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#### **INFORMATION NOTE**

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from: General Secretariat  
to: Permanent Representatives Committee/Council  
Subject: Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail  
- Outcome of the European Parliament's first reading  
(Strasbourg, 24 to 27 February 2014)

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#### **I. INTRODUCTION**

The rapporteur, Mr Mathieu GROSCH (EPP, BE), presented a report on the abovementioned proposal, on behalf of the Committee on Transport and Tourism. The report contained 62 amendments (amendments 1 - 62).

In addition, 23 other amendments (amendments 63 - 85) had been tabled by political groups (EPP, S&D, ALDE and EUL/NGL) and groups of 40 or more MEPs.

## II. DEBATE

The debate on the proposal, which took place on 25 February 2014, was a joint debate on the six proposals making up the fourth railway package (the single European railway area; opening of the market for domestic passengers; interoperability of the railway system; railway safety; the European Union Agency for Railways (ERA) and Common rules for the accounts of railway undertakings). A summary of the debate is set out in document 6815/14<sup>1</sup>.

## III. VOTE

The vote on the proposal took place on 26 February 2014. The European Parliament adopted 63 amendments to the proposal.

All but eight of the Committee's amendments (amendments 3, 4, 11, 13, 15, 37, 45, 46 and 49) were adopted. Amendment 34 was adopted with an oral amendment and amendment 16 was only partially adopted. In addition, nine other amendments were adopted (amendment 63 by EPP and ALDE, amendment 64, 65 - 67 and 69 by EPP, amendment 68 by EPP and S&D, amendment 75 by S&D and amendment 82 by EUL/NGL)<sup>2</sup>.

The amendments adopted are set out in the Annex together with the legislative resolution.

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<sup>1</sup> See also documents 6821/14, 6822/14, 6829/14 and 6830/14.

<sup>2</sup> Some amendments were identical.

## **Domestic passenger transport services by rail \*\*\*I**

**European Parliament legislative resolution of 26 February 2014 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail (COM(2013)0028 – C7-0024/2013 – 2013/0028(COD))**

### **1. (Ordinary legislative procedure: first reading)**

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= *The European Parliament,*

- (1) – having regard to the Commission proposal to Parliament and the Council (COM(2013)0028),
- (2) – having regard to Article 294(2) and Article 91 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7 0024/2013),
- (3) – having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- (4) – having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Seimas of the Republic of Lithuania, the Luxembourg Chamber of Deputies, the Netherlands Senate and the Netherlands House of Representatives, the Austrian Federal Council and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
- (5) – having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,
- (6) – having regard to the opinion of the Committee of the Regions<sup>2</sup>
- (7) – having regard to Rule 55 of its Rules of Procedure,
- (8) – having regard to the report of the Committee on Transport and Tourism and the opinions of the Committee on Employment and Social Affairs and the Committee on Regional Development (A7-0034/2014),
- (9) 1. Adopts its position at first reading hereinafter set out;
- (10) 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

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<sup>1</sup> OJ C 327, 12.11.2013, p. 122.

<sup>2</sup> OJ C 356, 5.12.2013, p. 92.

(11) 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

## Amendment 1

### Proposal for a regulation Recital 1

*Text proposed by the Commission*

I. (1) Over the past decade, the growth of passenger traffic by rail has been insufficient to increase its modal share in comparison to cars and aviation. The 6% modal share of passenger transport for rail in the European Union has remained fairly stable. Rail passenger services have not kept pace with *evolving needs* in terms of availability and quality.

*Amendment*

II. (1) Over the past decade, the growth of passenger traffic by rail has been insufficient to increase its modal share in comparison to cars and aviation. The 6% modal share of passenger transport for rail in the European Union has remained fairly stable. Rail passenger services have not kept pace with *the evolution of other modes of transport* in terms of availability, price and quality. *Bearing that in mind, all relevant lessons need to be learnt from the approach adopted by the Union in the course of the last three railway reforms.*

## Amendment 2

### Proposal for a regulation Recital 1 a (new)

*Text proposed by the Commission*

III.

*Amendment*

IV. (1a) *Rail transport plays a major role socially and environmentally, and in terms of mobility planning, and can significantly increase its overall share of European passenger transport. In this regard, investment in research as well as in infrastructure and rolling stock can make a significant contribution to new growth, thereby boosting employment directly in the railway sector and indirectly by increasing the mobility of employees of other sectors. Rail transport has the potential to develop into an important modern branch of Union industry, provided that Member States agree on greater cooperation.*

## Amendment 5

### Proposal for a regulation Recital 3

*Text proposed by the Commission*

V. (3) In its White Paper on transport policy of 28 March 2011 the Commission announced its intention to complete the internal railway market, allowing railway undertakings of the Union to provide all types of rail transport services without unnecessary technical and administrative barriers.

*Amendment*

VI. (3) In its White Paper on transport policy of 28 March 2011 the Commission announced its intention to complete the internal railway market, allowing railway undertakings of the Union to provide all types of rail transport services without unnecessary technical and administrative barriers. ***In order to better achieve that objective, the current reform needs to be conceived in the light of the railway models which have proved to be effective in the Union.***

**Amendment 6**

**Proposal for a regulation  
Recital 3 a (new)**

*Text proposed by the Commission*

VII.

*Amendment*

VIII. ***(3a) The quality of public services for rail passenger transport should be improved and their efficiency increased, whilst existing public passenger transport services that function efficiently are maintained.***

**Amendment 7**

**Proposal for a regulation  
Recital 3 b (new)**

*Text proposed by the Commission*

IX.

*Amendment*

X. ***(3b) The completion of the opening of the Union railway market should be considered to be essential in order for the railway to become a credible alternative to other modes of transport, in terms of price and quality.***

**Amendment 8**

**Proposal for a regulation  
Recital 3 c (new)**

XI.

