

**Round table on PSO Regulation 1370/2007:
Two years after enforcement, where are we? How efficient is
the regulation? Are there necessity and ways for progress?**

[1'53" – Sabine AVRIL] *Fortunately I have a harsh voice so you're with me anyway...* We will resume our work with the second round table. This round table will touch upon the PSO Regulation. But first of all we will have a speech from the representative of the Czech Ministry of Transports. So I wish you again a fruitful workshop.

**1) Jan SNOPEK, Ministry of Transport – Transport Services in the
Czech Republic**

[2'29"] Good afternoon. *Not yet, not yet.* Good morning and thank you for the possibility to speak here. I would like to briefly introduce Regulation 1370 and its application in our circumstances in the Czech Republic.

Slide 2 – Legislation

[3'00"] *It works.* So first of all I would like to mention three periods of time, how it was in the Czech Republic. Probably in different countries you have decided in a different way. But in our case, we have basically three periods of time, as you can see. And the thing is that after the coming into force of Regulation 1370, we didn't have a proper instrument, a proper act. We managed to have it only in July 2010, as you can see in the point III. But luckily in the meantime, from December 2009 to July 2010, almost no public contracts were awarded, so I think that in the Czech Republic, we managed to apply or to use both regulations in proper way. The Act on public passenger transport services offers smaller detailed information about awarding of public tenders than original regulation. So I think it was the right step from our side to have such an instrument, such an act. But of course this act, dealing not only with awarding of public contracts, but also with other things, for example with transport planning.

Slide 3 – Transitional period according to Regulation (EC) No. 1370/2007

So it's again a topic of a transitional period. I think it's not necessary to speak about it in detail, because probably for most of you, this topic is already known. Because again it goes with Regulation 2070 from the year 2007, which is of course applicable in all EU members.

Slide 4 – Regulation (EC) No 1370/2007

So it's again basic information about Regulation 1370. The main difference compared to the previous regulation is a new way of awarding public service contracts. Now we have a tendering procedure as a general rule and direct award works only for concrete cases, which is, let's say, small business operators, extraordinary situations, rail transport and internal operator, which will be probably discussed further.

Slide 5 – Act on public passenger transport services

And now I would like to speak a little bit about the organization of public transport here, in our circumstances, in the Czech Republic, according to the new act on public passenger transport services. A very important level is the first one, the region, which is responsible for

regional public transport services. It could be many systems of public transport and mainly it is bus and rail transport on regional level. But, of course, in order to be sufficient, they very often have to cross the border with other regions. So then agreement with another region is necessary.

The second level is municipality. At this level, we have to distinguish between city transport, which covers, let's say, city buses, trolley buses and streetcars, and tramways. This is typical for huge cities, for instance Prague or Brno or Ostrava. But we have also many smaller cities without tram or trolley buses, transports. And if they have the feeling that the level of service offered by region is insufficient, is not enough, then they can order some extra public transport services over the level which is covered by the region.

And the last one is of course the state level. This level is represented by the Ministry of Transport. In the Czech Republic this is exclusively long-distance railway service. A minister of transport in the Czech Republic cannot order bus lines. It covers long-distance transport, it means basically trains of category express and the fast trains or let's say *Schnellzug* in German, it could be more understandable for you, maybe.

Slide 6 – Long-distance railway passenger transport

[10'48''] So now you can see in the picture our product. It is a net of our long-distance trains. I think I should translate the text on the right side above. So the red lines, they are express trains, blue lines a little bit slower fast trains: they stop in smaller cities than expresses. Expresses, they are really oriented for connection between the biggest cities in the Czech Republic. And then we can see also how frequent they go. Full line is interval 60 minutes. And then 2 more categories, they concern 2 hours, 120 minutes, and unluckily some lines they have even 240 minutes.

