

TASK SPECIFICATIONS

to award a Specific Contract under DG TREN's Framework Contract
MULTIPLE FRAMEWORK SERVICE CONTRACT
WITH RE-OPENED COMPETITION FOR ECONOMIC ASSISTANCE
TREN/R1/350-2008 lot 2
for the assignment:

STUDY ON REGULATORY OPTIONS FOR FURTHER MARKET OPENING IN RAIL PASSENGER TRANSPORT

Unit of Directorate for Energy and Transport in charge: Rail Transport and
Interoperability, unit E2

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1. INTRODUCTION

In the White Paper 'European Transport Policy for 2010: Time to Decide'¹ and its 2006 revision², the Commission adopted an integrated approach for its transport policy that should allow the performance of the European transport sector to increase by reaping the efficiency potential of each mode individually or jointly through co-modality. Major forecasts on transport volume expect a significant increase of transport till 2020, which implies that the absolute volume of transport by rail should increase considerably. Although in absolute terms, there was a slight increase in passenger and freight transport by rail since 1995 modal shares of rail passenger transport however have declined from 9,5 % in 1995 to 6,1% in 2006 and in rail freight from 12,6% in 1995 to 10,5% in 2006.

¹ COM(2001)371 of 12 September 2001, see: http://europa.eu.int/comm/energy_transport/en/lb_en.html

² Communication from the Commission to the Council and the European Parliament - Keep Europe moving - Sustainable mobility for our continent - Mid-term review of the European Commission's 2001 Transport White paper (COM/2006/0314 final), see: http://ec.europa.eu/transport/strategies/2006_keep_europe_moving_en.htm

In order to revitalise rail transport the Community has put in place a legal framework for the creation of an integrated European railway area comprising complete market opening for rail freight services, opening for international rail passenger services, rail interoperability and the development of a Community wide rail safety approach.

In the framework of the Commission's regular monitoring of rail market developments it is necessary to assess whether a complete market integration including a further opening of the rail passenger market will allow the improvement of rail transport services to better contribute to meeting the objectives foreseen by the White Paper.

Other factors are important in achieving this objective. Among them are the development of railway infrastructure networks, improving financial conditions for the railway infrastructure and implementation of a fair intermodal charging framework taking into account the external costs of the different modes of transport. It is clear from experience in a number of EU member states that significant growth in rail passenger usage can be achieved only when the right regulatory arrangements and investment conditions are in place. It will also be necessary to clearly assess what will happen to transport volumes in case no further market opening measures are taken.

In recent years, the European legislator has put in place a legal framework for establishing an Internal Market for rail transport services. Major elements of this framework are the following:

- Market access: the infrastructure package Directives and their successive amendments (Directives 91/440/EEC amended by Directive 2004/51/EC and by Directive 2007/58/EC, Directive 95/18/EC and Directive 201/14/EC)

These Directives define principles for conditions of access to the rail infrastructure and access rights for rail freight services as well as international rail passenger services. A reinforcement of this legislation is envisaged in the near future in the framework of a recast.

- The railway interoperability Directives and its recast in 2008 (Directive 1996/48/EC, Directive 2001/16/EC and Directive 2008/57/EC)

This legislation aims at technical harmonisation of rail systems in the EU through the application of common specifications for new investments and renewal.

- The railway safety Directive and its amendment in 2008 (Directive 2004/49/EC and Directive 2008/110/EC)

These Directives define the framework for the development of a common approach to rail safety in the EU. This includes introducing safety certificates with EU wide validity (Part A) since 2004.

- The Directive 2007/57/EC on the certification of train drivers

This legal act sets out common rules and principles for the certification of train drivers to allow their mobility within the EU.

- The Regulation 1370/2007 on public services in rail and road transport

This Regulation defines the conditions under which contracts for the provision of public services in rail and road passenger transport shall be awarded to ensure safe, efficient and high-quality passenger transport services through regulated competition, guaranteeing also transparency and performance of public passenger transport services, having regard to social, environmental and regional development factors and to eliminate the disparities between transport operators from different Member States, which may give rise to substantial distortions of competition.