XII. (3c) *It is essential for the competent authorities to play a key role in the organisation of public passenger transport services. Such authorities have responsibility for planning public passenger transport services, including for indentifying the routes to be designated for open access or awarded under public service contracts and for determining the award procedure. Furthermore, they should justify that viability, efficiency and quality targets can only be achieved by using the award procedure that they have chosen, and should publish this justification.*

## **Amendment 9**

### **Proposal for a regulation**

#### **Recital 4**

*Text proposed by the Commission*

*Amendment*

XIII. (4) When competent authorities organise their public passenger transport services they need to ensure that public service obligations and the geographical scope of public service contracts are appropriate, necessary and proportionate to achieve the objectives of the public passenger transport policy in their territory. This policy should be set out in public transport plans leaving scope for market based transport solutions. The process of defining public transport plans and public service obligations should be made transparent to relevant stakeholders including potential market entrants.

XIV. (4) When competent authorities organise their public passenger transport services they need to ensure that public service obligations and the geographical scope of public service contracts are appropriate, necessary and proportionate to achieve the objectives of the public passenger transport policy in their territory. This policy should be set out in *sustainable* public transport plans leaving scope for market based transport solutions. The process of defining public transport plans and public service obligations should be made transparent to relevant stakeholders including potential market entrants.

## **Amendment 10**

### **Proposal for a regulation**

#### **Recital 5**

*Text proposed by the Commission*

*Amendment*

XV. (5) To ensure sound financing to meet the objectives of public transport

XVI. (5) To ensure sound financing to meet the objectives of *sustainable* public

plans, competent authorities need to design public service obligations to attain public transport objectives in a cost-effective manner taking account of the compensation for the net financial effect of those obligations and they need to ensure long-term financial sustainability of public transport provided under public service contracts.

XVII.

transport plans, competent authorities need to design public service obligations to attain public transport objectives in **both a high-quality and** a cost-effective manner, taking account of the compensation for the net financial effect of those obligations and they need to ensure long-term financial sustainability of public transport provided under public service contracts. ***That includes avoiding both over- and under-compensation, caused by the substance of the public service obligations, or the failure of the competent authority to meet its financial commitments.***

XVIII. ***Public service obligations may refer to networks in which some services can be operated with a fair profit without financial compensation; the inclusion of such services within the scope of the public service obligations should not result in compensation payments exceeding the amount necessary for providing the whole range of network services.***

## Amendment 64

### Proposal for a regulation

#### Recital 7

*Text proposed by the Commission*

XIX. (7) ***A maximum annual*** volume of a public service contract for passenger transport by rail needs to be set ***to facilitate*** competition for such contracts while allowing competent authorities some flexibility to optimise the volume according to economic and operational considerations.

*Amendment*

XX. (7) ***The*** volume of a public service contract for passenger transport by rail ***which will be awarded on the basis of a competitive tendering procedure*** needs to be set ***in a way that facilitates*** competition ***between small bidders, new entrants and the incumbent operator*** for such contracts while allowing competent authorities some flexibility to optimise the volume according to economic and operational considerations.

## Amendment 12

### Proposal for a regulation

#### Recital 8



*Text proposed by the Commission*

XXI. (8) To facilitate the preparation of tenders, and hence enhance competition competent authorities need to ensure that all public service operators interested in making such a submission receive certain information on the transport services and infrastructure covered by the public service contract.

*Amendment*

XXII. (8) To facilitate the preparation of tenders, and hence enhance competition competent authorities need to ensure that, ***whilst protecting business secrets***, all public service operators interested in making such a submission receive certain information on the transport services and infrastructure covered by the public service contract ***that prevents them from being deemed to have been discriminated against by the contracting authority with regard to other competitors.***

**Amendment 65**

**Proposal for a regulation**

**Recital 9 a (new)**

*Text proposed by the Commission*

XXIII.

*Amendment*

XXIV. (9a) ***The principle of reciprocity should be applied in order to ensure fair competition and to prevent the misuse of compensation. That principle should apply not only to Member States and companies established in the Union but also to companies from third countries that wish to participate in procurement procedures within the Union.***

**Amendment 14**

**Proposal for a regulation**

**Recital 10**

*Text proposed by the Commission*

XXV. (10) The establishment of an Internal Market for passenger transport services by rail requires common rules on competitive tendering for public service contracts in this sector ***to be applied*** in a harmonised manner in all Member States.

*Amendment*

XXVI. (10) The establishment of an Internal Market for passenger transport services by rail requires common rules on competitive tendering for public service contracts in this sector ***which are applicable*** in a harmonised manner in all Member States, ***whilst taking into account the specific circumstances of each Member States.***

## Amendment 16

### Proposal for a regulation

#### Recital 11

*Text proposed by the Commission*

XXVII. (11) *In* view *of* creating framework conditions for enabling society to fully reap the benefits of effective opening of the market for domestic passenger transport services by rail it is important that Member States ensure an adequate level of social protection for the staff of public service operators.

XXIX.

*Amendment*

XXVIII. (11) *With a* view *to* creating framework conditions for enabling society to fully reap the benefits of effective opening of the market for domestic passenger transport services by rail it is important that Member States ensure an adequate level of social protection for the staff of public service operators.

XXX.

## Amendment 66

### Proposal for a regulation

#### Recital 14

*Text proposed by the Commission*

XXXI. (14) *Consistent with the internal logic of Regulation (EC) No 1370/2007, it should be made clear that the transitional period until 2 December 2019 refers only to the obligation to organise competitive tendering procedures for public service contracts.*

*Amendment*

XXXII. *deleted*

## Amendment 67

### Proposal for a regulation

#### Recital 15

*Text proposed by the Commission*

XXXIII. (15) *Preparing railway undertakings for mandatory competitive tendering for public service contracts requires some extra time to allow effective and sustainable internal restructuring of companies to which such contracts were directly awarded in the past. Transitional measures are therefore necessary for contracts directly awarded between the date of entry into force of this Regulation and 3 December 2019.*

*Amendment*

XXXIV. *deleted*

## Amendment 17

### Proposal for a regulation

#### Article 1 – introductory part

*Text proposed by the Commission*

XXXV. Regulation (EC) No 1370/2007 is amended as follows:

*Amendment*

XXXVI. ***Without prejudice to Union law on public procurement [Directive..., not yet published],*** Regulation (EC) No 1370/2007 is hereby amended as follows:

## Amendment 18

### Proposal for a regulation

#### Article 1 – point 1 – point -a (new)

Regulation (EC) No 1370/2007

Article 2 – point a a (new)

*Text proposed by the Commission*

XXXVII.

