

PUBLIC SERVICE RAIL TRANSPORT IN THE EUROPEAN UNION: AN OVERVIEW



NOVEMBER 2005

The Voice of European Railways



COMMUNITY OF EUROPEAN RAILWAY AND INFRASTRUCTURE COMPANIES
COMMUNAUTÉ EUROPÉENNE DU RAIL ET DES COMPAGNIES D'INFRASTRUCTURE
GEMEINSCHAFT DER EUROPÄISCHEN BAHNEN UND INFRASTRUKTURGESELLSCHAFTEN

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Public service transport plays a crucial role in passenger transport in the European Union both from a political and an economic point of view. It is estimated that approximately 90% of domestic passenger transport is currently provided in the EU within the context of public service arrangements, which in many cases represents substantial revenues for railway undertakings. Moreover, public service transport undeniably constitutes a tool in public authorities' welfare policies.

The operation and organisation of public service transport differs greatly throughout the Union due to the great variety of needs and traditions. Furthermore, while the provision of public service transport in the EU 15 takes place to date within a certain legal framework providing some protection for railway undertakings, the same does not apply to railway operators from the new EU Member States. In other words, conditions under which public service transport is provided are complex. Harmonised, rules cannot be applied without taking into account the specific political and economic context in each Member State.

Against this background, the Community of European Railway and Infrastructure Companies (CER) is publishing this brochure which describes the state of the art in the European Union as well as in Norway and Switzerland. A general commentary is also included, guiding the reader through the various elements taken into account when providing public service transport. With this brochure, CER hopes to provide some useful guidance to stakeholders in their assessment of the new legal framework for public service transport as proposed by the European Commission in July 2005.



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OVERVIEW

In the rail transport sector, governments throughout the world fund the domestic rail passenger market to some extent. 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 2004, government payments for public service obligations across the EU-15 were worth approximately 10 billion Euro per year. These payments covered approximately 30% of operating costs (i.e. ticket revenues cover 70% of operating costs)¹.

Traditionally, payments have been 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 satisfy the fundamental right of mobility has been an essential political objective pursued by all government throughout the years. Secondly, securing affordable rail services has been an important component of governments’ social welfare and regional aid programmes – to allow low-income families, and those living in remote areas, to be mobile². Thirdly, with regard to the rail sector in particular and with the development of road transport, as the latter does not pay for the environmental and congestion costs (so called “external costs”) it produces; it makes sense to support an alternative mode of transport that does not produce such external costs (or at least in no comparable proportion)³.

By the mid-1960s, it became clear that the traditional form of subsidy 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 up front for this service – but waited for the annual budget discussion on the overall level of operating subsidy. In turn, this gave poor incentives for the state railway company. Rather than concentrating on generating new sources of revenue, or trying to reduce costs, it was often easier to focus attention on the annual budget negotiation with the government.

The core piece of European legislation on this topic – Regulation 1191/69⁴ – was designed to improve transparency and efficiency, and clarify the conditions under which public authorities could financially support rail public service with regard to the general European rules related to state aids. This first Regulation was amended in 1991 by Regulation 1893/91, and still applies today under this renewed version. The Regulation helps railway companies by ensuring that governments have to specify – up front – what level of service they require, and then agree on what this will cost. Politicians are confronted with the financial consequences of their political choices. Operators, on the other hand, face strong incentives to meet the cost targets implicit in the contract.

1. This has remained almost constant over the period 1996-2001. Source: NERA Study on the Financing of and Public Budget Contribution to Railways, 2004.
2. This principle also applies to public road transport.
3. 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 transport modes.
4. 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 waterway, as amended by Regulation 1893/91.



While most EU-15 Member States effectively base themselves on Regulation 1191/69 for the daily operation of their rail public services, several others – predominantly new members of the EU – have applied it in law only. In practice, in these new EU Member States in particular, railway companies struggle to finance loss-making passenger services. Closing such services has proved politically unacceptable – upsetting local and national politicians, trade unions and local residents. Yet without adequate funding, railways have often resorted to using revenues from a profitable freight sector to finance the “public service” passenger sector. By contrast, in several Member States, governments have introduced domestic legislation going beyond the requirements of 1191/69, often aimed at introducing greater competition to the provision of the service.

In 2000, the European Commission voiced its concerns about the fact that this regulation, last modified in 1991, was not relevant to current needs as it does not fit in the overall Commission policy of opening up markets. It has therefore made several attempts at modifying this text, although all have failed to gain support from the Council of Ministers. A new proposal was tabled on 20 July 2005⁵. In parallel, Heads of State and Government have 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.

Indeed, during various European Summits (Nice in December 2000; Laeken in December 2001 and Barcelona in March 2002), Heads of State and Government have clearly stated their attachment to the protection of services of general interest in the European Union. This has resulted in the publication of a Green and a White Paper on services of general interest in which the European Commission discusses and reiterates its attachment to the social dimension of such services, whilst recognising that they must be adequately financed⁶. The “Constitution for Europe” further contained a new article providing a new legal basis to adopt legislation setting out in particular economic and financial conditions of services of general economic interest⁷. Despite the fact that the Constitution for Europe has not met public support for the time being, the inclusion of an article on services of general interest demonstrates the political will to recognise the fundamental nature of such services in the European Union.

The debate goes on over experience with the competitive tendering of public service contracts. The UK, Sweden, Denmark, Germany and the Netherlands are the countries most often associated with tendering, although to varying degrees and with varying types of procedures - either through full compulsory competitive tendering or by giving regional contracting authorities the freedom to ask rival companies for a better price-quality offer.

5. European Commission revised proposal for a Regulation of the European Parliament and of the Council on public passenger transport services by rail and by road, COM(2005) 319.

6. 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.

7. Article III 122 of the Constitution: “Without prejudice to Articles I-5, III-166, III-167 and III-238, and given the place occupied by services of general economic interest as services to which all in the Union attribute value as well as their role in promoting its social and territorial cohesion, the Union and the Member States, each within their respective competences and within the scope of application of the Constitution, shall take care that such services operate on the basis of principles and conditions, in particular economic and financial conditions, which enable them to fulfil their missions. European laws shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Constitution, to provide, to commission and to fund such services.”

Views still vary as to how successful this experience has been. On the one hand, it is often claimed that increased competition has led to productivity increases and cost reductions, sometimes to the order of 20 percent⁸. However, there have also been problems. Firstly, sometimes the winner’s bid is, it turns out afterwards, too low – the so-called “winner’s curse”. If so, the public authority must then decide whether to bail out the operator or re-tender the service, with all the associated costs and delays in the provision of required services. Secondly, discussions continue over the optimal length of a contract, and what incentive that gives the winner to invest in new products. Thirdly, coordination issues – in timetabling and ticketing, for instance – can be problematic between different regional operators. Finally, operators involved in the bidding procedure often claim that there is little transparency on the side of the government as to why a particular price-quality bid has been rejected.

This report does not take a position on such matters. Rather, the aim is to review the state of the art in Europe today, over 30 years after the application of Regulation 1191/69. The report describes the legal, political and economic context within which public services are currently operated, the general contents of the public service contracts, the manner in which they are awarded, etc. in order to serve as a reference tool for all stakeholders. General comments on a number of aspects of public service contracts are discussed in Part II. The final section of the report contains individual country reports describing in greater detail the legal framework surrounding public services.

8. ECMT, 2005, Independent Regulation and Competitive Tendering – the state of play in European rail systems, paper prepared by Chris Nash and Bryan Matthews (Institute of Transport Studies, University of Leeds).



PART 1

EU LEGISLATION ON PUBLIC SERVICES





PART 1: EU LEGISLATION ON PUBLIC SERVICES

1. INTRODUCTION

Traditionally, the European Commission has been treating public service transport and compensation for the requirements laid down by public authorities in particular, from a purely competition policy point of view. This is bound to change in future, in light of recent European case law, as outlined below. To make it easier for the reader, the traditional European Commission views are presented below, with an insight towards the end of this section on future developments.

European competition rules provide that any form of state aid granted by a Member State to companies may distort competition and therefore be illegal⁹. In many cases, however, such financial support is beneficial to the economy and does not actually affect competition. The European Commission therefore requires that all proposed aid is notified to its services for prior authorisation.

The compensation of public service obligations required by national authorities in many economic sectors is generally considered to constitute state aid¹⁰. In the transport sector in particular, Article 73 of the Treaty provides that state aids “representing the discharge of certain obligations inherent in the concept of a public service” shall be compatible with the Treaty. In principle, this does not exempt national authorities from notifying such schemes to the European Commission.

However, given the large amount of state intervention in the inland transport sector, the European Commission decided to adopt a Regulation in 1969 (Regulation 1191/69 later amended by Regulation 1893/91) which constitutes – amongst others – a block exemption for state aid awarded with a view to discharge transport public service obligations. In other words, state aid fulfilling the conditions laid down in Regulation 1191/69 is automatically valid, without any need for notification.

This chapter briefly describes the objectives pursued by Regulation 1191/69 as amended by Regulation 1893/91.

9. Articles 87 and subsequent of the Treaty establishing the European Community.

10. Article 86 (2) of the Treaty provides in this respect that undertakings entrusted with the operation of services of general economic interest remain subject to EU competition rules “insofar as the application of such rules does not obstruct the performance [...] of the particular tasks assigned to them”.



2. REGULATION 1191/69: THE CURRENT FRAMEWORK

Regulation 1191/69 was drafted with the specific objective to protect railway undertakings from the tendency of national authorities' to impose public service obligations, without necessarily assuming the financial consequences of such political decisions.

Regulation 1191/69, as amended by Regulation 1893/91, defines the conditions under which public authorities may intervene in order to obtain the level of public transport they define as sufficient. The Regulation foresees two different ways to reach this objective:

- a) **Conclusion of a public service contract** between public authorities and transport operators (chapter V of Regulation 1191/69 as revised in 1991¹¹): if, for public policy reasons, public authorities wish to secure adequate transport services which take into account social and environmental factors and town and country planning, or such authorities wish to offer particular fares to certain categories of passengers, such authorities may conclude proper public service contracts with the railway operator in charge of the said services.

Regulation 1191/69 broadly describes the elements that should be included in the contract. These include amongst others:

- nature of the services to be provided;
- price of the services covered by the contract;
- rules concerning amendment and modification of the contract;
- period of validity and penalties in the event of failure to comply with the prescriptions of the contract.

For public service obligations conferred on a contractual basis, Regulation 1191/69 does not provide rules for the calculation of the level of compensation.

11. In fact the main objective pursued by the 1991 revision was to generalise the conclusion of public service contracts.

- b) However, for urban, suburban or regional passenger transport services, public authorities may **unilaterally maintain or impose public service obligations**, if they respect the detailed conditions defined by the Regulation (chapters II-IV of Regulation 1191/69).

Article 2 of Regulation 1191/69 defines public service obligations as “obligations which the transport undertaking concerned would not assume, or would not assume to the same extent, considering its own commercial interest”. They may consist of:

- **obligation to operate:** obligation to guarantee a transport service that meets established standards of continuity, regularity and capacity interpreted in a broad manner, i.e. including the obligation to ensure the operation of complementary services; obligation to maintain lines, equipment and facilities.
- **obligation to carry:** obligation to transport passengers at a particular price and conditions of transport.
- **tariff obligation:** obligation to apply specific tariffs – in particular in favour of certain categories of travellers – or tariffs approved by the authorities.

The Regulation outlines in great detail the calculation method to be applied to the “financial disadvantage” borne by the railway undertaking to which a public authority imposes public service obligations.

As a principle, the level of compensation must correspond to the costs incurred by the railway company for the provision of the obligations after deduction of the revenues generated by the operation of the services. These costs must be calculated on the basis of efficient management of the undertaking and the provision of transport services of an adequate quality. Moreover, the calculation of the level of compensation is done at least one year before the contract starts; therefore costs and revenues can only be an ex ante estimate. Following the Altmark ruling mentioned hereunder, railway companies may also request a “reasonable profit” to be added to the global compensation amount. This reasonable profit usually consists in the remuneration of the capital. Furthermore, Regulation 1191/69 foresees that where a transport undertaking operates both services subject to public service obligations as well as other services (defined in a contract), the public services must be operated as separate accounting divisions.

The financial compensation of public service obligations granted by national authorities is, in principle, deemed to constitute state aid, as defined under Articles 87 and subsequent of the EC Treaty. In practice, this means the state compensation should be notified to the European Commission for approval, prior to its implementation. However, Regulation 1191/69 states that, provided the public service obligation complies fully with the provisions of the said Regulation, the financial compensation at stake will be automatically authorised¹², without any need for prior notification and approval from the European Commission. Finally, in application of the Altmark ruling described below, this whole concept of state aid could be swept away, provided the funding fulfils the conditions laid down in the European Court of Justice judgement.

The Regulation does not specify the way in which contracts are to be awarded. National authorities can choose to award such contracts through an invitation to tender or directly negotiate them with the railway company of their choice.

12. Such an automatic authorisation system is also called a “block exemption”.



3. REVISION OF THE PUBLIC SERVICE REGULATION

In 2000 and 2002, the European Commission attempted to review the ten-year-old scheme, with a view to modernising it and “enhancing legal certainty by creating a harmonised framework for exclusive rights and state aid in passenger transport”¹³.

Both attempts were blocked in the Council for a number of years because Member States could not agree in Council on the objective pursued and the contents of the texts proposed, which did not reflect the effective needs of the sectors concerned. Despite efforts of European Parliament Rapporteur Meijer to find an agreement on the text, the position of the Council remained unchanged.

In 2003, however, the European Court of Justice gave several rulings which had important implications on the qualification of compensation of public service obligations. The *Altmark*¹⁴ case – the most notorious recent case relating to public service transport – brought clarification to the subject as well as some confusion.

13. COM (2000)7 on action by Member States concerning public service requirements and the award of public service contracts in passenger transport by rail, road and inland waterway, as amended by COM (2002)107.

14. Case C-280/00 Altmark Trans GmbH.

The Altmark Trans case opposed two bus companies on the conditions under which a German regional authority awarded to one of them a regional public transport contract. 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 the Altmark case does not apply – strictly speaking – 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 has been trying to take into account the Altmark ruling while drafting its proposal for a new Regulation.

As a result, the Council asked the Commission for an interpretation of the Altmark case in all sectors, including the transport sector¹⁵. The Commission took advantage of this occasion to prepare an entirely new proposal (the third) with the aim of reviewing Regulation 1191/69. The text was adopted by the College of Commissioners on 20 July 2005¹⁶.

Highlights of the proposal include:

- the provision of public service transport within the framework of a contract;
- public service obligations may be compensated through the granting of financial support or exclusive rights;
- the level of compensation must not exceed what is necessary to cover the costs incurred, including a reasonable profit;
- the level of compensation must be determined in advance and in a transparent manner;
- public service contracts may be concluded for a duration not exceeding 15 years with a possibility to extend this period to cover significant assets provided by the railway undertaking for the performance of the public service contract;
- Public service contracts must be awarded following a competitive tendering procedure with several exemptions. They include:
 - regional or long distance rail transport;
 - “in-house” operation: whereby competent authorities may decide to provide themselves public service transport through so-called “in-house” operators;
 - emergency situations: where there is an imminent risk of disruption of services the competent authority may directly award the contract to another operator;
 - public service contracts of a limited value (less than 1 million Euro per year or contracts for the provision of fewer than 300,000 km of services).

15. A first Communication was published by DG Competition on 26 February 2004: the so-called Monti Package. It does not cover the transport sector as competition rules for the transport sector are covered in a separate chapter of the Treaty (transport chapter; articles 73 and subsequent). This Communication was followed by a second package of texts proposed by the new Commissioner for competition policy, Neelie Kroes. These texts do not cover the transport sector either.

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

17. Proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/440 on the development of the Community's Railways, COM (2004)139.

18. The amendment proposed to Directive 91/440 would liberalise international passenger services and allow “cabotage” – transporting domestic passengers on international services between stations in the same Member State. This latest proposal is one of a series of EU measures intended to open the rail market. In particular, the First (2001) and Second (2004) Railway Packages contain essential framework provisions for the opening up of the railway market to competition.

- Competent authorities must comply with the Regulation and therefore secure that all public service transport is operated within the context of a duly concluded contract, complying with all compensation rules, etc. within a two-phase transition period: 50% of the contracts in value terms must comply with the Regulation within 5 years of its entry into force and 100% within 10 years of its entry into force;
- Furthermore, during the second half of the transition period, competent authorities may exclude railway undertakings benefiting from exclusive rights or from public service contracts awarded directly from participating in competitive tenders on their network. The mechanism foreseen for the eligibility of railway undertakings is complex;
- The Regulation will not apply to contracts concluded prior to the entry into force of the Regulation provided they have been awarded on the basis of a fair competitive tendering procedure and that they are of a limited duration comparable to what is foreseen in the Regulation;
- The proposed Regulation foresees the abrogation Regulation 1107/70 on state aid to infrastructure.

The draft Regulation will now follow the co-decision procedure in the European Parliament and the Council. The text is due to evolve closely to the issue of passenger transport liberalisation¹⁷ partly covered by the European Commission's Third Railway Package proposal published by the European Commission on 3 March 2004¹⁸.

With this new public service proposal, the Commission is signalling some changes in its approach to the regulation of public services in land transport. Indeed, the Commission has made a positive effort to simplify the new legal framework when compared to its previous proposals and it has made it more flexible so that it takes better account of the different situations through the full implementation of the subsidiarity principle.

Until this text – or any other text – is effectively adopted by the European Parliament and the Council, Regulation 1191/69 as amended in 1991, will continue to apply with regard to the financing of public service operations in inland transport.



