



# **JASPERS Horizontal Task Outputs**

## **Working Paper**

### **Role and Organisation of Regional Rail Passenger Transport Authorities**

#### **Comparison of Structures at Regional Level in France, Germany and Poland**

Report prepared on the basis of a Consultancy Contract with

Avanzata Consulting

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## Foreword

Several JASPERS beneficiary countries have requested JASPERS' support to establish, monitor and further develop PSO contracts on the basis of the new PSO Regulation (EC 1370/2007). Those contracts should establish the basis for a transparent compensation regime for regional passenger rail transport services both for directly or competitively awarded contracts. PSO contracts compliant with this regulation represent also the legal basis for EU funding of rolling stock. This has already been explained in a previous working paper on ways to use EU funds for rolling stock acquisition (JASPERS Working Paper N° 2 – "Funding Regional Rail Passenger Rolling Stock" –

[http://www.jaspers-europa-info.org/attachments/115\\_Jaspers%20working%20paper%20Funding%20Regional%20Rail%20Stock%20Czech%20Republic.pdf](http://www.jaspers-europa-info.org/attachments/115_Jaspers%20working%20paper%20Funding%20Regional%20Rail%20Stock%20Czech%20Republic.pdf)).

This working paper addresses the administrative capacities at the rail transport authorities to prepare, monitor and implement such contracts, select lines or regional networks which may become subject to competitively tendered railway services, develop concepts which determine the role of regional rail transport on the national/regional transport market, and measures to achieve those objectives railway, and communicates the policy and individual measures to the public and third parties. The authority may also possibly become owner of EU (or nationally) funded rolling stock which may then be used through railway operators for the purposes defined in those PSO contracts. The gradual establishment of such capacities is considered particularly important in countries where the responsibility for regional rail transport services is entirely or partially decentralised to the regional level. In some of those cases, the responsible regional level may be in need of expertise and capacity support from the national level as it is expected in Slovakia.

The report draws on experience of regional rail transport authorities in Germany, France and Poland, and does not aim at giving concrete advice to specific countries. JASPERS is ready to support any new member state in concretely preparing the establishment of such authorities and /or expert pools. Such support may be requested through the national authorities responsible for EU funds management to be determined in annual action plans.

JASPERS has decided to disseminate this report because it provides methodological support in a complex area of transport service organisation with actual or potential relevance for EU funding and because it will prove interest to a wide range of public authorities and the private sector in several countries. This report is part of a series of JASPERS outputs from "horizontal" tasks, aimed at addressing generic issues which impact the development of projects anticipated for EU-funding during the Programming Period 2007-2013.

In developing this paper, JASPERS has drawn on consultancy support from Thomas Avanzata Consulting. Subject working paper contains the full version of the report prepared under this consulting assignment. We would like to thank the author of the report, Thomas Avanzata, as well as Melanie Oertel and Christoph Schaafkamp of KCW, i.e. the consultant company supporting the Slovak authorities in establishing the national PSO contract, for their contributions, and Joachim Schneider, JASPERS Task Manager.

Vienna, December 2010

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## Introduction

This report aims at establishing the basis of discussions with the Slovak Ministry of Transport about the future structure of the Regional Rail Transport Authority in Slovakia. It is based on experience with rail transport authorities in France, Germany and Poland. The report presents their competencies and organisation, and could be the basis for conclusions regarding appropriate structures in Slovakia. In contrast with Slovakia, the authorities responsible for regional passenger rail traffic in the three Member States represented in the report are set up and governed at regional level. The geographical and demographical size of those regions is on the other hand compatible with Slovakia as a whole, so that the experience presented is directly relevant for a possible government based authority in Slovakia. More specific conclusions are to be drawn in separate meetings.

This report is partly based on answers to a questionnaire sent to competent authorities in charge of regional railway services in Austria, the Czech Republic, Germany, France, Poland and the UK.

In this report, in accordance with Article 2 (b) of EC Regulation N° 1370/07<sup>1</sup> which provides a definition of the “competent authority”, a regional rail transport authority, means any public authority or group of authorities of a Member State or Member States which has the power to intervene in public passenger transport in a given geographical area or any body vested with such authority.

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<sup>1</sup> OJ L 315, 03.12.2007, p. 1.

# 1. Aims and Competencies of the Regional Rail Transport Authority

## 1.1. Definition of a medium and long term regional rail transport policy

Since costs for public transport exceeding the fare box revenues are covered by the public, it is the responsible authority which proposes or establishes general objectives and the means to achieve those objectives, i.e. the main service characteristics. Aspects covered in such strategic plans include:

- available budgets,
- market share objectives (such as the modal split aims for public transport),
- general description of the services to be provided,
- reaction to modified demand (new lines, new stops in stations, reduction of services, of stops etc.),
- definition of main target groups (commuters, students, tourists, people with reduced mobility etc.),
- intermodality (the timing and the positioning of train services in relation to other modes of transport),
- definition of possible improvements concerning the quality of regional transport services.

Within the framework of their competencies, many authorities have decided to develop a mobility plan for the implementation of their transport policy. This plan supports the decision making process necessary for the further development of transport offers. Often, this plan is not limited to railways, and includes urban and inter-urban modes of transport.

Randomly selected examples include the “Mobility Plan”<sup>2</sup> of the Brussels-Capital Region, “Mobility Master Plan of the Barcelona Metropolitan Region” in Barcelona, Local Transport Plans (LTPs) in the UK, “Regional Passenger Rail Transport Plans” (so-called “SPNV Pläne”) in Germany etc.