This picture shows us the situation in the last year. Unfortunately, compared to the last year, we had to do some reduction of our trains. So for example the line between Jihlava and Pardubice is out of order now. The Ministry of Transportation unfortunately did not find enough money to keep this line going. But still I think as for our financial possibilities it is a good result.

There is one more interesting thing I probably should mention. One of the builders of this system is sitting with us today, but today he is no more member of our team, member of the Ministry of Transportation.

Slide 7 – Schedule of opening market for public service

[13'42''] Even though Regulation 1370 doesn't say to us that public transport authorities have to award some public services with tendering process, we decided for it, even though it's not necessary, just to higher up the quality of long-distance trains in our conditions. It was decided by Government Decree No 423 from the last year.

Slide 8 – Schedule of opening market for public service

[14'52''] And part of this decree is also scheduled, which is pictured here. So, according to this picture, we should declare tendering procedure in case of almost all long-distance lines in the Czech Republic. This picture shows our situation until end of the timetable 2018-19. We have prepared also a longer plan, approximately until the timetable 2025-26.

Maybe I should also explain what it means having if it's not clear this notification in official journal of EU:

- Long-distance railway lines: its clear.
- Traction: Diesel (M) or electric (E).
- Range: millions of kilometres. For example: 0.5 in the first line means approximately 500 000 km per year.
- Share: it's the percentage on the whole amount of our order. So as you can see, the first ones will be the rather smaller, only 1.4% share.

Slide 9 – Current questions in the public transport

[17'07"] As for current questions in the public transport, I have to say that in the last years, there were every year discussions about financing of public transport, not only long-distance trains, but also regional trains. Two years ago, there was an attempt to solve it and the Government accepted Government Decree No 1132. And with this government decree it was possible to pay for regions, for their regional order with state money, state grants. But it didn't last long such a good situation. Only one year later, the new government's motto was government has budget responsibility so they decided not to pay inflation rate, even though it was included in this decree. It stated here in the point No 1. As for just in order to save money. But of course, it doesn't concern only Ministry of Transportation but also many, many other different ministries, which have now cut finances.

Slide 10 – Current questions in the public transport

So the question is how the development will be in the next years. It's pretty possible that Czech railways will be again without inflation rates. Now the Ministry of Transportation has a discussion with the Ministry of Finance to solve this problem and to have rail operators with this problem.

Slide 11 – Thank you

[20'34"] So I think it was enough as brief information. If you have some questions, I think I can answer later. Thank you for your attention.

2) Tomas AVANZATA, Avanzata consulting – Moderator

[21'17"] Mr Chairman, Ladies and Gentlemen, good morning and thank you very much for this invitation to Prague. We'll now come to our debate on the implementation of the so-called PSO Regulation. So I will now introduce our speakers. Marc, will you join us?

We'll have the pleasure to listen to Mrs Suvi POSIO. Mrs Suvi POSIO is the legal counsel for HSL, the Helsinki region transport authority. We'll also listen to Jiří NÁLEVKA. NÁLEVKA is the representative of the general management of Czech Railways. He is also a consultant for ROPID, ROPID, which will be represented by Mr Jiří PROCKEL. Mr PROCKEL is the deputy director of ROPID. We will also listen to Marc GARCIA. Marc is a civil engineer. He is also the director of ATM, ATM being the Barcelona metropolitan transport authority. And we will finally also listen and have the pleasure to welcome and to listen to Mr Jan SHERP. Mr Jan SHERP works for the EC Commission inside DG-MOVE, inside a unit called A5, it's the unit

in charge of legal matters and infringement coordination and Mr SHERP is the policy officer responsible for the implementation of the Regulation 1370. So he is the guy!

So, first of all, I would like to propose you a short introduction to remind you what this Regulation 1370 is about and to frame our discussion and our debate. So we can go on for the PPT presentation.

Slide 2 – Why did the EU institutions adopt a new regulation?

[24'20''] OK, full screen... So I'm going to be very brief, but I will try to give you all the possible information in order to remind just all of you what this regulation is about. Now... OK. First slide. Why did the EU institutions adopt a new regulation?