- The Regulation 1371/2007 on rail passenger rights

This legal act defines general passenger rights including for persons with reduced mobility for transport by rail across the EU.

2. OBJECTIVES

The objective of the study is to:

- carry out a quantitative and qualitative analysis of the domestic passenger rail transport market: total traffic and its evolution, market segments (regional under Public Service Obligations, long-distance, etc.), actors, revenues, etc.

- describe and analyse different models of market regulation introducing competition in domestic rail passenger transport (open access, competitive tenders for public service contracts/franchise contracts, competitive tendering of concessions contracts) in the EU and other relevant countries (e.g. in America, Asia). The study shall assess the interaction of the various regulatory models and their effects on the market performance, quality of service, public finance, citizens' mobility and accessibility.

- the study shall assess the economic, social and environmental effects of further market opening options in domestic rail passenger transport in the EU.

The findings of the study should be an input to the Commission's regular monitoring of rail market developments, which feeds the future policy discussion.

3. PROBLEM DESCRIPTION

Directive 2007/58/EC opened up the market for international rail passenger transport including the right of cabotage from 1 January 2010. This directive foresaw that the Commission should draft a report on the first consequences of this market opening and the opportunity to open up the market for domestic rail passenger services.

Regulation 1370/2007 on public services in rail and road transport provides a regulatory framework for the provision of passenger transport services under public service contracts, i.e. defining service characteristics, rules of compensation of public services and/or exclusive rights for the transport provision. The Regulation clarifies the underlying principles and characteristics of such contracts. For rail transport, however, it does not provide for mandatory competitive tendering of public service contracts.

Some Member States have introduced public tendering for public service contracts on the basis of national law, others have not. The resulting regulatory asymmetry across EU Member States is a potential source of market distortion and inefficiencies. A legislative proposal for further EU-wide market opening for rail passenger transport could help to overcome this problem.

4. DESCRIPTION OF THE TASKS

a) Market analysis

The contractor shall first provide **a qualitative and quantitative analysis based on statistical data of the domestic passenger rail services in the EU**. This analysis shall include elements concerning the total traffic and its evolution, the description and the evolution of the different market segments (regional under Public Service Obligations, long-distance, etc.), the actors, the revenues and the profitability relating to this type of services.

b) Assessment of existing legal regimes

The contractor shall then **describe the existing regulatory regimes regarding rail passenger transport in all EU Member States** (open access, public service contracts, service concessions) and other appropriate countries to be selected by the contractor together with the Commission. The following issues will be addressed for domestic rail passenger services: legal regime of access to the market; regulatory approach (if any) to the network of services provided by different operators (connections, tickets, information); regulatory approach towards the availability and financing of rolling stock; expected regulatory developments (e.g. market opening).

The contractor shall make **a short overview of the relevant studies** that have been carried out regarding market opening in rail passenger transport in the EU and from which lessons can be learned. This overview shall include the studies carried out to make forecasts of passengers transport. Basic elements that should be taken account of in this literature survey should be:

- comparison of competition on the tracks versus a single operator or a tendered service ('competition for the tracks'). What are the outcomes for in particular passenger ridership, price levels and profit and losses;
- different ways of exchange of tickets between operators ('ticket integration');
- competition from other modes, such as road and/or air;

c) Case studies

In 4 representative (or significant) Member States, to be identified by the contractor together with the Commission, **an analysis of the effects, impacts and of the regulatory regimes for domestic services in force**. This assessment will focus on:

- transport demand development;

- economic development of the market (turnover, prices, profit and losses, operational efficiency, investments)
- sustainability of transport (in particular railway safety, passenger security)
- problems that may have occurred in situations of market opening regarding abuse of dominant positions, planning and financing of rolling stock and infrastructure improvements.
- role of public authorities, infrastructure managers and railway undertakings,

For these 4 Member States, the consultant will also assess **the effectiveness of the regulatory regime in respect of policy objectives** (i.e. competitiveness, quality of service, accessibility and mobility, stability of public finance).