PART 2

PUBLIC SERVICE MANAGEMENT IN THE RAIL SECTOR IN 25 COUNTRIES (EU and EEA)



PART 2: PUBLIC SERVICE MANAGEMENT IN THE RAIL SECTOR IN 25 COUNTRIES (EU AND EEA)

1. INTRODUCTION

This chapter describes how public services are dealt within the 25 countries included in the survey¹⁹. 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.

¹⁹. Countries surveyed include all European Union Member States (with the exception of Cyprus and Malta which do not have any railway network) as well as Norway and Switzerland (Members of the European Economic Area-EEA).

Country	Company(ies) surveyed
Austria	Österreichische Bundesbahnen Holding (ÖBB Holding)
Belgium	Société Nationale des Chemins de fer Belges Holding (SNCB Holding/NMBS Holding)
Czech Republic	České Dràhy (CD)
Denmark	Danske Statsbaner (DSB)
Estonia	Eesti Raudtee, Ministry of Economic Affairs and Communications
Finland	VR-Yhtymä (VR Group)
France	Société Nationale des Chemins de Fer Français (SNCF)
Germany	Deutsche Bahn (DB), Connex
Greece	Organismos Siderodromôn Elladas (OSE)
Hungary	Magyar Államvasutak (MAV), Győr-Sopron-Ebenfurti Vasút (GySEV/RoeEE)
Ireland	Córas Iompair Éireann (CIE)
Italy	Ferrovie dello Stato (FS)
Latvia	Latvijas Dzelzceļš (LDZ)
Lithuania	Lietuvos Geležinkeliai (LG)
Luxembourg	Société Nationale des Chemins de Fer Luxembourgeois (CFL)
The Netherlands	Nederlandse Spoorwegen (NS)
Norway	Norges Statsbaner (NSB)

Country	Company(ies) surveyed
Poland	PKP Regional Service Ltd. (PKP Przewozy Regionalne Sp. z o.o.), PKP Rapid Urban Rail in Triple City Ltd. (PKP Szybka Kolej Miejska w Trójmieście Sp. z o.o.), PKP Warsaw Commuter Rail Ltd. (PKP Warszawska Kolej Dojazdowa Sp. z o.o.), Mazovian Rails Ltd. (Koleje Mazowieckie Sp. z o.o.)
Portugal	Caminhos de Ferro Portugueses, E.P. (CP)
Slovakia	Železničná Spoločnosť (ŽSSK)
Slovenia	Slovenske Železnice (SŽ)
Spain	Red Nacional de los Ferrocarriles Españoles Operadora (RENFE Operadora)
Sweden	Tågoperatörerna representing several private transport operators, Connex, Statens Järnvägar (SJ AB)
Switzerland	Schweizerische Bundesbahnen/Chemins de Fer Fédéraux Suisses/Ferrovie Federali Svizzere (SBB/CFF/FFS); BLS Lötschbergbahn AG (BLS)
United Kingdom	Association of Train Operating Companies (ATOC) representing sectoral private transport operators

The review has, however, proved to be challenging, given that 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 III.

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 broadly three categories:

- public service operations organised purely at national level (at central government level);
- public service operations organised at regional or local level;
- 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 does not allow to draw conclusions on the scope of the contracts. It appears, however, that the level at which public service operations is mainly dealt with often depends upon the size of the country. In other words, in large countries, regional or local authorities will often be exclusively in charge of regulating public service operations, negotiating and concluding contracts, etc as they have a better understanding of the specific needs of their regional or local population.

Level at which public service transport is organised		
National level	Regional/local level	Mix
Austria, Belgium, Denmark, Finland, Greece, Hungary, Ireland, Latvia, Lithuania, Luxemburg, Norway, Portugal, Slovenia, United Kingdom	France, Germany, Italy, Poland	Czech Republic, Estonia, The Netherlands, Slovakia, Spain, Sweden, Switzerland

In a large majority of countries, public service transport is regulated at national level and public service contracts – if any – are directly negotiated and concluded with the central government. In most countries the law only regulates general principles leaving detailed aspects to be enshrined in the contract. In the UK, while franchises are awarded centrally, this is presently done with the involvement of local transport authorities in some metropolitan areas.

In all the other countries surveyed the competence is either shared between national and regional authorities (the Czech Republic, Hungary, the Netherlands, Slovakia, Spain and Switzerland) with a fair share of responsibilities in the hands of regional authorities, or they are entirely in the hands of decentralised authorities (France and Germany). In these two countries, the state intervenes by allocating a global financial envelope to the decentralised authorities for passenger public service transport²⁰.

Most of the railway companies in the new EU Member States are still organised on a national basis. Nevertheless, it should be underlined that in Poland, the Railway Act adopted in September 2000, mandated regional authorities (voivods) to negotiate public service contracts directly. A greater devolution of power to a decentralised level is expected to develop in the new Member States in the years to come.

20. These schemes are further developed in the country reports.

3. OPERATORS ON THE MARKET

At present, there is limited EU legislation aimed specifically at the rail passenger market. Directive 91/440 grants international groupings²¹ the right of access to operate international services between their countries of origin and other Member States, including transit rights. The passenger market as a whole has not yet been formally opened to competition by European legislation: in the Third Railway Package, the Commission proposes the liberalisation of international passenger services only, albeit with cabotage²². Against this background, public authorities have traditionally put the burden of public service obligations directly upon their incumbent railway operator.

As shown on the map below, in many Member States surveyed, legislation has been adopted with a view to opening the overall passenger rail market to competition prior to any European initiative.

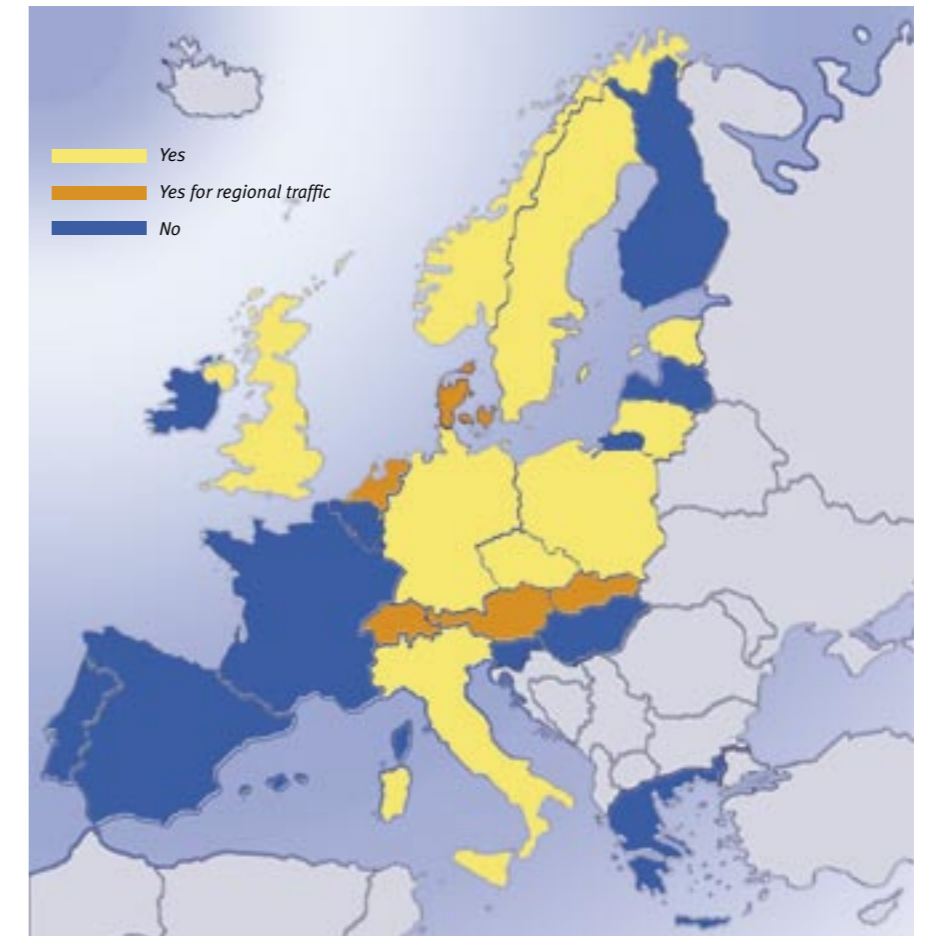


Figure 1. Markets formally open to competition for passenger services²³ in 2005 – prior to any European initiative.

21. The notion of “international grouping” is defined in article 3 of Regulation 91/440 as meaning “any association of at least two railway undertakings established in different Member States for the purpose of providing international transport services between Member States”.

22. See definition under footnote 12 above.

23. Markets opened either on through competitive tendering or through open access.

While in some countries (the United Kingdom, Germany and Sweden), national legislation opening up the market was adopted many years ago, in most of the EU countries, it is very recent. This partly explains why, to date, few competitors have effectively entered the markets that were recently opened. Further, other practical and technical difficulties such as for example the availability of a rolling stock leasing market, have made these markets less attractive to new entrants.

In the new EU Member States, while the rail freight market is slowly opening up, 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.

In the United Kingdom²⁴, Sweden and Germany, where the passenger rail market was opened many years ago, competition and new entrants have progressively settled down. In the United Kingdom in particular, all public service transport is currently put to competition (through systematic tendering of contracts: franchise agreements), and approximately 10 private operators are well established on the market.

24. It should be noted that the extent of competition "on the tracks" from open access operators offering extra train services is extremely limited: in the UK, this is controlled by the Rail Regulatory Body, to moderate the effect of competition on the franchise agreements.



4. DEFINITION OF PUBLIC SERVICE REQUIREMENTS

As outlined above, 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). On the other hand, when public authorities choose to conclude a contract instead of imposing unilaterally obligations, this contract still defines public service requirements which public authorities consider as necessary in order to guarantee the provision of adequate transport services.

In all countries surveyed, public service requirements are generally quite similar. 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 the 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 between large cities and during peak hours and stopping patterns. It is only in Portugal that this requirement does not appear to be compulsory;
- Quality requirements are generally included – whether explicitly in the section relating to public service obligations – or indirectly through “bonus penalty” systems. Quality requirements typically include:
 - punctuality performance;
 - services to passengers with reduced mobility;
 - client information, including the level of information to be provided;
 - requirements relating to ticket sales in train stations and on trains themselves;
 - cleanliness of rolling stock.
- Marketing of public service transport possibilities/availability at specific tariff levels is also often imposed by the allocating authority;
- Continuity of services, particularly in case of strikes (in Italy for example).

5. IMPORTANCE OF PUBLIC SERVICE PASSENGER TRANSPORT

Public service transport in the rail sector falling within the scope of the application of Regulation 1191/69 includes any passenger rail transport agreed with public authorities and 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 service obligation needs to be enshrined into a public service contract, whether local, regional or long distance traffic.

All situations can be found throughout Europe. Whilst quite a number of states limit public service transport to local and regional services, others provide public service transport on long-distance journeys. This remains a political choice depending on 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 to intensively-used commuter service capacity at peak periods. In the United Kingdom, for example, franchise awards (and, in most cases, public service funding) applies 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 and is defined for the rail sector as the transport of passengers by train in urban, suburban or regional traffics²⁵.

In smaller countries, such as Belgium, the Netherlands, Denmark, Greece and Switzerland, practically all internal passenger transport falls within the category of public service transport.

Public service transport has traditionally represented the major part of the passenger rail market and this trend is expected to grow with increasing road congestion and environmental concerns. When railway undertakings were in a monopolistic situation, Member States had recourse to public services as an urban and regional policy tool; without necessarily measuring directly 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 toward liberalisation in most sectors of the economy, the situation is evolving. In some countries, a number of extremely lightly-used services are being either highly financially supported or simply withdrawn, because the cost of operating them is completely out of proportion with any public service benefit. In others, parts of the network have been rationalised for this reason in the past.

²⁵. In case of doubt, the law clarifies that trains qualify for this if the majority of their passengers travel less than 50km or not more than one hour.

In the new EU Member States, the situation is somewhat different. In many cases, public authorities continue to request heavy public service obligations on a large part of the network with a duty to maintain continuity of services without, however, adequately compensating such obligations. As a result, the railway companies concerned have to run the services at a loss, and end up cross-financing from freight to passenger transport.

6. CONCLUSION OF A CONTRACT

Level at which the contract is concluded:

Regulation 1191/69 as amended by Regulation 1893/91 aims at generalising the award of public transport services through the conclusion of a contract between the competent public authority and the railway undertaking. The nature of the public authorities with whom the contract has to be concluded is not defined at EU level. This is defined exclusively by the Member States themselves.

In many Member States surveyed there are two administrative levels for the conclusion of public service contracts: one single framework agreement covering public service transport for the entirety of the territory describing, where appropriate, specificities applied in the different regions or localities; or individual agreements concluded for each specific region. In Belgium and Luxemburg, for example, public service passenger transport is organised through one single contract at national level while Denmark, France, Germany and Poland have contracts concluded only at decentralised level. In the United Kingdom the situation differs with all contracts being concluded with the central government (with additionally local authority support in some cases). However, these are all individual contracts covering specific train service groups.

In some of the new EU Member States, public service transport contracts have been concluded (often very recently) in order to comply with EU legislation. These contracts sometimes appear to be a pure formality as they are not systematically respected by the public authorities – at least as regards the financial compensation clauses.

Finally, when this report was drafted, Greece remained the only Member State from the EU-15 in which public service transport is operated outside of any contract. The legal framework is currently being completely overhauled in Greece with the conclusion of the first contract for public service transport. This reform is due to be achieved in the first half of 2005²⁶.

26. The Greek country report included in Part III of this report describes the new legal framework for the operation of public services that is still in the process of being negotiated as this report is being finalised. The Greek country report must be considered as a draft.

27. This appears to be somewhat divergent with the principle of mutual agreement between parties in a traditional contract.

Legal form of the contract:

There is no clear preference for one type of legal form of the contract itself. Most agreements concluded are commercial law agreements, which, in some cases, contain some elements of public law.

Due to the different legal systems at stake, the “contracts” take various legal forms, i.e. concession agreements, pieces of legislation²⁷, Memorandum of Understanding, franchise, etc.

Contents of the contract:

All elements relating to the provision of public services (level of financing, details about the services, etc.) are either provided in the framework legislation regulating public services in general or in the specific contracts concluded in the Member States with the relevant authorities.



7. CONTRACT PAYMENT

In practice, most of the Member States covered in the report compensate public service obligations through direct financial payments to the railway undertakings providing the services required. In other countries, public authorities compensate the public service obligations through a combination of purely financial compensation and exclusive rights to operate profitable parts of the overall train services required.

In the new EU Member States, public service requirements are compensated through financial support only (with a de facto exclusivity until any competitor enters the market). However, in most cases, the public funds effectively granted do not cover the reality of the costs incurred. In Poland for example, only a small share of the actual public service costs not covered by passenger revenue are effectively compensated through public funds. In addition, in most countries surveyed, financial compensation is generally granted at least one year after the services were provided.

Finally, this situation is aggravated by the fact that the railway operators concerned have been prevented from withdrawing very lightly-used services that should, by any measure be replaced by buses – or even taxis in certain extreme cases. Generally, only ten per cent of the requests to withdraw services have been accepted. Indeed attempts made in Poland to shut down certain services were unsuccessful because of the political response to general strikes. Similar developments have taken place in Hungary and the Czech Republic.

Penalty schemes also exist in many of the Member States surveyed. These schemes are generally based on quality and punctuality criteria. In practice, if the railway undertaking does not meet the quality criteria required by the public authority in the contract, a penalty is applied. In some cases, the corollary applies, i.e. when the quality criteria are exceeded, a bonus is applied. It should however be noted that while the penalty system is quite frequent, the corollary bonus system is not systematically applied.

8. GRANTING OF PUBLIC SERVICE CONTRACTS

In practice, public service transport contracts are being awarded according to one of the two following procedures:

- direct negotiation with only one operator;
- full competitive tendering within the framework of a formal and often very strict open or restricted procedure.

Traditionally, Member States awarded contracts directly to the incumbent company. However, with progressive steps towards market opening being achieved, in some Member States national or regional authorities started introducing the tendering procedure in their own legislation, without waiting for European legislation. As a result, as can be seen in the table below today, 9 Member States have the possibility to award public service contracts either on a negotiation basis or through a competitive tendering procedure, 13 Member States have recourse for the time being to the direct negotiation procedure (whether imposed by law or merely for practical reasons as no competitors are present on the market: see table below). Finally, to date, only one country (the UK) has a clear legal obligation to award public service contracts exclusively following a competitive tendering procedure.

Country	Formal award procedure	Comment
Austria	Direct negotiation and competitive tendering	Tendering not applied yet
Belgium	Direct negotiation	
Czech Republic	Direct negotiation	
Denmark	Direct negotiation and competitive tendering	15% of DSB public service contracts were tendered to date. 10% more to be tendered in 2007
Estonia	Direct negotiation	
Finland	Direct negotiation	
France	Direct negotiation	
Germany	Direct and public negotiation and competitive tendering	12% of the volume of public service contracts in effect in 2005 were awarded following a public tendering procedure
Greece	Direct negotiation	
Hungary	Direct negotiation	

Country	Formal award procedure	Comment
Ireland	Direct negotiation	
Italy	Direct negotiation and competitive tendering	
Latvia	Direct negotiation	
Lithuania	Direct negotiation and competitive tendering	In practice, the contract is directly negotiated with the national carrier as no other company showed interest to date
Luxemburg	Direct negotiation	
Netherlands	Direct and public negotiation and competitive tendering	Towards increased tendering on regional traffic
Norway	Direct negotiation and (gradual) competitive tendering	1 pilot service put to tender in February 2005
Poland	Competitive tendering	In practice contracts are awarded following direct negotiations with PKP Regional Service Ltd which is the sole supplier in Poland
Portugal	Direct negotiation and competitive tendering	1 suburban line tendered so far
Slovakia	Direct negotiation	
Slovenia	Direct negotiation	
Spain	Direct negotiation	
Sweden	Competitive tendering	
Switzerland	Direct negotiation and competitive tendering	Only 2 cantons used tendering procedure; none since 1996
United Kingdom	Competitive tendering	All franchises put to tendering

28. The Norwegian government decided to award three services following competitive tendering as pilot projects. They concern the Gjøvik route (for which the tendering process is well advanced as this report is drafted), 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.