For example, in 2010 the Landesnahverkehrsgesellschaft Niedersachsen (the competent rail transport authority for the majority of Lower Saxony) published an institutional strategy for the regional rail transport development up to the year 2017<sup>3</sup>. Topics included are a detailed analysis of current and predicted passenger demand for every line, the definition of numerous strategic and operative objectives, as well as certain measures to achieve them. The Landesnahverkehrsgesellschaft Niedersachsen intends to ensure the operation on all current railway lines, to expand the range of service on lines which are in frequent demand, and to upgrade the quality of used rolling stock.

Whatever the term, the practice emerged as a comprehensive road map reflecting real concerns about how public transport should develop as a sustainable activity in itself, but also to support economic activities and reinforce social cohesion. It also encompasses a variety of new measures deemed important to shape the transport authority strategy in the medium term.

These local or regional comprehensive strategies have been undertaken since a majority of European central governments in the 80s and early 90s decided to hand competency for certain public transport modes over to local administrations either at regional or sub-regional level.

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<sup>2</sup> The Brussels-Capital Region's "Mobility Plan" is among the oldest, with the first plan covering 1991-1998.

<sup>3</sup> Source: [www.lnvg.niedersachsen.de](http://www.lnvg.niedersachsen.de) and [http://www.lnvg.niedersachsen.de/download/broschi/Konzept\\_SPNV\\_lang.pdf](http://www.lnvg.niedersachsen.de/download/broschi/Konzept_SPNV_lang.pdf)

## 1.2. The responsible authority defines the offer of services and the conditions in which the services will be produced through the establishment of a public service contract

Major choices and political orientations of the responsible public transport authority are defined in the strategy plans mentioned above or more specifically in the "Regional Transport Plan" in force at the time the public service contract is signed.

Within the framework of the public service contract, the authority defines the precise offer of services which must be implemented by the operator, in terms of lines, level of service and quality objectives.

### Examples

#### **France:**

In France, the law SRU "Solidarity and Urban Renewal"<sup>4</sup> transferred the competence to organise collective transport of regional interest to the regions as of January 1<sup>st</sup>, 2002. As far as regional rail transport is concerned, the regions have signed contracts with the SNCF (national publicly owned company) since the start of 2002. These contracts are entered into without being open to competition, for periods of between 5 and 10 years, depending on the region.

Public service contracts between French regions and SNCF deal with:

- The description of the offer of services such as: rail lines to be operated; bus services to be operated (the regions may also be in charge of the organisation of the bus services replacing the regional rail services); stops; train and bus schedules; services in stations and on board; information to passengers; intermodality; ticketing; quality of services; accessibility for persons with reduced mobility; fraud etc;
- The specific tariffs applicable to the transport services on the regional territory. Those tariffs have to respect the principles of the national tariff system;
- The financial and accounting conditions in which the services will be delivered (allocation of costs and revenues, profit-sharing and penalty mechanisms, invoicing and payment conditions etc.). The region is responsible for the establishment, modification or cancellation of regional transport services. Any decision entailing modification of the reference services or of the operating modalities will require an amendment to the contract and entail, if necessary, an adjustment of the amount of the financial contribution of the region;
- Subcontracting possibilities;
- The nature, character and ownership of the different equipment necessary for the production of the services (e.g. infrastructure, rolling stocks, stations) and of investments linked to this equipment, safety and vandalism, intangible assets etc;
- The control and the follow up of transport service delivery (control and audit rights, conditions for the information and the follow up of the region etc.);
- Miscellaneous (end of the contract, responsibilities, insurances, litigations, transmission of documents etc.).

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<sup>4</sup> Law N°2000-1208 dated 13 December 2000 on solidarity and urban renewal

### 1.3. Institutional communication / Public relations

Good communication is not only necessary for passengers to be aware of services available. It is also crucial, if responsible authorities which are headed or steered by elected officials decide to promote a dynamic or efficient transport policy.

In practice, public relations and communication are rarely under the sole responsibility of the regional railway transport authority. Communication can be shared with the operator(s). But it is crucial that the competent authority keeps at least part of this responsibility. This is especially true in the case of competitively tendered services provided by different operators. In that case it is necessary to have integrated communication and information about the whole supply of services, as no company has an interest in giving passengers information about the services or fares of competitors.

The competent authority may for example:

- Determine (and possibly tender) services which are offered at coherent price and quality level on the whole network with a name and an image independent from that of the railway operator(s);
- Harmonise the whole communication for the network including rolling stock (colour, logo etc.), but this is sometimes difficult to achieve as operators are often very reluctant to renounce to their own communication codes and brand signs;
- Develop its own journey planning service on the internet, without operators being involved etc.

### 1.4. Coordination with other authorities

Services offered at regional level need to be coordinated with services offered at national or local level or with services offered in neighbouring regions. These coordination processes have different objectives:

- To optimise correspondence between regional services,
- To optimise correspondence with national services,
- To organise good correspondence with the other regional transport networks, particularly urban transport networks,
- To establish a consistent tariff system which will also facilitate intermodality.

For example, in Germany there is the Federal Working Group for regional rail transport authorities (BAG-SPNV)<sup>5</sup>, in which 25 rail transport authorities are organised. General meetings take place twice a year. In these meetings, the members specify the organisations' general aims and missions, and vote for a committee, which represents the workgroup in public and among political decision-makers. In specialist workgroups, the members get the opportunity to share information and experience in special issues (e.g. infrastructure, tariff, quality, financing).

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<sup>5</sup> Source: [www.bag-spnv.de](http://www.bag-spnv.de)

## 1.5. Dialogue with passengers

The responsible authority needs an exact knowledge of the usage level of the transport network and the mobility needs of the users, necessitating regular surveys of the train users. This precise knowledge of the level of train use allows the authority:

- to adjust the composition and capacity of trains circulating on the network,
- to evaluate mobility needs in order to develop or improve the timetables,
- to optimise the purchasing needs of material and rolling stocks.