Very quickly: The former regulation was dating from 1969, so a long time ago. It did not make public service contracts compulsory for urban, suburban and regional services. And, most of all, it failed specifying the procedures for the award of public service contracts. So the application of this 1969 regulation became very difficult considering the evolutions in the transport market. As a result, there was increasing legal insecurity.

Slide 3 – Entry into force and transition

[25'30''] So a new regulation was finally adopted at the end of the year 2007 after something like 8 or 10 years' discussion – it depends where we start discussions, but let's say after 8 years' discussion, so that's quite a long time, with different versions, different propositions... So, finally, it was adopted end of 2007. It entered into force the 3rd December 2009, with a transition period very limited to the application of article 5. Article 5 is the article concerning the way public service contracts have to be awarded. So for this article 5, there was a 10-years transition period, so from 3rd December 2009, ending 3rd December 2019.

There was also a specific regime for existing contracts that under certain conditions may remain in force also after the entry into force of the Regulation.

Slide 4 – The new regulation does not have an impact on every decision

[26'46''] So, before saying a few words on the impact of the regulation, it is, I think, important to say that the new regulation does not have an impact on every type of decision. For example, the new regulation does not interfere with the institutional structure of a member state. That means that it doesn't impose any type of authority. It is at the member state level that has to be decided who is the responsible competent authority. It can be the city, it can be region, it can be a county, it can be a group of cities... It also may be a company set up by the city in order to be the competent authority.

In the same way, it does not impose or define any public service obligation. It is up to the competent authority to define and to impose the public service obligations and to decide according to the local situation what is, and what is not, required.

In the same way, the regulation does not impose social, environmental or quality criteria. Of course, it is possible to impose such criteria. Then they have to be mentioned in the contract, but the regulation itself does not set up a minimum level as regard social, environmental quality criteria.

And, last, the new regulation does not interfere with authorities' decisions on how to organise public transport services. Competent authorities may decide to organise the network with one contract for the network, they may decide to award a line per line series of contracts, they may decide to have one contract for the metro and one contract for the bus or one contract for the metro and ten contracts for the bus services, etc. This is up to the competent authorities to decide.

Slide 5 – The regulation defines a minimum content of contracts

[28'58"] The regulation defines a minimum content of contracts. Well, as regards this chapter, there is no major decision. Let's say that the regulation imposes a certain level of transparency, as regards the contents of contracts.

- For example, the contracts must clearly define the PSOs, so they have to be mentioned, clearly, inside the contract.
- The contract must establish the nature and the extent of the exclusive right(s).
- The contract must also – and this is very important – establish in a transparent manner the way compensation, if there are compensations, will be calculated. If the contract is directly awarded, then the calculation methods defined in the annex of the regulation is to be respected.
- Another point: the contract must also be of a limited duration. The regulation sets principle durations, 10 years for bus services, 15 years for rail services, with the possibility to extend these durations by a maximum of 50% if the operator provides significant assets that are needed in order to provide the transport services.
- As I already mentioned, there are also the possibilities to impose social standards. In that case, the contract shall list the staff and give transparent details as regards the staff contractual rights.
- In the same way, the contracts should also mention possibilities for subcontracting.

So this is for the minimum content of the contract. But let's say that the main impact of the new regulation is that it defines the rules for the award of public service contracts.

Slide 6 – Main impact: The regulation defines the rules for the award of public service contracts

[31'22"] We have to face a first difficulty concerning this subject, because as regards the award of contracts, the regulation is not the only applicable text. The procedures defined in the regulation, in article 5 of the regulation, will have to be coordinated with public procurement directives procedures!

