

4th Railway Package – A missed opportunity

Initiated by the European Parliament in 2009, voted in 2016, the 4th Railway Package is the culmination of a process which started in 1992 with a triple objective: better quality for railway services, better value for public money invested in the system and better efficiency of the rail sector. Two main tools should help to achieve these objectives: rail market opening to a fair and transparent competition and technical harmonisation to implement interoperability. This paper intends to give the passenger's point of view on this important piece of legislation in assessing how this is matching, or not, customer's expectations.

1/ Historical background:

- **The 1st Railway Package** (2001) liberalised international freight traffic and created the European Railway Agency (ERA) in charge of safety and interoperability issues.
- **The 2nd Railway Package** (2004) liberalised domestic rail freight and issued the first technical specifications of interoperability (TSI).
- **The 3rd Package** liberalised international passenger traffic and associated Regulation 1370/2007 introducing competitive tendering for contracted public passenger transport – from which rail was excluded. Incidentally, Regulation 1371/2007 formalised passenger rights for rail services, however with numerous exemptions.
- **The 4th Railway Package** included two “pillars”, a technical one dealing with interoperability and safety and a “political” one dealing with governance (“unbundling”, i.e. separation between infrastructure management and train operations) and competitive tendering for train services run under public service obligations (PSO). This last legislative package was supposed to achieve the final market opening establishing the ultimate conditions for an open and transparent European rail system, cornerstone of the Single European Market.

2/ A satisfactory Technical Pillar:

In order to accelerate the delivery of new rolling stock and the associated better service quality, the ERA will be able to deliver **safety certificates**. In addition, **technical homologation** of new rolling stock will be coordinated between the ERA and Member States authorities.

These new processes will help to reduce lengthy and costly national procedures and solve many problems and delays operators and transport authorities have to face when introducing new trains.

This should be good news for passengers which could expect on time delivery of new vehicles and **better competitiveness of train** with other modes, especially for cross border services.

3/ A not so inspiring political pillar:

The essential document is the **revised “PSO” Regulation 1370/2007** which was supposed to extend **competitive tendering** becoming the rule for contracted rail services and achieve market opening

through regulated competition. But the definitive version unfortunately does not, and **direct award** remains possible through various exemptions (articles 3, 4 & 5) with for some of them very vague criteria:

- “In house” operator rule,
- “Small countries” derogation,
- “Exceptional circumstances” derogation,
- “Performance” derogation.

This is **no good news** for the passenger for two reasons:

- Discretionary direct award may lead to numerous **law cases and legal uncertainty** resulting in delayed or disrupted introduction of new contracts or services,
- And last but not least it means a **severe risk of costs increase and bad quality**, as regulated competition has proved in countries where it was implemented to bring both cost control and better service quality, i.e. “value for money”.

These negative effects will be amplified by the length of the **transition period** during which Member States will have to progressively comply with the new **Regulation 2016/2338**: it will **start on December 24, 2019 and will end on December 24, 2023**. Directly awarded contracts before this date could last **10 years** (15 years if rolling stock investment made by the operator), which could delay market opening until 2033 (or even 2038) in reluctant countries. To summarise, competitive tendering will be compulsory after December 24, 2023, except where direct award remains allowed (see above) **but all begins in 2019** at the latest with Member States having to start implementing the new Regulation to prepare for the 2023 deadline.

4/ The governance directive:

It is not so impacting passengers as it is mainly dealing with relationships between infrastructure managers and train operations. However, two points are worth of interest:

- **PSO contracts are protected** if an open access service is endangering their economic equilibrium (article 11), which is positive;
- But **integrated ticketing and information systems** remain an option, and not an obligation, for Member States or operators (article 13a.)

5/ To conclude - A missed opportunity:

Rail is an essential lever of economic development and ecological transition. It is to be feared that the final version of the 4th Railway Package will not help a lot to reach the objectives of the 2011 White Paper, confirmed in 2016, which is planning a **50% shift** in medium distance intercity passengers **from road to rail by 2030**.

Direct award will profit to Member States where rail networks are shrinking whereas protected monopolies will be able to compete and develop on other opened markets.

The 4th Railway Package is a true missed opportunity **to boost passenger rail through regulated competition** and effective separation between infrastructure and operations in integrated companies.

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