Responsible authorities have also started to involve individual users and interest groups to determine needs and possibilities to improve rail transport services.

Some authorities have also set up systems of permanent dialogue through local bodies such as “Line - Committees”. The objective of these committees is to improve the service quality through a better understanding of travellers’ needs. These committees enable the responsible authority to stay informed and to consider specific, local economic, educational or social projects, and to reach management of public spending more effectively.

For example, in 1993 the German passenger transport association, the Rhein-Main-Verkehrsverbund (RMV), founded an advisory board<sup>6</sup> consisting of 42 passengers. Out of these, 27 persons are voluntary members (who are selected for a period of 3 years), 15 more are representatives of certain interest groups (e.g. cyclists or disabled persons). Meetings take place four times a year. The board makes suggestions concerning e.g. the design of ticket machines or the requirements on vehicle equipment.

## 1.6. Control of the execution of the transport services

The responsible authority ensures control of the execution of the transport services by the operator.

Article 7 (1) of Regulation N° 1370/07 even imposes to make public the results of this control: “Each competent authority shall make public once a year an aggregated report on the public service obligations for which it is responsible (...). This report shall distinguish between bus transport and rail transport, allow the performance, quality and financing of the public transport network to be monitored and assessed (...).”

### Examples

#### **France:**

In the Lorraine region, the operator (SNCF) is required to supply the region with a daily summary of major events in the regional transport operation: cancelled trains, particularly important train delays (all regions have decided not to compensate passengers for delays on regional railway services; on national long distance services, passengers are compensated for delays exceeding 30 minutes), the duration and cause of delays, follow up of previous days etc. The operator also supplies the region with monthly scorecards concerning traffic, infrastructure, and income. These scorecards allow the region to assess the execution of services. Finally, every year before May 1<sup>st</sup>, the operator establishes an annual report for the previous calendar year, which recapitulates the detailed statistics and the technical, financial and commercial information.

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<sup>6</sup> Source: <http://www.rmv.de/coremedia/generator/RMV/WirUeberUns/StrukturDesRMV/Fahrgastbeirat>

**Poland:**

In the Małopolskie province of Poland, the “Transport Policy and Rail Transport Team” is in charge of monitoring the operator’s performance of his duties. The monitoring involves checking the punctuality and cleanliness of trains, the technical condition of carriages used, and the quality of passenger information and service. The monitoring also concerns repair and maintenance procedures on trains purchased by the Małopolskie province and leased to the operator.

In the Mazovia province, the operator is obliged to submit annual reports on transport implementation to the transport authority, with final subsidy settlement taking place after the year end. The responsible authority has a right of audit in connection with the exercise of its competences. Certain authorities initiate production audits which aim at checking the quality of the rail transport services through a series of visits, enquiries (in stations, on board trains, in technical centres), and data collection with the various persons in charge of the operations. These audits are also intended to highlight any production deficiencies (maintenance of the material, assemblage of trains) in order to identify possible operator improvements and means of control and intervention for the region.

### 1.7. Public service compensation

The way the financial compensation is calculated differs from one contract to another.

#### Examples

**France:**

In most French regional rail contracts, the operator (SNCF) takes on cost risk through fixed price for certain cost categories. This fixed cost package is index-linked on the basis of an annual formula. The other costs are re-invoiced to the region. The operator keeps the revenue from the sale of tickets, including tariff compensation. For example, in the Lorraine region the revenue from ticket sales only covers about 25 % of the service costs.

The revenue risk is shared between the region and the operator on the basis of a revenue objective fixed annually within a profit sharing scheme. The profit sharing formula is written into the contract and encourages the operator to act commercially. The financial compensation paid by the region is intended to cover the deficit and to restore the accounting balance. It is calculated as the difference between the costs and the revenues, and is subject to adjustments. The contract also includes a bonus/penalty formula which encourages the operator to respect the quality objectives and penalty mechanisms which sanction non-performance of the transport services.

**Poland:**

In the Poland province of Wielkopolskie, the compensation is calculated as the approved tariff level plus the operator’s unit costs connected exclusively with the provision of contract services, not including any commercial discounts applied by the operator, and is subject to the maintenance of separate accounts in regard to performance of the contract. The unit costs presented by the operator are established on the basis of regulated price lists and cost calculation, while revenues are calculated on the basis of the approved tariff and estimated passenger volume. Failure to meet the parameters defined in the public service contract (train composition, supply of seats, punctuality and cleanliness) result in contractual penalties.

In the province of Mazovia the compensation awarded to the carrier for operation of regional rail passenger transport services is intended to offset the shortfall resulting from the difference between the documented and actual revenue and the actual costs covered by the annual contract. Costs and revenue relating to transport activities are subject to settlement. The annual subsidy amount is divided into 12 monthly instalments and transferred to the operator’s account by the 10<sup>th</sup> day of each month.

## 2. Organization, staff required, tasks and level of staff expenses at responsible authority level

### 2.1. France

France is divided into 26 administrative regions, 22 of which are in Metropolitan France (including Corsica), the others are overseas. Each mainland region and Corsica is further subdivided into departments, ranging in number from 2-8 per region for the metropolitan ones.

Regions are in charge of organising road and rail transport “of regional interest” (connections between departments in the same region). Departments are responsible for organising inter-urban transport (by road only).

Regional administration there is typically a service called the “mobility and transport direction”, which employs fewer than 20 staff and which is dedicated to regional rail transport.

