

## PRESS COVERAGE

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### **European rail theoretically fully open to competition in 2019**

Competition will be the rule, but not to excess. The European Parliament's vote on the EU's fourth railway package, on 26 February in Strasbourg, revealed once again the clout of the incumbent railway companies and national interests. Officially, MEPs chose to fully open up rail to competition from 2019 by liberalising national passenger transport, the last segment still protected today. In reality, though, many provisions will continue to make it complicated for new players to enter the market.

Two key dates are set in the texts adopted by the EP: 2019 and 2022. In December 2019, barriers will fall and rail undertakings will have the opportunity to directly offer passenger transport services that compete with those of today's monopolies. In practice, several rail companies may then operate in parallel on purely national lines, like the TGV and Thalys today.

However, since most national lines are currently under public service contracts – more than 90% of national traffic – the second date becomes important. From December 2022, these contracts will as a rule have to be awarded on the basis of a tendering procedure, the idea being to make operators compete. These contracts are still awarded directly in many cases today, usually to the long-established companies. But compared with the big bang scenario sought by the Commission, MEPs rounded off a lot of rough edges. Ultimately, the states will be able to continue to award public service contracts directly in a number of cases, particularly if they adopt efficiency requirements and clear quality criteria. These would include, for example, criteria for punctuality, frequency of services, customer satisfaction or quality of rolling stock. Only if these criteria are not met at the time of expiry of the contract awarded directly will the tendering procedure become the rule.

A transitional period is also established for contracts awarded before 2022 – thus potentially without a tender and without the quality criteria planned at EU level: they may continue to run up to ten years after the new rules come into force.

#### *Incumbent operator protected*

Parliament also confirms that it does not wish to prohibit holding companies that house within a single structure the infrastructure manager and incumbent rail operator. Germany defends this model tooth and nail and France is returning to it after an episode of unbundling the SNCF-RFF (infrastructure manager). But where the report adopted in the Committee on Transport (TRAN) last December still contained a number of "walls of China" meant to guarantee the manager's independence of action/decision making within these structures, MEPs adopted in plenary a set of amendments directly inspired by CER, the association representing the incumbent operators, that makes these walls very

permeable. These amendments caused considerable tension in recent weeks, because those referred to as "newcomers" see them as attempts to keep the infrastructure managers under the control of the incumbent companies.

This is a victory for CER but a setback for the new entrants. Pierre Tonon, secretary-general of the European Rail Freight Association (ERFA) – which represents the newcomers – told *Europolitics* after the vote of his "surprise that MEPs still feel subservient, bound by a national duty to protect their incumbent operator". The weakening of the walls of China and the watering down of the powers of infrastructure managers decided in Strasbourg are such that "discrimination will de facto be established on markets," in his view.

Transport Commissioner Siim Kallas is on the same wavelength. He sees the vote as "yet another demonstration of the tenacity of the vested national interests that proved more appealing to MEPs than the balanced and well-reasoned compromises reached in December by the Transport and Tourism Committee". Saïd El Khadraoui (S&D, Belgium), rapporteur on this aspect, also regretted that the debate took place during an election period. He clearly singled out the "pressure put on MEPs to respect their national governments' wishes".

All will take consolation from the technical pillar of the rail package, on which this time the entire sector – incumbents, new entrants and manufacturers - agrees. This pillar will strengthen the powers of the European Rail Agency based in Valenciennes in terms of safety certification and issuing of marketing authorisations for rail vehicles. These reforms will make it possible to sort out the 11,000-odd national rules in force today, a headache for rail equipment manufacturers and rail companies and a technical barrier for the entry of new operators.

### *Right to strike safeguarded*

On the day before the vote, trade unions denounced the EU's determination to undermine the right to strike (see *Europolitics*4817). They will be reassured at least on this point since the provision in question – a recital stressing the importance of guaranteeing a minimum service during strikes (but not requiring states to do so) – was deleted by the plenary.

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