The system in place in the United Kingdom is the most clear-cut in the EU, based on uniform awarding procedures, with systematic tendering of all franchises, and pressure to produce the most advantageous bid. The process is not publicly transparent: the bids are confidential and the tendering authority is not required to justify its decision fully.

Competitive tendering is in its very early stage in other countries. 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 network²⁸. In the Netherlands for example, regional lines are progressively put to competitive tender as the old contracts come to an end. Indeed, 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.

Furthermore, in many countries and in particular in the new EU Member States, despite the tendering procedure put into place, the incumbent operator “wins” the contract. This can be due to the fact that no other company responds to the tenders launched because of the low financial compensation granted in practice. As a result, the incumbent company is generally obliged (on the basis of the principle of continuity of service) to fulfil the public service obligations. In Latvia for example, public authorities launched a tender to which no railway operator responded. Eventually after a few months the public service obligations were required from LDz, the incumbent company. In Portugal, an open tendering procedure was held for a particular line; but the state-owned operator was not permitted to participate.

9. CALCULATION OF LEVEL OF COMPENSATION

The calculation of the level of compensation depends upon the public authority's choice whether to conclude a contract or to impose public service obligations. In the absence of a contractual agreement, the calculation of the level of compensation must be in accordance with the detailed provisions defined by Regulation 1191/69²⁹.

The level of compensation is determined in advance for all railway undertakings interviewed, including in most cases a reasonable margin, as outlined in the Altmark ruling³⁰.

When calculating the level of compensation, most railway companies interviewed include similar costs, i.e. costs relating to service operation (staff, rolling stock, track access charges, energy costs, railway policy and administrative costs).

The calculation of the overall revenue generated by the service is generally based on revenues generated in previous years adjusted by reasonable forecast of new demand. In some cases forecasts are generated by applying general network results (revenue per passenger/kilometre) to a particular set of services.

There are some exceptions. In Belgium, compensation is paid in the form of a global sum determined without detailed calculations demonstrating that it will effectively compensate the actual costs incurred. This is one of the reasons for which the railway company often incurs debt. A similar dilemma faces many of the state-owned companies operating in the new EU Member States.

Finally, in many cases, there appear to exist a strong relationship between the level of track access charges and the overall level of public service compensation. For instance traditionally the Netherlands has set low track access charges and hence the level of compensation is relatively low. In general, comparing levels of public service payments between regions or countries is only meaningful when the level of track access charges are known.

29. See Part 1.

30. Refer to Part 1, chapter 3.

10. GENERAL PAYMENT CONDITIONS

While in most EU 15 countries payments are made in regular instalments (i.e. on a monthly or quarterly basis), it should be noted that in Portugal and in most new EU Member States, payments are made depending upon the political commitment to rail of the authorities, the state of public finances and other political priorities.

Payment conditions		
Country	Interval	VAT
Austria	Monthly	No
Czech Republic	Monthly	Yes
Belgium	Monthly	No
Denmark	Monthly	No
Estonia	Monthly	No
Finland	Monthly	Yes
France	Monthly	Yes
Hungary	Monthly	Yes
Germany	Monthly	No
Greece	Quarterly	Yes
Ireland	Monthly	No
Italy	Yearly	No
Latvia	Monthly	No
Lithuania	Monthly	Yes
Luxembourg	Monthly	Yes
Netherland	Quarterly	Yes
Norway	Quarterly	No
Poland	Monthly	No
Portugal	discretionary	Yes
Slovakia	Quarterly	No
Slovenia	Monthly	No
Spain	Monthly	No
Sweden	Regular instalments ³¹	No
Switzerland	Regular instalments ³²	Yes
United Kingdom	Monthly	No

31. The frequency at which payments are made vary from contract to contract.

32. The frequency at which payments are made vary from contract to contract.

PART 2: PUBLIC SERVICE MANAGEMENT IN THE RAIL SECTOR IN 25 COUNTRIES (EU AND EEA)

With regard to the fiscal treatment of the compensation paid, no clear trend can be discerned on the application of value added tax (VAT): in some Member States railway undertakings are exempted from any VAT for public service transport compensation; whereas in others they have to pay VAT, but can eventually recover it. This really depends upon the specificities of the legal system in question.

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

11. DURATION OF PUBLIC SERVICE CONTRACTS

Regulation 1191/69 does not go into detail on the duration of the public service contract; i.e. it does not set minimum or maximum duration. It simply requires for the contract duration to be specified.

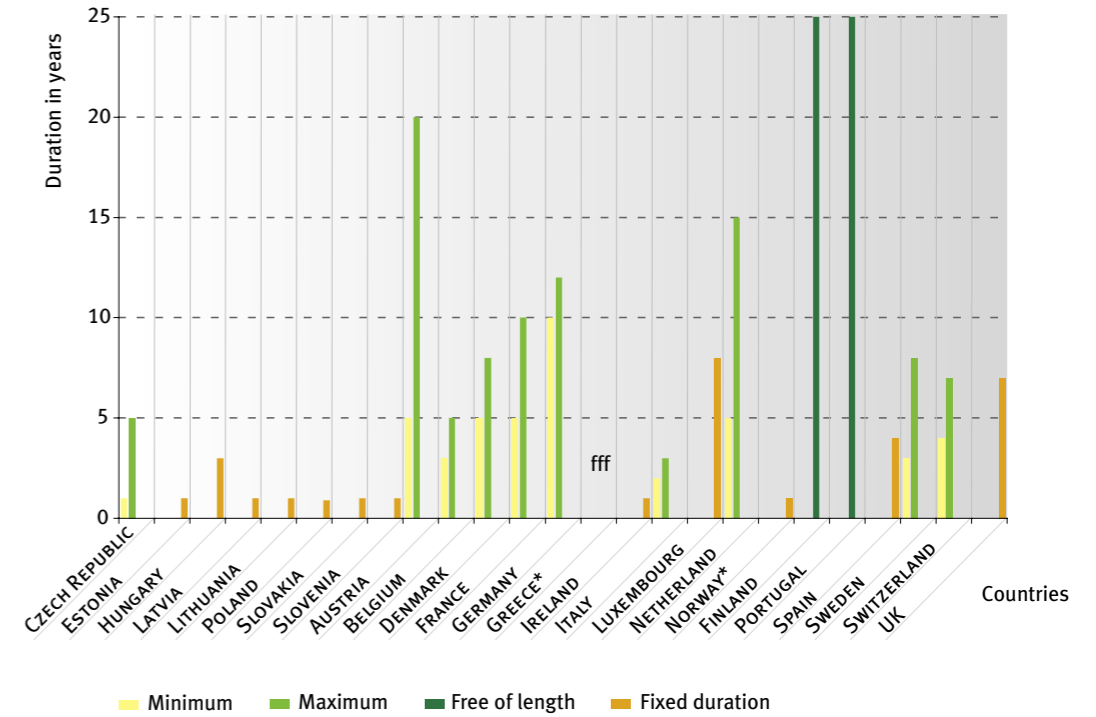
In practice, the chart below shows that there are currently very different situations in the EU. In the EU-15, contracts generally have a minimum duration of two to four years and a maximum duration approaching 10 to 15 years depending upon whether investments had to be made by the operators for the provision of services as specified by the public authorities. In Austria they can have a maximum duration of 20 years.

In the new EU Member States, however, contracts are generally limited to 1 year: this does not necessarily benefit the railway undertakings providing the services; and does not encourage any investments or reasonable planning aimed at improving passenger services.

It should be noted that in Norway, even though the public service purchase contract is concluded on a yearly basis, the railway operator is able to make long-term plans based on the basic agreement concluded for a 10 year period and on the so-called long term agreement concluded for a 4 year period. In Greece, the duration of the public service contract has not yet been fixed at the time of writing of this report.

PART 2: PUBLIC SERVICE MANAGEMENT IN THE RAIL SECTOR IN 25 COUNTRIES (EU AND EEA)

PUBLIC SERVICE CONTRACTS



12. CONCLUSION

This report illustrates the great diversity in the legal, political and economic frameworks in which public service transport is organised throughout the European Union. It illustrates therefore how useful it is, that the general frame defined at European level to regulate public intervention still guarantees sufficient latitude to public authorities when they organise their own public transport network.

Some Member States have recently taken steps to open up the public passenger rail market, prior to any EU requirement. There are still various hurdles to be met on some markets, making effective access to the market quite difficult. However, examples taken from other countries where market opening occurred earlier (such as the UK, Germany or Sweden for example) show that some barriers can be eliminated.

Market opening is no simple panacea. In particular the political, economic and legal environment in the new EU Member States often differs greatly from the same environment in the former EU-15. As a result, what may be relevant and appropriate from a political, economic and legal point of view to facilitate the smooth operation of public service transport in some of the EU-15 Member States may be less suited to new EU Member States at the present time.

PART 3

COUNTRY REPORTS

AUSTRIA ▶	
BELGIUM ▶	
CZECH REPUBLIC ▶	
DENMARK ▶	
ESTONIA ▶	
FINLAND ▶	
FRANCE ▶	
GERMANY ▶	
GREECE ▶	
HUNGARY ▶	
IRELAND ▶	
ITALY ▶	
LATVIA ▶	
LITHUANIA ▶	
LUXEMBURG ▶	
THE NETHERLANDS ▶	
NORWAY ▶	
POLAND ▶	
PORTUGAL ▶	
SLOVAKIA ▶	
SLOVENIA ▶	
SPAIN ▶	
SWEDEN ▶	
SWITZERLAND ▶	
UNITED KINGDOM ▶	

AUSTRIA



Information in this section was gathered through interviews conducted with Österreichische Bundesbahnen Holding (ÖBB Holding)

1. Organisation of public service operations in Austria

The organisation of public services in Austria is regulated in the short distance and regional passenger public transport law of 1999 (Öffentlicher Personennah- und Regionalverkehrsgesetz - ÖPNRV-G)

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, the regions may provide additional public service passenger transport on the rail market and are responsible for public services in the bus market.

2. Operators on the Austrian passenger rail market

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 include: Linzer Lokalbahn AG, Salzburg AG, Steiermärkische Landesbahnen, Zillertaler Verkehrsbetriebe AG, Innsbrucker Verkehrsbetriebe und Stubaitalbahn GmbH, Achenseebahn AG, Motafonerbahn AG, Neudsiedlersee Bahn AG, Wiener Lokalbahnen AG, Graz Köflacher Bahn und Bus GmbH, Gmunden-Vorchdorf-Eggenberg AG, Lambach-Vorchdorf-Eggenberg AG, Vöcklabruck-Attersee AG, Niederösterreichische Schneebergbahn GmbH, Raab-Oedenburg-Ebenfurter Eisenbahn AG, City Air Terminal Betriebs GmbH, Logistik Service GmbH.

These companies operate public service passenger rail transport in most cases on specific lines which they own.

Any railway company registered in Austria has the right to carry out passenger transport. The private rail companies mentioned above run their own lines active on the Austrian passenger rail market.

3. Definition of public service requirements

Public service contracts are concluded only for local or short distance traffic. Long distance and international traffic is provided outside of public service obligations.

Public service obligations for rail traffic usually consist in:

- tariff obligations,
- quality requirements (also for the rolling stock),
- obligation of continuity



4. Importance of public service operations in overall passenger traffic

The entirety of local and regional passenger transport is covered by public service contracts.

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, based on article 14 of EU Regulation 1191/69 as amended by 1893/91 and in principle prior to the implementation of the contract.

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. Contract payment

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 cost 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.

Costs incurred for public service contracts are compensated only through the granting of financial compensation. In practice, often the operator having concluded the public service contract will benefit from a de facto exclusivity on the lines concerned as it will have won the contract.

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.

7. Awarding of public service contracts

Public service contracts may be either granted on the basis of a negotiation, or a call for public tendering. For the time being no public service contract has been tendered.

8. Calculation of level of compensation

Compensation levels must be 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:

- On board staff (driver and other mobile staff)
- Cost generated from the rolling stock (maintenance, amortisation and interests³³)
- Shunting services
- Length of the line – number of trains/buses and kilometres provided
- Energy costs
- Number of gross tons of the train per energy to be used
- Charges for the use of infrastructure (number of kilometres and gross tons and number of stations used per train)
- Administrative costs for the management of the public service contract
- Interest rate of capital involved

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

³³. In general, no reserve is provided for the renewal of rolling stock.

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. There exists a rudimentary system of bonus/malus 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.

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 public authority competent does not cover any deficits made by railway undertakings for the operation of public service contracts.

In practice the Austrian national company (ÖBB-PV AG) has to compensate increasing losses on public service contracts as the latter are concluded for 5 years for a determined amount which does not take into account any increase in infrastructure charges.

10. Duration of a public service contract

The duration of public service contract varies. In general terms, public service contracts for the national territory are concluded every year, based on a 5 years commitment to contract.

Contracts concluded with regional authorities can be valid for 5 years or up to 20 years depending upon the region and the investments made by the railway undertaking, especially in rolling stock.

BELGIUM



HOLDING

Information in this section was gathered through interviews conducted with Société Nationale des Chemins de Fer Belges Holding (SNCF/NMBS Holding)

1. Organisation of public service operations in Belgium

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

- Law of 21 March 1991 reviewing some public enterprises (“loi portant réforme de certaines entreprises publiques économiques”³⁴)
- EC Regulation 1191/69 as amended in 1991

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 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 obligations³⁵.

It should be noted that the scope and the 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.

34. This law foresees as a principle that the state engages into a contract for public service obligations with its public enterprises.

35. 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 Belgian passenger rail market

The Société Nationale des Chemins de Fer Belge (SNCF) is the passenger rail operator on the Belgian market. It is a company with limited liability (public law company). It is undergoing a complete restructuring. As of 1 January 2005, SNCF 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;
- SNCF in charge of passenger and freight transport (national and international);
- Infrabel, the infrastructure manager

Until 2005, there were no other passenger operating company on the Belgian market. However, DB/ICE has been granted the authorisation to use the Belgian rail infrastructure.

3. Definition of public service requirements

Public service obligations usually consist in:

- 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-km per day, degree of comfort required, scope of information to be provided to the customer, level of quality, access, etc.);
- 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.).

4. Importance of public service operations in overall passenger traffic

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

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

5. Contract

Currently³⁶, public service obligations are included in one single civil law contract – the “contrat de gestion” – that covers the following three types of services:

- public service passenger transport within the territory;
- acquisition, building and maintenance and management of infrastructure³⁷;
- services that need to be performed to satisfy some “needs of the Nation”;
- cross-border passenger services until the first stop across the border.

6. Contract payment

In theory, the contract payment is freely negotiated between the parties. The Federal State pays the railway undertaking and the infrastructure manager the agreed price (duration of the contract: between 3 and 5 years).

7. Awarding of public service contracts

There is one single public service contract concluded currently with the sole operator on the market. The contract is currently granted on a basis of negotiation.



36. Until 31 December 2004.

37. Infrastructure management is considered to be a public service operation in Belgium.



8. Calculation of level of compensation

The compensation level is determined in advance in the form of a global amount aimed at “contributing to the costs incurred by the railway undertaking”.

It should, however, be noted that this amount is a global sum granted without taking real account of whether it will effectively compensate the costs incurred.

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

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

To the compensation of public service obligations is added a state allowance based on Regulation 1192/69 relating to the normalisation of accounts. This allowance compensates part of pension charges for railway staff that other transport modes don't bear.

9. General payment conditions

Payment is made by regular instalments at determined intervals. It 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 a public service contract

The public service contract is usually concluded for a duration of between three to five years. In practice, no smaller duration contract is concluded.

CZECH REPUBLIC



1. Organisation of public service operations in the Czech Republic

Public service operations in the rail sector is regulated in the Czech Republic in the Railway Act No 266 from 1994 and its amending legislation. 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.

The passenger rail market is open to competition and private operators have currently entered the passenger rail market.

2. Operators on the Czech passenger rail market

There are currently 6 railway companies operating passenger services in the Czech Republic. They are the following:

- Žeské Dráhy (CD) as joint stock company;
- Connex Žeská Železnižní plc.;
- Viamont joint stock company;
- OKD, Doprava, joint stock company;
- RAILTRANS plc.;
- Jindřichohradecké místní dráhy joint stock company (this company operates on narrow gauge).

All of these companies operate also regional services which cross border between Czech Republic and Germany except OKD, Doprava and Jindřichohradecké místní dráhy. They 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).

4. Importance of public service operations in overall passenger traffic

Public service transport in the Czech Republic is provided with 6420 trains per day, which represents 465 5000 passengers per day (170 million passenger/kilometres per year). Overall, the public service market represents approximately 95,5% of the overall passenger rail market.

5. Contract

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, are concluded with the Ministry of Transport. Contracts concerning local trains are concluded with regional authorities (local authorities).

Since the beginning of 2005, local authorities have a choice as to whether they wish to spend the amount of public money dedicated to public service transport for bus or rail.

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

6. Contract payment

The compensation of public service requirements today is paid through the allocation of financial input and exclusivity on the lines.

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. 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.

For many years, however, compensation has been insufficient to effectively cover the shortfall in revenues from public service passenger transport. The shortfall is cumulated by every year.

