

# POLICY BRIEF

## EUROPEAN TRANSPORT REGULATION OBSERVER

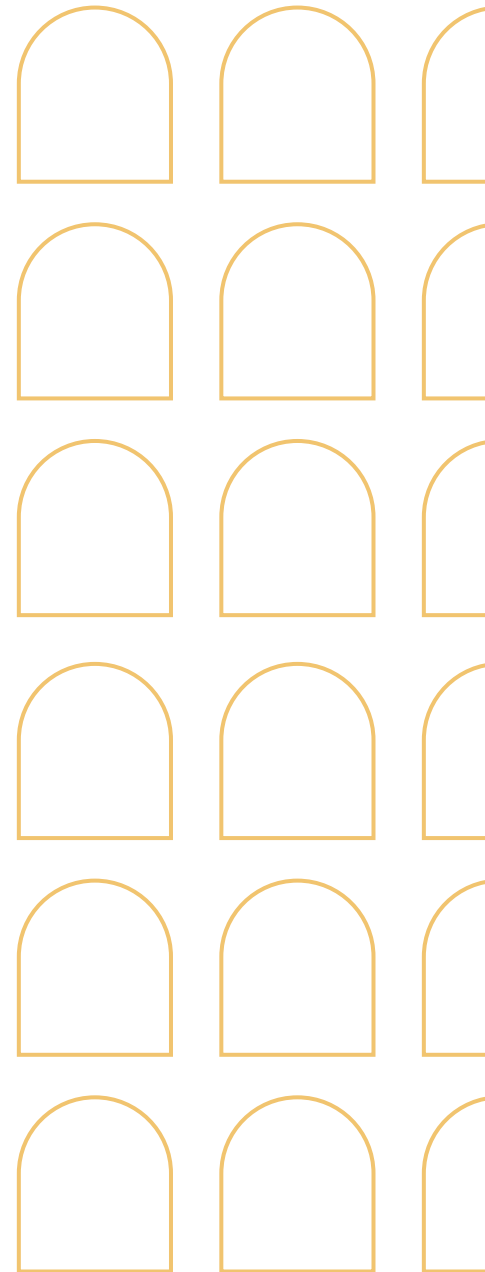
### Tendering railway public service obligation contracts: A balance sheet

Regulation 1370/2007, as amended by the Fourth Railway Package, set the date of 25 December 2023 for the opening to competition of services subject to public service obligations. As opposed to the model of “competition in the market” for commercial services, the model for PSO services is that of competition for market’, i.e. tendering of contracts for the competitive selection of the operator with whom the PSO contract will be concluded. Some Member States started tendering for PSO contracts some years ago. This is the case in Sweden and Germany. These experiences are of great interest to identify the potential of tendering, but also the challenges it faces. In France, the regions have started tendering PPO services more recently. Spain has made use of the transitional period foreseen in Regulation 1370/2007. The contract between the State and Renfe is valid until 2027 and can be extended for a further five years, although the third clause bis establishes that for some services, which account for around 3% of the contract, the validity is limited to 1 January 2026. This means that the first tender could take place in the coming months. The CNMC has opened a consultation on this issue. The experience of the pioneer countries will be of interest in addressing the challenges of tendering, including: the subject of the contracts (optimal size), duration, progressive timetable for tendering, access to rolling stock, human resources, exemptions from the tendering obligation.

On 11 December 2024, PTFE-FFE organised a workshop in Madrid with the Florence School of Regulation, Transport area, on ‘Best practices: Tendering Public Service Obligations Contracts in Railways.’ This Policy Brief summarises the main takeaways from the workshop.

#### Authors

Juan Montero, EUI; Elodie Petrozziello, EUI.



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## Tendering Railway Public Service Obligation Contracts: A Balance Sheet

A comment by Juan Montero and Elodie Petrozziello, Florence School of Regulation – Transport Area

The Fourth Railway Package set 2023 as the date for the obligation to tender public service obligation contracts in the European Union. Exemptions, a long transition period and plain infringements of the legal obligation are delaying tenders in many member states. However, some member states already had a long tradition of such tenders (Sweden and Germany) and others are effectively starting to tender as required by Regulation 1370/2007, as in the case of France. Lessons can be learnt from the experiences in these countries.

Experience shows that there are tangible benefits from tendering these contracts. Tendering has the potential to reduce the cost of services for public transport authorities (PTAs). Competition in the market forces railway undertakings to more effectively control costs. Cost reduction can be as much as 25% but it tends to stabilise at around 15% of the cost of providing PTAs with services. As a consequence, with the same funding PTAs can improve PSO services by introducing new routes and more frequencies, etc.

However, in order to fully benefit from the potential benefits, it is necessary to properly design the tendering process and the contracting conditions. A sweet spot needs to be identified in which enough bidders are attracted to create real competition for the market while ensuring that railway undertakings have no incentive to overbid and later not be in a position to meet their obligations, as has sometimes happened in the United Kingdom and Sweden.

For the success of tenders a fundamental element is the definition of the right lots. Experience in Germany shows that large packages of services exclude newcomers and so reduce competition in the tender. However, very small packages tend to be inefficient as service providers cannot exploit economies of scale and density. As we have previously explained (Montero et al. 2022), we recommend starting with a volume between 1.5M and 3M train-kms per contract in the first period of liberalisation, and eventually increasing to larger

contract sizes between 3M and 5M train-kms as the market matures. In any case, in addition to volume, the geographical distribution of services and the existence of service facilities (stations, maintenance facilities, etc.) should be taken into consideration to define the lots to be put out for tender.

Progressive tendering is also recommended. A scheduled evolution of tenders over time enables both the incumbent and newcomers to participate in all tenders at their best capacity, and PTAs to properly manage the tendering. Progressive tendering allows all stakeholders to learn from previous tenders. Finally, tendering over the years creates a market of continual tenders, while tenders concentrated in time close the market after the allocation of contracts, making it more difficult for newcomers to establish themselves in the market.