Slide 7 – Coordination with public procurement directives procedures (art. 5§1)

[33'32"] When public procurement directives are to be applied, then article 5 of the regulation will not be applied. This means that article 5 of the regulation will apply to all train or metro

contracts and to any contract that takes the form of a service concession contract, whatever transport mode is concerned. So that means that for tram and buses, the first question is:

- Is the contract to be considered a concession contract, then we'll have to follow article 5, or:
- Is the contract a classical contract for the public procurement of transport services, for instance a euro kilometre-based contract, or a sub-contracting type of contract, then procedures from public procurement directives will have to be followed.

So, of course, that makes the risk criteria, the existence of industrial and commercial risk for the operator, very important in order to distinguish between concession contracts and classical contracts submitted to public procurement and directives.

If I lose anybody or if anybody is lost, it is now time to raise your hand. OK. So as regards the award of bus and tram concessions and any metro contracts, as regards article 5 of the regulation, competent authorities have a free choice.

Slide 8 – Award of bus and tram concessions and any metro contract

They may decide to directly award the contract to an internal operator, following article 5.2 of the regulation. This direct award is possible unless prohibited by national law. So if national law prohibits such direct award, it is not possible for a local competent authority to use the regulation in order to say: "I want to directly award to my internal operator." So it has to be permitted by the national law.

So direct award is possible, but it requires that the internal operator is controlled by the competent local authority. That means that the competent local authority has to exercise a control on the internal operator and this control has to be similar to the control that the authority exercises on its own departments. So it is a strong control. Second condition: the internal operator or any entity – and this is very important – or any entity over which the internal operator exerts even a minimal influence, so the internal operator and any entity over which it exerts this influence has to perform its passenger transport activity strictly within the territory of the competent local authority.

And the counterpart of this possibility of direct award is the fact that compensation for public service obligations are to be calculated in accordance with the annex. The way compensation is to be calculated in the annex is based on the concept of net financial effect. So the compensation shall not exceed the net financial effect. So that means the cost incurred in relation to the implementation of public service obligation minus any positive financial effects and minus the receipts from the tariffs plus a reasonable profit. What is a reasonable profit? That is probably going to be one of our questions. But in the regulation, a reasonable profit is defined as a rate of return on capital. That is normal in this sector, considering the existence of the absence of risk for the operator.

So the authority also has the choice to decide for a competitive tendering procedure. The procedure shall be open to all operators, fair, and it shall observe the principles of transparency and non-discrimination. So it has to be mentioned that the regulation is absolutely not detailed in regards the procedures and... So only these main principles are mentioned in the regulation.

We also know that the procedure may involve negotiations, which is very important, and that tender documents shall be transparent about social aspects, quality standards, and subcontracting.

Slide 9 – Award of rail contract

[38'06"] As regards the award of rail contracts, competent authorities also have a free choice. They may go for a direct award to any operator – not to an internal operator, this is different from the tram and metro situation, so it is possible to award to any operator. This may be a historical operator, the incumbent, or it may be a private company... There is no detail in the regulation as regards this point. So, once again, this direct award is possible unless prohibited by national law.

The counterpart is that the contract shall not exceed 10 years (instead of 15 years). So, if the authority decides to go for the direct award, the contract has to be a bit shorter. Another counterpart is that the competent authority has to make public a certain number of detailed information, within one year of granting the award. And, once again, the compensation has to be calculated in accordance with the Annex.

Just like in the urban sector, the authority also has the possibility to choose competitive tendering procedure, and then the same article applies, article 5.3: the procedure shall be open to all operators, etc.

Slide 10 – Possible direct award to any operator

[40'20"] We also have to quickly, very quickly mention that there is inside the regulation a possibility to directly award public service contracts, which are under thresholds. It is possible for a competent authority to directly award a contract, which has reached an annual value estimated < 1 million €, or a contract, which concerns less than 300 000 km/year. These thresholds are doubled in the case of a contract is awarded to a small or medium size company. A medium size company is a company operating not more than 23 vehicles.

And there is also, inside the regulation, the possibility to have a direct award as an emergency measure. But in that case, the contract shall not last more than 2 years.