7. Awarding of public service contracts

Public service contracts are directly negotiated with the railway operator on the entirety of the territory.

8. Calculation of level of compensation

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

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:

- 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.



9. General payment conditions

Payment is made monthly, automatically paid by the state / the region. There is 5% VAT applied on the public compensation.

10. Duration of public service contract

The Railway Act sets only the minimum duration for the conclusion of a public service contract - 1 year. In practice, the purchase agreement is concluded on a yearly basis. No multiannual planning is foreseen. The contract with some regions can nevertheless be concluded for 5 years.



DENMARK



1. Organisation of public service operations in Denmark

The organisation of public services is regulated in Denmark in the following pieces of legislation adopted in 1998:

- Act on the Independent Public Corporation DSB and on DSB S-tog A/S;
- Act on Railway Operations

The state is the sole authority competent with regard to the determination of the contents of public service obligations and of their scope. This task is effectively undertaken by the Ministry of Transport. As in the UK, a sort of “SRA” authority was created in Denmark. This authority is called the National Rail Authority and it is part of the Ministry of Transport.

Currently, Danish legislation distinguishes between three types of passenger services carried out as public service transport:

- “negotiated” services, i.e. services that are granted by the national authorities directly to an operator outside of any call for tender.
- “tendered” services, i.e. services that are granted further to open competition
- “free” services, i.e. service which is neither tendered out nor negotiated with the Ministry of Transport.

2. Operators on the Danish passenger rail market

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.

Today, competitors have entered the Danish market and are running a certain number of lines that were put to public tendering.

3. Definition of public service requirements

Public service obligations usually consist in:

- tariff imposition (general prices). Specific categories such as handicapped, elderly, children, etc. are not included in the contract;
- time schedules, traffic levels are specified in greater detail in the public service contract concluded with the operator.

4. Importance of public service operations in overall passenger traffic

Almost the entirety of passenger transport in Denmark is run under public service contracts.

Passenger transport can be divided in three types of transport:

- S-trains (Greater Copenhagen area);
- regional transport;
- long distance transport.

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

At present, the market is divided in the following manner:

- 85 % of long-distance and regional services are negotiated;
- 15 % of regional services are tendered out;
- Currently no one operates “free” service in Denmark at the moment as it is not financially viable.

5. Contracts

Public service operations are organised through the conclusion of legally binding contracts freely negotiated between the parties to the contract.

6. Contract payment

The traffic contract is negotiated with the Ministry of Transport, and in accordance with the contract.

To date, the Ministry of Transport has launched a public bid for a part of the lines.

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 price for running the lines considered. This price takes into account the revenues generated by the service and all costs it will produce.

The law does not provide for the right to grant exclusive rights.

There are separate contracts for the different forms of services. No cross-subsidisation between the different traffics.

7. 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.

In December 2000, 15% of DSB's train services were put up for tender. In December 2001, the Ministry of Transport announced that Arriva had won the tender for a number of lines in central and western Jutland.



8. General payment conditions

Payment is made by regular instalments at determined intervals on a monthly basis.

There is no VAT on public service contract payment.

9. Duration of contract

The duration of tendered public service contracts varies.

In 1999, DSB signed five year contracts with the Ministry of Transport concerning long-distance, regional train services and S-train services. In 2004, DSB entered into a new contract with the Ministry of Transport. The contract will become effective as from 1 January 2005. However, the Ministry of Transport may decide to tender out a percentage of that contract while the contract is running.

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



ESTONIA



Information in this section was gathered through interviews conducted with Eesti Raudtee (EVR) and the Estonian Ministry of Economic Affairs and Communications

1. Organisation of public service operations in Estonia

Public service transport is organised in Estonia by the new Railway Act which entered in force on 31 March 2004 and by the Public Transport Act.

Public service transport is managed by 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 Economics and Communications the specific needs of the population in their geographic territory. However, passenger transport in Estonia is rather limited nowadays. Indeed, the number of passengers transported has dropped from approximately 36,5 million passengers in the late 80’s to 8,8 million passengers in 1994. This is mainly due to the growth of the car market and enhanced competition from the bus sector.

According to the Railway Act, the passenger transport market is fully open to competition. In practice, however, no competitors have shown interest to enter the market as it is not commercially attractive.

Public service transport is developed 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 Estonian passenger rail market

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:

- Edelaraudtee is privatised rail operator responsible for commuter and long distance services (the distinction between the two notions is somewhat artificial given the size of the country);
- The state-owned Elektriautee AS which provides suburban services in and around Tallinn on the electrified network in Estonia;
- EVR Ekspress which operates international trains to Moscow (not covered by public service contract).

The two first companies operate public service transport as defined by public authorities whereas EVR Ekspress operates exclusively international passenger transport outside of any public intervention.

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 includes also an obligation to return the public transport vehicles and line facilities 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.

4. Importance of public service operations in overall passenger traffic

Public service passenger rail transport may be provided for all national rail services (international traffic is not covered).

Public service passenger transport in Estonia represents the largest share of passenger transport. This is mainly due to the size of the country.



5. Contract

There are currently three public service contracts concluded in Estonia between the Ministry of Economy and a railway undertaking: one contract concluded with Elektriarautee AS; and two contracts concluded with 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 to compensate the 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;
- 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. Contract payment

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.

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 of up to 300 fine units.

7. 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.

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 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.

9. General payment conditions

Payment is made on a monthly basis. The amounts received as public service compensation are not submitted to VAT

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. In practice, purchase agreements for public service transport (so-called “public transport order”) are usually concluded on a yearly basis.

FINLAND



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
 - directly applicable EU law
 - The Ministry of Transport and Communications (MinTC) has been appointed the only responsible body for public services in the field of railways.
- Act on Passenger Traffic on the Road
 - state aid procedures are also applicable to railway services
- Railway Act
 - VR Ltd is solely entitled to use infrastructure capacity (ref. 2001/14/EC) for domestic passenger and freight services (legal monopoly).
- Act of Helsinki Metropolitan Council
 - In the Helsinki metropolitan area a municipal authority, YTV, is responsible to arrange all public transport
 - YTV bears the commercial risks of rail services in that area.
 - According to the Railway Act VR Ltd is the only possible railway undertaking which is entitled to provide these services to YTV.
 - Due to YTV's own commercial risk, Regulation 1191/69 is not directly applicable to YTV's rail services.



2. Operators on Finland's passenger rail market

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.

Passenger rail services in Finland are classified as follows:

- Purely commercial services long-distance services:
 - VR Ltd bears full commercial responsibility of services;
 - all Pendolino-trains and almost all Intercity-trains and other long-distance trains coming from or going to Helsinki;
 - not subsidised in any manner.
- Commercial long-distance services with complementary public service purpose:
 - commercial long-distance services with extended route and services on off-peak times which would otherwise be non-profitable;
 - long-distance services across Finland (not Helsinki based) and certain night trains subject to public service contract obligations .
- Regional feeder services to long-distance trains:
 - mainly non-commercial services to feed regional hubs;
 - subject to public service contract obligations.
- Regional services near Helsinki:
 - commercial regional services beyond Helsinki Metropolitan Area (outside of this area) with extended intervals and service on off-peak times which would otherwise be non-profitable;
 - subject to public service contract obligations;
 - in practice these are the same trains with shared seats with traffic described in the following point (Rail traffic in Helsinki Metropolitan Area).
- Rail traffic in Helsinki Metropolitan Area:
 - Helsinki Metropolitan Council, YTV, is responsible to arrange these services;
 - in practice these are the same trains with shared seats with traffic with service described in the previous point (Regional services near Helsinki);
 - subject to specific domestic legislation and a bilateral business contract between YTV and VR Ltd.



3. Definition of public service requirements

- Public service contract with the Ministry of Transport and Communications:
 - subject to Regulation 1191/69, section 5, Public Service Contract;
 - the contract meets the requirements laid down in the section 5 and ECJ-ruling on the Altmark-case;
 - services are defined by an identification code of each train included to the contract. A performance scheme is included.
- Business contract with YTV to provide rail traffic:
 - it is a business contract to provide rail traffic for YTV purposes;
 - services are defined by volumes. A performance scheme is included and ticketing management and income clearing with shared seats had been agreed.

4. Importance of public service operations in overall passenger traffic

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 the regulation 1191/69 and additional national state-aid legislation.



6. Contract payment

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

In practice, the railway undertaking submits to the Ministry of Transport 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 bought services depends on state budget available for this purpose for roads and rails. 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.

7. Awarding of public service contracts

Public service contracts are currently granted directly to the sole railway undertaking, VR Ltd, on the market. There is currently no tendering obligation provided in the national legislation.

8. Calculation of level of compensation

In public service contracts there is an agreed amount for compensation which is defined in advance and which also meets other requirements described in the Altmark ECJ-ruling relating to the level of compensation. Therefore all the revenues and the cost incurred and reasonable margins are reflected in the agreed price.

9. Duration of public service contract

It is up to the parties to determine the duration of public service contracts.

FRANCE



1. Organisation of public service operations in France

The organisation of regional rail passenger transport is regulated in France by the Law on Solidarity and Urban Renewal³⁸ adopted in 2000.

This law transfers all competencies with regard to the definition and negotiation of public service obligations in the field of regional rail passenger transport to the regional authorities (Conseils régionaux). For this purpose, they are denominated “Organisational Authorities”.

The Organisational Authorities are also in charge of the financing of such public service operations through their own budget. However, the state provides each Region with a global envelope from the national budget to cover such costs.

The aforementioned public service operations can be divided in two categories:

- those negotiated with the Regions;
- the ones negotiated in the specific area of Paris, the region called “Ile de France”.

³⁸ Loi Solidarité et Renouveau Urbain, n°2000-1208 of 13 December 2000.

In the second case, the Organisational Authority is a public body called “*Syndicat des Transports d’Ile de France*” (STIF), which includes representatives of the state, of the Region (*Conseil régional d’Ile de France*) and of the eight Ile-de-France local authorities (*Départements*). Half of the board of the STIF consists of representatives of the state, and its chairmanship is held by the regional representative of the state (*Préfet de région*): central authorities have therefore an important say in the organisation of public services in this specific region.

This situation however, is due to change: from the 1 July 2005 at the latest, the state will not be represented in the STIF any longer and the Region (“*Conseil régional d’Ile de France*”) should become Organisational Authority in public transport matters and take on the chairmanship of the STIF.

2. Operators on the French rail market

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 very operator, SNCF.

A private railway company, Connex, operates passenger regional rail services on the French territory as a subcontractor of SNCF (this concerns a few lines for historical reasons³⁹) and directly with a joint body of local authorities for the 150 km Nice to Digne line.

3. Definition of public service requirements

The definition of public service obligations varies from region to region depending upon the specific needs and the contractual specifications. However, they can be generally categorised as follow:

- characteristics of servicing;
- tariffs⁴⁰, in consistency with the national tariff system;
- service quality;
- client information.

39. This relates to 2 lines operated in Brittany and in the area of Paris by Connex since its creation. These services are operated as sub-contracts of SNCF and are completely integrated in the regional tariff system.

40. Tariff obligations can consist in the implementation of tariff reductions for social reasons (so-called social tariffs) throughout the territory. These social tariffs are defined by the state and applied on the entirety of national passenger services (regional and long distance services).



4. Importance of public service operations in overall passenger traffic

Public service contracts are granted for regional services throughout the territory. With 4 billion Euro in 2003, rail public services (including “Ile de France”) represents 46% of the turnover generated by SNCF rail passenger services, 10700 trains per day and 2,760 millions passengers per day.

5. Contract

Since 2002, French Regions and the railway operator – SNCF – conclude a contract similar to a concession. It is a contract of public law.

One single contract is concluded per region. Each contract between SNCF and the regions specifies which services are subcontracted by SNCF (the rail services provided by Connex are an example of such subcontracted services).

6. Contract payment

The level of compensation of public service operations varies from region to region. In practice, the Organisational 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 Organisational Authority pays the railway operator for the services provided and compensates costs generated by any public service obligations that are not covered by revenues.

SNCF quotes the price it considers necessary to accomplish the service required. SNCF has every right to include in such price what it calculate to be a “reasonable profit”. The overall quote is then negotiated between the parties, either on an annual or a pluriannual basis.





The contracts contain various forms of financial incentives such as bonus/malus clauses based on the degree of respect of agreed quality.

Current common quality criteria that are 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 concession, the conditions can be re-negotiated by the parties.

7. Awarding of public service contracts

There is currently a legal obligation for the Organisational Authority to negotiate all public service contracts with SNCF.

If SNCF does not respect its obligations, it has to pay penalties as defined in the contract.

8. Calculation of level of compensation

Compensation levels are determined in advance.

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

There are two types of charges:

- C1: SNCF exploitation charges;
- C2: charges billed back by SNCF.

C1 charges include in particular:

- costs linked to the circulation of trains (driving, accompanying, energy);
- rolling stock maintenance and leasing;
- charges linked to the maintenance of fixed SNCF installations;
- communication and information costs;
- overhead and management costs.

C2 charges include in particular:

- infrastructure charges;
- financial fees, financial amortization and professional taxes;
- fees relating to the use of material belonging to Regions.



9. General payment conditions

SNCF addresses a n-1 quote to the Region for the public services required on a yearly basis. The quote is then formally approved by the Region which then registers the provisional amount in the regional budget.

Payment is made by monthly instalments at determined intervals. The monthly payment corresponds to 1/12th of the provisional amount foreseen and of the tariff compensation. At the end of the year, a final payment is made reflecting the reality of costs incurred.

All payments are based on an SNCF invoice.

All receipts and compensations are submitted to a 5,5% VAT, which is recovered after by SNCF.

As a result of the transfer of competencies from the state to the regions implemented in January 2002, 20 regional authorities (apart from the “Ile de France” regional authorities that are under a different regime) receive financial compensation. The calculation of the level of financial transfer from the state to the regions takes into account the three following components:

- compensation for running the services transferred;
- complementary compensation for rolling stock renewal;
- compensation corresponding to social welfare tariffs (social welfare tariffs set at national level only).

In 2002, the global amount allocated to all 20 regions was of 1518 million Euro. This amount is indexed every year in average by 2% (1554 million euro in 2003, 1810 million Euro in 2004 and 1870 million Euro in 2005). These amounts cover only part of the public funds granted to SNCF in compensation for public service transport. If necessary (when new services are created for example) regional authorities complete the amount they receive from the state budget with public funds from their own budget.

10. Duration of public service contract

In general most contracts are concluded for a five year duration, which is the minimum fixed by law. Currently, their duration varies between 5 and 10 years.

GERMANY



Information in this section was gathered through interviews conducted with Deutsche Bahn AG (DB AG) and Connex

1. Organisation of public service operations

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

- Allgemeines Eisenbahngesetz (AEG);
- Regionalisierungsgesetz des Bundes;
- Regionalisierungsgesetze der Länder;
- EG-Verordnung 1191/69;
- Vergabeverordnung.

In Germany, public services are organised in a decentralised manner. Indeed, the regions (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 in totality to local authorities.



2. Operators on the passenger rail market

DB AG is a private stock company wholly owned by the Federal State. The state monopoly granted to 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 service⁴¹.

Competitors have entered the German market essentially after the Railway Reform (even though certain were already present beforehand but this was marginal at the time) and are running a certain number of lines. The total volume of ordered local and regional railway passenger transport services is about 630 million train-km in 2005. Competitors run about 84 million train-km of this volume. Whereas competitors previously sought access to regional transport in Germany mainly through tenders or negotiated contract awards, they have now increasingly bought up other companies to achieve that goal. This enabled the British transport group Arriva to secure a successful place in the German transport market within just a few months. They are now the second biggest competitor after Connex (market share 2004: 4%), with Hessische Landesbahn (HLB) and Hamburger Hochbahn (HHA) being other notable market players.

3. Definition of public service requirements

Public service obligations usually concern:

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

In some cases, the contract concluded with the Railway Authorities 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 Railway Authorities are making attempts at tendering public service contracts for smaller portions of the geographic area in their competence, thereby enhancing competition on these contracts.

⁴¹ This system was introduced in 1996 in Germany, following the global railway reform launched in 1994. The act for regionalising public passenger transport provides that the Federal Government must grant funds to the Länder for the operation of public service transport: 4.5 billion Euro were shared between the 16 Länder in 1996. This initial amount was first increased with additional funds in the following years. In 2001 the allotment reached some 6.86 billion Euro. The Regionalisation Act was amended in 2001 with a view to increase the global allotment for public passenger transport by a rate of 1.5% per year. The revision was effective as of 2002.



4. Importance of public service operations in overall passenger traffic

The entirety of local and regional passenger transport is undertaken through public service contracts concluded with the public authority responsible for the geographic territory concerned.

Regional transport represented in 2004 approximately 40 billion passengers-km. All other passenger traffic (long distance and international transport) does not benefit from public service contracts, and represented approximately 33 billion passengers-km in 2004.

5. Contract

Public service operations are organised through the conclusion of contracts, with the competent authorities being 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 the public service obligations. Each Railway Authority has its own contract design which has to comply with the legal requirements of Regulation 1191/69 and German public law.

6. Contract payment

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. Each public authority will define its priorities and apply them to all operators within its geographic scope of competence.

In practice, the railway undertaking submits to the Railway Authority an offer for the public service operations requested that also describes the cost that this would incur. In general, 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”). Therefore the Railway Authority only pays the expected difference between the costs and the revenues. So the railway undertaking takes the risk of the revenues, which can be at the same time a chance for the railway undertaking.

PART 3: COUNTRY REPORTS



In other cases, the Railway Authorities 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 and the railway operator in such case does not bear any risk.

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.