*Amendment*

***(-a) the following point is inserted:***

XXXVIII. ***"(aa) "public rail passenger transport" means public passenger transport by rail, excluding passenger transport on other track-based modes, such as metros, tramways or, if Member States so decide , tram-train systems;"***

## Amendment 19

### Proposal for a regulation

#### Article 1 – point 1 – point a

Regulation (EC) No 1370/2007

Article 2 – point c

*Text proposed by the Commission*

XXXIX. "(c) "competent local authority" means any competent authority whose geographical area of competence is not national and which covers the transport needs of an urban agglomeration or a rural ***district***;"

*Amendment*

XL. "(c) "competent local authority" means any competent authority whose geographical area of competence is not national and which covers, the transport needs of, ***inter alia***, an urban agglomeration ***and/or*** a rural ***area, or a region, including at cross-border level***;"

## Amendment 20

### Proposal for a regulation

#### Article 1 – point 1 – point b

Regulation (EC) No 1370/2007

Article 2 – point e

*Text proposed by the Commission*

XLI. "The scope of public service obligations shall **exclude all** public transport services that **go beyond of what is** necessary **to reap** local, regional or sub-national **network effects**."

*Amendment*

XLII. "The scope of public service obligations shall **cover** public transport services that **are** necessary, **inter alia, for the benefits of economic, technical or geographical** network effects to **be reaped** at local, regional or sub-national **level**. **Such network effects arise through the integration of transport services, which makes public transport more attractive for passengers and more efficient for the public transport sector. Network effects may be generated both by services which attain break- even and by services which do not, as well as at various geographical-, train schedule- or tariff- levels.**"

## Amendment 21

### Proposal for a regulation

#### Article 1 – point 2

Regulation (EC) No 1370/2007

Article 2 a – Title

*Text proposed by the Commission*

XLIII. Public transport plans and public service obligations

*Amendment*

XLIV. **Multimodal and sustainable** public transport plans and public service obligations

## Amendment 22

### Proposal for a regulation

#### Article 1 – point 2

Regulation (EC) No 1370/2007

Article 2 a – paragraph 1 – subparagraph 1 – introductory part

*Text proposed by the Commission*

XLV. 1. Competent authorities shall establish and regularly update public passenger transport plans covering all relevant transport modes for the territory

*Amendment*

XLVI. 1. Competent authorities shall establish and regularly update **multimodal** public passenger transport plans covering all relevant transport modes for the

for which they are responsible. These public transport plans shall define the objectives of public transport policy and the means to implement them covering all relevant transport modes for the territory for which they are responsible. **They** shall at least include:

territory for which they are responsible. These public transport plans shall define the objectives of public transport policy and the means to implement them covering all relevant transport modes for the territory for which they are responsible, ***thereby promoting social and territorial cohesion. It shall be possible for those plans to consist of information on public transport plans that already exists in the public domain. Where interregional services already exist, they shall be taken into account. Those plans*** shall at least include:

### Amendment 23

#### Proposal for a regulation

##### Article 1 – point 2

Regulation (EC) No 1370/2007

Article 2 a – paragraph 1 – subparagraph 1 – point b

*Text proposed by the Commission*

XLVII.(b) basic requirements to be fulfilled by public transport offer ***such as*** accessibility, ***territorial connectivity, security***, modal and intermodal interconnections at main connecting hubs, ***offer characteristics such as times of operation, frequency of services and minimum degree of capacity utilisation;***

*Amendment*

XLVIII. (b) basic requirements to be fulfilled by public transport offer, ***including, inter alia, accessibility for persons with disabilities, and*** modal and intermodal interconnections at main connecting hubs;

### Amendment 24

#### Proposal for a regulation

##### Article 1 – point 2

Regulation (EC) No 1370/2007

Article 2 a – paragraph 1 – subparagraph 1 – point b a (new)

*Text proposed by the Commission*

XLIX.

*Amendment*

L. ***(ba) for public rail passenger transport, efficiency criteria including inter alia modal share of public transport, punctuality, cost-efficiency, frequency of services, customer satisfaction and the quality of rolling stock;***

## Amendment 25

### Proposal for a regulation

#### Article 1 – point 2

Regulation (EC) No 1370/2007

Article 2 a – paragraph 1 – subparagraph 1 - point c

*Text proposed by the Commission*

LI. (c) quality standards *related to items such as equipment features of stops and of rolling stock, punctuality and reliability, cleanliness, customer service and information, complaint handling and redress, monitoring of service quality;*

*Amendment*

LII. (c) quality *and safety* standards *as well as control aspects regarding the rolling stock, infrastructure and services, including information;*

## Amendment 26

### Proposal for a regulation

#### Article 1 – point 2

Regulation (EC) No 1370/2007

Article 2 a – paragraph 1 – subparagraph 1 – point d

*Text proposed by the Commission*

LIII. (d) principles of tariff policy;

*Amendment*

LIV. (d) principles of tariff policy, *such as the use of social tariffs;*

## Amendment 27

### Proposal for a regulation

#### Article 1 – point 2

Regulation (EC) No 1370/2007

Article 2 a – paragraph 1 – subparagraph 1 – point e

*Text proposed by the Commission*

LV. (e) *operational requirements such as transport of bicycles, traffic management, contingency plan in case of disturbances.*