The tendering conditions are always relevant. Key features are the duration of the contract, the awarding criteria, the allocation of risk, conditions on rolling stock and conditions on human resources. Starting with the duration of the contract, 15 years is the limit initially set in Regulation 1370/2007. This is a long duration but it is less than the regular life of rolling stock, which creates risk for bidders. Shorter durations are feasible if bidders can rely on rolling stock provided by PTAs, ROSCOs, etc.

Awarding criteria set incentives for bidders. The temptation to rely exclusively on price and award the contract to the lowest bidder should be resisted. It certainly increases the chances of reducing the cost of the provision of the service, but it encourages aggressive bidding and future problems when railway undertakings cannot meet their commitments. Experiences in the United Kingdom and Sweden indicate the benefit of taking into consideration the quality of the provision of services and ensuring continuity of service for the duration of the contract.

The allocation of risk is equally important. Again, PTAs might be tempted to pass all the operating risk to bidders. However, passing all the risk to railway undertakings will certainly increase the price required by bidders, sometimes very substantially. Regarding incentives, passing risks that are beyond the control of railway undertakings, such as increases in ridership due to the evolution of the population or the economy, certainly does not discipline the behaviour of the contractor. Limiting the risks passed to railway undertakings to those that they can effectively manage will reduce the

cost of the contract for PTAs and provide the right incentives.

Rolling stock is the main cost and the main risk for railway undertakings and it determines the success of the tendering procedure. Rolling stock is expensive, its life extends beyond the usual duration of contracts, and if the contract is not renewed the company will have difficulty using it in other places due to lack of interoperability. As a result, rolling stock is the main barrier to entry for newcomers. Markets for rolling stock might emerge over time, but at the moment they are not a reality in most member states. An alternative is to have rolling stock owned by the PTA, making it available for all bidders.

Human resources are another large cost in the operation of railway services. The rules governing the transfer of workers from the incumbent to the newcomer winning the tender will determine the cost of the service and the possibility for the newcomer to differentiate its services, and also whether the newcomer has the resources to start the operation of the service.

Defining a fair period between the awarding of the contract and the start of operations increases the possibility for newcomers to have access to rolling stock and human resources, which facilitates market entry and therefore more competitive tendering.

Finally, incumbents have to prepare for tendering. They not only have to meet massive data sharing requirements to level the playing field for the tenders. They have to create specific teams to prepare the bids, they have to change their culture and accept that they will lose some contracts and that they have to manage costs and certainly the delivery of services after winning the contract. Experience shows, however, that incumbents have a fair chance of adapting to the new scenario, win a fair share of tenders (as in Germany and France) and become more efficient and competitive thanks to competitive awarding of public service obligation contracts.

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## Tendering experiences of railway PSO contracts

By Elodie Petrozziello and Juan Montero,  
Florence School of Regulation

Regulation 1370/2007, amended by the Fourth Railway Package, set 25 December 2023 as the deadline for opening public service obligation (PSO) services to competition. Unlike commercial services, PSO services use a 'competition for the market' model, in which contracts are tendered in order to select operators. Some member states, including Sweden and Germany, have been tendering PSO contracts for several years, which provides valuable insights into the benefits and challenges of this approach. France has only recently begun tendering for these services.

Spain has made use of the transitional period provided for in Regulation 1370/2007. The contract between the state and Renfe is valid until 2027 and can be extended for a further five years, although the third clause bis establishes that for some services, which account for around 3% of the contract, the validity is limited to 1 January 2026. This means that the first tender could take place in the coming months. The CNMC has opened a consultation on this issue. The experiences of the pioneer countries will be of interest as they address the challenges of tendering, including the subject of the contracts (optimal size), duration, progressive timetables for tendering, access to rolling stock, human resources and exemptions from the tendering obligation.

### Public service obligations for rail services in the European Union

The Fourth Rail Package requires tenders to be organised when awarding public service contracts. This framework aims to create a market in the European Union (EU) that enables various railway companies to offer their services in markets outside their national territories. This new legal structure represents a significant shift from traditional national rail systems which fosters competition in the sector. [Regulation 1370/2007](#), modified by [Regulation 2016/2338](#), applies to public passenger transport services by bus and rail. It lists the conditions that govern transport operators when compensated or given exclusive rights by public transport authorities (PTAs) to provide public transport services which

are in the general interest but would otherwise not be commercially viable. The contract awarding process must be fair, transparent and non-discriminatory.<sup>1</sup> With this aim, a public service obligation (PSO) can be imposed and compensated.

With the 2016 amendment, the principle of competitively awarding public service contracts in the railway sector was introduced. It allowed longer transition periods to enable PTAs and railway undertakings to adapt to the new rules, and also some exemptions. The transition period allowed direct awards until 25 December 2023, which means that some PTAs will only start tenders in 2033. Although this policy brief focuses on the tendering process, directly awarding rail contracts remains possible in exceptional and well-defined circumstances. In particular, a PTA can directly award a service when it is justified by the geographical or structural characteristics of the market, if the award would improve the quality of the service and/or result in cost-efficiency and lastly if the volume of the contract is modest (either by having an estimated average annual value below €7.5 million year or fewer than 500,000 kilometres) (Laget-Annamayer & Perennes, 2025).

### EU pioneers

Several countries have a long history of competition in the market for PSOs and have been experimenting with tendering these contracts for years. This is the case of Sweden and Germany. Sweden stands out as an example of successful PSO tendering. The Swedish PTA began bidding for public service contracts in 1988. The 22 regional transport authorities collaborated with the national authority to organise these tenders. Germany initiated its tendering process in 1996 and gradually made it a common practice for public authorities to award contracts to private service providers. Although Germany's approach is often viewed as a success story, it has its limitations. In France, the tendering process is currently underway and there are limited lessons to draw from its results so far.