7. Awarding of public service contracts

According to the German legal framework, the Railway Authorities can make use of different instruments to award a public service contract. Regardless of the particular instrument chosen, the authorities have to obey the principles of transparency and non-discrimination in the procedure. Within these boundaries they can either negotiate public service contracts, make price inquiries or place the contracts through competitive tenders⁴². In some cases, public authorities have even changed the procedure applicable in the course of application of the contract. For example, Connex had been granted a contract following a competitive tendering procedure. The contract was renewed on a direct negotiation basis by the Länder before it came to an end as the Land was satisfied with the quality of the services provided and did not wish to go through a new costly and cumbersome tendering procedure.

In 2004, the competent authorities awarded far more contracts via tenders and price inquiries than in any previous year. A clear increase in the number of tenders is again expected for 2005, with 19 tenders anticipated for a volume of more than 40 million train kilometres.

42. However, in 2003 the European Commission has begun to examine the conformity of the procedures with the EC Treaty and state aid rules. The German government persists that the national framework is in compliance with European law. There are currently discussions on whether a standardised procedure by way of self-obligation for contract negotiations or a similar instrument would meet the specific concerns.

Table 1 shows that in 2004, 11.9% of the regional passenger market was won by operators other than DB AG. This has grown from 6.4% in 2000, and is set to rise to 13.2% in 2005. These figures relate to train kilometers, which is the relevant measure and it determines payment. But as tendering has been introduced first on less utilised lines, a lower market share (5.3%) emerges when measured in passenger kilometers.

	2000	2001	2002	2003	2004	2005
Deutsche Bahn	553	550	552	558	553	549
Other train companies	38	49	52	61	75	84
Total	591	599	604	619	628	633
Market share other train companies	6.4 %	8.2 %	8.6 %	9.9 %	11.9 %	13.2 %

Table 1: Train kilometres regional train services. (Data in million train kilometres).
Source: DB's own calculation in its Competition Report 2005.⁴³

	2000	2001	2002	2003	2004 (estimates)
Deutsche Bahn	38.2	39.1	36.7	37.9	37.9
Other train companies	1.0	1.3	1.5	1.7	2.1
Total	39.2	40.4	38.2	39.6	40.1
Market share other train companies	2.6%	3.2%	3.9%	4.3%	5.3%

Table 2: Passenger kilometres regional train services. (Data in billion passenger kilometres).
Source: DB's own calculation in its Competition Report 2005.⁴⁴

These figures are potentially misleading as a measure of tendering – if DB AG wins a considerable portion of the bids, a low market share of alternative operators would result. DB Competition Report 2005 shows that over the 1995-2004 period, 114.6 million train kilometers (total volume in 2005: 630) were subject to some type of tendering. Twelve percent of the volume of public service contracts in effect in 2005 were awarded after tenders. Note that this includes both formal competitive tendering procedures and more informal procedures, under which the contracting authority has asked several operators for offers. The 2005 DB Competition Report further shows that DB was successful with their offers for approximately 45% of the volume tendered in 2004.

43. The report may be downloaded from http://www.db.de/site/bahn/en/db_group/corporate_group/facts/competition_report/competition_report_2005.html

44. The report may be downloaded from http://www.db.de/site/bahn/en/db_group/corporate_group/facts/competition_report/competition_report_2005.html



8. Calculation of level of compensation

Compensation levels must be 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:

- cost generated from the rolling stock (incl. operating costs, maintenance, capital costs);
- personnel costs;
- ticket sale costs;
- charges for the use of infrastructure (tracks, stations);
- energy costs;
- administrative costs for the management of the PS contract (overhead).

Calculation of the revenues:

- estimated passenger kilometres as basis for the revenues through ticket sale (relevant is the specific revenue per passenger-kilometre);
- train kilometres as basis for the compensation by the authority.

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. There exists a system of bonus/penalty whereby the railway undertaking will 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 contract 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 considerable investments (i.e.: provide its own rolling stock).

GREECE



Information in this section was gathered through interviews conducted with Organismos Siderodromôn Elladas (OSE)

1. Organisation of public service operations in Greece

The situation in Greece is somewhat particular as it is in the process of being completely reformed.

Public service rail transport in Greece are 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, definition of public service is not regulated in great detail. The major legal bases for public services are the following:

- Framework law stipulating the scope of public service transport. The currently applicable legislation was adopted in 2003 and applies until 2007. The law provides that all passenger transport services that are in operation in Greece are covered by public service obligations;
- Another piece of legislation provides that the Ministries of Finance, Economy and Transport fix the tariff policy applicable to public services in the railway sector.

Public service transport should be provided in future following prescriptions included in a contract that the national carrier, OSE, has proposed to the Ministries of Transport and Communication and Economy and Finance for signature. At the moment this report is drafted, the public service contract proposed was not yet signed.

A report on the operation of public services has been recently issued in Greece that serves as a basis to reform the system. The aim pursued is amongst others to introduce:

- Legally binding contracts that will have been freely negotiated between the state and the railway operator containing a clear definition of the rights and obligations on both parts;
- Definition of the scope of public service obligations in great detail;
- Clearly defining the elements to be taken into consideration to calculate effectively the costs incurred by public service transport and thereby determining the level of compensation needed by the railway undertaking for the fulfilment of the obligations.

2. Operators on the Greek passenger rail market

The Hellenic Railways Organisation (OSE) 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. Importance of public service operations in overall passenger traffic

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

5. Contract

The reform which is in the process of being finalised in Greece foresees the conclusion of a contract with the Transport Ministry and the Ministry of Economy and Finance, relating to public service passenger rail transport.

6. Contract payment

Public service operations are compensated solely through financial compensation. The entire Greek market is indeed open to free competition and no exclusivity is granted to any operator. There are however, currently no competitors on the market which provides the Hellenic Railways with a de facto exclusivity.

The level of compensation of public service operations varies from line to line, service to service as it is based on tariff imposition.

The deficit of the Hellenic Railways will have to be covered by the Greek state budget.

7. Awarding of public service contracts

For the time being this issue is not relevant given the Greek market, where there is no other competitive operator.

8. Calculation of 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:

- on-board staff (driver and other mobile staff);
- cost generated from the rolling stock (amortisation and interests);
- shunting services;
- VAT⁴⁵.

9. General payment conditions

The compensation amount is 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 proceeds 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.

⁴⁵ 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.



The compensation amount of the public service constitutes the object of an annual automatic adaptation. The compensation is adapted automatically as soon as the infrastructure use taxes will be defined and published.

10. Duration of public service contract

Once the currently proposed contract is signed, it will run for four years from the date of its signature.



HUNGARY



Information in this section was gathered through interviews conducted with Magyar Államvasutak (MAV) and Győr-Sopron-Ebenfurti Vasút (GySEV/RoeEE)

1. Organization of public service operations in Hungary

Public service in railway transport is regulated in the Railway Act XCV of 1993.

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

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).

The timetable for the passenger transport carried out as public service and the alternative timetables are elaborated by MAV Co, which is approved by the Minister of Economy and Transport. Before the publication of the timetable for passenger transport carried out as public service, it 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 the community rules.



2. Operators on the Hungarian passenger rail market

There are currently two railway companies present on the Hungarian market: MAV Co. and GySEV. MAV Co. is 100% owned by the state and it is the major passenger rail transport operator.

3. Definition of public services requirements

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

The draft framework public service contract contains⁴⁶ 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:

- obligations on tariffs and obligatory 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;
- obligatory indicators of punctuality to be reached;
- planned revenues from fares of the service provider;
- etc.

4. Importance of public service operations in overall passenger traffic

In 2004, public service transport was provided through the operation of 3000 trains per day, transporting 432 000 passengers per day.

5. Contract

The Minister of Economy and Transport shall conclude a contract with the railway undertaking or a railway company on the detailed conditions and on the method of financing of passenger transport carried out as public service. The approval of the Minister of Finance is needed for such contract to be valid.

The contract between the Hungarian state and MAV Co. in force was signed on 18th October 2001. 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 and partial financing of the public services from central budget.

⁴⁶ The information on the draft framework public service contract remains provisional until it is formally approved.

A new draft framework public service contract for the period 2005-2008 has been elaborated as a result of the cooperation of MAV Co. and the Ministry of Economy and Transport.

6. Contract payment

According to the Railway Act, forms of financing are as follows:

- provision of statutory consumer price subsidies from the central budget for social policy and other reasons (state pays the difference between reduced-rate and full-fare domestic tickets) within the framework of providing a public service;
- supplementation of the revenues earned from public service activities from the central budget (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 visit to certain museums).

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

7. Awarding public service contracts

Public service contracts are directly negotiated between the Ministry of Economy and Transport and railway companies.



8. Calculation of level of compensation

According to the draft framework public service contract, the planned justified costs not covered by revenues are calculated by MAV Co. that is approved by the Hungarian state. The amount, the righteousness, 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 charge;
 - shunting services;
 - central management.
- The content of revenues:
 - fares and other revenues from passenger transportation;
 - consumer price subsidies;
 - other revenues.

9. General payment conditions

According to the new draft framework contract, payment is planned on a monthly basis upon presentation of an invoice.

10. Duration of public service contract

The current contract was signed in 2001. The new draft framework contract has been elaborated for the period 2005-2008.

IRELAND



Information in this section was gathered through interviews conducted with Córas Iompair Éireann (CIE)

1. Organisation of public service operations in Ireland

Public service transport in Ireland is organised centrally by the Department of Transport. Details relating to passenger public service rail transport is, in particular, organised in a memorandum of understanding concluded between Iarnród Éireann and the Department of Transport.

2. Operators on the Irish passenger rail market

The Irish national rail company – Iarnród Éireann (IE) – is a limited liability company set up under the Companies Act as provided for in the Transport Act of 1986. IE is one of three subsidiaries of Córas Iompair Éireann, a statutory Corporation wholly owned by the Irish Government charged with managing all public transport services in Ireland.

The principal activities of IE 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, 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.

4. Importance of public service operations in overall passenger traffic

The entirety of passenger rail transport is submitted to public service obligations as provided in the Memorandum of Understanding concluded between IE and the Department of Transport.

5. Contract

Public service operations are determined and negotiated between IE and the Department of Transport. They are enshrined in a Memorandum of Understanding (MoU) detailing all obligations and targets to be met. Payments are historically based but steps are being taken to formally link public service obligation payments with service level, performance and delivery.

There is no mechanism in place for licences or path allocation as is the case in the UK.

6. Contract payment

The compensation of public service obligations is paid through the allocation of financial input and exclusivity on the lines.

The financial influx is done in the form of a bulk payment to CIE, the Holding company, which then allocates a share of the subvention to each of its three subsidiaries. CIE has the sole discretion as to the effective amount allocated to each company, but this is changing.

7. Granting of public service contracts

The MoU is concluded with IE for the entirety of the territory. There is no tendering of public service passenger rail transport in Ireland for the time being.

8. Calculation of level of compensation

Compensation levels must be clearly determined in advance. It is enshrined in the MoU.

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

9. General payment conditions

Payment is made by regular instalments at determined intervals (usually monthly) to CIE which in turn redistributes shares to each of its subsidiaries. All payments are exempt of VAT.

A monitoring system is instituted to review and monitor the understandings laid down in the MoU. Monitoring takes place on a quarterly basis.

There is however no bonus/penalty system set up based on the achievement of IE. If the performance of IE does not reach the expectations, the Department of Transport may threaten to hold back part of the subvention.

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 IE (and more generally CIE) is a wholly owned company, any deficit will eventually have to be covered by the state budget.

10. Duration of public service contract

The MoU is concluded on a yearly basis.



ITALY



1. Organisation of public service operations in Italy

The legal basis for the financing of public service obligations in Italy is Regulation 1191/69. According to EU legal framework and in line with the subsidiarity principle the organisation of public services in Italy is regulated in the short distance and regional passenger public transport (TPL) by the Law no. 422/97 (“Conferimento alle regioni ed agli enti locali di funzioni e compiti in materia di trasporto pubblico locale, a norma dell’articolo 4, comma 4, della legge 15 marzo 1997, n. 59”). The Law represents the main national reference for public service in transport and it makes a distinction among national public services and local/regional public services.

Until recently, all public service operations were financed by the state. Since 2001, 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 and operated by Trenitalia or local and regional railway companies. In this case public service operations are granted through the conclusion of the so called “contratti di servizio”, contracts for services undersigned among regional authorities and the railway undertakings (RU).

This legal framework made Regions responsible for planning regional transport activities.



2. Operators on the Italian passenger market

Trenitalia, fully owned by Ferrovie dello Stato, covers all national public service passenger traffic and most of regional services. Other public service operations at a regional and local level are operated by other railway undertaking, mainly owned by regional authorities.

3. Definition of public service requirements

Public service obligations usually consist in tariff imposition and time schedules or traffic level, according to Law 422/97.

These obligations are specified in greater detail in the single public service contract concluded with the operator.

4. Importance of public service operations in overall passenger traffic

Public service contracts cover mainly regional and local services, especially for commuting. They also regard some tariff obligations (e.g. for military staff) and certain long distance service obligations (e.g. for night trains across Italy).

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 state authorities, to cover the extra costs needed in order to ensure the public service requirements.

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.

PART 3: COUNTRY REPORTS



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.

6. Contract payment

Compensation of public service obligations covers the extra costs of running the services in question. As there is no specific provision on the issue, recognition of “reasonable profit” as specified in the recent Altmark ruling of the European Court of Justice depends upon the public Authority’s application of Regulation 1191/69.

7. Awarding of public service contracts

National public service contracts have not yet been assigned through competitive tendering, while some regional authorities (e.g. Regione Veneto, Lombardia, Liguria) have initiated competitive tendering procedures applicable to new public service contracts.

8. Calculation of 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, 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.

9. General payment conditions

Payment is made on a yearly basis.

10. Duration of public service contracts

National public service contracts concluded by the state for specific services are normally limited to a duration of two/three years.

Regional public service contracts concluded at regional level have a variable duration depending upon what has been negotiated between the parties.

LATVIA



Information in this section was gathered through interviews conducted with Latvijas Dzelzceļš (LDz)

1. Organisation of public service operations in Latvia

Public service transport is regulated in Latvia in a general framework law – the Railway Law – adopted on 1 April 1998 dealing with public services in the railway sector. Based upon this framework piece of legislation the Cabinet of Ministers adopts specific regulations for railway operation. The Regulation on the state or municipal public service obligation in rail transport adopted on 23 December 2003 define public service operations in rail transport in Latvia in general terms.

Public service operations in rail transport are dealt with in a centralised manner by the Ministry of transport.

The Regulation adopted on 23 December 2003 provides in particular that the passenger rail market is fully open to competition.

2. Operators on the Latvian passenger rail market

JSC “Pasazieru vilciens” (“Passenger train”) is subsidiary of LDz, which is 100% owned by the state is the only national passenger rail transport operator in the country (there are more licensed operators; however they are international operators).

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. They 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.

4. Importance of public service operations in overall passenger traffic

The public service passenger market represents 100% of the overall passenger rail market since 1 January 2005.

Public service transport represents approximately 290 trains per day and 65,000 passengers transported per (day 700 million passenger/kilometres per year).

5. Contract

Since 2005 and for the first time ever, the Government has concluded a long term public service contract with LDz. Indeed, until 2005, public service operations were provided based on one year contracts. Since 2005, the public authorities have concluded a 2 year contract which will be followed by an 8 year contract.

6. Contract payment

The compensation of public service obligations today is paid through the allocation of financial input. In practice, LDz benefits from an exclusivity on the lines as no competitor has yet entered the market despite the fact that it is fully open to competition.

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”⁴⁷. The parties then negotiate the level of compensation in comparison with the public services to be provided.

47. As defined in the Altmark case.

For many years, however, compensation has been insufficient to effectively cover the shortfall in revenues from public service passenger transport.

7. Awarding of public service contracts

Public service contracts are in theory provided following a competitive tendering procedure.

However due to the absence of any applications to the last competitive tendering procedure launched, the current public service contract was granted to a subsidiary of LDz on a direct negotiation basis⁴⁸. It was granted to this company with a view to secure the transition until 1 May 2007 when a new public service contract will be put to competitive tender.

Not other competitor has entered the market to date due to the low volumes of traffic involved and the risks linked to the unspecified long-term strategy. However, recently the 10 year strategy for public services in both rail and road sectors has been passed.

8. Calculation of 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 level. 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:

- charges for the use of infrastructure;
- on-board staff (driver and other mobile staff, sales staff and management);
- cost generated from the rolling stock (maintenance and depreciation);
- shunting services;
- administrative costs for the management of the public service contract;
- energy costs (both electricity and fuel);
- relevant overheads.

⁴⁸The Latvian Railway Law provides that carriers shall not have the right to refuse to enter into a contract for railway carriage orders if the ordering party compensates for the difference between the actual expenditures incurred in fulfilling the contract for railway carriage orders and the income earned from the carriage.



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.

Until 2005, a subsidiary of LDz was compensated approximately half of the effective costs incurred. With the new public service contract, LDz hopes to be able to negotiate 100% of compensation, according to the operational and financial projections submitted.

9. General payment conditions

Payment is made monthly upon the terms of payment decided in the agreement. The payments are made directly without a subsidiary of LDz having to send out an invoice. The amounts received as public service compensation are not subject to VAT.

10. Duration of public service contract

The current public service contract is concluded for 2 years. It is foreseen that the following one will be concluded for 8 years.

LITHUANIA



Information in this section was gathered through interviews conducted with Lietuvos Geležinkeliai (LG)

1. Organisation of public service operations in Lithuania

Public service operations are organised in Lithuania in the Law on Basics of Transport Activity (consolidated version in force since 29 April, 2004) and Railway Transport Code (RTC) in force since 1 May, 2004. EU legislation on transport policy is implemented in the Lithuanian legal system by the Code (references to EU Directives implemented by the Code are included in its Annex). 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.

