate in tendering procedures for public service contracts so request in order to be able to participate in tendering procedures.

The competent authority may comply with the requirement set out in the first subparagraph in one of the following ways:

- (a) by acquiring itself the rolling stock used for the execution of the public service contract with a view to making it available to the selected public service operator at market price or as part of the public service contract pursuant to Article 4(1)(b), Article 6 and, if applicable, to the Annex,
- (b) by providing a guarantee for the financing of the rolling stock used for the execution of the public service contract at market price or as part of the public service contract pursuant to Article 4(1)(b), Article 6 and, if applicable, to the Annex. Such a guarantee may cover the residual value risk while respecting the relevant state aid rules when applicable,
- (c) by committing in the public service contract to take over of the rolling stock at the end of the contract at market price.

In the cases referred to in points (b) and (c), the competent authority shall have the right to require the public service operator to transfer the rolling stock after the expiry of the public service contract to the new operator to whom a contract is awarded. The competent authority may oblige the new public transport operator to take the rolling stock over. The transfer shall be done at market rates.

3. If the rolling stock is transferred to a new public transport operator the competent authority shall make available in the tender documents detailed

information about the cost of maintenance of the rolling stock and about its physical condition.

4. By [18 months after the date of entry into force of this Regulation] the Commission shall adopt measures setting out the details of the procedure to be followed for the application of paragraphs 2 and 3 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 9a(2)."

6. In Article 6 paragraph 1 is replaced by the following:

"1. All compensation connected with a general rule or a public service contract shall comply with Article 4, irrespective of how the contract was awarded. All compensation of whatever nature connected with a public service contract not awarded according to Article 5(3) or connected with a general rule shall also comply with the provisions laid down in the Annex. "

7. Article 7 is amended as follows:

- (a) Paragraph 1 is replaced by the following:

"1. Each competent authority shall make public once a year an aggregated report on the public service obligations for which it is responsible, the starting date and duration of the public service contracts, the selected public service operators and the compensation payments and exclusive rights granted to the said public service operators by way of reimbursement. The report shall distinguish between bus transport and rail transport, allow the performance, quality and financing of the public transport network to be monitored and assessed and, if appropriate, provide information on the nature and extent of any exclusive rights granted. Member States shall facilitate central access to these reports, for instance through a common web portal."

- (b) In paragraph 2, the following point is added:

"(d) the envisaged starting date and duration of the public service contract."

8. Article 8 is amended as follows:

- (a) The first subparagraph of paragraph 2 is replaced by the following:

"2. Without prejudice to paragraph 3, the award of public service contracts by rail with the exception of other track-based modes such as metro or tramways shall comply with Article 5(3) as from 3 December 2019. All public service contracts by other track-based modes and by road must have been awarded in compliance with Article 5(3) by 3 December 2019 at the latest. During the transitional period running until 3 December 2019, Member States shall take measures to gradually comply with Article 5(3) in order to avoid serious structural problems in particular relating to transport capacity."

- (b) The following paragraph 2a is inserted:

"2a. Public service contracts for public passenger transport by rail directly awarded between 1 January 2013 and 2 December 2019 may continue until their expiry date. However they shall, in any event, not continue after 31 December 2022."

(c) In paragraph 3, the last sentence of the second subparagraph is replaced by the following:

"The contracts referred to in (d) may continue until they expire, provided they are of limited duration similar to the durations specified in Article 4."

9. "The following Article 9a is inserted:

Article 9a

Committee procedure

1. The Commission shall be assisted by the Single European Railway Area Committee established by Article 62 of Directive 2012/34/EU of the European parliament and of the Council of 21 November 2012 establishing a single European railway area (recast)¹³. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply."

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

¹³ OJ L343/32 of 14.12.2012