

Railway market opening and governance: Council agrees its position

On 8 October 2015, the Council agreed a **general approach** on two proposals to **liberalise domestic rail passenger services** and **strengthen the governance of railway infrastructure**. The proposals are part of the market pillar of the fourth railway package.

François Bausch, Luxembourg's Minister for Sustainable Development and Infrastructure and President of the Council, said: "Today we reached an agreement on EU regulation which will help promote rail throughout Europe. I am satisfied with the large support but even more pleased at the balanced and solid solutions that we managed to agree upon."

The goal of the new rules is to **improve the quality** of rail services by making them more dynamic and customer-oriented. They should also encourage investment and innovation and ensure fair competition in the rail market.

Under the proposals, EU train companies would have **non-discriminatory access** to the network in all EU countries for the purpose of running domestic passenger services. They could either **set up their own commercial services** to compete with other operators, or **bid for public service contracts**.

Safeguards would be put in place to **prevent conflicts of interest** and **increase the transparency** of financial flows between infrastructure managers and rail operators.

Public service obligation (PSO) regulation

The Council agreed that **competitive tendering** should be the **main rule for awarding public service contracts**. However, a number of exceptions to this rule would allow public service contracts to be awarded directly. They address concerns such as the suitability of competitive tendering for small markets and the need to ensure the long-term continuity of public rail transport services.

In particular, member states' authorities would be able to opt for direct award if **justified by the structure and geographical characteristics of the market and network** and if it would **improve the quality of services and/or cost-efficiency**. The national authorities would assess progress in improving the services using performance criteria, such as the punctuality and frequency of trains.

Direct award would also be possible for small contracts and in exceptional circumstances.

The **deadlines** in the Council position are longer than those put forward by the Commission. For example, national authorities would be able to continue to award public service contracts directly for 10 years after the regulation enters into force without having to justify their use. Existing, directly awarded public service contracts would be allowed to run until they expire.

Governance directive

The Council considers that member states' **organisational structures are already largely compatible** with the proposal's objectives. **Targeted measures** will address a number of situations that have been identified as potentially problematic, such as risks of conflicts of interests or transfers of funds between infrastructure managers and railway companies. Safeguards should not, however, interfere with the structure of undertakings.

To avoid any unnecessary administrative burden and adaptation costs, measures to ensure the **independence of infrastructure managers** should centre on their essential functions. These cover decision-making on train path allocation and infrastructure charging.

A certain flexibility has been introduced in the way in which the infrastructure manager's **functions** can be **carried out**. Member states may decide to allow path allocation and infrastructure charging to be carried out by an independent body. In addition, the

infrastructure manager may outsource functions to enhance efficiency.

Loans between different players in the railway sector would not be prohibited as a general rule, but only in cases where they present a risk to the fair operation of the sector.

Rules to ensure the **independence of staff and management** have been simplified to avoid overregulation.

Member states would have three years to adapt their national provisions. Some key rules, such as those relating to infrastructure managers' independence or financial transparency, would have to be in place by the end of this transition period. Others, including non-discriminatory access to infrastructure, would apply from 2020.

Next steps

The Council position allows the presidency to start negotiations with the European Parliament. Both institutions need to approve the proposals before they can become law.

[4th railway package: Governance and market opening proposals](#)

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