Local governments also play a role in this process by providing input on their specific needs directly to the Ministry of Transport. This role remains however limited.

Further, the Statutes of the national railway operator LG provide explicitly that this company is in charge of providing public service transport in the country.

The Railway Transport Code does not contain any provision restricting competition on the transport market in Lithuania.

2. Operators on the Lithuanian passenger rail market

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) the RTC (Article 12) and in the public service contract concluded. They comprise:

- tariff obligations and compulsory discounts on national journeys for social groups of the population;
- service frequencies/train schedules;
- quality standards as defined in the public service draft contract for 2005.

4. Importance of public service operations in overall passenger traffic

Public service passenger transport is provided in Lithuania to approximately 19,100 passengers per day (443,5 million passengers/km on an annual basis).

5. Contract

On 17 March 2004, LG concluded a contract with the Ministry of Transport with regard to the provision of public service obligations (in particular with regard to reduced rates and related cost recovery as required by the government) for the entire country.

The contract defines the subject and scope of the agreement, the parties' rights and obligations, liability issues, date of expiry, etc. The contract is a mixture between public and private law.

The contract has come to an end on 31 December 2004 and has not been renewed since. Public service transport has however been provided by LG on the basis of the necessity to secure continuity of services.



In practice, LG meets on a yearly basis with the Ministry of Transport 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.

6. Contract payment

The compensation of public service obligations today is paid through the allocation of financial input and a de facto exclusivity on the lines.

The compensation, however, only covers losses resulting from price reductions applied by categories. Other losses resulting from other public service obligations (as service frequency, etc.) are not compensated.

7. Awarding of public service contracts

The RTC does not prescribe any compulsory awarding procedure with regard to public service transport services. In other words, public service contracts may be awarded to any company either through a tendering procedure or through direct negotiation.

In practice, however, as public service transport is not properly compensated, no railway company effectively applies to tenders. As a result, LG is obliged to provide such services as national carrier.



8. Calculation of level of compensation

Compensation levels are clearly determined in advance in the public service contract.

The level of compensation is usually the result of the difference between the foreseen costs and revenues. In practice this aspect is the object of negotiations between the parties and does not necessarily reflect the exact 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 costs⁴⁹:

- on-board staff (driver and other mobile staff);
- railway police (safety and security);
- cost generated from the rolling stock (amortisation and interests⁵⁰);
- shunting services;
- assistance to passengers with reduced mobility;
- charges for the use of infrastructure Administrative costs for the management of the public service contract;
- VAT⁵¹.

9. General payment conditions

In the 2004 public service contract, payment was made on a monthly basis upon presentation of an invoice by LG to the Ministry of Transport. This issue must still be clarified in the upcoming contract for 2005.

The amounts received as public service compensation are not submitted to VAT.

10. Duration of public service contract

The original public service contract was concluded for one year. It is now terminated. LG continues to provide services outside of any legal framework. The duration of the new contract is still under discussion.

49. As the public service report is being drafted, the contents of the 2005 contract have not yet been finalised. The list may therefore not reflect the future contents of the contract.

50. No reserve is provided for the renewal of rolling stock.

51. 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.

LUXEMBURG



Information in this section was gathered through interviews conducted with Société Nationale des Chemins de Fer Luxembourgeois (CFL)

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.

loi du 28 mars 1997

- approuvant le protocole additionnel du 28 janvier 1997 portant modification de la Law of 28 March 1997
- approving the additional protocol of 28 January 1997 reviewing the Belgo-French-Luxembourg Convention on the operation of the railways of the Grand-Duchy, signed at Luxembourg on 17 April 1946;
- approving the modified statutes of the CFL;
- relating to the financial intervention and supervision of the state with regard to the CFL;
- reviewing the Law of 10 May 1995 relating to rail infrastructure management.

Regulation (EEC) 1893/91 of the Council of 20 June 1991 modifying Regulation (EEC) 1191/69 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway;

Regulation of the Grand-Duchy of 29 July 1993 on the execution of Regulation (EEC) 1191/69 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway, as modified and completed thereafter;

Regulation of the Grand-Duchy of 3 February 1978 laying down the conditions for granting and retrieving authorisations for establishment and exploitation of regular road transport services, as modified and completed thereafter.

2. Operators on the Luxembourg passenger rail market

The CFL is currently the only operator in Luxembourg. It cooperates with companies from neighbouring countries on cross border passenger services.

3. Importance of public service operations in overall passenger traffic

Public service contracts represent roughly 80,6 % of the overall passenger traffic based on Train/KM.

4. Contract

Public service transport is operated under a public service contract negotiated between the CFL and national authorities. It is a commercial law contract

5. Contract payment

Public service operations are compensated by financial input only.

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%.

Contracts between the Luxembourg's state and the CFL are based on the principle of full cost coverage plus a margin.

6. Awarding of public service contracts

Contracts are directly negotiated with the state. In 1999 the public service contracts were negotiated with state representatives for a contract period stretching from 2000 to 2008.

7. Calculation of level of compensation

The full cost coverage principle is applied 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.

8. General payment conditions

CFL gets advance payments on a monthly basis (in accordance with the approved budget).

At the end of the year the finance department of CFL sends a final calculation (décompte final) whereby the remaining expenses are invoiced to the state.

The payments are based on an invoice sent by the CFL, VAT included.

9. Duration of public service contract

For the time being, public service operations are enshrined in one single contract for the entire country and it is concluded for eight years, i.e. from 2000 to 2008.



THE NETHERLANDS



Information in this section was gathered through interviews conducted with Nederlandse Spoorwegen (NS)

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 relating to all forms of public passenger transport (bus, tram, etc), which excludes, however public service transport by rail;
- Concession Law that entered into force on 1 January 2005, in application of the “Law on Passenger Transport 2000”, providing a general framework for the operation of public services in the railway sector.

Public services are in principle organised both centrally by the Ministry of Transport with regard to the exploitation of the so-called “trunk 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.

2. Operators on the Dutch passenger rail market

The Dutch market for rail passenger services is open to regulated competition.

The operators to date are:

- Nederlands Spoorwegen (NS): fully state-owned company;
- Syntus: company with three shareholders (NS Reizigers, Connexion Holding en Cariane Multimodal International (CMI));
- NoordNed: fully owned by the (originally UK) company Arriva Nederland.

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.

4. Importance of public service operations in overall passenger traffic

Only national passenger service is covered by public service contracts, which represents approximately 95% of the total rail passenger traffic. The remainder is the international passenger traffic.



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 is included in individual contracts concluded for one specific line or a set of lines depending on the needs of the regional authority.

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.

Compensation of public service obligations is made in the following manner:

- for the trunk network: through the sole granting of exclusive rights;
- for regional network: through both the granting of exclusive rights and direct financial flows.

It should however be noted that charges for the use of infrastructure are very low in the Netherlands as the main core of such costs are taken up by the state. Of course charges are non-discriminatory.

6. Contract payment

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.

Should there be any deficit above the compensation granted by the state, the railway operator may wish to renegotiate the conditions.

7. Awarding of public service contracts

Public service contracts are awarded through either a competitive tendering procedure as regards regional traffic or through direct negotiation.

Recently, public service regional services contracts have been awarded through competitive tendering procedures. This procedure is not applicable yet to the entirety of 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 in future through tendering process.

The concession for the trunk network was granted directly to NS through direct negotiation. This is explicitly provided for in the Concession Law. The law also states that in 2015 for the trunk network the management could be tendered.

8. Calculation of 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.

The level of compensation is the result of the difference between the foreseen costs and revenues. Simply all relevant costs to operate a train services and all relevant revenues from operating a train services have to be taken into account. In procedure of public tendering there is no limitation to several types of costs and/or revenues. In the case of direct award of a contract parties negotiate also on all relevant costs and revenues.

9. General payment conditions

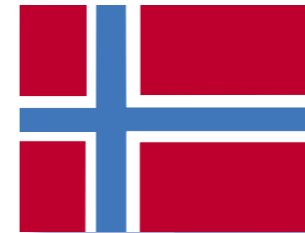
Payment is made by regular instalments at determined intervals (usually quarterly)

The contract is submitted to VAT, and this VAT is recovered. From a fiscal point of view, payment is considered as normal income.

10. Duration of public service contract

The maximum duration of a public service contract is in principle 5 years. However, under certain conditions a maximum duration of 10 or 15 years can be agreed.

NORWAY



Information in this section was gathered through interviews conducted with Norges Statsbaner (NSB)

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:

- 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.

2. Operators on the Norwegian passenger rail market

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;
- Ofotbanen AS, Passenger transport on Ofotbanen (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 punctuality and regularity;
- planned or foreseen service disruptions 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 its obligations three times a year.

4. Importance of public service operations in overall passenger traffic

Publicly funded passenger train services include local traffic around the big cities, the intercity traffic in the Skien-Halden-Lillehammer triangle, and some long distance, regional and local trains.

All traffic which is now purchased through direct negotiations with NSB AS, will gradually be opened to competition.

In terms of revenues, public service transport represents about 70% of NSBs 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. 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. The most recent one was concluded in 1997, duration for approximately 10 years;
- a long term agreement concluded for a duration of 4 years (from 2003 – 2006) 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;
- from 2003 NSB has also a quality agreement on the main lines in the Skien, Lillehammer, Halden triangle (around the Oslo area).

The quality of services (essentially punctuality requirements) is negotiated on a yearly basis and is monitored every four months.

There is a system of bonus-penalty put into place in case the quality targets are met for some services. It is based on regularity, the volume of seats/trains provided and number of passengers transported. NSB is not penalised in cases where the regularity targets are not met due to the infrastructure.

The long term agreement and the purchase agreements are the object of enhanced discussions and negotiation between the parties.

6. Contract payment

The compensation of public service obligations today is paid through the allocation of financial input and exclusivity on the lines.

7. Awarding of public service contracts

Until recently, the entirety of public service transport was granted directly to NSB AS. Since 2002, the Norwegian government has decided to introduce progressively public tendering: competitors are therefore about to enter the Norwegian passenger rail market. The first line put on tender will be Gjøvikbanen – a regional line from Oslo to the city of Gjøvik. A number of large competitors have been pre-qualified. They include DSB, Connex, Arriva and Keolis. NSB has won the tender. The line is scheduled to be operational in summer 2006.

The government has the intention to open all traffic which now is purchased through direct negotiations with NSB AS to competition. Furthermore, it will also open all commercial passenger traffic to competition as part of packages.

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 opening up the rest of the network to competition.



8. Calculation of 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;
- charges for the use of infrastructure;
- administrative costs for the management of the public service contract;
- interest rate of capital involved;
- energy (electricity/diesel);
- sales and marketing;
- maintenance.

The production data is not included in the contract, just the level of services provided and the level of regularity and punctuality promised.

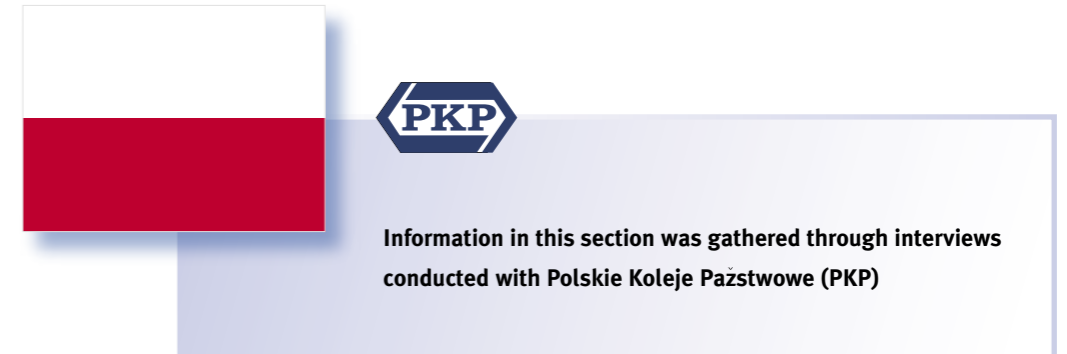
9. General payment conditions

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

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.

POLAND



1. Organisation of public service operations in Poland

Public service transport is regulated in Poland in a series of texts. A selection of the most important Polish legal acts relating to passenger railway transport, which were adjusted to the EU law include:

- Act of 28 March, 2003 on rail transport:
 - Regulation of the Council of Ministers of 21 April, 2004 on the organisation of regional passenger transport by rail;
 - Regulation of the Minister of Infrastructure of 7 April, 2004 on the conditions of access to and use of rail infrastructure.
- Act of 29 January, 2004 Public Procurement Law
- Act of 15 November, 1984 Transport Law
- Act of 20 June, 1992 on the rights to discounts in means of collective transport.

The principles of transport organization in Poland within the framework of public service obligations were laid down in the Act of 28 March 2003 on railway transport (Journal of Laws 03.06.789 of 17 May 2003). Article 40 of the act provides that organising and compensating regional passenger transport by rail executed within the framework of public service obligations constitutes a duty of voivodship local government.

The obligations are executed and financed from the voivodship local government own income on the basis of a contract concluded between the local government body and the rail carrier. In practice, due to territorial division, this means negotiating and concluding at least 16 individual contracts.

Organization of transport: the organisation of regional passenger transport by rail is regulated in the Regulation of Council of Ministers of 21 April 2004. It provides in particular for:

- the determination of transport needs;
- the selection of carriers and the conclusion of contracts related to organizing and compensating transport;
- developing and implementing, in cooperation with rail carrier, a plan of rail routes on the area of voivodship or neighbouring voivodships respectively;
- the evaluation and control of the execution of transport services.

The contracts ought to be concluded no later than 6 months before the timetable enters into force.

Transport obligation, in line with Article 8.1 of Act of 15 November, 1984 Transport law, may be limited by:

- the minister responsible for transport issues, and in the case of voivodship, county/administrative district or municipality collective transport by voivod, by the head of county, head of commune or mayor respectively – for reasons of state defence or security, or in case of natural disasters;
- the carrier – in case of natural disasters, break in operation, particular difficulties caused by a customer, for economic reasons which were impossible to foresee by the carrier, as well as for reasons of traffic safety with the consent and on conditions established by:
 - minister responsible for transport or voivod – concerning carriers in case of which the minister or voivod respectively fulfils a function of founding body;
 - minister responsible for State Treasury - concerning carriers in case of which the minister fulfils a function of founding body or exercises his share rights;
 - voivodship marshal or head of commune – concerning carriers in case of which voivodship management or county management respectively exercise their share rights;
 - executive body of commune or county – concerning commune or county collective transport respectively.

No consent is required if transport obligation is limited for less than 7 days.

Carriers have the right to limit train traffic for economic reasons, e.g. for lack of proper contract ensuring transport financing.



If a carrier intends to stop rendering transport services within the framework of public service he informs the voivodship local government of the intention stop transport services no later than 6 months before the new train timetable enters into force, in line with Article 41.1 of Act of 28 March, 2003 on rail transport (Journal of Laws No. 03.86.789 of 17 May, 2003). However, in line with section 2 of this Article, voivodship local government may refuse granting consent to stop public service transport if it covers loss documented by the rail carrier.

2. Operators on the Polish passenger rail market

Rail transport on the Polish passenger market is executed via the following operators in the PKP S.A. Group:

- PKP Regional Service Ltd. (PKP Przewozy Regionalne spółka z o.o.) – the largest in Poland, executes regional, interregional and international transport:
 - ensures transport to work and school on a daily basis;
 - reaches trade and administration centres, as well as tourist resorts around the country;
 - connects neighboring cities – from the centre to the centre;
- PKP Intercity Ltd. – executes long-distance transport, both domestic and international; maintains the following train categories: EuroCity, InterCity, Ekspres and Cheap Railway Lines (Tanie Linie Kolejowe), as well as international hotel trains (Chopin, Polonez and Jan Kiepura);
- PKP Rapid Urban Rail in Triple City Ltd. (PKP Szybka Kolej Miejska w Trójmieście Sp. z o.o.)- manages and administers a separated railway line (No. 250) in the agglomeration region of Gdansk – Sopot – Gdynia; renders agglomeration passenger transport services on selected routes within Pomeranian voivodship;
- PKP Warsaw Commuter Rail Ltd. (PKP Warszawska Kolej Dojazdowa Sp. z o.o.) with its seat in Grodzisk Mazowiecki manages and administers a separated railway line, uses its own special railway stock to service the Warszawa-Grodzisk Mazowiecki line with Milanówek Grudów branch, running through communes near Warsaw and the following districts in Warsaw: Włochy, Ochota, Śródmieście;
- “Mazovian Rails Ltd.” (Koleje Mazowieckie – KM) – executes passenger transport within Mazowieckie voivodship. The company was established on 29 July 2004 by the local government of the Mazowieckie voivodship (51% shares) and by PKP Regional Service Ltd. (49% shares). It started its transport services on 1 January 2005. The contract on the organization and compensation of the deficit for regional passenger transport was signed with the local government of the Mazowieckie voivodship in December 2004.

3. Definition of public service obligations

Public service obligations are defined in the Act on rail transport (2003) which makes direct reference to the definition provided in EU Regulation 1191/69/EEC: “Public service obligations means obligations which the transport undertaking in question, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions. Public service obligations within the meaning of this definition consist of the obligation to operate, the obligation to carry and tariff obligations, meaning any obligation imposed upon transport undertakings to apply, in particular for certain categories of passenger, for certain categories of goods, or on certain routes, rates fixed or approved by any public authority which are contrary to the commercial interests of the undertaking and which result from the imposition of, or refusal to modify, special tariff provisions”.