For example, in the Midi Pyrenees<sup>7</sup> region this “mobility and transport direction” employs 13 staff:

- one head of unit (Category A),
- two secretaries (Category B),
- two persons specialised in ticketing (one category A and one Category C),
- two management controllers: budget management, financial analysis, financial follow-up (two category A),
- one person responsible for passenger information (Category A),
- one person for follow-up of the contract between the region and the operator (Category A),
- one person for pricing, quality of service and control of delivery of services (Category A),
- one person to manage and answer user complaints (Category A),
- one person for rolling stock (Category A),
- one person to update databases (Category B).

In the Midi Pyrenees region, the global staff costs amount to about 67 million Euro, of which staff costs for organisation and management of regional transport, including employer's social security contributions are about 650 000 Euro (i.e. appx. 1 % of the global sum).

The “mobility and transport direction” of the Lorraine region<sup>8</sup> employs 17 persons for the organisation and the management of regional rail transport. Details are presented in annex 1.

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<sup>7</sup> Midi Pyrenees: 2.8 million inhabitants (4.4 % of the total population); area is 45,000 km<sup>2</sup> (7.2 % of the total area of France); density is 62 (Metropolitan France has a density of 108 people per km<sup>2</sup>).

<sup>8</sup> Lorraine: 2.3 million inhabitants (3.7 % of the total population); area is 23,500 km<sup>2</sup> (4.3 % of the total area of France); density is 99.

## 2.2. Poland

Poland is divided into 16 provinces (Voivodships). Provinces are subdivided into counties (Powiats), and these are further divided into municipalities (Gminas). Major cities normally have the status of both municipality and county.

Responsibility for regional rail lies with the Voivodships.

There are fewer staff members working in the organisational unit responsible for rail transport matters inside the competent authority.

The Department of Transport at the Marshal's Office of the Wielkopolskie Province<sup>9</sup> employs six staff at a cost of appx. PLN 400,000 (around EUR 100,000).

In the Podlaskie province<sup>10</sup>, an Infrastructure and Environmental Protection Department – Technical Infrastructure Section has been set up as part of the structure of the Podlaskie province Speaker's Office and employs two persons to perform tasks linked to rail transport. These tasks are:

- To determine demand for regional rail passenger transport,
- To draw up draft contracts, to subsidise regional rail passenger transport,
- To monitor transport services and control contract implementation,
- To purchase rail vehicles,
- To oversee operations and maintain the rail vehicles which are the property of the provincial authority.

Staff costs amount to PLN 60,000 (around EUR 15,000).

In the Malopolskie province<sup>11</sup>, a Transport Policy and Rail Transport Team has been set up as part of the Department of Transport and Communication of the province. This team employs 6 members with the following responsibilities:

- To analyse and help to determine the demand for rail transport,
- To prepare and introduce a rail service plan in cooperation with the rail operator,
- To manage issues connected with the procedure for selecting and concluding contracts with rail operators; to verify reports on rail services and how services are charged,
- To monitor rail services undertaken,
- To analyse demand for rolling stock and to prepare and manage the procedure for purchasing rail vehicles,
- To prepare applications for financing the purchase of rail vehicles,
- Cooperation with rail operators for leasing rail vehicles,
- To prepare strategy documents for developing and implementing rail transport,
- To identify measures to achieve a sustainable transport system within the province.

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<sup>9</sup> Wielkopolskie province: 3.3 million inhabitants; area is 29,800 km<sup>2</sup>; density is 112.

<sup>10</sup> Podlaskie province: 1.2 million inhabitants; area is 20,000 km<sup>2</sup>; density is 60.

<sup>11</sup> Malopolskie province: 3.8 million inhabitants; area is 15,000 km<sup>2</sup>; density is 252.

The organisational entity at the Opole province<sup>12</sup> Speaker's Office responsible for the functioning of rail transport is the Infrastructure Office, which forms part of the Department of Infrastructure and Management. The Infrastructure Office has 3 employees, whose duties include:

- Monitoring the implementation of the public services supply contract for passenger rail transport,
- Receiving and examining complaints and applications,
- Dealing with the organisation of regional rail passenger transport,
- Checking bills, invoices and other settlements,
- Involvement in consultations with carriers concerning timetables and performance conditions for rail passenger transport,
- Timetable analysis and assessment,
- Conducting and analysing studies of travel flows on trains covered by supplementary funding from Opole province,
- Conducting studies of the level and structure of the demand for transport services,
- Participating in the preparation of transport bids in the field of rail passenger transport, etc.

The total cost of the Infrastructure Office (staff and administration costs) is about PLN 140,000 per annum gross (around EUR 35,000).

The Mazovia<sup>13</sup> provincial authority has appointed the Mazovia province Speaker's Office (UMWM) to implement its tasks.

Within the structure of the UMWM, a Department of Fixed Assets and Infrastructure has been set up which includes a Rail Transport Section. This section's main tasks involve:

- working with carriers to prepare information about available transport in the area of creating and amending timetables;
- controlling the provision of regional rail passenger transport by carriers, based on public service provision contracts;
- analysing the rail communications system in the province and investigating potential public transport needs which affect rail communications in the province;
- drafting the tender documentation and managing the organisation of tender processes.

Two public service contracts have been directly awarded to two public operators (KM and WKD).

The authority also organises tenders for traffic analysis and quality assessments of transport provided by operators; purchase and supply of new carriages, locomotives and motive power units; and upgrading of existing train units, etc.

The Rail Transport Section employs 6 staff, typically trained in management at polytechnics/universities. The total annual staff cost in the Rail Transport Section is around PLN 360,000 gross (around EUR 90,000).