### The tendering process

The process of organising a tender can be cumbersome as it requires both public transport authorities and railway undertakings to go through complex administrative procedures. To succeed, these institutions need to be specialised and receptive to innovation. The role of the PTA is to

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<sup>1</sup> Article 4 of Regulation 1370/2007



draft the contract and design a calendar that defines the regional scope of the tendering and the date for it to happen. The purpose of the concession contract is to outline the terms and conditions for providing and financing public transport services. Contracts are granted following a competitive awarding process that is publicly communicated, with PTAs, whether national or regional, playing a central role in the process. This means that PTAs must create specifications for tender invitations under the appropriate conditions and manage the entire process. The consequence of this requirement is a need for transparency. PTAs must anticipate the tender invitations and publish comprehensive information notices containing detailed descriptions of the services required, as mandated by EU law. This task demands significant access to information from the incumbent rail operators and the infrastructure manager, together with a high level of web expertise. This is true in countries like France, where the law imposes obligations to share information and regulators are empowered to enforce these obligations. Ultimately, PTAs have the flexibility to design the framework of contracts, which allows for creativity and innovation. This flexibility turns the tendering process into a realm of opportunities for PTAs.

Regarding the institutional aspects of the process, the regulator does not usually oversee the tendering process but may choose to recommend certain actions to address challenges related to the tendering calendar. For several reasons, it is not ideal for all tenders to occur simultaneously. First, the costs associated with participation are quite high. While established railway companies can afford to respond to all open calls, new entrants may find the cost prohibitive. On the human resources side, having the necessary skills and personnel available to manage multiple tenders at the same time can be challenging. Therefore, it is preferable to adopt a staggered timetable for competitively awarding contracts (Montero et al. 2022).

## The size and geographical scope of tenders

Tenders must specify the geographical scope of the bid, and in particular the volume of each lot. They must strike a balance. Packages need to be large enough to achieve economies of scale, which is very important for efficiency, but not being excessively large, as an excessive size can lead to increased complexity. This complexity can create barriers to entry, making it less appealing

for newcomers to engage in the tender. Early on, academic literature identified that market contestability diminishes as the size of public service contracts increases. In other words, the larger the contract the more relevant the barriers to entry. More resources such as rolling stock and staff are needed, which in turn entails higher risks. In other words, the size of public service contracts affects the possibilities of newcomers winning tenders. For example, an analysis of 77 tenders for public service contracts in Germany showed that the larger the network size (measured in kilometres) the more likely the incumbent DB Regio is to win. While the average length of networks won by DB Regio was 171 KM, for the other undertakings it was 124 KM (Lalive & Schmutzler 2008). Even if a large segment of the PSO is open for tender in Germany, the market share of newcomers is below 25% (Monopolkommission 2009). This has led to a consensus in the economics literature that public transport authorities should not aim for one single public service contract in their territory but instead should divide the services into a number of different contracts.

However, there are limits to the allotment of public service contracts. The greater the number of tenders and contracts, the higher the transaction costs. Furthermore, there are operative constraints on the size of the operation to make them efficient. The tendered packages are between 4,000,000 and 6,000,000 train/kilometres.

As a reference, it is of interest to identify the size of public service contracts in the EU pioneer countries in 2017. The average contract size in train-kms in Germany was 3.5M and in Sweden 5.8M (Perennes 2020). In both countries, tenders were organised by regional public transport authorities. In contrast, in the UK, where tenders were organised at the national level, yet covering all rail services and so also including very profitable long-distance services, the average contract size was 28M.

However, this size has been identified as one of the potential reasons for inefficiencies in the system, particularly the difficulty of curbing costs (McNulty 2011). Another interesting reference can be identified in the EU legislation itself. When the Commission proposed to amend [Regulation \(EC\) 1370/2007](#) for the Fourth Package, it included a provision limiting the size of public service contracts. Public service contracts could not include more than a third of the total national passenger volume under public

contract, or 10 million train-kms (whichever the largest). This proposal did not make it through to the final text but it provides an interesting reference.

We share the conclusion of Perennes (2020) recommending starting with a volume between 1.5M and 3M train-kms per contract during the first period of liberalisation and eventually increasing to larger contract sizes between 3M and 5M train-kms as the market matures. This evolution is coherent with our recommendation to space tenders over time, that is, not to tender all contracts at the same time.

Finally, it is important not to rely solely on theoretical volume calculations. PTAs play a crucial role in the tendering process also because of their knowledge of the territory and the political context. When they divide up the area, they consider geographical factors and identify key elements that affect this volume such as maintenance facilities, depots and stations. A thorough process increases the possibility of having strong competition for the bid.

### **Information needed for the tender**

It is essential to effectively communicate information in order to entice strong candidates to tender. Collecting data from incumbent rail operators, and from the infrastructure manager, is the responsibility of PTAs. They are tasked with ensuring that candidates receive accurate information and have access to it. In most states, the PTA heavily relies on the support of the incumbent as it authorises the dissemination of information throughout the tendering process.

In some states like France, the PTA has established a Q&A platform to facilitate communication. If candidates believe they are lacking information, they can submit their inquiries to the PTA through this platform, which is then required to provide the necessary data. Instead of resorting to lengthy court proceedings, it is wise for the incumbent to proactively share the expected information in advance.

This process can involve sharing thousands of files simultaneously. On average, candidates receive approximately 3,000 files of data for a single tender. Therefore, candidates must be prepared to analyse a substantial amount of information. In addition, there might be instances in which companies are in the dark about the existence of intermodal consortiums that enable intermodal transport in the region. Therefore, fostering communication among old and new parties is also important.

### **The benefits of tendering PSOs**

Tenders can significantly reduce the price demanded by a railway undertaking to operate in a particular area. This is evident when comparing contracts previously awarded following tenders. On average, the cost of providing a private service is reduced by 20%-25% in the first bidding process. However, this reduction is not a stable figure as railway undertakings tend to be over-optimistic when designing their bids. Some companies can even end up bankrupted by over-optimistic contracts, the so-called 'winner course.' During the second round of bids, rail undertakings tend to become more concerned with the real cost of providing services. Hence, the cost reduction stabilises at 10-15% in the subsequent bids. Often, public transport authorities take cost reduction as an opportunity to increase services in terms of train-kms, which also leads to an increase in ridership.

