

RAIL TRANSPORT

Table of Contents

MEPs vote for competition in national passenger traffic

By Isabelle Smets

It is done: members of the European Parliament, meeting on 17 December in the Committee on Transport (TRAN), adopted their position on the Union's fourth railway package, voting in favour of the liberalisation of national passenger traffic from 2019. This is the only segment

rail firm and that their accounts are separate – what the Commission calls “walls of China” – will not please these two states.

The least that can be said is that everyone was under strong pressure on this issue. Up to the moment of pressing the button, the result was uncertain for the touchiest aspects, such as the question of the relationship between companies in

the same holding structure (“the compromise is expected to pass by only two votes,” an expert told *Europolitics* before the vote). In recent weeks, MEPs were lobbied so intensively that TRAN Chair Brian Simpson (S&D, UK) had to intervene, threatening to refer the matter to the



Passenger transport is the only segment not open to competition today

not open to competition today. They also decided not to ban in the EU railway holding companies that group within the same structure the infrastructure manager and the incumbent railway firm. This model is championed by Germany and France, with the latter just returning to it. But the guarantees that MEPs are demanding to make sure that the infrastructure manager is not under the control of the incumbent

EP president for “interference with the democratic process”.

The European Commission proposed to ban new holding companies – those not in existence at the time the new rules enter into force. But MEPs refused to go along with that: their amendments explicitly authorise states to choose the type of structure at any time, including a holding company if they **(continued on page 5)**

Rail transport

(continued from page 1)

operate currently under separate structures. They also added flexibility to the “walls of China” proposed by the Commission – the price of the compromise – though not enough, according to those who defend the holding structure model. The Community of European Railway and Infrastructure Companies (CER), to which most incumbent railway firms belong, worked hard in the wings to bring more flexibility to these measures.

The principle of these “walls of China” is thus preserved. That is the case for the requirements of strict separation of financial flows between the different entities in the holding company (to prevent cross-subsidisation, where public money ends up subsidising commercial services) and guarantees to ensure the decision making independence of the infrastructure manager. On the other hand, organisational requirements are eased, in particular possibilities for internal mobility within the holding structure. There is no longer a non-employability clause, for example, preventing a transfer from one entity to another for a certain period. Likewise, the clauses preventing individuals from sitting in the decision making bodies of the holding’s different entities were also deleted. Basically, MEPs found that Europe did not have to go this far into detail. On the other hand, they assign this task to national regulators – the rail watchdogs that ensure compliance with the

rules and non-discrimination against new companies. These authorities will have to publish guidelines on the effective independence of the infrastructure manager within the holding company addressing all these aspects.

MEPs kept the Commission’s proposal to be able to shut out of markets rail companies that are part of a holding structure but fail to comply with the unbundling criteria in the new rules. The Commission will assess compliance.

PUBLIC SERVICE CONTRACTS

In the future, rail operators will therefore be able to directly offer passenger transport services in competition with those of other operators. This is already the case on certain high-speed lines. But the real liberalisation mainly involves the reform of rules for awarding public service contracts, which today cover the vast majority of national traffic. The Commission takes the view that the general rule must be a mandatory tendering procedure for the award of such contracts, which currently are awarded directly in many cases. MEPs’ amendments are such that the rule will be a little less general, however. They provide that the states may continue to award public service contracts directly, provided they adopt very clear efficiency and quality requirements. Explicitly mentioned are: the change in the number of passengers transported, punctuality and frequency of services, customer satisfaction, quality of rolling stock, etc. If these criteria

are not fulfilled at the time the contract expires, the tendering procedure will then become the rule.

MEPs also introduced new criteria related to size. Markets with less than 20 million train-km (eg Luxembourg and Belgium) can be covered by a single public service contract. The larger the market, the higher the minimum number of contracts, up to at least four contracts for markets of more than 200 million train-km, which concerns Germany and France, for example.

A transitional period will run until December 2022. The new rules will apply to everyone from that point forward. Contracts awarded directly before that deadline will have to expire no later than ten years after the new regulation enters into force. Under this measure, existing contracts could potentially remain in place until the end of 2032.

SOCIAL CLAUSES

Will the new rules spark social protest? Probably, given the dogmatic positions of the different sides on the question of competition. The fact is, though, that the social requirements placed in the text by MEPs are a bit stronger than the traditional clauses leaving things to member states’ good will. In the event of a change of operator, for instance, there is no question of taking advantage of the situation to weaken working conditions compared with existing national or regional standards. Similarly, social criteria are mandatory in public service contracts. ■