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<sup>12</sup> Opole province: 1 million inhabitants; area is 9,500 km<sup>2</sup>; density is 112.

<sup>13</sup> Mazovia Province: 5 million inhabitants ; area is 35,500 km<sup>2</sup> ; density is 144

### 3. The current or future opening of the regional railway transport market

Regulation 1370/07, article 5(6) leaves to competent authorities the choice to directly award public service contracts for train services or to award the contract on the basis of a competitive tendering procedure. National laws which oblige direct awarding as the sole procurement option for regional railway services will have to be modified so that competitive tendering becomes an additional procurement option<sup>14</sup>. In some countries the national law is already in line with article 5(6). In other countries, Member States shall take measures to gradually comply with article 5(6) as of 3 December 2019<sup>15</sup>.

#### 3.1. Examples of the legal development of rail transport organisation and public rail transport procurement laws:

##### a) Germany

As of 1996, the responsibility for the tasks and financing relating to short-distance rail passenger transport was transferred from the federal government to the "Bundesländer" ("Länder" = regions). The set of laws, voted in 1993 and known as the Regionalisation Act<sup>16</sup>, leaves it to the Länder to determine whether they themselves will assume responsibility for the tasks and financing relating to short-distance rail passenger transport or whether they prefer to transfer this task to other agencies (cities).

The 16 Bundesländer have adopted various regulations relating to this competence, though most have chosen to keep this task within their own competence.

The railway transport has been regulated by the Federal Common Railroad Law ("Allgemeines Eisenbahngesetz"/AEG) since 1993<sup>17</sup>. This General Railway Act (i.e. the framework law of a broader legal package which includes the Regional Act) contributed to a major reform of the railway sector. The most important features of the reform are:

- The opening of the network to undertakings other than Deutsche Bahn (DB), i.e. the former public monopoly;
- The transformation of DB into a public limited company (DB AG), tasked with four distinct activities: "passengers", "freight", "stations", "infrastructures";
- The creation of the EBA (Eisenbahnbundesamt), a regulatory body responsible for enforcing competition and access to the network. EBA is also in charge of ensuring compliance with safety standards;
- The creation of the BEV (Bundeseisenbahnvermögen). This body has played a crucial part in the German railway reform and was the financial basis of the dynamic strategy of DB AG. Specific social costs (see below) as well as the entire cumulated debt (around 35 billion Euro) of the former Deutsche Bundesbahn and of the former Deutsche Reichsbahn (freight and passenger transport) were transferred to the BEV.
- The opening of regional railway service to competition. The financial means to exercise the new regional competence was based on a transfer of financial resources from the Federal State (Bund) to the Länder. In 2002, this financial transfer amounted to 7 billion Euro, shared proportionally between the Länder according to their population number and the level of railway services in the reference year.

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<sup>14</sup> It is to be underlined that according to Article 5(6), national law may prohibit direct award. In this case, responsible authorities will have no choice but to tender railway public service contracts.

<sup>15</sup> Regulation 1370/07, Art. 8(2), OJ L 315, 03.12.2007

<sup>16</sup> Source : <http://bundesrecht.juris.de/bundesrecht/regg/index.html>

<sup>17</sup> Allgemeines Eisenbahngesetz dated Dezember 27th, 1993. See [www.gesetze-im-internet.de/aeg\\_1994/index.html](http://www.gesetze-im-internet.de/aeg_1994/index.html)

As mentioned above, from January 1<sup>st</sup>, 1996, the Länder had the possibility to award the services to any operator they chose on the basis of a tendering procedure. The possibility remained for the Länder to negotiate contracts directly with the incumbent (DB Regio - the subsidiary of the DB in charge of regional transport) for the first "contract round" after the shift of competencies to the Länder. The questions whether there is now an obligation for competitive tendering is currently subject to a law suit.

In practice, competitive tenders organised by the Länder have been undertaken for significant parts of the regional network (normally based on services for small to medium sized networks of one hundred to several hundred of kilometres). At the beginning of the regionalisation process, the Länder were rather cautious. Bavaria, one of the first Länder to experiment with competition, started with the 120 km of the "Bayerische Oberland Bahn" (BOB) between Munich and the Alps. Progressively, Länder have launched tenders for increasingly large parts of the regional networks.

As a consequence, the regional rail services branch of DB AG (DB Regio) now faces increasing competitive pressure. Yet, even where DB Regio is not selected as the winning bidder in tendering procedures, parts of the DB consortium remain involved. As mentioned previously, the Railway Act established subsidiaries for the DB activities. Apart from DB Regio which is operating railway services (still the most beneficial part of the entire consortium), "DB Station + Service" is in charge of the management of stations, and "DB Netz" is in charge of infrastructure management, including the possibility to schedule train paths). This particular position of DB may in some cases establish market access barriers to newcomers, particularly concerning sensitive issues like the award of train paths (as regards long distance trains). Another potentially difficult question is the percentage taken by DB on tickets sold in stations, where these tickets concern another operator.

## **b) Poland**

In Poland, as previously mentioned, the responsibility for regional rail lies with the provinces (Vojvodships). Regional passenger rail services may either be competitively tendered or directly awarded. The incumbent operator PKP (Polskie Koleje Państwowe) dominates the market. Regional services are tendered or directly awarded to PKP or private companies, and overall, the market is liberalising but the situation differs from region to region.

In December 2007, Arriva, the British operator, won a tender to provide passenger rail traffic services on some non-electrified lines in the Kuyavian-Pomeranian province, effectively breaking the monopoly of PKP.

