

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 5

Award of public service contracts

1 Public service contracts shall be awarded in accordance with the rules laid down in this Regulation. However, service contracts or public service contracts as defined in Directives 2004/17/EC or 2004/18/EC for public passenger transport services by bus or tram shall be awarded in accordance with the procedures provided for under those Directives where such contracts do not take the form of service concessions contracts as defined in those Directives. Where contracts are to be awarded in accordance with Directives 2004/17/EC or 2004/18/EC, the provisions of paragraphs 2 to 6 of this Article shall not apply.

[^{F12} Unless prohibited by national law, any competent local authority, whether or not it is an individual authority or a group of authorities providing integrated public passenger transport services may decide to provide public passenger transport services itself or to award public service contracts directly to a legally distinct entity over which the competent local authority, or, in the case of a group of authorities at least one competent local authority, exercises control similar to that exercised over its own departments.

In the case of public passenger transport services by rail, the group of authorities referred to in the first subparagraph may be composed only of local competent authorities whose geographical area of competence is not national. The public passenger transport service or the public service contract referred to in the first subparagraph may only cover the transport needs of urban agglomerations or rural areas, or both.

Where a competent local authority takes such a decision, the following shall apply:]

- (a) for the purposes of determining whether the competent local authority exercises control, factors such as the degree of representation on administrative, management or supervisory bodies, specifications relating thereto in the articles of association, ownership, effective influence and control over strategic decisions and individual management decisions shall be taken into consideration. In accordance with Community law, 100 % ownership by the competent public authority, in particular in the case of public-private partnerships, is not a mandatory requirement for establishing control within the meaning of this paragraph, provided that there is a dominant public influence and that control can be established on the basis of other criteria;
- (b) the condition for applying this paragraph is that the internal operator and any entity over which this operator exerts even a minimal influence perform their public passenger transport activity within the territory of the competent local authority, notwithstanding any outgoing lines or other ancillary elements of that activity which enter the territory of neighbouring competent local authorities, and do not take part in competitive tenders concerning the provision of public passenger transport services organised outside the territory of the competent local authority;
- (c) notwithstanding point (b), an internal operator may participate in fair competitive tenders as from two years before the end of its directly awarded public service contract under the condition that a final decision has been taken to submit the public passenger

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transport services covered by the internal operator contract to fair competitive tender and that the internal operator has not concluded any other directly awarded public service contract;

- (d) in the absence of a competent local authority, points (a), (b) and (c) shall apply to a national authority for the benefit of a geographical area which is not national, provided that the internal operator does not take part in competitive tenders concerning the provision of public passenger transport services organised outside the area for which the public service contract has been granted;
- (e) if subcontracting under Article 4(7) is being considered, the internal operator shall be required to perform the major part of the public passenger transport service itself.

[^{F13} Any competent authority which has recourse to a third party other than an internal operator, shall award public service contracts on the basis of a competitive tendering procedure, except in the cases specified in paragraphs 3a, 4, 4a, 4b, 5 and 6. The procedure adopted for competitive tendering shall be open to all operators, shall be fair and shall observe the principles of transparency and non-discrimination. Following the submission of tenders and any preselection, the procedure may involve negotiations in accordance with these principles in order to determine how best to meet specific or complex requirements.]

[^{F23a} Unless prohibited by national law, as regards public service contracts for public passenger transport services by rail awarded on the basis of a competitive tendering procedure, the competent authority may decide to temporarily award new contracts directly where the competent authority considers that the direct award is justified by exceptional circumstances. Such exceptional circumstances shall include situations where:

- there are a number of competitive tendering procedures that are already being run by the competent authority or other competent authorities which could affect the number and quality of bids likely to be received if the contract is the subject of a competitive tendering procedure, or
- changes to the scope of one or more public service contracts are required in order to optimise the provision of public services.

The competent authority shall issue a substantiated decision and shall inform the Commission thereof without undue delay.

The duration of contracts awarded pursuant to this paragraph shall be proportionate to the exceptional circumstance concerned and in any case shall not exceed 5 years.

The competent authority shall publish such contracts. In doing so, it shall take into consideration the legitimate protection of confidential business information and commercial interests.

The subsequent contract that concerns the same public service obligations shall not be awarded on the basis of this provision.

3b In application of paragraph 3, competent authorities may decide to apply the following procedure:

Competent authorities may make public their intentions to award a public service contract for public passenger transport services by rail by publishing an information notice in the *Official Journal of the European Union*.

That information notice shall contain a detailed description of the services that are the subject of the contract to be awarded, as well as the type and the duration of the contract.

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Operators may express their interest within a period fixed by the competent authority which shall not be less than 60 days following the publication of the information notice.

