



Interpretative Guidelines concerning Regulation (EU) 1370/2007

Questions and Answers

22 June 2023

Why has the Commission adopted new Guidelines for Regulation (EU) 1370/2007¹ (the Land PSO Regulation)?

- The new Guidelines were necessary, as the Guidelines from 2014 had become obsolete. The Land PSO Regulation was modified in 2016 by the 4th Railway Package, which fully opened the rail market to competition, and there was a new case law from the European Courts to take into account. It was considered important to provide updated guidance to Member States before the end of the transition period set by the 4th Railway Package, which made competitive tendering a mandatory requirement under EU law.

What is the legal value of the Guidelines? Do they create new rules?

- The Guidelines do not replace the Land PSO Regulation or create new rules, but explain the existing rules in their full legal context, taking into account for example the horizontal EU rules applicable to public service obligations, and the case law of the European Courts.
- The Guidelines aim to increase legal certainty by explaining to stakeholders how the Commission interprets the rules. However, the European Courts always have the final say on the interpretation of EU law.

Did the Commission conduct a transparent consultation on the Guidelines?

- The Commission carried out a wide stakeholder consultation between 2021 and 2022. All stakeholders directly concerned by the Regulation, namely the Member States, competent authorities, representatives of transport operators, users and workers were involved.

¹ 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 and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, OJ L 315, 3.12.2007, p. 1–13

- The Commission received more than 40 written contributions and held over 15 meetings with the concerned parties. The Commission also presented the Guidelines to the TRAN Committee of the European Parliament. The original draft was modified to take into account, wherever possible, the comments received during these consultations.

Do the Guidelines limit the possibility to impose PSOs to the benefit of commercial services?

- The right for railway undertakings to offer services on a commercial basis across the EU is laid down explicitly in the 4th Railway Package.
- However, public services are at the heart of EU law, and the Treaty is explicit on their importance. The Land PSO Regulation recognises the fundamental role of public service obligations in land transport. They are indispensable when market forces alone cannot deliver the full extent of services which are in the public interest. Member States continue to retain a wide margin of discretion as to which services they consider necessary in the public interest, not only to meet actual user demand, but also to achieve modal shift and climate change objectives.
- However, to put those services in place, Member States need to follow the procedures set out in the Land PSO Regulation, and in particular the obligation to award public contracts, in principle, via competitive tendering. This obligation is now also fully applicable to rail.
- On markets where there is open-access competition, Member States should also ensure that they take into account the existence of commercial offer when defining the scope of their PSO contracts.

Is direct award of rail public service contracts still possible?

- With the 4th Railway Package, competitive award has become the principle, and direct award the exception. This is clearly stated in the Land PSO Regulation and accordingly reflected in the Guidelines.
- The requirement of competitive award is a significant change compared to the past, where Member States were free to directly award rail public service contracts. To enable Member States to adapt to the new requirements, the Land PSO Regulation foresaw a very long transition period, which expires at the end of this year.
- Direct award will still remain possible in limited and well-justified cases. The applicable conditions are clarified in the Guidelines.