*Amendment*

LVI. (e) *applicable rules regarding passenger rights, social and employment conditions, environmental protection and the establishment of environmental objectives.*

## Amendment 28

### Proposal for a regulation

#### Article 1 – point 2

Regulation (EC) No 1370/2007

Article 2 a – paragraph 1 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

LVII. *In establishing public transport plans, competent authorities shall have regard in particular to applicable rules regarding passenger rights, social, employment and environmental protection.*

LVIII. *deleted*

## **Amendment 29**

### **Proposal for a regulation**

#### **Article 1 – point 2**

Regulation (EC) No 1370/2007

Article 2 a – paragraph 1 – subparagraph 3

*Text proposed by the Commission*

*Amendment*

LIX. The competent authorities shall adopt the public transport plans after consultation of relevant stakeholders *and publish them. For the purpose of this Regulation, relevant stakeholders to be taken into consideration are* at least transport operators, infrastructure managers *if appropriate*, and representative passenger and employee organisations.

LX. The competent authorities shall adopt the public transport plans after consultation of relevant stakeholders, *including* at least transport operators, infrastructure managers and representative passenger and employee organisations, *and shall publish those plans.*

## **Amendment 30**

### **Proposal for a regulation**

#### **Article 1 – point 2**

Regulation (EC) No 1370/2007

Article 2 a – paragraph 3 – subparagraph 1 – point b

*Text proposed by the Commission*

*Amendment*

LXI. (b) they shall be appropriate to achieve the objectives of the public transport plan;

LXII. (b) they shall be appropriate to achieve the objectives of the public transport plan, *i.e. they shall determine the award procedure in terms of quality standards to be achieved and the appropriate means of doing so, in order to meet the objectives of the public transport plan;*

## Amendment 31

### Proposal for a regulation

#### Article 1 – point 2

Regulation (EC) No 1370/2007

Article 2 a – paragraph 3 – subparagraph 1 – point c

*Text proposed by the Commission*

LXIII. (c) they shall **not exceed what is** necessary and proportionate to achieve the objectives of the public transport plan.

LXV.

LXVII.

*Amendment*

LXIV. (c) they shall **be** necessary and proportionate to achieve the objectives of the public transport **plans and, in respect of public passenger transport by rail, they shall take into account Directive 2012/34/EU of the European Parliament and of the Council<sup>1a</sup>.**

LXVI. \_\_\_\_\_

LXVIII. <sup>1a</sup> **Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ L 343, 14.12.2012, p. 32).**

## Amendment 32

### Proposal for a regulation

#### Article 1 – point 2

Regulation (EC) No 1370/2007

Article 2 a – paragraph 3 – subparagraph 2

*Text proposed by the Commission*

LXIX. **The assessment of appropriateness referred to in point (b) shall take into account whether a public intervention in the provision of passenger transport is a suitable means of achieving the objectives of the public transport plans.**

*Amendment*

LXX. **deleted**

## Amendment 33

### Proposal for a regulation

#### Article 1 – point 2

Regulation (EC) No 1370/2007

Article 2 a – paragraph 3 – subparagraph 3

*Text proposed by the Commission*

LXXI. **For public passenger transport by rail the assessment of necessity and**

*Amendment*

LXXII. **deleted**



*proportionality referred to in point (c) shall take into account the transport services provided under Article 10(2) of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast) and consider all information given to the infrastructure managers and regulatory bodies pursuant to the first sentence of Article 38(4) of that Directive.*

## Amendment 34

### Proposal for a regulation

#### Article 1 – point 2

Regulation (EC) No 1370/2007

Article 2 a – paragraph 4

#### *Text proposed by the Commission*

LXXIII. The specifications of public service obligations and the related compensation of the net financial effect of public service obligations shall:

LXXV. (a) achieve the objectives of the public transport plan in *the most* cost-effective manner;

LXXVII. (b) financially sustain the provision of public passenger transport *in accordance to the requirements laid down in the public transport plan* in the long term.

#### *Amendment*

LXXIV. The specifications of public service obligations and the related compensation of the net financial effect of public service obligations shall achieve the objectives of the public transport plan in *a* cost-effective manner *and shall* financially sustain the provision of public passenger transport in the long term.

*LXXVI.*

*LXXVIII.*

## Amendment 35

### Proposal for a regulation

#### Article 1 – point 2

Regulation (EC) No 1370/2007

Article 2 a – paragraph 5 – subparagraph 2

#### *Text proposed by the Commission*

LXXIX. The competent authority shall *in an appropriate manner* consult relevant stakeholders such as *a minimum*,

#### *Amendment*

LXXX. The competent authority shall consult relevant stakeholders such as transport operators, infrastructure

transport operators, infrastructure managers *if appropriate* and representative passenger and employee organisations on these specifications and take their positions into consideration.

managers and representative passenger and employee organisations on these specifications and take their positions into consideration.

## Amendment 36

### Proposal for a regulation

#### Article 1 – point 2

Regulation (EC) No 1370/2007

Article 2 a – paragraph 6 – point a

#### *Text proposed by the Commission*

LXXXI. (a) compliance of the assessment and of the procedure set out in this Article shall be ensured by the regulatory body referred to in **Art 55** of Directive 2012/34/EU *including on its own initiative*.

#### *Amendment*

LXXXII. (a) compliance of the assessment and of the procedure set out in this Article shall be ensured by the regulatory body referred to in **Article 55** of Directive 2012/34/EU *at the request of any stakeholder concerned*;

## Amendment 69

### Proposal for a regulation

#### Article 1 – point 2

Regulation (EC) No 1370/2007

Article 2 a – paragraph 6 – point b

#### *Text proposed by the Commission*

LXXXIII. (b) *the maximum annual volume of a public service contract in terms of train-km shall be the higher value of either 10 million train-km or one third of the total national public rail passenger transport volume under public service contract.*

LXXXV.