This tendency to overbid has been spotted by PTAs as rail undertakings cannot cover the cost of providing the service. In response to this regulatory authorities often concede modifications to the contract conditions either while the contract is still running or for subsequent tenders. By doing this, PTAs ensure that there will be a minimum number of rail undertakings bidding in each tender. In addition, PTAs must be aware of illegal behaviour while tendering. Railway undertaking bids are often the same ones each time. In Sweden, in certain instances there has been a suspicion of coordinated offers. Apart from cost reduction, competitively awarding PSO contracts frequently means that the service is of a higher quality. Rail operators offer their services and provide the best value for money in order to win the bid.

### **Challenges faced by the incumbent rail undertaking when dealing with competition**

The introduction of the tendering process entails a huge evolution and a big transformation for incumbent rail companies. At first, it can be very difficult to decide on the right strategy. It is important to diversify efforts and use existing national and local expertise when entering bids, for instance by mixing staff who are already experienced in competition. Most incumbents can mix expertise by having in their tendering teams people who have experience in freight transport. They have experienced competition and know how to handle it. People with such experience are able to build the

expertise and competence of new ones coming into the competition.

The second big challenge is a change of mindset. Incumbents must be prepared to lose. It is very unlikely that they can keep the same market share in the future. Therefore, the incumbent must be strategic and reinvent its approach by developing some critical thinking. From the PTA perspective, the incumbent shifts from a 'power position' to a 'humble position' as it can no longer impose its views. It now must listen to the needs of the PTA and address them.

The third challenge is definitely the level of competitiveness with which the incumbent enters a bid. As most incumbents are big companies, being more competitive is a process that can require years. However, it is not a gradual process, competitive intensity increases throughout the process of bidding. The incumbent also needs to submit data to the PTA. When the PTAs give data to all the competitors, it is data coming from the incumbent. In some states, the incumbent transfers ownership of rolling stock and maintenance facilities to the PTA. Therefore, while the incumbent is transforming its strategy and approaches, it also needs to accompany the PTA in handling this data and the ownership of rolling stock and depots. This is quite a thorough transformation that will probably take years to deploy, but it is also a great opportunity to reach maturity.

## Contracting terms

### *Duration*

The Regulation establishes a maximum duration of 15 years for these contracts (Article 4). This duration can be extended, but the maximum extension allowed is 50% (up to 22.5 years). PTAs must also consider the mobilisation period, which is the time from the notification of the contract to the commencement of actual operations, which is generally 1.5 years.

Although tendering is indeed a way to introduce competition in a market in which there would not be any, it also needs to be properly thought through. If inadequately and/or superficially done, it can annihilate the benefits of lowering the prices and boosting innovation. Contracts that last 15 years or more entail higher risks for public transport authorities, which cannot accurately assess the evolution of external factors. However,

long-term contracts are understandable as most railway companies bear the cost of purchasing and maintaining their rolling stock. Contracts that exclude such purchases typically last between five and ten years with potential extension clauses if transport operators acquire new vehicles. In the case of Sweden, submitting over-low bids can be risky. Some bidders overlook the fact that rolling stock requires maintenance, which incurs additional costs. However, really short contracts are possible in a framework in which the risk associated with rolling stock is significantly lower. In such cases, the duration of contracts can be as brief as three years, but this also means that companies do not have much time to introduce innovation. The duration is also dependent on whether a maintenance depot exists on the territory or if it needs to be built.

In essence, if a rail operator needs to buy rolling stock and whenever it needs to build a new depot, the pre-exploitation period is going to be longer. The timing is not only the duration of the progressive tendering but also includes the preparatory period. In instances in which the newcomer must bring the rolling stock and own the maintenance facilities, the PTA must grant a longer contract. In a nutshell, if the risk of rolling stock can be reduced the ideal length of contracts is five to seven years.

### *Maintenance facilities*

Regarding maintenance facilities, some regions request the incumbent to provide maintenance support to these facilities before the end of their contracts. This allows new competitors to operate in well-organised maintenance facilities. An example is the Normandy region, where they divide maintenance facilities into two separate sections to accommodate two different operators. The necessary construction work to split the building is carried out by SNCF, the incumbent operator, prior to the conclusion of the contract. In other regions, however, there are instances in which the authority asks the new competitor to build its own maintenance facility. In Europe, there are instances in which the PTA owns the depot but the rail operator conducts the maintenance. For example, in the Stockholm area the transport authorities own three maintenance facilities specifically built for their railway stock while the operator performs the maintenance. The approach taken really relies on the legal framework, and if it is lacking it depends on the circumstances of the tendered geographical area. This flexibility enables regions to make



choices based on their specific financial circumstances.

### *The ownership of rolling stock*

The cost of purchasing and maintaining rolling stock is the primary financial risk for railway undertakings. Companies are keener to participate in a tender if they have some sort of reassurance that the rolling stock can be reused after the end of the contract. However, public transport authorities struggle to mitigate the risks. They cannot just mandate the creation of a Rolling Stock Company (ROSCO). Regulating the renting of rolling stock is not ideal either. Nonetheless, it is universally accepted that ownership of the material cannot be required without adequate compensation.

When it comes to acquiring new rolling stock, the question arises of whether the operator or the PTA should be responsible for purchasing it. There is no universal rule governing this issue, and responses can vary significantly among regions. Some regions have established dedicated bodies to handle the purchase of new rolling stock, while others require the operator to make the investment. Hence, the question of rolling stock ownership revolves around whether it belongs to the operator or if transport authorities take ownership and assume financial responsibility. The latest scenario sees PTAs increasingly taking over this responsibility. In the initial tenders, PTAs fully subsidised the acquisition of rolling stock. However, in new tenders they often offset the full cost of purchasing the equipment, and they are interested in having operators manage the acquisition of rolling stock. Simply put, the responsibility for acquiring rolling stock is being handed over to operators through the tender process.