4. Importance of public service operations in overall passenger traffic

PKP Regional Service Ltd. is the sole supplier of public service operations on the railway market of passenger transport in Poland. Until 2004 the company carried over 200 million persons annually, i.e. ca. 602,74 thousand persons per day. In 2004 the transport to/from work/school constituted 61,78% of all operations executed by the Company.

5. Contract

Public service regional transport is organized by the voivodship local government and executed by PKP Regional Service Ltd. Public service regional transport is also executed by “Mazovian Rails Ltd.”, “PKP Warsaw Commuter Rail Ltd.” and “PKP Rapid Urban Rail in Triple City Ltd.”.

6. Contract payment

Contract payment is made on the basis of a contract concluded between the Voivodship management and Regional Service Ltd. Advance payments for transport are transferred to carrier’s account by 10TH or 15TH day of the respective month (payment in advance).



PKP Regional Service Ltd. has a system for direct cost registration “PocRap”.

The contract provides for a penalty system related to breaking of contractual terms and conditions, e.g. train delays.

7. Awarding of public service contracts

Polish law provides for a possibility to conclude contracts following competitive tenders or following negotiations with a single contractor. In practice, the majority of contracts are currently concluded following negotiations with a single contractor.

8. Calculation of 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 means earmarked by the local government to cover the deficit generated by the public service obligation to carry. The deficit constitutes a 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. For example PKP Regional Service Ltd. will receive in 2005 compensations from local governments that will cover only 60% of the deficit generated by the corresponding public service regional transport;
- The calculation of the total costs of services is based on rates negotiated with service providers of PKP Regional Service Ltd. (PKP Polish Railways – fee for access to infrastructure, PKP Cargo – fee for locomotives and traction teams, PKP Energetyka – fee for traction energy) and on costs of commercial, repair, operational and maintenance activities.

9. General payment conditions

See: point 5 above.

10. Duration of public service contract

The term of a public service contract is of one turnover year (in the case of Malopolskie voivodship it is 2 years).

PORTUGAL



Information in this section was gathered through interviews conducted with Caminhos de Ferro Portugueses (CP)

1. Organisation of public service operations in Portugal

Public service is defined in Portugal centrally by state authorities. The regions have no real role, although there is legislation stating they may intervene (Law n°159/99, from 14.09.1999 and Law n°32-A/2002, from 30.12.2002).

The contents, delimitation and definition of public service operations are not regulated for the time being on a contractual basis, with the exception of the Fertagus concession.

Legal provisions relating to public service are mainly contained in two pieces of legislation:

- The law imposing tariffs limitations on passenger transport lines (Decree-law n° 8/93, from 11.01.1993);
- The framework law relating to land transport systems (Law n° 10/90, from 17.03.1990);
- Decree-Law n°80/73 of 2 March 1973 and Decree-Law n°16/82 of 2 January 1982.

2. Operators on the Portuguese passenger rail market

For the time being, there are two railway undertakings operating public service transport in Portugal:

- Caminhos de Ferro Portugueses (CP), a company held at 100% by the Portuguese state;
- Fertagus, a private company.

As CP is the state owned enterprise, it was granted a concession for the operation of all public service operations throughout the country. Recently (since 1998), Fertagus was granted a concession for one specific line only (suburban “eixo Norte-Sul”).

3. Definition of public service requirements

Suburban and regional passenger traffics are traditionally considered to constitute public service transport, while long distance passenger transport does not fall within that category.

The public service obligations are limited to the limitation of tariff level. CP is free to propose the frequency of transport as well as any other element related to the organisation of the public service in question.

4. Importance of public service operations in overall passenger traffic

CP has been operating all suburban and regional passenger traffic as public services on a historical and legal basis (Law n° 88-A/97, from 25.07.1997).

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. No specific contract was drawn up with CP.

6. Contract payment

Public service obligations are to be compensated solely through financial compensation. No exclusivity is granted except on the lines granted to Fertagus on a contractual basis.

Payments are made on a regular basis. Their amount does not, however, systematically cover the total amount due to CP for the compensation of public service obligations, which contributes to the operating deficit of the enterprise.

7. Awarding of public service contracts

There is no legal obligation to grant public service contracts or concessions following a call for public tendering. It is done on a case by case basis. For example, and for the time being, the only line that was granted further to a public tendering procedure is the one granted to Fertagus.

8. Calculation of level of compensation

Given that CP has encountered many difficulties in obtaining full compensation of the public services they run, they have set up a very detailed accounting recollection of all costs incurred with a view to have the best base possible for negotiation with the state.

Theoretically, the level of compensation is the difference between the foreseen costs and revenues.

Some elements that are taken into account to determine the cost of the public service obligations include the following costs:

- 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;
- VAT⁵² (5%);
- electricity.

52. 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.



9. General payment conditions

As mentioned above CP has been poorly compensated for the public services it runs. Payment is also purely made upon state discretion.

The specific concession granted to Fertagus contains provisions relating to payment conditions.

10. Duration of public service contract

No provision is made as to the duration of the public service lines operated by CP. They appear to be indefinite.

The contract with Fertagus was concluded in 1998 for 30 years. It has been renegotiated since then. As a result, the concession contract shall be valid until 31 December 2010 and may be renewed for an additional 9 year period.



SLOVAKIA



Information in this section was gathered through interviews conducted with *železníčná spoločnosť Slovensko, a. s.* (ZSSK)

1. Organisation of public service operations in Slovakia

The organisation of public services in railway transport in Slovakia is regulated by the Act of the National Council of the Slovak Republic no. 164/1996 Coll. on railway infrastructure and operating transport on the railway infrastructure, adopted in 1996, an later amended by further provisions (entered into force in years 1997, 2001, 2002, 2004, 2005, 2006), specifying terms and conditions, as well as content of public service contract. Slovakia, before the entry into the EU, made most of its legislative system in the transport sector compatible with the existing EU law (full harmonization in the railway sector with the Regulation 1191/69 on public services).

For the time being, public service transport is managed centrally, by the Ministry of Transport, Post and Telecommunications. For the past few years these competencies are being progressively transferred into the hands of regional authorities (self-governing authorities of 8 regions in Slovakia). The ultimate aim of this reform is to transfer completely the management of public service transport into the hands of the regional authorities, which would decide on the volume of transport performance for their region, with the state guaranteeing transport coverage of certain routes and transport volumes. The authorities would be bound to allocate fixed levels of financial means for the public service transport.

The reform is currently in a draft form, with 2007 set as a preliminary date for its implementation.

Currently, the Ministry of Transport is sole competent to define the public service obligations. However, each regional authority contributes to this process by indicating to the Ministry of Transport their specific needs in terms of tariff obligations, service frequencies, etc.

2. Operators on the Slovak passenger rail market

ZSSK is the principal rail passenger company and is 100% owned by the state.

The Municipality of Bratislava has recently established an operator company BRKS (Bratislava Regional Rail Company) that operates a small number of passenger trains on the line Zohor – Záhorská Ves as the only operator, within a public-private partnership.

3. Definition of public service requirements

The above mentioned Act no. 164/1996 defines the conditions and content of the public service contract.

The contract on operating public services of passenger rail transport commits the operator to the following obligations:

- obligation to operate;
- obligation to carry;
- tariff obligation.

The obligation to operate commits the operator to undertake all measures providing for the requested extent, smoothness and frequency of the transport performance.

Obligation to carry commits the operator to transport passengers or luggage/goods under specified conditions and for specified prices.

Tariff obligation commits the operator to transport passengers or luggage/goods for regulated prices according to special regulations.

The contract binds the state or a regional self-government authority to compensate a demonstrable loss incurred for the operator as the result of fulfilling the contractual commitments.

4. Importance of public service operations in overall passenger traffic

Based on the number of passengers transported by ZSSK in 2004, the public service contract covered almost 99% of passenger traffic. However, based on the transport performance (in passenger-kilometres) of ZSSK, in 2004 the public service contract covers ca 94%

5. Contract

One single contract is concluded between the railway operator and the Ministry of Transport for the entirety of public service transport operated by that operator in the country.

6. Contract payment

The compensation of public service obligations today is paid through the allocation of financial input.

There are no bonuses for fulfilling the obligations of the public service contract. However, there are various sanctions, for instance for not observing the timetable, for exceeding certain number of accidents/incidents, for not providing certain temperature in passenger carriages, for incorrect accounting of costs towards the ordering party etc. The sanctions are defined in a separate Annex to the public service contract.

ZSSK cannot add any reasonable profit to its request as ZSSK is not even properly compensated. For instance in 2003 and 2004 due to low compensation from the state, ZSSK produced a non-covered loss with regard to public services operations.

The government of the Slovakia decided to split the ZSSK into two separate entities, as of 1 January 2005 there is ZSSK, now a solely passenger operator, and ZSSK CARGO, a freight operator. All cross-subsiding has, therefore, been abolished.

7. Awarding of public service contracts

The timetable is developed in cooperation with the party ordering the transport performances. ZSSK cannot, of its own will, terminate the operation on a certain line without the prior agreement of the ordering party (the Ministry of Transport, Post and Telecommunications).



8. Calculation of level of compensation

According to Act n°109 of 2005, amending Act n°164/1996, the passenger transport operator is entitled to compensation for demonstrable loss. However, the same article of the Act states that the public service contract is concluded only after the Act on state budget is approved, and only up to the level of financial means allocated in the state budget for the given year.

The contract (as set in the above mentioned Act) binds the state or a regional self-government authority to compensate a demonstrable loss incurred to the operator as the result of fulfilling the contractual commitments.

The demonstrable loss in passenger transport is the difference between economically justified costs incurred to the operator when fulfilling the obligations resulting from the public service contract and the revenues of the operator gained from the same obligation.

This principle worked until 2002. In 2003 and 2004 the state budget allocated the amount of 4.33 billion SKK to cover the public services (by rail) and ZSSK was not entitled to compensation for the loss beyond this framework. The public service contract was concluded for this specific sum total.





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

- traction fuel;
- traction electric energy;
- material;
- direct wages;
- direct depreciation / amortisation;
- direct maintenance and repairs;
- levies;
- fare;
- access fees;
- other direct costs;
- operational overheads;
- administrative expenses;
- financial charges.

The charges for the use of infrastructure are lower for passenger services than what is applied to freight traffic.

The revenues depend mostly on the transport performance (number of passenger-kilometres) and the tariff policy for the given period.

9. General payment conditions

Based on the signed public service contract for 2004, the ordering party was obliged to make advance payments quarterly.

The compensation amount for 2004 of 4.33 billion SKK does not include VAT. (Both costs and revenues are calculated without VAT, and the sum paid by the Ministry quarterly is calculated without VAT as well.)

10. Duration of public service contract

So far the purchase agreements are concluded on a yearly basis. Changes are possible but not envisaged in the near future.

SLOVENIA



Information in this section was gathered through interviews conducted with Slovenske Železnice (SZ)

1. Organisation of public service operations in Slovenia

Public service transport in Slovenia is partly regulated in the Railway Transport Act in force since January 2003.

Public service operations are in general defined in a Decree describing the way compulsory public services must be performed in internal railway passenger transport as well as with the Decree relating to the compensation of the costs for the transport, research and investments borne by the operators. These Decrees refer to EU law.

The state – through the Ministry of Transport and the Slovenian Rail Agency – manages to organisation of public service transport in the country.

Public service transport is provided throughout the country for almost the entirety of internal passenger transport. There is no distinction made between regional and long distance travel given the small size of the country.

2. Operators on the Slovenian passenger rail market

For the time being, there is only one passenger rail operator on the Slovenian market: SZ 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 SZ (the timeframe not defined).

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);
- quality of passenger service (safety, comfort, speed, transport capability; parameter specified in contract is punctuality in minutes per 100 kilometres; number of complaints and praises);
- financial report (quarterly profit and loss account);
- 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).

4. Importance of public service operations in overall passenger traffic

The number of trains per day amount to approximately 580. This represented in 2004 approximately 47,630 passengers per day (647,7 millions passenger kilometres per year for internal traffic).

Overall, 85% of the global passenger rail market is provided under public service obligations. The other 15% represent international trains, for which no subsidy is received.

5. Contract

A yearly contract is concluded between the railway operator and the Rail Agency.

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 Decree on the manner of performing the obligatory public services in internal railway passenger transport.



6. Contract payment

The compensation of public service obligations is paid through the allocation of financial input. In addition, given that SZ is the sole passenger rail operator on the Slovenian market, it holds a de facto exclusivity on the lines.

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 Railway Agency. The Article 11 of Decree relating to the performance of compulsory public service transport defines that the level of subsidy can not exceed the amount set in the Budget of Republic of Slovenia.

For many years, however, compensation has been insufficient to effectively cover the shortfall in revenues from public service passenger transport.

7. Awarding of public service contracts

SZ 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 close down certain limited lines.





8. Calculation of level of compensation

The level of compensation is negotiated annually in the first months of the year. It is based on passenger/kilometres. Compensation levels must be clearly determined in advance. No renegotiation of 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:

- rolling stock (insurance premiums, depreciation, cleaning, maintenance and overhaul);
- labour (wagon surveyors, train staff, office staff, ticket sales, maintenance, other);
- other costs (data system etc., buildings, payments to holding, service for infrastructure, other).

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 internal transport are composed of:

- revenues from ticket sales;
- subsidy (public service);
- other revenues (promotion, etc.).

The calculation of the overall revenue generated by the service will generally be based on the following production data:

- gross revenue per passenger/kilometre;
- result per passenger/kilometre;

9. General payment conditions

Payment is made on a monthly basis. In the beginning of every month the estimation of passenger transport volume (number of passengers and passenger kilometre) is sent to the Agency. This is the base for the calculation of monthly payment of subsidiary. Next month the final report for the past month has to be sent.

10. Duration of public service contract

The public service contract is concluded on a yearly basis.

SPAIN



renfe

Information in this section was gathered through interviews conducted with Red Nacional de los Ferrocarriles Españoles Operadora (RENFE Operadora)

1. Organisation of public service operations in Spain

Currently in Spain, the organisation of public service operation in railway transport is regulated by the following pieces of legislation:

- the Transport by Land Law: Law 16/1987 (30/07/87) – Articles 17, 20
- Law on the Rail Sector. Law 39/2003 (17/11/03): Third and Fourth Transitory Dispositions;
- Royal Decree 2387/2004 (30/12/04), by virtue of which the regulation implementing Law on the Rail Sector is approved. Fourth Transitory Disposition;
- RENFE Statutes: Royal Decree: 2396/2004 (30/12/04) – Second Transitory Disposition, paragraph 4;
- RENFE/state 5 year sliding Contract Programme – Among others, the Contract Programme establishes the compensations that RENFE should receive for the operation of public service obligations;
- Regulation 1191/69 CE – integrated in the Spanish legal system when Spain became an EU member state in 1986.

It should be noted that the existing legislation for rail transport has recently been modified in Spain. The new legislation – LAW 39/2003 – entered into force in January, 2005. The public railway network, as well as all the railway services on said national network, are the exclusive competence of the Ministry of Fomento, (Transport and Infrastructure).

In certain regions, (the Eusko Trenbideak, in the Basque Region; the Ferrocarrils de la Generalitat in Catalonia; the Ferrocarrils de la Generalitat Valenciana in the Autonomous Community of Valencia and the Ferrocarriles de Mallorca in Mallorca) regional lines exist and these lines are the full responsibility of the regional authorities⁵³. These lines are also of a different gauge, independent and not connected to other lines – as if they were “regional subway lines”⁵⁴.

All public service contracts concluded for the state railway network fall within the scope of competence of the state (Ministry of Fomento – Transport and Infrastructure).

2. Operators on the Spanish passenger rail market

The new Law on the Rail Sector, Law 39/2003, has dramatically reorganized the legal regime governing state-managed rail services, and has opened the state railway network. The new law refers to liberalisation of the passenger rail services, and provides that it will apply when provided for by EU regulations. As a result, RENFE Operadora remains sole passenger operator until at least 2010, although the European Commission’s latest proposals on liberalising passenger services are due to be debated this year.

3. Definition of public service requirements

Public service obligations usually 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;
- number of trains during peak hours to major cities;
- minimum service levels;
- services to passengers with reduced mobility.

4. Importance of public service operations in overall passenger traffic

Public service operations transport represents 96% of overall passenger transport on the network.

53. With regard to regional railways, it must be taken into account that in Spain regional public bodies are the bodies that are responsible of the regional lines within the territory of an autonomous community, in the event that such autonomous community has been designated by Law as the competent authority on the regional railways.

54. These networks probably do not fall under community legislation and therefore they are not further developed in the Spanish report.



5. Contract

Public service operations for the state railway network are included in one single agreement (the Contract Programme) (public/private law contract with a domination of public law) for the entire network. All conditions, rights and obligations are stipulated in detail in this unique contract. Currently, RENFE Operadora is negotiating its new Contract Programme with the state for the next five years (2005-2010).

Public service operations for regional railway networks are included in individual contracts concluded with the corresponding regional authority.

In practice, the competent authority determines the public service obligations for specific lines. The railway undertaking proposes a service covering the public service obligations for a given price. The price is then subject to negotiations between the parties. This price is negotiated at the moment when both parties (namely RENFE and the state), sign the Contract Programme.

6. Contract payment

Compensation of public service obligations is made through the sole granting of financial compensation.

The level of compensation of public service obligations is laid down annually in the contract.

Railway undertakings quote the price they consider necessary to accomplish the service required. RENFE does not have the right to include in such a price whatever they calculate to be a “reasonable profit”. The overall quote is then negotiated with the state.

Any benefit made from these services is then obligatorily re-invested in the operation of public services.

Should there be any deficit above the compensation granted by the state, the latter might wish either to renegotiate the conditions or simply fill in the deficit.