Slide 11 – Consequence: Competent authorities have various tools

[41'13"] So the regulation that has finally been adopted in 2007 is a very balanced text, giving free choice to competent authorities. Competent authorities have various tools. They may choose between:

- Controlled competition,
- Closed markets,
- Mixed systems with maybe direct award to an internal operator for the metro and competition for the buses, for example,
- And they may still use the deregulated markets, just like in England, outside London.

Slide 12 – More than two years after the entry into force

[41'59"] So, more than two years after the entry into force, in 2011, EMTA published a study on the implementation of the regulation. The European Commission did the same based on the DLA paper work¹ and they also organised, at the end of 2011, an international workshop on this subject. Some of you were present in Brussels for this workshop.

So the conclusions, more than 2 years after the entry into force of the regulation is that it is a very balanced text. It sets the basis for a more transparent public transport, BUT on many issues interpretation and clarification is needed and required in order to ensure proper implementation of this regulation.

We will now listen to our speakers and will start with the speakers representing EMTA members. So my first question will be quite simple, and it will be a question to Mr GARCIA, Mr NÁLEVKA and Mrs POSIO and Mr PROCKEL.

Can you explain us what is the situation in your network and how you have awarded the current contract in your network? And what are your plans as regards the award of the future contracts in your network? So maybe we will start with Marc GARCIA, for Barcelona.

3) Marc GARCIA, ATM, Barcelona – Devolution of commuter train services to the Catalan Regional Government – An update

[43'56"] Thank you so much. Just to give you an overall flavour... It is not easy to do it in a compressed way, but I'll try. First, Barcelona's metropolitan region is comprised of 164 municipalities. We have 5 million people living there and the public administrations responsible for the public transport are essentially the regional government and the municipalities. The state has only a prominent, let's say, role as owner of one railway infrastructure network. No other, let's say, relevant role of the state is at the moment in the area.

The regional government, the municipality of Barcelona and the federation of 36 municipalities around Barcelona decided to establish in 1977 ATM – which is where I work. ATM is a consortium of these three entities that develop the main and provide the main, the bulk of the public transport services in the area. Like in Madrid, in our system, they did not delegate it onto us, the provision of the service, but only in very specific issues, as is the case of the tramway system. It means that in the other cases it is the regional government who is really having the contractual relationship to operators. It is the Barcelona municipality and the other municipalities that are having the contractual relationship with the respective operators of metro and bus services.

[45'53"] Just to give you an overall prospective, in Barcelona, in 2011, the number of trips in public transports was 925 millions. Of that, 70% were transported by internal operators, and in particular two internal operators, the prominent two internal operators. One is the internal operator by the municipality of Barcelona that is TMB. TMB is responsible for the urban bus transport in the city of Barcelona and the undergrounds system. And the other internal operator is FGC, a regional railway company that is owned by the regional government.

¹ DG-MOVE ordered a study by the consultant firm DLA-Piper in March 2010 on the implementation of the PSO Regulation

Although FGC is owned by the regional government, it is rather smaller, in terms of supply provisions, than TMB, the municipal company.

[47'10"] The rest of the system... well, this internal operators, I would say that the basic regulation, the basic relationship between the mother – or father – public administration are what we would call the sui generis PSO contracts. I mean, if we look into the literal way how public service contract is explained in the regulation, I could manage to say that *that* is a public service contract. But in fact, I mean it is an old political decision of direct award in the service, so there is probably... I mean by 2019, when this transition period ends, there has to be an important evolution of the way how this contractual relationship is established.

[48'00"] In the other cases, the tramway system, for which the regional government delegated the contractual competences on us, it is based, it is run on a concession basis. There are two tramway networks, actually. Each of them was tendered in 2000 and 2001, respectively and they are 25-year long contracts and according to the Spanish concession rule. And they are both run by the same private company.