Another approach is the French one, in which PTAs establish new entities, referred to as local or regional companies, to manage the transfer of rolling stock. One significant reason for this move is that the PTAs do not wish to consolidate their debt. By creating these new companies, they effectively transfer the responsibility for debt consolidation. These companies may also rent the rolling stock to the operators. This situation poses challenges for the incumbent rail operator, which is likely to prefer to avoid debt repayment. The concern is that if debt is transferred to them, it could also impact

their competitors, who may have similar positions regarding debt management.

### *Human resources*

Another factor to take into account is human resources. Although the PSO is carried out by a different company, employees must be transferred to the incoming one. The PTA has the responsibility to ensure that the process is as smooth as possible, that workers' rights are respected and that innovation is safeguarded. Subrogation can be easier for the new railway undertaking to handle, but it limits the scope for innovation. This transfer of the workforce is done to secure the continuity of the employees' contracts. Experience in France shows that only 85% of the workforce is transferred. This means that the winning company lacks staff and has to hire new workers.

It might be time to include national labour law frameworks that clearly govern the transfer of staff from one company to the other when PSO contracts are awarded.<sup>2</sup> The idea is to increase the transparency of the transfer procedure to enable the success of the tender and to have all the relevant information concerning the number of employees that will be transferred, the regeneration of the stockholders and deadlines. This is sometimes complicated as the regulator has to clarify via jurisprudence. Therefore, established procedures can ease the process and avoid both over- and under-transfer of employees.

### *Awarding criteria*

Awarding criteria are important. Experience shows that it is not advisable to rely exclusively on prices. The reality in France is that price weighs, on average, 40% in the final decision. The quality of the service weighs 60% as it mirrors the tangibility of the candidate's proposal. In other words, the quality of the service proposed reassures the PTA that the railway undertaking is not selling dreams. There are several criteria to award the contract, and they involve how candidates manage the rolling stock, how they are planning to build and manage the depot facility, and how they are going to organise staff on and outside the trains.

PTAs also consider the impact of environmental and sustainable development, which can vary between 5% and 10% depending on the state/region. The

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2 Preamble (16) of Regulation 1370/2007 and Directive 2001/23



authorities count how the candidates bidding demonstrate their planning during the pre-exploitation period. This period is crucial because it shows the PTA how the rail operator manages the time between the award of the contract and the actual start of it.

An important factor beyond just price is risk allocation. A contract fundamentally revolves around the risks involved and the provisions associated with them. Technically, PTAs can shift all the risk onto the railway operator. However, if that happens, operators will inevitably increase their prices to mitigate those risks. The more risk PTAs pass to the candidates, the higher the price they request. Moreover, it is pointless to pass the risk on to operators if they cannot manage it. This approach does not promote a situation in which both parties benefit. It fails to serve the broader interest.

On this line of thought, the PTA should cap responsibilities and penalties. Without a cap, the door is open to vague provisions, which lead candidates to promise unrealistic prospects. The aim is for a contract that achieves a fair balance, with the PTA assuming some risks that are not the operator's responsibility. While the railway undertaking is accountable for production and maintenance, it cannot be held responsible for unpredictable events like climate disasters. Therefore, it is crucial to adopt a balanced approach and ensure that the contract is equitable to reduce the need for extensive provisions, and ultimately achieve the best price for everyone involved.

## Conclusion

The public service obligation to contract out rail services mainly covers regional services and allows PTAs to ensure that passengers can access safe, efficient, attractive and high-quality public passenger transport services. Following the Regulation, the PTA must conclude a public service contract when awarding exclusive rights to a transport company to operate a particular route or when financially compensating it for the cost incurred in providing a PSO. Although the obligation to award rail public service contracts is fairly new in Europe, these contracts have been used by public transport authorities for a long time. Indeed, they serve the state and its citizens as guarantees that a leg of a journey is covered even though it is not commercially viable for the railway operator. The financial compensation incentivises this.

There are still instances in which tendering by putting in place a competitive contractual procedure is not always necessary. However, when it is necessary, a learning curve is fundamental for national PTAs and regulatory authorities to improve the services tendered. Key lessons have been highlighted in this policy brief. Perhaps the most important one is that the PTA has the authority to ensure the tendering process occurs smoothly. Over the years, risk sharing has evolved, from the railway undertaking a varying ridership risk – in other words, fluctuation in the volume of passengers – to the public transport authority taking on the risk. The change in risk-bearing was because service contracts do not allow a railway undertaking to manage profits by employing a pricing strategy in accordance with demand.

The duration of PSO contracts must be carefully determined considering factors such as rolling stock acquisition and the need for operators to recover investments. If companies have to acquire rolling stock, then PTAs should grant a contract that lasts for a longer period as the rail operator needs to financially recover the investment made. If it is for the authority to acquire the rolling stock, then it can significantly reduce the period. Staggering contract periods can enhance competition and allow continual learning and improvement. Some railway undertakings might not be in a position to bid for several projects simultaneously. If tenders do not coincide, the public transport authority has more resources to devote to each public service contract. This time differentiation also allows all parties to learn from previous bids and make better future ones. Last, the optimal size and number of contracts require careful balancing. Contracts must be sufficiently long to incentivise efficiency while remaining manageable for both operators and the PTA. By carefully considering these factors, PTAs can effectively utilise PSO contracts to deliver critical rail services for their local and rural communities.