If after the expiration of that period:

- a only one operator has expressed its interest in participating in the procedure to award the public service contract;
- b that operator has duly proved that it will in fact be able to provide the transport service complying with the obligations established in the public service contract;
- c the absence of competition is not the result of an artificial narrowing of the parameters of the procurement; and
- d no reasonable alternative exists;

the competent authorities may start negotiations with this operator in order to award the contract without further publication of an open tendering procedure.]

[^{F14} Unless prohibited by national law, the competent authority may decide to award public service contracts directly:

- a where their average annual value is estimated at less than EUR 1 000 000 or, in the case of a public service contract including public passenger transport services by rail, less than EUR 7 500 000; or
- b where they concern the annual provision of less than 300 000 kilometres of public passenger transport services or, in the case of a public service contract including public passenger transport services by rail, less than 500 000 kilometres.

In the case of a public service contract directly awarded to a small or medium-sized enterprise operating not more than 23 road vehicles, those 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.]

[^{F24a} Unless prohibited by national law, the competent authority may decide to award public service contracts for public passenger transport services by rail directly:

- a where it considers that the direct award is justified by the relevant structural and geographical characteristics of the market and network concerned, and in particular size, demand characteristics, network complexity, technical and geographical isolation and the services covered by the contract, and
- b where such a contract would result in an improvement in quality of services or cost-efficiency, or both, compared to the previously awarded public service contract.

On that basis, the competent authority shall publish a substantiated decision and shall inform the Commission thereof within one month of its publication. The competent authority may proceed with the award of the contract.

Member States for which on 24 December 2017 the maximum annual market volume is less than 23 million train-km and which have only one competent authority at national level and one public service contract covering the entire network shall be deemed to fulfil the condition set out in point (a). Where a competent authority of one of those Member States decides to award a public service contract directly, the Member State concerned shall inform the Commission thereof. The United Kingdom may decide to apply this subparagraph to Northern Ireland.

Where the competent authority decides to award a public service contract directly, it shall lay down measurable, transparent and verifiable performance requirements. Such requirements shall be included in the contract.

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The performance requirements shall in particular cover punctuality of services, frequency of train operations, quality of rolling stock and transport capacity for passengers.

The contract shall include specific performance indicators enabling the competent authority to carry out periodic assessments. The contract shall also include effective and deterrent measures to be imposed in case the railway undertaking fails to meet the performance requirements.

The competent authority shall periodically assess whether the railway undertaking has achieved its targets for meeting the performance requirements as set in the contract and shall make its findings public. Such periodic assessments shall take place at least every 5 years. The competent authority shall take appropriate and timely measures, including the imposition of effective and deterrent contractual penalties if the required improvements in quality of services or cost-efficiency, or both, are not achieved. The competent authority may at any time wholly or partially suspend or terminate the contract awarded under this provision if the operator fails to meet the performance requirements.

4b Unless prohibited by national law, the competent authority may decide to award public service contracts for public passenger transport services by rail directly where they concern operating only passenger rail services by an operator which manages simultaneously the entire or the major part of the railway infrastructure on which the services are provided, where that railway infrastructure is excluded from the application of Articles 7, 7a, 7b, 7c, 7d, 8, 13 and Chapter IV of Directive 2012/34/EU of the European Parliament and of the Council⁽¹⁾ in accordance with Article 2(3)(a) or (b) of that Directive.

By way of derogation from Article 4(3), the duration of directly awarded contracts pursuant to this paragraph and paragraph 4a of this Article shall not exceed 10 years, except where Article 4(4) applies.

Contracts awarded in accordance with this paragraph and paragraph 4a shall be published, while taking into consideration the legitimate protection of confidential business information and commercial interests.]

[^{F15} In the event of a disruption of services or the immediate risk of such a situation, the competent authority may take emergency measures.

The emergency measures 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 period for which a public service contract is awarded, extended or imposed by emergency measures shall not exceed 2 years.]

6 Unless prohibited by national law, competent authorities may decide to make direct awards of public service contracts where they concern transport by rail, with the exception of other track-based modes such as metro or tramways. In derogation from Article 4(3), such contracts shall not exceed 10 years, except where Article 4(4) applies.

[^{F26a} In order to increase competition between railway undertakings, competent authorities may decide that contracts for public passenger transport services by rail covering parts of the same network or package of routes are to be awarded to different railway undertakings. To this end, the competent authorities may, before launching the competitive tendering procedure, decide to limit the number of contracts to be awarded to the same railway undertaking.]

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7 Member States shall take the necessary measures to ensure that decisions taken in accordance with paragraphs 2 to 6 may be reviewed effectively and rapidly, at the request of any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement, on the grounds that such decisions have infringed Community law or national rules implementing that law.