In the Małopolskie province, contractors are selected on the basis of tenders. Framework contracts for the provision of services are concluded for a period of three years. Each year, while the framework contracts are in force, annual contracts are concluded, which specify the train timetables and level of subsidy. Rolling stock, purchased by the Małopolskie Province and at its disposal for the duration of the contract, has been leased to the operator performing the rail services for the duration of the contract.

The Wielkopolskie provincial government directly awards contracts to operators. According to the authority, tendering is not used due to the lack of undertakings on the market and the randomness of their selection.

In the Opole province, a tendering process was announced in 2009 for the operation of passenger transport by rail. The company "Przewozy Regionalne Spółka z o.o". was selected, and Opole province signed a framework agreement with this company for the period 2009-2015.

A loan agreement was also concluded between the transport authority and the operator for 9 diesel rail vehicles which are the property of Opole province, and which are intended for use on non-electrified lines.

In 2009 the province of Mazovia directly awarded a framework contract for the next 15 years to the company Koleje Mazowieckie [Mazovia Railways] (KM) and to Warszawska Kolej Dojazdowa [Warsaw Rail Access] (WKD). The Province of Mazovia holds 100 % resp. more over 95 % of the shares in KM and WKD.

Every year, as a complement to this 15 year framework contract, an annual contract for the provision of regional rail passenger transport within Mazovia province is foreseen between the provincial government and the operators. So in 2010 the provincial authorities concluded a public service provision contract with the above companies, covering the operation of regional rail passenger transport within Mazovia province. All duties imposed on the carrier by the transport authority are specified in these bilateral annual contracts, which establish the conditions for operating transport and contain clauses on funding and how to calculate subsidies made available by the transport authority, i.e. the province.

### **c) France**

In France, since the introduction of the “SRU” (Solidarity and Urban Renewal) Law of December 13<sup>th</sup>, 2000, regional rail transport public service contracts are concluded by the regions with SNCF (the publicly owned national railways operator). French law (loi LOTI of December 30<sup>th</sup>, 1982, Internal Transport Reform Act) makes it compulsory to directly award these contracts to SNCF without a tendering procedure. These contracts are concluded for durations of 5-10 years, depending on the different regions. Such contracts include SNCF commitments on operational costs, commercial revenues and quality, but also include profit and loss-sharing mechanisms.

In a recent answer to a parliamentary question<sup>18</sup>, the European Commission stated that - before the end of the transition period laid down in article 8§2 of Reg. 1370/07 - the French law (loi LOTI) will have to be modified in order to allow French regions the possibility to choose between directly awarding and tendering the public service contract. There would be no obligation for regions to tender their regional railway services, but a direct award to SNCF would no longer be the sole possible solution.

Discussions are ongoing at national level concerning the possibility for regions to experiment with tendering for regional railway lines and on the mechanisms to open up competition.

A recent law of 2009 already creates an independent regulatory body called “ARAF” (Autorité de Régulation des Activités Ferroviaires)<sup>19</sup>. Further changes are presented in Chapter 3.2.

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<sup>18</sup> See the answer given by the European Commission on 25.02.2009 to Parliamentary Question P-0563/09FR

<sup>19</sup> Law of December 8th, 2009 on the organisation and the regulation of railway transports

### 3.2. Remaining issues related to opening up competition of the regional railway transport market – at the example of France

If it is to succeed, opening up competition needs to be economically reasonable and regionally viable, but obviously also fair for all potential operators.

In France, where, as previously mentioned, the opening up of the regional passenger rail transport market has to be prepared, the objective of the ongoing discussions is to find pragmatic and transparent solutions to the following questions:

#### a) Access to rolling stock

Issues relating to rolling stock, whose life cycle exceeds the duration of PSO contracts, are fundamental to competitively tendered railway services in the future.

The current rolling stock was initially financed by SNCF to ensure regional railway transport. Since 1997 this rolling stock has been partially, then completely financed by the regions. As a result, the regional passenger railway rolling stock in every region is currently financed in a variety of ways, including binding contractual agreements between the SNCF and the regions which include a “return clause”, obliging SNCF to return the respective rolling stock to the regions at the end of the PSO contract period.

To date, all rolling stock used for passenger rail transport is owned by SNCF, with the exception of the stock recently leased by regions where the stock is the property of the financial institution, renting it to the region which in turn makes it available to the railway operator.

The ongoing discussions on opening up the regional passenger rail transport market include the need to establish financing and ownership solutions in a number of different cases, as indicated below.

**Leased rolling stock:** The competent authority which rents the rolling stock to the financial institution should, in principle, be able to make the leased rolling stock available to the new operator.

**SNCF-owned rolling stock:** This situation is more complicated as the vast majority of the current French rolling stock is SNCF-owned (either completely financed by SNCF or, after 1997, completely or partially financed by the competent authority).

- For rolling stock 100 % financed by SNCF, solutions have to be found on a case by case basis, but it does not seem that SNCF is obligated to make it available to newcomers. The rolling stock does not constitute an essential facility in the sense of the directive 2001/14, so that the incumbent operator is not obliged to make it available. In Germany, the DB has refused to make its rolling stock available to newcomers, and in most cases the newcomers themselves had to make the investments necessary for the operation of the services. However, it is worth underlining that competition law must be respected, particularly regarding any possible abuse of a “dominant position”. For example, the EC considered that the refusal of the Italian incumbent operator to supply locomotives to a newcomer on the “open access” market constituted an abuse of its “dominant position”<sup>20</sup>. This decision was based on the fact that it was impossible for the newcomer to find interoperable rolling stock through any other means, and consequently to get access to the market. In all cases, the planned time between contract signature and the start of operations will have to be sufficiently long to permit the newcomer to obtain the necessary rolling stock.