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## Sweden – A competitive tendering experience

A comment by Bertil Hylén, former analyst at VTI Transport Research

In 1950-1970 there was a boom in road transport and few believed that rail had any future. Long-distance services were few and slow, and regional services were seen as having no future. Regional and local public transport was very fragmented. The turnaround came when regional transport authorities (RTAs) assumed responsibility for regional public transport in the 1970s. Competitive tendering was introduced first for bus services and gradually for commuter and regional rail services. The RTAs improved the frequency of services and started to acquire new rolling stock. Multi-modal ticketing integration was seen as absolutely essential. Low access charges also helped expand services. In 2024 about half of Sweden's rail services (measured in passenger-kms) were tendered out.

Long distance services are expected to operate on fully commercial terms. The only services that may be regarded as passenger service obligations (PSO) are those to northern Sweden. In 2025 only three services, two to northern Sweden and one to the Danish-German border, are subsidised by the state after tendering. It is therefore possible to run almost all long-distance services on commercial terms in Sweden, a country with only 10 million inhabitants and no road congestion. Countries with 50-60 million inhabitants should be able to operate long distance services without subsidies.

RTAs can choose to operate services by bus or train. It may therefore not be correct to characterise regional rail services as PSOs.

There have of course been setbacks. The Stockholm regional service (*Pendeltåg*) failed in 1999. Only 75% of the contracted trains operated because of staff shortages. There have been some appeals. In a few cases the appealing bidder has won the contract. There have been cases in which the operator has not been able to pay for the maintenance of rolling stock and has had to be dismissed.

In 2024 there were several noteworthy developments in the Swedish (tendered) rail scene:

- 1) Stockholm region commuter services (*Pendeltåg*). MTR handed over (early) to SJ. MTR paid a 90M€ exit fine to Stockholm RTA.
- 2) *Mälartåg* (interregional RTA in the Mälaren region). MTR handed over (early) to Transdev. MTR paid a 40M€ exit fine.
- 3) Stockholm Metro (*Tunnelbana*). MTR left the contract. A new operator from 2025: Connecting Stockholm (based in UK + Singapore).
- 4) Stockholm-Luleå/Narvik. Vy did not wish to use a two-year extension clause. SJ got a 1+1 year directly awarded 'emergency' contract.
- 5) MTR sold MTRX (Stockholm-Göteborg commercial operations) to VR.
- 6) Öresundståg Skåne-Danmark. Vy, VR and Transdev bid. VR won from December 2025. The contract will only be for five years as new rolling stock is planned from 2030 onwards.

and...

- Almost all traffic at Stockholm Bromma airport moved to Arlanda. This may mean changes in Arlanda rail services.
- Swedish NATO membership triggered many (more or less realistic) demands for rail and road improvements.

For many years the EU has sought competitive tendering of (non-commercial) services. In Sweden this is now generally accepted. There is no intention to use the EU exception rules other than as exceptions. There is some political debate about rail tendering but this is practically nothing compared to controversies about contracted health care and schools. Public transport has largely escaped this.

Competitive tendering (of regional services) can be launched by:

- ▶ creating a regional framework for competitive tendering. Carrying out regional consultations. Consensus is essential!
- ▶ creating a multi-modal ticketing and information scheme.
- ▶ Deciding who will supply/own/maintain rolling stock.
- ▶ Deciding on the design and size of contracts. Sweden offers no real advice but in Germany

five million train-kms a year have been mentioned as a minimum.

- Beware of very low bids.
- Prepare for problems, for instance an operator failing.

Competition is good for us – the Lisbon treaty states that a market economy is a condition for being a member state.

## Sweden

**Area** 447,000 km<sup>2</sup>

**Inhabitants** 10.5 million

**Rail network** 10,000 km

**Train km** 165 million

**Freight** 23,000 million tonne-kms

**Regional rail travel** 6,200 million pass-kms

**Long distance rail travel** 7,100 million pass-kms

**Total rail travel** 13,300 million pass-kms

**Rail travel/inhabitant/year** 1,280 kms

**Cars per 1,000 inhabitants** 471

Data provided by Trafikanalys [www.trafa.se](http://www.trafa.se).  
All figures refer to 2023.



## Opening up PSO services in France to competition: work in progress

A comment by Aurore Laget-Annamayer, Full professor of public law, Paris Dauphine-PSL University

Opening up passenger rail transport to competition is a slow but progressive process in France. The current legal framework for French PSO services – which consist mainly of regional services (called TER) and territorial balance trains (TET) – was established by a law of 27 June 2018 called ‘the New Rail Pact,’ which established the principle of opening up domestic passenger rail transport to competition. For PSO services this means that competitive tendering is the rule (Transport Code, art. L.2121-15).

### A gradual timetable for opening up to competition with a transition period

The French legislator defined a special timetable for PSO services. The competitive tendering rules for the market came into force on 3 December 2019 in accordance with the EU Regulation. However, there was a transitional period until 25 December 2023, during which for services of national interest the transport organising authorities (PTAs), regions or the state, were able, by way of a derogation from the competitive tendering rules, to directly award a public service contract with the incumbent operator, SNCF Voyageurs, for a maximum period of 10 years. As a result, PTAs in France had much discretion, since they could choose to organise a competitive tender to renew all or some of their contracted services, which some such as the Sud region have done, or else postpone the competitive tender until 2033, as the Bretagne region has done. This means that all conventional rail transport will only have been put out to tender by 25 December 2033.

It should also be pointed out that a dedicated timetable has been set up for the Ile de France region (Transport Code art. L.1241-7-1), which does not really seem compatible with the PSO regulations, as it postpones opening up to competition even further.

Under these conditions, it is imperative to establish progressive tendering calendars coordinated between regions, as they need to maximise the number of respondents by continually mobilising applicants.