LXXXVII.

#### *Amendment*

LXXXIV. (b) *the minimum number of public service contracts for rail transport in a Member State shall be:*

LXXXVI. – *one, in the case of a national market volume of rail passenger transport under public service contract of up to 20 million train-km;*

LXXXVIII. – *two in the case of a national market volume of rail passenger transport under public service contract of more than 20 million train-km and up to 100 train-km, on condition that the size of one contract does not exceed 75% of the total market volume under public service*

LXXXIX.

XCI.

*contracts;*

XC. – *three in the case of a national market volume of rail passenger transport under public service contract of more than 100 million train-km and up to 200 million train-km, on condition that the size of one contract does not exceed 75% of the total market volume under public service contracts;*

XCII. – *four in the case of a national market volume of rail passenger transport under public service contract of more than 200 million train-km, on condition that the size of one contract does not exceed 50% of the total market volume under public service contracts.*

### Amendment 38

#### Proposal for a regulation

##### Article 1 – point 2

Regulation (EC) No 1370/2007

Article 2 a – paragraph 6 – point b a (new)

*Text proposed by the Commission*

XCIII.

*Amendment*

XCIV. (ba) *The competent authority shall determine the routes to be awarded under public service contracts in accordance with Directive 2012/34/EU.*

### Amendment 39

#### Proposal for a regulation

##### Article 1 – point 3 – point a

Regulation (EC) No 1370/2007

Article 4 – paragraph 1 – point a

*Text proposed by the Commission*

XCV. "(a) clearly define the public service obligations laid down in Article 2(e) and Article 2a with which the public service operator is to comply, and the *geographical areas* concerned;"

*Amendment*

XCVI. "(a) clearly define the public service obligations laid down in Article 2(e) and Article 2a with which the public service operator is to comply, and the *transport networks* concerned, *and require the operator to provide the competent authority with all the information essential for the award of public service contracts, whilst protecting business*

*secrets";*

## Amendment 40

### Proposal for a regulation

#### Article 1 – point 3 – point b

Regulation (EC) No 1370/2007

Article 4 – paragraph 1 – point b – last sentence

#### *Text proposed by the Commission*

XCVII. "In the case of public service contracts not awarded according to Article 5(3), these parameters shall be determined in such a way that **no** compensation **payment may** exceed the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations, taking account of revenue relating thereto kept by the public service operator and a reasonable profit;"

#### *Amendment*

XCVIII. "In the case of public service contracts not awarded according to Article 5(3), these parameters shall be determined in such a way that **compensation shall neither exceed nor fall below** the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations, taking account of revenue relating thereto kept by the public service operator and a reasonable profit;"

## Amendment 41

### Proposal for a regulation

#### Article 1 – point 3 – point b a (new)

Regulation (EC) No 1370/2007

Article 4 – paragraph 5

#### *Present text*

XCIX.

CI. 5. Without prejudice to national and **Community** law, including collective agreements between social partners, competent authorities **may** require the selected public service operator to grant staff previously taken on to provide services the rights to which they would have been entitled if there had been a transfer within the meaning of Directive 2001/23/EC. Where competent authorities require public service operators to comply with certain social standards, tender documents and public service contracts shall list the staff concerned and give **transparent** details of their contractual

#### *Amendment*

C. **(ba) Paragraph 5 is replaced by the following:**

CII. "5. Without prejudice to national and **Union** law, including **representative** collective agreements between social partners, competent authorities **shall** require the selected public service operator to grant staff **working conditions on the basis of binding national, regional or local social standards and/or to implement the compulsory transfer of staff in case of change of operator. When such transfer occurs, the staff** previously taken on **by the previous operator** to provide services **shall be granted** the **same** rights to which they would have been entitled if there had been a transfer within the meaning of Directive

rights and the conditions under which employees are deemed to be linked to the services.

2001/23/EC. Where competent authorities require public service operators to comply with certain social standards, tender documents and public service contracts shall list the staff concerned and give **transparently** details of their contractual rights and the conditions under which employees are deemed to be linked to the services.";

### **CIII.**

#### **Amendment 42**

##### **Proposal for a regulation**

##### **Article 1 – point 3 – point c**

Regulation (EC) No 1370/2007

Article 4 – paragraph 6

##### *Text proposed by the Commission*

CIV. "**Where** competent authorities, **in accordance with national law, require public service operators to comply with certain** quality and social standards **or establish** social and qualitative criteria, **these standards and criteria shall be included** in the tender documents and in the public service contracts.

##### *Amendment*

CV. "6. **In accordance with national law, the** competent authorities **shall set binding** quality and social standards, **lay down appropriate** social and qualitative criteria, **including the obligation of public service operators to comply with the applicable representative collective agreements and ensure decent employment and working conditions, including them or make reference thereto** in the tender documents and in the public service contracts, **regardless of the award procedure.**";

#### **Amendment 43**

##### **Proposal for a regulation**

##### **Article 1 – point 3 – point d**

Regulation (EC) No 1370/2007

Article 4 – paragraph 8

##### *Text proposed by the Commission*

CVI. "8. Competent authorities shall make available to all interested parties relevant information for the preparation of an offer under a competitive tender procedure. This shall include information on passenger demand, fares, costs and revenues related to the public passenger

##### *Amendment*

CVII. "8. Competent authorities shall make available to all interested parties relevant information for the preparation of an offer under a competitive tender procedure, **whilst protecting business secrets**. This shall include information on passenger demand, fares, costs and

transport covered by the tender and details of the infrastructure specifications relevant for the operation of the required vehicles or rolling stock to enable them to draft well informed business plans. Rail infrastructure managers shall support competent authorities in providing all relevant infrastructure specifications. Non-compliance with the provisions set out above shall be subject to the legal review provided for in Article 5(7).

revenues related to the public passenger transport covered by the tender and details of the infrastructure specifications relevant for the operation of the required vehicles or rolling stock to enable them to draft well informed business plans. Rail infrastructure managers shall support competent authorities in providing all relevant infrastructure specifications. Non-compliance with the provisions set out above shall be subject to the legal review provided for in Article 5(7).".