[^{F2}For cases covered by paragraphs 4a and 4b, such measures shall include the possibility to request an assessment of the substantiated decision taken by the competent authority by an independent body designated by the Member State concerned. The outcome of such assessment shall be made publicly available in accordance with national law.]

Where bodies responsible for review procedures are not judicial in character, written reasons for their decisions shall always be given. Furthermore, in such a case, provision must be made so that any alleged illegal measure taken by the review body or any alleged defect in the exercise of the powers conferred on it may be the subject of judicial review or review by another body which is a court or tribunal within the meaning of Article 234 of the Treaty and independent of both the contracting authority and the review body.

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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- (1) [^{F2}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).]

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Textual Amendments

- 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).

Changes to legislation:

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Changes and effects yet to be applied to :

- Regulation revoked by [S.I. 2023/1369 Sch. 3 para. 9\(a\)](#)
- Art. 5(1) substituted by [S.R. 2020/252 reg. 8\(a\)](#) (This amendment not applied to legislation.gov.uk. S.R. 2020/252 revoked immediately before IP completion day by S.R. 2020/338, regs. 1(1), 2)
- Art. 5(1) substituted by [S.R. 2021/337 reg. 2\(7\)\(a\)](#)
- Art. 5(1) substituted by [S.I. 2020/504 reg. 8\(a\)](#)
- Art. 5(2) words substituted by [S.R. 2020/252 reg. 8\(b\)\(i\)](#) (This amendment not applied to legislation.gov.uk. S.R. 2020/252 revoked immediately before IP completion day by S.R. 2020/338, regs. 1(1), 2)
- Art. 5(2)(1) words substituted by [S.R. 2021/337 reg. 2\(7\)\(b\)\(i\)](#)
- Art. 5(2) words substituted by [S.I. 2020/504 reg. 8\(b\)\(i\)](#)
- Art. 5(3a) words omitted by [S.R. 2020/252 reg. 8\(c\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. S.R. 2020/252 revoked immediately before IP completion day by S.R. 2020/338, regs. 1(1), 2)
- Art. 5(3a)(2) words omitted by [S.R. 2021/337 reg. 2\(7\)\(c\)\(ii\)](#)
- Art. 5(3a) words omitted by [S.I. 2020/504 reg. 8\(c\)\(ii\)](#)
- Art. 5(3a) words substituted by [S.R. 2020/252 reg. 8\(c\)\(i\)](#) (This amendment not applied to legislation.gov.uk. S.R. 2020/252 revoked immediately before IP completion day by S.R. 2020/338, regs. 1(1), 2)
- Art. 5(3a)(1) words substituted by [S.R. 2021/337 reg. 2\(7\)\(c\)\(i\)](#)
- Art. 5(3a) words substituted by [S.I. 2020/504 reg. 8\(c\)\(i\)](#)
- Art. 5(3b) words substituted by [S.R. 2020/252 reg. 8\(d\)](#) (This amendment not applied to legislation.gov.uk. S.R. 2020/252 revoked immediately before IP completion day by S.R. 2020/338, regs. 1(1), 2)
- Art. 5(3b)(2) words substituted by [S.R. 2021/337 reg. 2\(7\)\(d\)](#)
- Art. 5(3b) words substituted by [S.I. 2020/504 reg. 8\(d\)](#)
- Art. 5(4) sum substituted by [S.R. 2020/252 reg. 8\(e\)\(i\)](#) (This amendment not applied to legislation.gov.uk. S.R. 2020/252 revoked immediately before IP completion day by S.R. 2020/338, regs. 1(1), 2)
- Art. 5(4) sum substituted by [S.R. 2020/252 reg. 8\(e\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. S.R. 2020/252 revoked immediately before IP completion day by S.R. 2020/338, regs. 1(1), 2)
- Art. 5(4)(2) sum substituted by [S.R. 2021/337 reg. 2\(7\)\(e\)\(ii\)](#)
- Art. 5(4) sum substituted by [S.I. 2020/504 reg. 8\(e\)\(ii\)](#)
- Art. 5(4) words substituted by [S.R. 2020/252 reg. 8\(e\)\(i\)](#) (This amendment not applied to legislation.gov.uk. S.R. 2020/252 revoked immediately before IP completion day by S.R. 2020/338, regs. 1(1), 2)
- Art. 5(4)(1) words substituted by [S.R. 2021/337 reg. 2\(7\)\(e\)\(i\)](#)
- Art. 5(4) words substituted by [S.I. 2020/504 reg. 8\(e\)\(i\)](#)
- Art. 5(4a)(3) omitted by [S.R. 2021/337 reg. 2\(7\)\(f\)\(iii\)](#)
- Art. 5(4a) words omitted by [S.R. 2020/252 reg. 8\(f\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. S.R. 2020/252 revoked immediately before IP completion day by S.R. 2020/338, regs. 1(1), 2)
- Art. 5(4a) words omitted by [S.R. 2020/252 reg. 8\(f\)\(iii\)](#) (This amendment not applied to legislation.gov.uk. S.R. 2020/252 revoked immediately before IP completion day by S.R. 2020/338, regs. 1(1), 2)
- Art. 5(4a)(2) words omitted by [S.R. 2021/337 reg. 2\(7\)\(f\)\(ii\)](#)
- Art. 5(4a) words omitted by [S.I. 2020/504 reg. 8\(f\)\(ii\)](#)
- Art. 5(4a) words omitted by [S.I. 2020/504 reg. 8\(f\)\(iii\)](#)

