

Regulation (EC) No 1370/2007 of the European Parliament and of the Council  
of 23 October 2007 on public passenger transport services by rail and by  
road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70

*Article 4*

**Mandatory content of public service contracts and general rules**

- 1 Public service contracts and general rules shall:
- (a) [<sup>F1</sup>clearly set out the public service obligations, defined in this Regulation and specified in accordance with Article 2a thereof, with which the public service operator is to comply, and the geographical areas concerned;
  - (b) establish in advance, in an objective and transparent manner:
    - (i) the parameters on the basis of which the compensation payment, if any, is to be calculated; and
    - (ii) the nature and extent of any exclusive rights granted, in a way that prevents overcompensation.

In the case of public service contracts not awarded according to Article 5(1), (3) or (3b), 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;]

- (c) determine the arrangements for the allocation of costs connected with the provision of services. These costs may include in particular the costs of staff, energy, infrastructure charges, maintenance and repair of public transport vehicles, rolling stock and installations necessary for operating the passenger transport services, fixed costs and a suitable return on capital.

2 Public service contracts and general rules shall determine the arrangements for the allocation of revenue from the sale of tickets which may be kept by the public service operator, repaid to the competent authority or shared between the two.

3 The duration of public service contracts shall be limited and shall not exceed 10 years for coach and bus services and 15 years for passenger transport services by rail or other track-based modes. The duration of public service contracts relating to several modes of transport shall be limited to 15 years if transport by rail or other track-based modes represents more than 50 % of the value of the services in question.

4 If necessary, having regard to the conditions of asset depreciation, the duration of the public service contract may be extended by a maximum of 50 % if the public service operator provides assets which are both significant in relation to the overall assets needed to carry out the passenger transport services covered by the public service contract and linked predominantly to the passenger transport services covered by the contract.

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*Status: Point in time view as at 31/01/2020.*

*Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1370/2007 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)*

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If justified by costs deriving from the particular geographical situation, the duration of public service contracts specified in paragraph 3 in the outermost regions may be extended by a maximum of 50 %.

If justified by the amortisation of capital in relation to exceptional infrastructure, rolling stock or vehicular investment and if the public service contract is awarded in a fair competitive tendering procedure, a public service contract may have a longer duration. In order to ensure transparency in this case, the competent authority shall transmit to the Commission within one year of the conclusion of the contract the public service contract and elements justifying its longer duration.

[<sup>F24a</sup> In the performance of public service contracts, public service operators shall comply with obligations applicable in the field of social and labour law established by Union law, national law or collective agreements.

4b Directive 2001/23/EC shall apply to a change of public service operator where such a change constitutes a transfer of undertaking within the meaning of that Directive.]

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

[<sup>F16</sup> 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, those standards and criteria shall be included in the tender documents and in the public service contracts. While respecting Directive 2001/23/EC, such tender documents and public service contracts shall, where applicable, also contain information on the rights and obligations relating to the transfer of staff taken on by the previous operator.]

7 Tender documents and public service contracts shall indicate, in a transparent manner, whether, and if so to what extent, subcontracting may be considered. If subcontracting takes place, the operator entrusted with the administration and performance of public passenger transport services in accordance with this Regulation shall be required to perform a major part of the public passenger transport services itself. A public service contract covering at the same time design, construction and operation of public passenger transport services may allow full subcontracting for the operation of those services. The public service contract shall, in accordance with national and Community law, determine the conditions applicable to subcontracting.

[<sup>F28</sup> Public service contracts shall require the operator to provide the competent authority with the information essential for the award of public service contracts, while ensuring the legitimate protection of confidential business information. Competent authorities shall make available to all interested parties relevant information for the preparation of an offer under a competitive tendering procedure, while ensuring the legitimate protection of confidential business information. This shall include information on passenger demand, fares, costs and revenues related to the public passenger transport covered by the competitive tendering procedure and details of the infrastructure specifications relevant for the operation of the required vehicles or rolling stock to enable interested parties to draft well informed business plans. Rail infrastructure managers shall support competent authorities in providing all relevant

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infrastructure specifications. Non-compliance with the provisions set out above shall be subject to the legal review provided for in Article 5(7).]

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#### **Textual Amendments**

- F1** Substituted by [Regulation \(EU\) 2016/2338 of the European Parliament and of the Council of 14 December 2016 amending Regulation \(EC\) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail \(Text with EEA relevance\).](#)
- F2** Inserted by [Regulation \(EU\) 2016/2338 of the European Parliament and of the Council of 14 December 2016 amending Regulation \(EC\) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail \(Text with EEA relevance\).](#)

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