#### **Amendment 44**

##### **Proposal for a regulation**

##### **Article 1 – point 4 – point –a (new)**

Regulation (EC) No 1370/2007

Article 5 – paragraph 1 a (new)

*Text proposed by the Commission*

CVIII.

CX.

*Amendment*

**CIX. (-a) the following paragraph is inserted:**

**CXI. "1a. Any competent authority, whether it is an individual authority or a group of authorities, including from more than one Member State, shall be entitled to award public service contracts in accordance with the rules laid down in this Regulation.";**

#### **Amendment 68**

##### **Proposal for a regulation**

##### **Article 1 – point 4 – point -a a (new)**

Regulation (EC) No 1370/2007

Article 5 – paragraphs 3a and 3b

*Text proposed by the Commission*

CXII.

CXIV.

*Amendment*

**CXIII. (-aa) The following paragraphs are inserted:**

**CXV. '3a. Until the end of the transitional period referred to in Article 8(2), Member States and, if permitted by national law, competent authorities may exclude from competitive tendering procedures for the award of public service contracts by rail organised by the**

*competent authorities in their territory pursuant to paragraph 3 of this Article, any railway undertaking or operator or any subsidiary directly or indirectly controlled by a railway undertaking or its holding company if the controlling railway undertaking, the controlling holding company or their subsidiaries:*

CXVI.

*CXVII. (a) are licensed and operating domestic rail services in a Member State in which the competent authorities are not permitted to award public service contracts through competitive tendering procedures, and*

CXVIII.

*CXIX. (b) have benefitted from directly awarded public service contracts by rail the share of which in terms of value is higher than 50% of the total value of all public service contracts by rail awarded to that railway undertaking or holding company or their subsidiaries.*

CXX.

*CXXI. For the purposes of this paragraph, "control" means any rights, contracts or other means which, either separately or in combination, and having regard to any relevant considerations of fact or law, provide the opportunity to exert a decisive influence on an undertaking, in particular through:*

CXXII.

*CXXIII. (a) ownership or the right to use all or part of the assets of an undertaking;*

CXXIV.

*CXXV. (b) rights or contracts which confer the right to exert a decisive influence on the composition, voting or deliberations of the social organs of that undertaking.*

CXXVI.

*CXXVII. 3b. Member States and, if permitted by national law, competent authorities may exclude from the competitive tendering procedures any operator or undertaking that is directly or indirectly controlled by a legal or natural person or by persons registered in a third country or third countries, save where that country or those countries have taken measures that allow public service contracts to be awarded through*

#### **Amendment 47**

##### **Proposal for a regulation**

##### **Article 1 – point 4 – point a**

Regulation (EC) No 1370/2007

Article 5 – paragraph 4 – subparagraph 1 – point b

##### *Text proposed by the Commission*

CXXVIII. (b) where they concern the annual provision of less than 300 000 **kilometres** of public passenger transport services or less than **150 000 kilometres** in the case of a public service contract including public transport by rail.

##### *Amendment*

CXXIX. (b) where they concern the annual provision of less than 300 000 **vehicle-km** of public passenger transport services or less than **500 000 vehicle-km** in the case of a public service contract including public transport by rail.

#### **Amendment 75**

##### **Proposal for a regulation**

##### **Article 1 – point 4 – point a**

Regulation EC No 1370/2007

Article 5 – paragraph 4 – subparagraph 1 – point b a (new)

##### *Text proposed by the Commission*

CXXX.

##### *Amendment*

CXXXI. *(b a) where the technical specifications of isolated rail systems in the field of public rail passenger transport differ significantly from the TSI of the main rail network of the respective Member State to which they are not connected.*

#### **Amendment 48**

##### **Proposal for a regulation**

##### **Article 1 – point 4 – point a**

Regulation (EC) No 1370/2007

Article 5 – paragraph 4 – subparagraph 2

##### *Text proposed by the Commission*

CXXXII. In the case of a public service contract directly awarded to a small or medium-sized enterprise operating not more than 23 road vehicles, these thresholds may be increased to either an average annual value estimated at less than

##### *Amendment*

CXXXIII. In the case of a public service contract directly awarded to a small or medium-sized enterprise operating not more than 23 road vehicles, these thresholds may be increased to either an average annual value estimated at less than



EUR 2 000 000 or to an annual provision of less than 600 000 *kilometres* of public passenger transport services.

EUR 2 000 000 or to an annual provision of less than 600 000 *vehicle-km* of public passenger transport services.

### Amendment 63

#### Proposal for a regulation

##### Article 1 – point 4 – point a a (new)

Regulation (EC) No 1370/2007

Article 5 – paragraph 5

#### *Present text*

CXXXIV. 5. In the event of a disruption of services or the immediate risk of such a situation, the competent authority may take an emergency measure. This emergency measure shall take the form of a direct award or a formal agreement to extend a public service contract or a requirement to provide certain public service obligations. The public service operator shall have the right to appeal against the decision to impose the provision of certain public service obligations. The award or extension of a public service contract by emergency measure or the imposition of such a contract shall not exceed two years.

#### *Amendment*

*(aa) Paragraph 5 is replaced by the following:*

CXXXV. '5. In the event of a disruption of services or the immediate risk of such a situation, the competent authority may take an emergency measure. ***A situation of emergency may include the inability of the competent authority to launch in good time a tender procedure for a public service contract and/or to award that contract in good time to an operator.*** This emergency measure shall take the form of a direct award or a formal agreement to extend a public service contract or a requirement to provide certain public service obligations. The public service operator shall have the right to appeal against the decision to impose the provision of certain public service obligations. The award or extension of a public service contract by emergency measure or the imposition of such a contract shall not exceed two years.'