- Art. 5(4a) words substituted by [S.R. 2020/252 reg. 8\(f\)\(i\)](#) (This amendment not applied to legislation.gov.uk. S.R. 2020/252 revoked immediately before IP completion day by S.R. 2020/338, regs. 1(1), 2)
- Art. 5(4a)(1) words substituted by [S.R. 2021/337 reg. 2\(7\)\(f\)\(i\)](#)
- Art. 5(4a) words substituted by [S.I. 2020/504 reg. 8\(f\)\(i\)](#)
- Art. 5(4b) words substituted by [S.R. 2020/252 reg. 8\(g\)](#) (This amendment not applied to legislation.gov.uk. S.R. 2020/252 revoked immediately before IP completion day by S.R. 2020/338, regs. 1(1), 2)
- Art. 5(4b)(1) words substituted by [S.R. 2021/337 reg. 2\(7\)\(g\)](#)
- Art. 5(4b) words substituted by [S.I. 2020/504 reg. 8\(g\)](#)
- Art. 5(6) words substituted by [S.R. 2020/252 reg. 8\(h\)](#) (This amendment not applied to legislation.gov.uk. S.R. 2020/252 revoked immediately before IP completion day by S.R. 2020/338, regs. 1(1), 2)
- Art. 5(6) words substituted by [S.R. 2021/337 reg. 2\(7\)\(h\)](#)
- Art. 5(6) words substituted by [S.I. 2020/504 reg. 8\(h\)](#)

Changes and effects yet to be applied to the whole legislation item and associated provisions

- Annex para. 6 words omitted by [S.R. 2020/252 reg. 15](#) (This amendment not applied to legislation.gov.uk. S.R. 2020/252 revoked immediately before IP completion day by S.R. 2020/338, regs. 1(1), 2)
- Signature words omitted by [S.I. 2020/504 reg. 14](#)
- Annex para. 6 words omitted by [S.I. 2020/504 reg. 15](#)
- Art. 2(b) words omitted by [S.R. 2020/252 reg. 4\(a\)](#) (This amendment not applied to legislation.gov.uk. S.R. 2020/252 revoked immediately before IP completion day by S.R. 2020/338, regs. 1(1), 2)
- Art. 2(b) words omitted by [S.R. 2021/337 reg. 2\(3\)\(a\)](#)
- Art. 2(b) words omitted by [S.I. 2020/504 reg. 4\(a\)](#)
- Art. 2(i) words omitted by [S.R. 2020/252 reg. 4\(b\)](#) (This amendment not applied to legislation.gov.uk. S.R. 2020/252 revoked immediately before IP completion day by S.R. 2020/338, regs. 1(1), 2)
- Art. 2(i) words omitted by [S.R. 2021/337 reg. 2\(3\)\(b\)](#)
- Art. 2(i) words omitted by [S.I. 2020/504 reg. 4\(b\)](#)
- Art. 2a(1)(3) words omitted by [S.R. 2021/337 reg. 2\(4\)\(b\)](#)
- Art. 2a(1)(4) words omitted by [S.R. 2021/337 reg. 2\(4\)\(c\)](#)
- Art. 5(2)(a) words omitted by [S.R. 2020/252 reg. 8\(b\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. S.R. 2020/252 revoked immediately before IP completion day by S.R. 2020/338, regs. 1(1), 2)
- Art. 5(2)(a) words omitted by [S.R. 2021/337 reg. 2\(7\)\(b\)\(ii\)](#)
- Art. 5(2)(a) words omitted by [S.I. 2020/504 reg. 8\(b\)\(ii\)](#)
- Art. 5(4)Art. 5(1)(a) sum substituted by [S.R. 2021/337 reg. 2\(7\)\(e\)\(i\)](#)
- Art. 5(4)(a) sum substituted by [S.I. 2020/504 reg. 8\(e\)\(i\)](#)
- Art. 12(6) words omitted by [S.R. 2021/337 reg. 2\(14\)](#)