d) Definition of regulatory options

On the basis of this assessment, **the contractor together with the Commission will identify 3 or 4 market regulation options** that could be set up at EU-level. These options could be: complete domestic market opening; restricted opening of intercity transport; opening of all lines that are not covered by a public service contract.

f) Evaluation of the effects of regulatory options

Finally, the contractor will **assess the effects of the identified regulatory options on railway transport, on the economy, on social aspects and environmental aspects in 3 Member States** selected together with the Commission. The objective of this task is to make an assessment of the current market situation and the expected market situation (scenario) once a market-opening model has been put into place. The following effects will be assessed:

- effects on service levels on different market segments;
- effects on quality and prices for passengers;
- effects on investments, turnovers and profitability;
- effects on state aids;
- effects on market structure (developments of low cost railway undertakings?, concentration of the market?);
- effects on passengers carried;
- effects on regional cross-border services;
- effects on service availability for different market segments (e.g. business users versus commuters and leisure market)

A reference scenario will be identified, and approved by the Commission. The reference scenario and the policy scenarios shall take account of infrastructure development and other development of modes of transport.

The contractor shall also analyse whether the regulatory model could have potential effect on: railway safety; passenger security; employment and working conditions; environment (atmospheric emissions, noise); modal shift. The effects should where possible be quantified or otherwise qualitatively stated. The assessment of effects should be compared to the reference scenario.

By extrapolating the results obtained for the 3 selected Member States, the contractor will assess the potential effects in the EU as a whole.

g) Communication of the findings

The contractor will **present its final findings to stakeholders** during a hearing organised by the Commission.

5. SCOPE, WORKING METHOD AND APPROACH

The geographic scope is that of the EU, European Economic Area, Switzerland and the candidate states for accession to the European Union.

The study will prepare recommendations and test them with stakeholders through questionnaires and a hearing.

6. INVOLVEMENT OF STAKEHOLDERS

Relevant stakeholders as defined under point 4 have to be consulted and a stakeholder hearing has to be organised.

7. REPORTING AND DELIVERABLES

The contractor is requested to present:

- 1) an inception report outlining the context of the present situation, the problem analysis, the approach and the objectives of the initiative;
- 2) an intermediate report shall include (in addition to the above elements), the overview of existing regulatory regimes, the market research from a theoretical perspective, a proposal for the approach to be taken for the stakeholder consultation and hearing as well as preliminary findings of the simulation exercise.
- 3) a draft final report shall include (in addition to all the above elements), the results of the consultation of stakeholders and the stakeholder hearing, the findings of the assessment of the likely economic, environmental and social effects of the regulatory options and recommendations for policy action.
- 4) a final report that will take into account the Commission's comments and requests. The final report, containing all relevant information shall also provide a written summary aiming at a non-specialised audience.

8. ORGANIZATION AND TIMETABLE

The technical officer in charge will participate in the meetings with the contractor, facilitate access to information, monitor the work and validate the results of the services of the contractor.

In cases where an inter-service steering group will be constituted, the contractor may participate to some of these meetings if requested by the Commission.

The study is expected to start in June 2009.

Not later than 10 working days after the signature of the specific contract, a kick-off meeting will be held in Brussels, in order to settle all the details of the assessment to be undertaken.

Not later than 20 working days after the signature of the specific contract an inception report is to be submitted to the Commission. The inception report is to be discussed and approved at in a meeting with DG TREN Unit E2 in Brussels.

Not later than 2 months after the signature of the specific contract the intermediate report is to be submitted to the Commission.

Not later than 5 months days after the signature of the specific contract the draft final report is to be submitted to the Commission. The draft final report is to be discussed in a meeting with DG TREN Unit E2 in Brussels.

The final report, which shall fully reflect the Commission's comments, is to be submitted not later than 10 working days following the receipt of the Commission's comments by the contractor.

9. COMMISSIONING BODY AND USER (S) OF THE STUDY RESULTS

Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the contract, shall be owned solely by the Community.

The Commission services will be responsible for deciding the possible dissemination of the findings and conclusions of the assessment and its related materials produced under this work contract.