### Amendment 50

#### Proposal for a regulation

##### Article 1 – point 4 – point b

Regulation (EC) No 1370/2007

Article 5 – paragraph 6

#### *Text proposed by the Commission*

CXXXVI. ***"Competent authorities may decide that, in order to increase competition between railway undertakings, contracts for public***

#### *Amendment*

CXXXVII. ***"6. In accordance with Directive 2012/34/EU, and unless prohibited by national law, those competent authorities which are***

*passenger transport by rail covering parts of the same network or package of routes shall be awarded to different railway undertakings. To this end the competent authorities may decide before launching the tender procedure to limit the number of contracts to be awarded to the same railway undertaking."*

**CXXXVIII.**

**CXL.**

**CXLII.**

**CXLIV.**

**CXLVI.**

**CXLVIII.**

**CL.**

**CLII.**

**CLIV.**

*responsible for establishing public transport plans as referred to in Article 2a may decide to proceed to the direct award of public service contracts concerning public rail passenger transport services, subject to the following conditions:*

**CXXXIX.** (a) *the public transport plan contains requirements applicable for the entire duration of the contract concerning the following:*

**CXLI.** - *evolution of passenger volumes,*

**CXLIII.** - *punctuality of services,*

**CXLV.** - *cost-efficiency in terms of capital productivity,*

**CXLVII.** - *frequency of train operations,*

**CXLIX.** - *customer satisfaction,*

**CLI.** - *quality of rolling stock.*

**CLIII.** (b) *the competent authority publishes no later than 18 months before the start of the contract how the requirements set out in (a) are to be complied with through the direct award of a public service contract and regularly evaluates compliance with these requirements in the annual report referred to in Article 7(1). If a complaint of an interested railway operator or undertaking regarding the direct award of the contract is filed, the regulatory body evaluates the reasons provided by the competent authority and takes a decision no later than two months after the complaint was filed. The regulatory body may also act on its own initiative.*

**CLV.** (c) *the regulatory body evaluates no later than 24 months before the end of the current contract whether the requirements set out in point (a) of Article 5(6) and assessed in accordance with Article 7(1) have been complied with. The competent authority shall provide to the regulatory body all data necessary for its evaluation .*

CLVI.

*CLVII. Where the regulatory body concludes that the requirements set out in point (a) of Article 5(6) have not been complied with, it shall without delay oblige the competent authority to award any new public service contract in accordance with Article 5(3). The decision of the independent regulatory authority shall be binding and immediately applicable.*

CLVIII.

*CLIX. By way of derogation to Article 4(3), the duration of such contracts shall not exceed nine years.*

CLX.

*CLXI. The Commission shall adopt delegated acts, in accordance with Article 9-a detailing the requirements set out in point (a) of Article 5(6)."*

## Amendment 51

### Proposal for a regulation

#### Article 1 – point 5

Regulation (EC) No 1370/2007

Article 5 a – paragraph 1

*Text proposed by the Commission*

*Amendment*

CLXII. 1. *Member States* shall in compliance with State aid rules take the necessary measures to ensure effective and non-discriminatory access to suitable rolling stock for public passenger transport by rail for operators wishing to provide public passenger transport services by rail under public service contract.

CLXIII. 1. *The competent authorities* shall, in compliance with State aid rules, take the necessary measures to ensure effective and non-discriminatory access *conditions* to suitable rolling stock for public passenger transport by rail for operators wishing to provide public passenger transport services by rail under *a* public service contract.

## Amendment 52

### Proposal for a regulation

#### Article 1 – point 5

Regulation (EC) No 1370/2007

Article 5 a – paragraph 2 – subparagraph 2 – introductory part

*Text proposed by the Commission*

*Amendment*

CLXIV. The competent authority may comply with the requirement set out in the first subparagraph in *one of the*

CLXV. The competent authority may comply with the requirement set out in the first subparagraph in *various* ways *that*

*following* ways:

*facilitate economies of scale, such as:*

### **Amendment 53**

#### **Proposal for a regulation**

##### **Article 1 – point 5**

Regulation (EC) No 1370/2007

Article 5 a – paragraph 2 – subparagraph 2 – point a

*Text proposed by the Commission*

CLXVI. (a) by acquiring itself the rolling stock used for the execution of the public service contract with a view to making it available to the selected public service operator at market price or as part of the public service contract pursuant to Article 4(1)(b), Article 6 and, if applicable, to the Annex,

*Amendment*

CLXVII. (a) by acquiring, itself, **at market price**, the rolling stock used for the execution of the public service contract with a view to making it available to the selected public service operator at market price or as part of the public service contract pursuant to Article 4(1)(b), Article 6 and, if applicable, to the Annex,

### **Amendment 54**

#### **Proposal for a regulation**

##### **Article 1 – point 5**

Regulation (EC) No 1370/2007

Article 5 a – paragraph 2 – subparagraph 2 – point c a (new)

*Text proposed by the Commission*

CLXVIII.

*Amendment*

**CLXIX. (ca) by cooperating with neighbouring local authorities in order to create a larger pool of rolling stock.**

### **Amendment 55**

#### **Proposal for a regulation**

##### **Article 1 – point 5**

Regulation (EC) No 1370/2007

Article 5 a – paragraph 2 – subparagraph 3

*Text proposed by the Commission*

CLXX. In the cases referred to in points (b) and (c), the competent authority shall have the right to require the public service operator to transfer the rolling stock after the expiry of the public service contract to the new operator to whom a contract is awarded. The competent authority may oblige the new public transport operator to take the rolling stock over. The transfer

*Amendment*

CLXXI. **3.** In the cases referred to in points (b) and (c) **of the second subparagraph of paragraph 2**, the competent authority shall have the right to require the public service operator to transfer the rolling stock after the expiry of the public service contract to the new operator to whom a contract is awarded. The competent authority may oblige the

shall be done at market rates.

new public transport operator to take the rolling stock over. The transfer shall be done at market rates.