7. Granting of public service contracts

Currently public service contracts on the state railway network are granted on a negotiation basis as is stipulated in the Contract Programme.

The new law, Law 39/2003, foresees the introduction of public tendering when the latter becomes compulsory in EU legislation.

The current Contract Programme contains “Performance Regime Provisions” which stipulate that RENFE must improve the quality of its public service operations as well as reduce the rate of its subsidies per passenger- kilometre.

8. Calculation of level of compensation

The level of compensation applied to the operation of public service obligations must be 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 is generally based upon the following costs, amongst others:

- on-board staff (driver and other mobile staff);
- railway police (safety and security);
- cost generated from the rolling stock (amortisation and interests⁵⁵);
- shunting services;
- assistance to passengers with reduced mobility;
- charges for Administrative & Overhead/Managerial costs for the management of the public services;
- VAT⁵⁶;
- power supply and other external services;
- others.

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

The calculation of the overall revenue generated by the service will generally be based on the following production data amongst others:

- number of seated places per kilometre;
- number of passenger per kilometre;
- gross revenue per passenger/kilometre.

55. No reserve is provided for the renewal of rolling stock.

56. 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.



In addition, RENFE includes marketing costs, publicity of specific time schedules, etc. which are incurred for the operation of public services.

The compensation granted by the state for public service obligations on the national network is deemed only to cover the total costs incurred.

The contracts are monitored, by law, on a yearly basis. A system of bonus/penalty is applied to the level of performance of the services against quality criteria predetermined in the contract. The balance is determined every year and any difference, whether positive or negative, is reported to the following year until the end of the contract.

9. General payment conditions

Payment is made by regular instalments at determined intervals. No invoice is sent out to the Ministry of Fomento; the sums to be paid are reserved in the state budget and are automatically paid to the railway company on a monthly basis.

The funds granted are not submitted to payment of VAT. Vat is not totally recovered. Approximately 46% of the VAT that RENFE pays to the totality of its suppliers is not recovered.

10. Duration of public service contract

The duration of a public service contract for the state network coincides with the duration of the Contract Programme, (usually 4 years).



SWEDEN



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.

Passenger rail traffic in particular was progressively deregulated in Sweden as of 1990. 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.

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 the Rikstrafiken. It deals with all (in principle) long distance travel of public service nature.

It depends of the Ministry of Transport. Its tasks consist in:

- 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 all 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 in:

- defining local/regional traffic in the best interest of citizens;
- awarding and managing public service contracts

The Trafikhuvudman 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.

The Rikstrafiken and Trafikhuvudman often cooperate to propose public service contracts covering more than one single region. As the Rikstrafiken is in principle in charge of all long distance traffic, various Trafikhuvudman group themselves together to “buy out” cross regional traffic from the Rikstrafiken. They then tender in cooperation the services and manage the contracts and their implementation together. This form of cooperation has recently substantially increased. 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, various Trafikhuvudman have created a joint rolling stock company allowing them to rent away rolling stock to railway operators for the provision of specific public service transport.

2. Operators on the Swedish passenger rail market

SJ AB is the state-owned passenger rail operator (the former Swedish State Railways was split in three company groups in 2001, one of which in charge of passenger traffic). Since the deregulation of the passenger rail market in 1991, approximately 10 private companies have entered the market. The major ones are:

- Citypendeln Sverige AB;
- Connex Sverige AB;
- Svenska Tågkompaniet AB;
- Roslagståg.



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.

4. Importance of passenger public service transport in overall passenger traffic

Public service transport in Sweden is very important at regional level (traffic around large cities and commuter trains).

5. Contract

Public service transport is organised through the conclusion of civil law contracts freely negotiated between the parties to the contract, i.e. the Rikstrafiken or Trafikhuvudman and the railway undertaking. In practice, the public authority launches a public bid for a determined route. Interested railway undertakings submit their offer for the transport services requested.

The contract concluded by the authorities and the railway companies is essentially divided in two parts: one standard part that regulates the liabilities issues with regard to passengers and infrastructure and another part the content of 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.

6. Contract payment

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.



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 said line thereby allowing the railway company 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.

This system is applied for both long distance and regional public service contracts.

7. Granting of public service contracts

Public service contracts are granted following a public tendering procedure as regulated in Swedish procurement law. 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 competitors is usually the most important criteria.

In practice, all lines that are not profitable are put to tender either by the Rikstrafiken or by the Trafikhuvudman. All railway companies are then in a position to propose a bid.

8. Calculation of level of compensation

The level of compensation of public service operations varies from line to line, service to service.

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. Competition is fierce on the market, especially as all risks are borne by the railway companies.



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 instalments at determined intervals (this is pre-determined in the contract itself).

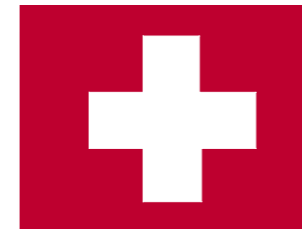
Any deficit on the service will not be compensated a posteriori by national or regional authorities. This is part of the risk railway undertakings are deemed to take when operating public services.

10. Duration of public service contracts

Generally speaking public service contracts are nowadays concluded for a duration ranging between 3 to 8 years. 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.



SWITZERLAND



bls

Information in this section was gathered through interviews conducted with Schweizerische Bundesbahnen/Chemins de Fer Fédéraux Suisses/Ferrovie Federali Svizzere (SBB/CFF/FFS) and BLS Lötschbergbahn AG (BLS)

1. Organisation of public service operations in Switzerland

The general legal framework for public transport has been in the process of being reformed since 1996. First, public tendering for public service operations was introduced in 1996 for the entirety of regional traffic. Furthermore, the legal status of SBB/CFF/FFS was reformed in 1999 with a view to transform the company in a limited company under public law.

The next step of the reform that was already initiated at the end of 2003, aims at harmonising rules applicable to private operators followed by further proposals presented in the second quarter of 2004.

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 indemnities, loans and financial aids granted according to the LCdF (OIPAF)

Specific to SBB exclusively:

- Law of 20 March 1998 on federal railways (LCFF)
- Convention relating to the performance of services between the Swiss Confederation and the limited company of the Federal Railways CFF/SBB/FFS, concluded for periods of four years (currently 2003-2006)

Public service operations are in general 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 must however be of a minimum of 36% and may not exceed 94%.
- Cantons are competent for negotiating and concluding public service contracts with railway undertakings. They cover the public service costs that are not covered by the federal authorities.

2. Operators on the Swiss passenger rail market

Passenger rail transport in Switzerland is undertaken by SBB/CFF/FFS (which transported 250 million passengers in 2003) and of more or less 50 private companies (which transported 169 million passengers in 2003).

The largest private railway company in Switzerland is BLS Lötschbergbahn AG (BLS). At the end of 2004, BLS assumed 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 600 km. Furthermore, BLS is currently preparing itself for opening of the Lötschberg Base Route scheduled in 2007, where it will be in charge of running trains on the Lötschberg-Simplon axis. Finally, BLS is currently engaged in merger talks with Regionalverkehr Mittelland (RM).



3. Importance of public service operations in overall passenger traffic

The entirety of regional traffic is organised through concessions and is covered by public service contracts.

National long distance traffic is entirely organised through a concession in which public service obligations are imposed and is currently granted to SBB.

4. Contract

Public service transport operations are granted through the conclusion of a public law contract for regional traffic. Long distance traffic is managed through the conclusion of a concession that includes the fulfilment of certain public service obligations.

The contract is freely negotiated between the parties, i.e. the canton and the railway undertaking. In practice, the RU submits to the Canton an offer for the public services requested. The price of the service to be paid is freely negotiated between the parties; it is approved by the national authorities (Federal Office of Transport).

Some specificities apply to SBB/CFF/FFS exclusively. The federal transport department (representing the owner of the Company) drafts together with the state owned railway company CFF/SBB/FFS the general Convention relating to transport performances that provides for the overall political and strategic objectives for SBB 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 the infrastructure. It is approved by the federal Parliament.

5. Contract payment

GENERAL CONDITIONS

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 level of compensation for the provision of public service obligations is clearly determined in the contract prior to its effective implementation;



- the contract will be concluded for a specific line throughout a specified period of time (the entire timetable period, i.e. one year) and for specific services to be provided. Revenue generated by the profitable services is passed onto the costs of the other non-profitable services;
- 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;
- exclusivity is granted to the railway undertaking on the said line thereby allowing the railway undertaking to run further – profitable – services during the said period of time.

The concession for long distance traffic is 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 RU operation on long distance traffic.

FISCAL TREATMENT – VAT:

Transport services are submitted to VAT (7,6% currently). VAT is always borne by the final consumer and is therefore not an effective cost for the company that provides transport services.

VAT normally borne by railway companies in their daily business activities may be recuperated at the end of the operation.

However, a special regime is applicable to any public money provided to a rail transport company whereby no VAT is collected at the origin. Therefore, no VAT is collected on the share of costs for public services that is covered by state funding.

LEVEL OF COMPENSATION OF PUBLIC SERVICE OBLIGATIONS:

The level of compensation of public service obligations varies from line to line, service to service.

As a principle (stated in the legislation itself), public service obligations are deemed not to be profitable in the sense that they will not generate any profit. The additional costs incurred and not covered by revenue are to be covered by federal or cantonal finances prior to the effective provision of services.



As a result, if due to good and efficient management, the railway undertaking succeeds in providing the service requested at a lower cost than what was initially planned and agreed in the public service contracts, 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.

6. Awarding of public service contracts

The Swiss legislation provides for the possibility to grant public service contract through a public tendering procedure.

The Canton remains however, free to decide whether to tender or to directly chose its service provider. In practice, only 2 on the 23 cantons have introduced the public tendering procedure in their respective legislation. Since 1996, date 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.

7. Calculation of level of compensation

It should be recalled that the Swiss legislation imposes public service compensation levels to be clearly determined in the contract prior to its effective implementation.

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);
- railway police (safety and security);
- cost generated from the rolling stock (amortisation and interests⁵⁷);
- 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;
- VAT⁵⁸.

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

57. No reserve is provided for the renewal of rolling stock. The rolling stock is however the property of SBB.

58. 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.



The calculation of the overall revenue generated by the service will be based on the following production data:

- seats offered-km;
- passenger-km;
- gross revenue per passenger-km.

Optionally and on a case by case basis, other costs can be included, such as marketing costs, publicity of specific time schedules, etc.

8. General payment conditions

As mentioned earlier, the level of compensation is agreed in advance, when the contract is concluded. The effective payment is made by regular instalments at determined intervals (this is pre-determined in the contract itself).

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 the reserve that will have been constituted by any positive difference of the provisions made on previous contracts (see point 6 above).

Any deficit that may not be compensated by the reserve will have to be covered by the Company itself.

9. Duration of public service contract

Public service contracts for regional services are concluded on an annual basis.

The general Convention relating to transport performances and infrastructure service containing the overall political objectives for SBB including the public service objectives is concluded for a duration of 4 years.

For long distance traffic (SBB Monopoly), a global concession agreement was concluded in 1999 and will last until 2007. Certain specific lines where specific investments were made (tilting trains) are covered by the concession agreement until 2019 in order to include return on investment.

UNITED KINGDOM (UK)



ATOC

Information in this section was gathered through interviews conducted with the Association of Train Operating Companies (ATOC) and represents the regime implemented in 2005 following the government's "Rail Review"

1. Organisation of public service operations in UK

Public services are organised in the UK 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 and for some London routes the Mayor of London also awards the contracts to provide train services "franchises" elsewhere in England and Wales the regional or local authorities must be consulted but the decision making is centralised.

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 in all aspects e.g. investment, commercial and safety, commercial and investment policy;
- creates regulation to implement the 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, which

- determines the funding required (i.e. track access charges) for the (monopoly) infrastructure supplier (Network Rail) to deliver the outputs specified by the DfT;
- oversees the track access regime to ensure that Network Rail do not abuse their 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.);
- oversees the franchising regime to ensure that the DfT do not abuse their status as monopoly customer for the franchisees;
- oversees and enforces safety legislation;
- awards “Safety Cases”.

This was done under the Railways Acts of 1994 including subsequent amendments) and 2005

2. Operators on the UK passenger rail market

There are approximately 25 passenger operators on the UK passenger rail market. It is planned to reduce this to just over 20 in the current round of franchising.

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 minimum 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).

4. Importance of public service operations in overall passenger traffic

Although originally provided for, open access passenger services are very limited and almost the totality of 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 not been enough capacity to satisfy the rights to access of existing franchises and freight operators, there has been almost no possibility of open access passenger operators procuring paths.

PART 3: COUNTRY REPORTS



5. Contract

Public service operations (including the award of exclusive rights for operations that overall are profitable) in the UK are managed through the granting of franchises.

The DfT maintains a standard (albeit frequently changing!) 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 freely 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 SRA the conditions and price according to which it will be running the service. These conditions will be broadly based on those already included in the tender initially submitted to the DfT authority during the competition process.

Whilst the tendering is open to all, the content of the and the terms and conditions agreed with the winner remain confidential to the DfT

Compensation for the public service obligations imposed is provided through:

- the granting of exclusive rights to operate the services considered throughout the duration of the franchise;
- financial influx over the franchise period. This will vary over time and may be positive or negative depending upon the balance of services.

6. Contract payment

The level of compensation of public service operations varies from franchise to franchise. e.g. franchises where exclusivity over profitable (Inter-City type) services predominates will tend to attract an increasing premium payment from the franchisee to the government over the franchise period whereas in respect of franchises where public service obligations predominate (regional and commuter 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 benefit throughout the duration of the franchise of both the exclusivity rights. Because of the loss making nature of the service, these rights will be of little overall value but are necessary to prevent “cherry picking” of those journeys in the service package that can be profitable by other operators and of state financial compensation.

Franchises that are granted for a package of services in which there exists a potential for profit will value the exclusivity rights much more highly and will therefore be prepared to pay significant and usually increasing premiums to the state for the exclusivity.

In general the UK Inter City and long distance regional franchises tend to command a premium, regional services tend to require a subsidy and commuter services fall in between.

All franchises benefit from a specific fiscal regime whereby the financial compensation granted by national authorities are exempted from VAT. Where the franchise purchases goods or services that include VAT, they may reclaim the VAT from the government

7. Awarding of public service contracts

All franchises are granted through a public tendering procedure. 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, little public transparency on the eventual criteria that were taken into consideration to grant the franchise. 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.

8. Calculation of level of compensation

As a principle, each bidder takes the “bottom line” risk and in making his bid uses the extensive information provided by the DfT on the existing cost and revenue base of the franchise. Although the franchisee in principle takes most risks, he is protected from the effects of events over which he has no control such as the revenue effects of the state of the economy



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, in case of conflict, the unsatisfied party can appeal to the Rail Regulator.

There is also a system of premium/penalty for performance applied to payments made for the “typically loss making franchises” that have a high public service obligation element described above. In other words, if the performance levels agreed in the franchise agreement for the public services are exceeded, the DfT will add a premium to the monthly instalments. In the opposite, penalties will be imposed with a view to encouraging better performance for these services.

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

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

- either to take the franchise back and put it through a new tendering procedure, or
- to 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, or
- to put the franchise on a “life support” (a “cost plus” x% funding regime) until it is due to be re-tendered.

In practice, the third option has become the option normally selected because option 1 cannot usually be enacted quickly (the bidding and award process can take up to 2 years) and in negotiations under option 2 the incumbent franchise is in a very strong position because they face no competition and other organisations who had bid less optimistically in competition for the franchise might cry “foul”.

10. Duration of franchise

A franchise is generally concluded for the duration of seven years.

The 2005 model of the UK rail industry structure corrects perceived flaws of earlier versions and to reduce the number of government agencies. In particular:

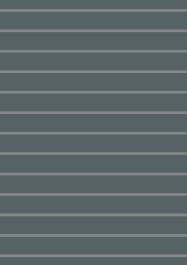
- Safety strategy and regulation was integrated into the DfT from the independent Health & Safety executive. This was to ensure that the same government agency that created industry safety obligations was also responsible for funding them.
- The Office of the Rail Regulator was made into a combined safety and commercial “policeman”. This again to ensure that the safety benefits arising from enforcement of safety obligations were considered in the context of their costs.
- The Strategic Rail Authority (which awarded franchises financed investments and created plans) was abolished and most of its functions transferred to the DfT. This to reduce the number of government agencies involved in rail.
- The concept of a “binding agreement” between the DfT and the Infrastructure Manager was created. Hitherto, although Network Rail was in receipt of substantial government funds, from the government (SRA) both via franchises and via direct payments, the government had no control over its activities. At this stage, however, the content of the binding agreement has yet to be finalised.

The Community of European Railway and Infrastructure Companies (CER) brings together 45 railway undertakings and infrastructure companies from the European Union, the accession countries (Bulgaria, Croatia and Romania) as well as Bosnia/Hercegovina, Serbia/Montenegro, Norway and Switzerland. It is based in Brussels and represents its members' interests vis-à-vis the European Parliament, Commission and Council of Ministers as well as other policy makers and transport actors. CER's main focus is promoting the development of rail as essential to the creation of a sustainable transport system which is both efficient and environmentally sound. A key priority in this respect for CER is the achievement of a more balanced modal split in the transport system, minimising external costs arising to society and improving economic efficiency. In parallel to the railways' own initiatives for improving the quality of rail services, CER sees ensuring sufficient investment in infrastructure rail projects as a prerequisite for achieving the desired modal split. All policy areas of significance to railway transport are dealt with by CER, which offers advice and recommendations to European policy makers. CER monitors and contributes to railway policy making. Its interests span the whole spectrum of European transport policy: infrastructure planning, passenger and freight services, public service, the environment, research and development and social dialogue.

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