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20 Decision of the Commission of 27 August 2003, relating to a proceeding pursuant to Article 82 of the EC Treaty (2004/33/EC)

- When the rolling stock has been partially financed by the competent authority and when a “return clause” is included, the competent authority should be able to reclaim the rolling stock under the terms negotiated with the incumbent operator and to make it available to the new operator.
- Even in the absence of a “return clause”, the competent authority should be able to make the rolling stock available to newcomers. The recent community guidelines on state aid for railway undertakings<sup>21</sup> seem to point to this interpretation as they specify that “*the rolling stock must remain exclusively assigned to the specific region (...)*” where the rolling stock has been wholly or partially financed by the region.

Future investments in rolling stock: It is possible that the introduction of competition generates the creation of new railway services and thus a need for rolling stock. As outlined in the JASPERS Working Paper N° 2 “EU funding of rail rolling stock” of 2008, competent authorities have various options to promote the acquisition and utilisation of new rolling stock. Among them are:

- Directly purchased new rolling stock which will be placed at the disposal of the operator (the authority may organise its own tendering procedure for the acquisition and the financing of the rolling stock or it may include its needs for rolling stock in a tendering procedure organised in common with other authorities etc.),
- Lease rolling stock from financial institutions or from Rosco’s (Rolling Stock Companies). Rosco’s have first been established in the UK, and they are now present in other European countries, especially in Germany. Rosco’s specialise in leasing own railway rolling stock to railway operators or public entities. In this case, operators and competent authorities are no longer responsible for rolling stock investment and the associated risks linked to possible residual value at the end of the contract. It also reduces delivery delay and maintenance risks.
- Determine contractual conditions which oblige the operator to invest in rolling stock. The operator will then have the responsibility for future investments and will have the choice to purchase or lease the vehicles. In Germany, most of the regions have determined such conditions which have factually obliged new operators to use new vehicles (or to reduce costs in certain cases to acquire second hand rolling stock) while DB kept its own vehicles.

#### b) Access to rolling stock maintenance facilities

Questions related to the maintenance of rolling stock are crucial in any discussion about opening the regional railway services to competition. These questions have a direct impact on the delivery of the services, particularly on the availability of the fleet, the punctuality and overall quality of the passenger services.

To date, SNCF undertakes all maintenance of rolling stock used for the passenger services, even where SNCF is not the owner.

In the future, the region will have the possibility to integrate maintenance into the call for tender concerning the delivery of services or to plan a separate call for tender covering maintenance.

If the region chooses the first option, the rolling stock could be maintained in a number of different ways: the operator may decide to leave maintenance to a third company such as the rolling stock manufacturer, or the operator may directly undertake the maintenance. The solution chosen by the operator will certainly depend on various parameters:

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21 Community guidelines on State aid for railway undertakings, OJ C184 of 22.7.2008

- The type of rolling stock,
- The nature of the maintenance to be undertaken,
- The location of the existing maintenance centre,
- The duration of the public service contract,
- The property of the rolling stock etc.

In this context, the access to a maintenance centre for the railway companies is fundamental, since the construction of new centres is difficult to implement, given the high cost and lack of suitable sites in the vicinity of stations. However, the use of maintenance centre staff does not constitute a service which has to be offered by the SNCF. Another issue is the capacity and opening hours of these maintenance centres which may need to be modified, if these centres have to be shared between several railway companies. At the moment, every French region has at least one maintenance centre, and certain regions are currently studying the possibility of new maintenance centres.

#### c) Access to stations and to their services

As competition opens up within both regional and international railway services the question of open, non-discriminatory access to stations and to station equipment for railway companies and their travellers becomes essential.

The access to stations is mentioned in the Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification as part of the minimum access package to be supplied to railway undertakings. This access shall be non-discriminatory and shall include passenger stations, their buildings and other facilities.

However, equipment and services in stations do not all have the same status: Directive 2001/14/EC distinguishes three types of services offered to railway undertakings:

- Minimal services. These services must be supplied in a transparent and non-discriminatory way to any railway undertaking. They constitute the essential facilities which the infrastructure manager is obliged to supply.
- Additional services. Where the infrastructure manager offers any additional services, they shall be supplied upon request to a railway undertaking.
- Ancillary services. Railway undertakings may request a further range of ancillary services from the infrastructure manager or from other suppliers. The infrastructure manager is not obliged to supply these services.

In France, SNCF is the station manager

Tn the context of the transposition of the Directive 91/440, the law of February 13<sup>th</sup>, 1997 created RFF (Réseau Ferré de France, the infrastructure manager)<sup>22</sup> and organised the separation between infrastructure management (entrusted to RFF) and transport operations (SNCF). However, stations have been excluded from this transfer to RFF, and as a result SNCF remains the delegated infrastructure manager in charge of stations, while RFF is only responsible for the station platforms.

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22 Law 97-135 of 13.02.1997, OJ of 15.02.1997, carrying creation of railroad network of France with the aim of the revival of the railroad transport

To separate its station manager activities and its railway operator activities, SNCF recently created a new business sector directly under the responsibility of its President called “Gare et Connexions” (Stations and Connections). This sector covers the management and operation of passenger stations (approximately 3,000 stations on the national network) and also the maintenance and development of these stations. These activities are executed by a total of 13,000 staff in the group. Since 2010, SNCF “Gare et Connexions” benefits from an accounting separation within the SNCF.

#### Situation in other European countries

In Germany, passenger stations are managed and owned by the company DB Station and Service AG, which is a subsidiary company of the holding company of the DB AG Group. Another subsidiary company, DB Netz AG, is in charge of the management of the railway network.