## Amendment 56

### Proposal for a regulation

#### Article 1 – point 5

Regulation (EC) No 1370/2007

Article 5 a – paragraph 3

*Text proposed by the Commission*

CLXXII. 3. If the rolling stock is transferred to a new public transport operator the competent authority shall make available in the tender documents detailed information about the cost of maintenance of the rolling stock and about its physical condition.

*Amendment*

CLXXIII. 4. If the rolling stock is transferred to a new public transport operator the competent authority shall make available in the tender documents detailed information about the cost of maintenance of the rolling stock and about its physical condition.

## Amendments 57 and 82

### Proposal for a regulation

#### Article 1 – point 5

Regulation (EC) No 1370/2007

Article 5 a – paragraph 4

*Text proposed by the Commission*

CLXXIV. 4. *By [18 months after the date of entry into force of this Regulation] the Commission shall adopt measures setting out the details of the procedure to be followed for the application of paragraphs 2 and 3 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 9a(2).*

*Amendment*

CLXXV. *deleted*

## Amendment 58

### Proposal for a regulation

#### Article 1 – point 7 – point a

Regulation (EC) 1370/2007

Article 7 – paragraph 1

*Text proposed by the Commission*

CLXXVI. "1. Each competent authority shall make public once a year an

*Amendment*

CLXXVII. "1. Each competent authority shall make public once a year an

aggregated report on the public service obligations for which it is responsible, the starting date and duration of the public service contracts, the selected public service operators and the compensation payments and exclusive rights granted to the said public service operators by way of reimbursement. The report shall distinguish between bus transport and rail transport, allow the performance, quality and financing of the public transport network to be monitored and assessed and, if appropriate, provide information on the nature and extent of any exclusive rights granted. Member States shall facilitate central access to these reports, for instance through a common web portal."

aggregated report on the public service obligations for which it is responsible, the starting date and duration of the public service contracts, the selected public service operators and the compensation payments and exclusive rights granted to the said public service operators by way of reimbursement. ***The report shall assess performance in terms of compliance and specify all transport service indicators, including punctuality, reliability, cleanness, user satisfaction as measured by public opinion polls, and the minimum capacity utilisation rate.*** The report shall distinguish between bus transport and rail transport, allow the performance, quality and financing of the public transport network to be monitored and assessed and, if appropriate, provide information on the nature and extent of any exclusive rights granted. Member States shall facilitate central access to these reports, for instance through a common web portal. ***The Commission shall prepare a summary of these reports and submit it, in all working languages, to the European Parliament and the Council.***";

## Amendment 59

### Proposal for a regulation

#### Article 1 – point 8 – point a

Regulation (EC) No 1370/2007

Article 8 – paragraph 2 – subparagraph 1

#### *Text proposed by the Commission*

CLXXVIII. "2. Without prejudice to paragraph 3, the award of public service contracts ***by rail with the exception of*** other track-based modes such as metro ***or*** tramways shall comply with Article 5(3) ***as*** from 3 December 2019. ***All public*** service contracts ***by other track-based modes and by road must have been*** awarded in compliance with Article 5(3) ***by 3 December 2019 at the latest.*** During the transitional ***period running until 3 December 2019,*** Member States shall take measures to gradually comply with Article 5(3) in order to avoid serious structural

#### *Amendment*

CLXXIX. "2. Without prejudice to paragraph 3, the award of public service contracts ***concerning transport by road and*** other track-based modes such as metro, tramways ***or tram-train systems*** shall comply with Article 5 from 3 December 2019. ***Public*** service contracts ***concerning public passenger transport by rail shall be*** awarded ***from 3 December 2022*** in compliance with Article 5. ***By 3 December 2022 the competent authorities responsible for establishing the public transport plans referred to in Article 2a shall be entrusted with all powers***

problems in particular relating to transport capacity.";

*necessary for awarding public service contracts in accordance with Article 5. During the transitional periods, Member States shall take measures to gradually comply with Article 5(3) in order to avoid serious structural problems in particular relating to transport capacity."*;

## Amendment 60

### Proposal for a regulation

#### Article 1 – point 8 – point a

Regulation (EC) No 1370/2007

Article 8 – paragraph 2 – subparagraph 1 a (new)

*Text proposed by the Commission*

CLXXX.

*Amendment*

CLXXXI. *"Within six months after the first half of the transitional periods, Member States shall provide the Commission with a progress report, highlighting the implementation of any gradual award of public service contracts that comply with Article 5. On the basis of the Member States' progress reports, the Commission may propose appropriate measures addressed to Member States."*;

## Amendment 61

### Proposal for a regulation

#### Article 1 - point 8 – point b

Regulation (EC) No 1370/2007

Article 8 – paragraph 2 a

*Text proposed by the Commission*

**CLXXXII.** 2a. Public service contracts for public passenger transport by rail directly awarded between 1 January 2013 and 2 December 2019 may continue until their expiry date. However they shall, in any event, not continue after 31 December **2022**.

CLXXXIV.

CLXXXVI.

*Amendment*

**CLXXXIII.** "2a. Public service contracts for public passenger transport by rail that do **not comply with Article 5**, directly awarded **before 3 December 2022**, shall in any event **expire at the latest on ... \***.";

CLXXXV. \_\_\_\_\_

**CLXXXVII.** *\* OJ: please insert the date 10 years after the entry into force of this Regulation (i.e. of the amending act - 2013/0028(COD))*

## Amendment 62

### Proposal for a regulation

#### Article 2

##### *Text proposed by the Commission*

CLXXXVIII. This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

##### *Amendment*

CLXXXIX. This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*. ***It shall be made available in the form of a text consolidated with Regulation (EC) No 1370/2007, which it shall amend within three months of its publication.***