In addition, all the exceptions recognised in EU PSO Regulation 1370/2007 have been incorporated in French law, so that public service contracts can still be awarded directly in six circumstances.<sup>3</sup> However, we do not think that these exceptions are likely to be widely used in the French context.<sup>4</sup>

### The key role of the independent regulator ‘ART’ in the effectiveness of competition

As recognising a competitive procedure is not enough to make calls for tenders effective, the French legislator has established ‘ART,’ a strong independent regulatory authority with broad legal and soft powers to monitor the process of opening up to competition, particularly in PSO services. This is especially the case regarding the major challenge of access to information and the objective of reducing the information asymmetry between the incumbent operator and newcomers. It is also a challenge for PTAs when they prepare the tender process and draft concession contracts. In this regard, a legislative obligation has been established for railway companies providing public passenger rail transport services, infrastructure managers and service facility operators to transmit information relating to the organisation or execution of PSO services.<sup>5</sup> ART has significant ex post powers in this respect (dispute settlement, sanctioning) and has already used them to bring about changes in behaviour and to move towards greater transparency.<sup>6</sup>

3 Decree No. 2020-728 of 15 June 2020 on the procedures for the direct awarding of public service contracts for passenger rail transport.

4 A. Laget-Annamayer and P. Perennes, ‘Opening regional rail to competition: can the member states avoid compulsory rail market opening for regional rail? The French example,’ in Current challenges in transport regulation in Europe and beyond, (dir. Matthias Finger, Juan Montero and Elodie Petrozziello), to be published in 2025, ed. E. Elgar.

5 Article L.2121-19 of the French Transport Code.

6 For instance, ART Decision n° 2020-044 of 30 July 2020 settling a dispute between Hauts de France and SNCF voyageurs, ART Decision n° 2021-032 PACA, disputes mainly linked to information relating to rolling stock, its maintenance and human resources. ART, Decision n° CS-2023-001 of 27 June 2023 by the ART Sanction Commission. ART imposed a fine of two million euros on SNCF Réseau for failing to comply with its obligation to provide systematic, accurate and intelligible information to applicants in the event of a refusal to allocate requested train paths.

Nevertheless, there is still room for improvement and the regulatory framework for access to data undoubtedly needs to be clarified.

More generally, this process requires a strong regulator. This is clearly the case of ART, which also uses soft law and sunshine regulation to monitor competition, to guarantee non-discriminatory access to the rail network and to strengthen the conditions of equity and equal opportunities for all stakeholders.

Although the process of tendering is underway in France, the players involved and some regions in particular need to become even more proactive in order to take advantage of the opportunities available to them in this area.

## Opening up PSO services in France to competition: a true devolution of regional rail services

A comment by Patricia Perennes, Rail Transport Economist, Trans-Missions

In line with the PSO Regulation, the 'New Rail Pact' mandates the opening of French regional rail services to competition. A key feature in this process is the truly decentralised legal framework established by the French legislator. The regions have been granted significant autonomy in determining both the timeline and the specific terms of the tendering processes for the rail services they oversee.

### Various regional decisions regarding the timetable for opening up to competition

The New Rail Pact does not require a minimum (or impose a maximum) percentage of regional rail services to be put out to tender in new or renewed TER contracts. It also establishes a transition period (December 2019 to December 2023), during which French public transport authorities (PTAs) can either directly award contracts to the incumbent operator, SNCF Voyageurs, or initiate competitive tendering for regional contracts.

The only binding requirement under French law, derived from the PSO Regulation, is that by 2033 all TER services must be awarded through competitive tendering.

French PTAs have taken advantage of the flexibility offered by the law: during the transition period each region chose either to extend existing contracts or sign new agreements with SNCF Voyageurs. Some regions also initiated competitive processes. However, not all the contracts grant 100% of regional rail services to SNCF Voyageurs for their full duration. Many regions opted to progressively remove certain 'lots' (i.e. groups of railway lines) from these contracts, thus reducing their scope over time through what are called 'detachable coupons.'

Hence, the current TER contractual landscape is very diverse in France, as is illustrated in Figure 1. Five regions (black) have successfully completed competitive tendering for some lots. Four regions (striped) have begun the process of tendering some lots to competition. The three remaining regions (white) have postponed competitive tendering until the expiry of their current contracts.

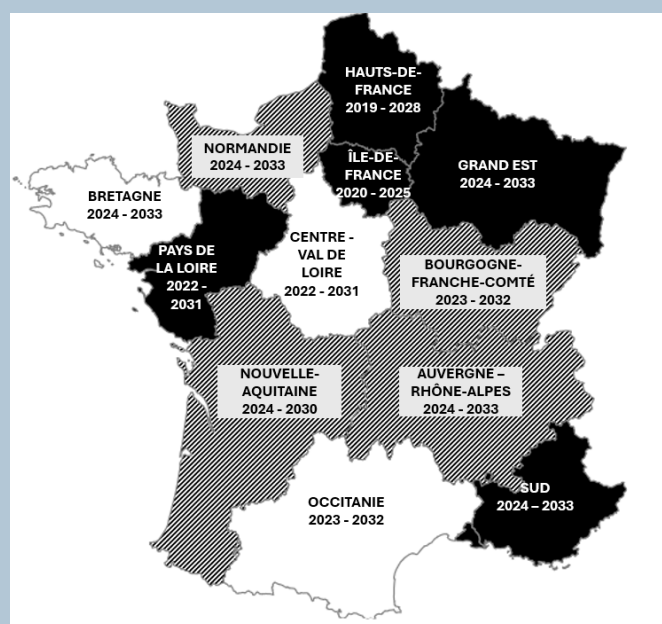


Figure 1

Source: Patricia Perennes based on public data

### Various regional decisions regarding the contents of competitively attributed contracts

In addition to differences in timelines, the contents of newly awarded contracts vary significantly. The New Rail Pact provides PTAs with substantial freedom to tailor contracts to regional needs. There could be multiple examples, but we will limit ourselves to three illustrations.

First, the law does not specify who should purchase rolling stock when replacements are needed at the beginning of a new contract. Consequently, regions such as Auvergne-Rhône-Alpes, Nouvelle-Aquitaine, Hauts-de-France and Occitanie have created Sociétés Publiques Locales (public bodies under direct regional control) to manage the purchase and/or maintenance of rolling stock. Other regions, such as Sud, in contrast require bidders to procure rolling stock themselves, supported by regional grants.