In Italy, a subsidiary company of Ferrovie dello Stato, FS Sistemi Urbani, manages the 116 main stations of the country, but leaves the operation to two subsidiary companies: Grandi Stazioni manages the 13 main stations, and Centostazioni the 103 others. The infrastructure manager RFI (itself a subsidiary of Ferrovie dello Stato) manages the 2,087 other Italian stations.

In the United Kingdom, the infrastructure manager Network Rail, a non-profit private company, is the owner of the 2,514 stations. In general, the management of the stations is delegated to Station Facility Owners (SFO).

Sweden has a system which completely separates the incumbent railway operator, Statens Järnvägar (SJ), the infrastructure manager, Bankverket (BV), and the stations manager, Jernhusen AB. The station manager is independent from the incumbent and the infrastructure manager, and is placed under the responsibility of the Ministry of Business and Industry.

Specific problems related to the management and possible transition:

In France, essential facilities include:

- Provision and the maintenance of buildings, surfaces receiving people and equipment, as well as services necessary for passenger reception;
- Passenger access to trains via the provision of adequate equipment;
- Operational management of the station and the access of trains to the station;
- Provision of information to passengers concerning access to trains.

The minimum service which SNCF has to provide to all operators constitutes a set of indivisible services which benefit all passengers (signalling systems, lost-and-found, general information centres, indication of tracks, waiting areas, toilets). Other services include those which railway undertakings may need, such as the lease of premises needed for services beyond minimum service level. These different services have distinct tariffs.

The lack of detail in the EU Directive and in the relevant transposing French legislation make it impossible to establish a list of all the various minimal, additional and ancillary services which could be offered to non SNCF railway undertakings. This is still subject to discussions, but a pragmatic approach would have to be taken concerning the minimal services which depend upon a variety of different factors, such as building configuration, the level and quality of available equipment etc.

In countries which have already opened their railway services or parts of their railway services to competition, newcomers have met concrete difficulties concerning the non-discriminatory access to stations and their related services. Examples below may illustrate this:

- Newcomers were sometimes allocated the most distant and least accessible platforms (such kind of experience has been made where the responsibility for those decisions is either attributed to the incumbent railway operator or delegated to the incumbent operator or a company within a holding structure which includes the incumbent operator. In France, such allocation would be under the responsibility of RFF and not SNCF);
- The information concerning the trains of the newcomers was not correctly disseminated in the station;
- The basic services offered to the passengers in station were not ensured (e.g. waiting rooms or toilets were locked etc.).

The access to stations and their services has a significant impact on the quality of the services offered to the passengers, and as such, potential railway undertakings interested in the competitive opening of part of the French regional market are being consulted in context of the ongoing discussions. They have already identified a number of issues which will have to be addressed:

- Necessity of a multi-annual pricing strategy for the services in station. This multi-annual pricing already exists in the airport sector and is fundamental for railway undertakings wishing to participate in competitive tendering procedures.
- A system of performance rewards and/or penalties could also be included in the contracts between the station manager and the railway undertakings, particularly in case of service disruption.
- Given the large number of parties involved (SNCF, RFF, other railway undertakings, municipalities, the region, shopkeepers etc.) it would be wise to establish “station committees” in order to inform and discuss the needs of each party involved.

It appears that complex challenges will have to be solved but opening up competition could also be an opportunity to develop new services. For example, certain suburban stations in the UK, being busy only in the morning and afternoon rush hours, developed additional services such as the installation of day-nurseries or supermarkets which increased the attractiveness of stations.

#### d) Social aspects

Social aspects constitute the main and the most sensitive remaining issue which is currently discussed. The question is, how can employee rights be transferred in case an operator other than SNCF is selected and will be in charge of part of regional railway services? In particular:

- How to identify and list the staff concerned?
- How to manage/transfer the pension fund rights?
- How to manage different salary levels and structures?
- How to manage the social benefits, seniority rights etc.?

These questions have already been addressed in a different segment of the public transport market: as a matter of fact, in 2006 more than 90 % (Paris excluded) of the urban networks (bus, tram, metro) were operated on the basis of competitively tendered public service contracts. This experience will certainly be useful in the framework of the current passenger railway service related discussions, but the opening up of regional railway services will nevertheless involve a specific approach, considering in particular that SNCF staff benefit from a state employee’s status.

In order to find solutions to these questions, the analysis of the German experience appears to be the most pertinent.

As previously mentioned, in 1994 the entire cumulated debts of all subcompanies of the newly established holding fund were transferred to the BEV (Bundeseisenbahnvermögen). But the latter also inherited responsibility for the retirement pension funds of these (sub)companies (45 billion Euro for the period 1994-2002, covering the rights of about 210,000 employees). Finally, responsibility for the state employees was also transferred to the BEV (108,000 agents in 1994, not more than 42,000 full time equivalents in 2006).

The BEV continues to pay them according to the civil servant salary scale, while DB AG reimburses the BEV on the basis of the salary scale of the collective agreement applicable to DB AG. According to the 2007 financial law, the total forecasted BEV receipts amount to 1.8 billion Euro (mainly DB AG reimbursements for the salaries and contributions), while expense should amount to 7.6 billion Euro (5 billion for retirement pension funds, 1.6 for salaries, the rest for diverse aids), that is to say a debit balance amounting to 5.8 billion Euros. In any case, all hirings are under private law employment contracts since 1994.

Full social consensus solutions as the one adopted in Germany may not necessarily be transferable to France or other European countries, but it is important to state that, thanks to the creation of the BEV, DB AG has been financially able to face the opening up to competition of the regional railway transport market.

Annex 1: Organisation chart “Mobility and Transports Direction” in the Lorraine region