Second, approaches to maintenance facilities also vary. Sud requires bidders to build new facilities, with financial support from regional grants. Normandie, on the other hand, tasked SNCF Voyageurs with upgrading existing facilities near Caen before the beginning of the contract for the corresponding lot.

Third, ticket distribution strategies differ widely. Grand Est requires SNCF Voyageurs, in its directly awarded contract, to handle ticket distribution for

all its lots, including those operated by competitors. Sud, in contrast, has removed ticket distribution from all TER contracts (both directly attributed and tendered) and awarded this responsibility through a separate competitive process.

This diversity in regional approaches will serve as a valuable resource to evaluate the outcomes of opening regional rail services to competition. The lessons learned and best practices identified can then be shared and implemented across the French regions and maybe even in other European countries, ensuring continual improvement in service delivery and efficiency.



## Opening up PSO rail services in France to competition: opportunities and challenges for SNCF Voyageurs

A comment by Scheherazade Zekri, Director, Strategy, Bids & New Mobility, SNCF Voyageurs TER

Opening up public service obligation (PSO) services in France to competition represents a significant evolving transformation, marked by both opportunities and challenges. This process of liberalisation, which was initiated in 2019, has gradually reshaped the landscape of regional rail services. As of today, approximately 60% of train-kilometres are being tendered, showing the growing reality of competitive dynamics in this sector. To date, five rail service contracts have been awarded, with SNCF Voyageurs securing three of them accounting for 80% of the train-kilometres awarded, emphasising SNCF Voyageurs' continued success despite rising competition.

In 2023, the Florence School of Regulation (FSR) and SNCF Voyageurs published an insightful document aimed at examining the progressive tendering of regional rail services. This publication not only highlighted the progress made but also delved into the critical success factors shaping this new framework. Among these factors were the allotment of public services, the efficiency and practicality of contract sizes, the optimal organisation of timetables, the strategic distribution of resources and other considerations drawn from European experiences in similar contexts. By benchmarking against established practices in other countries, the document aimed to provide a roadmap to ensure smooth and effective competition.

One of the most notable aspects of this transition is the principle of progressiveness. Unlike a uniform nationwide strategy, each French region retains the autonomy to manage its own tendering process for regional rail services. This decentralised approach has led to significant variations in contract sizes and organisational strategies. On average, contracts range between 4 million and 6 million train-kilometres. However, exceptions abound, with smaller contracts tailored to specific dedicated lines – such as Marseille-Nice and Nancy-Contrexéville – and larger contracts that exceed 10 million train-kilometres.

For SNCF Voyageurs, the historical operator in the French rail market, this liberalisation represents nothing short of a revolution. The company faces the dual challenge of adapting to the simultaneous initiation of multiple tendering procedures – 10 of which are currently underway – while implementing significant internal changes to respond to escalating competitive pressure. Unlike many of its competitors, SNCF Voyageurs has chosen a bold strategy of responding to every tender, a decision that underscores its determination to maintain a leading position in this evolving market.

The legislative framework underpinning this liberalisation is rooted in the New Rail Pact, which transposed the 4th European Railway Package into French law. This framework lays out the modalities for opening up competition while ensuring fair and equitable conditions for all participants. Key provisions include the transfer of assets – such as rolling stock and workshops – and employees to new operators. Specifically,

- employees directly involved in the operation and continuity of the public service are transferred to the new operator awarded the public service contract;
- assets, primarily consisting of rolling stock and workshops, are transferred upstream to the organising authority, which then makes them available to the selected operator.

This regulatory clarity has attracted interest from a wide range of operators, both domestic and international, which are eager to enter the PSO rail market. Their enthusiasm reflects the growing recognition of the opportunities presented by this new competitive landscape.

Public transport authorities (PTAs) play a pivotal role in this process by seeking to open the market while achieving key objectives such as increasing service offerings at lower costs, enhancing service quality and improving overall robustness. They rely on prescriptive specifications to objectively compare offers and select the most advantageous solutions for their regions. In response, SNCF Voyageurs has embarked on a comprehensive transformation journey aimed at boosting its competitiveness. This includes aligning its offerings with PTA specifications, streamlining its cost structure for greater efficiency and fostering the development of the skills and expertise of its workforce. The company is also restructuring its organisation to anticipate

the fragmentation of the value chain – encompassing operations, maintenance, rolling stock and distribution – and to propose tailored solutions for each segment.

Another critical element for SNCF Voyageurs is the need to capitalise on early tender experiences to industrialise its approach. This will help reduce the cost and complexity of future tendering procedures. The company's credibility and legitimacy hinge not only on its ability to win tenders but also on the performance of its current services, which remain under scrutiny by PTAs. As the monopoly agreements that previously governed operations will expire between 2028 and 2033 (depending on the region), the coexistence of monopoly operators and tender-awarded operators will create a dynamic and competitive ecosystem in the same territories.

For SNCF Voyageurs, opening up to competition is more than just a challenge; it is a unique opportunity to innovate, reinvent itself and demonstrate its expertise. The company aspires to transcend its traditional image as a legacy operator and becoming a trusted and preferred operator chosen by regions for its proven capabilities and commitment to operational excellence.

## FSR Transport

*The Florence School of Regulation (FSR) is a project within the European University Institute (EUI) focusing on regulatory topics. It works closely with the European Commission, and is a growing point of reference for regulatory theory and practice. It covers four areas: Communications and Media, Energy (Electricity and Gas), Transport, and Water.*

*The FSR-Transport Area's main activities are the European Transport Regulation Forums, which address policy and regulatory topics in different transport sectors. They bring relevant stakeholders together to analyse and reflect upon the latest developments and important regulatory issues in the European transport sector. These Forums inspire the comments gathered in this European Transport Regulation Observer. Complete information on our activities can be found online at: [fsr.eui.eu](https://fsr.eui.eu)*

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