[48'44"] As for suburban buses outside the Barcelona municipality, we have two different types of situation. On one side, we have the urban and suburban buses run by the municipalities, which are normally... they are based on tendered contracts and the duration of these contracts is roughly 5 years, in the average. So they are really, I mean, doing what really the regulation is expecting that should happen in this area. And on the other side, we have the situation of the suburban and interurban bus transport, for which the regional government is responsible. These are concessions based on the 1987 Transport Act, by the Catalan Parliament, and the decree issued in 2003 extended the duration of these concessions to 25 years – which might be quite controversial.

[50'03"] And this is the present situation, so there is, I would say, the classical concession scheme, a well-established scheme, not only in Catalonia, but all over Spain, that probably, I mean, has a lot of tiny issues that should be adapted. In addition to that, there are general rules for integrated tariffs, for the management of integrated tariffs system, I mean the general rules according to what the regulation says, which is the general rules.

[50'40"] And last, but not least, let me come to the services delivered by the state owned operator, which is RENFE. These services were devolved to the region in 2010 – well, part of them in 2011, but that doesn't matter. Actually, the government, the regional government, had the initial idea to go for direct awarding of these services as long as they could, I mean, this was the idea of the government in power until December 2010 – that's correct. But now we have, since January 2011, we have a different government, and they want to tender. The problem is that the Spanish 39/2003 Railway Act does not allow the regional government to tender these services. This act has a transitory disposition that says that, as long as the internal railway transport in Spain has not been liberalised, all the capacity is allocated to the traditional operator. So essentially, I mean, that is a big political debate at the moment in Catalonia, with the Spanish government happening, the regional government, although it might wish to go for tendering, it is not allowed to. But I'm pretty sure this will be a very hot topic this year and things have to happen *for sure*, because the situation is quite controversial at the moment. I have to warn you...

[52'33"] Tomas AVANZATTA: "Can you please tell us exactly what type of services are concerned by this wish of the regional government to tender?"

[52'48"] The regional government is competent for all passenger services delivered within the borders of Catalonia, of the Catalan region, on the Iberic gauge lines, that means, which is the classical or old, conventional lines, whatever you'd like to say. That means that the state only keeps the responsibility for the delivery of the long distance inter-regional services and the high-speed lines. Everything else has been transferred to the regional government: the commuter line system in the Barcelona area in 2010 and the regional services in 2011. So that's a lot. I mean, in terms of practical... in practical terms, the number of passengers is something around 150 million passengers a year and, in terms of supply, it must be something around 39 million branch kilometres a year. So it's big! That's big.

[54'06"] One final comment on this. What... Let's suppose that this legislative restriction is removed. Will the government be able to really go for an open tendering process? I mean, or in other terms, is there any company going to attend an eventual tendering process of the whole network – which I think will not be the case – or substantial, or lines of a certain entity? And the answer is, or my answer, or my hypothesis, is that probably not! Probably, we will not find anybody coming, unless the regional government acquires the property, or the assets, of the state-owned company running the services.

[55'17"] In the devolution agreements in 2010 and 2011, there was a little wording, a bit confusing, not totally clear, that said that in case that the regional government decided not to continue with the same company, with the traditional operator, it should be able to get this assets, I mean, so as to allocate that either to a direct management, a direct provision of the services, *or* to a contract-based provision of the services. And you would say *why*? The answer is that Iberian gauge – and that's not the standard EC gauge – so was the company being able to deliver 2050 trains of Iberian gauge and to depreciate that into a 10, into a 15 plus, even with the plus 50% time considered in the contract? You will not find it in the market. So that's really something absolutely crucial. I mean, so we have a regional government now that wants to go for tendering, perhaps, I mean, for partial tendering and in the long term, I mean, for more ambitious tendering, but actually, I mean, this... Or the government here gets the property of this means or this will not be possible. Thank you.

[56'50" TA]: So if I understand you correctly, you are telling us that not only there are legal barriers, restrictions, but there are also technical and financial, economic obstacles for this tendering evolution.

[57'07"] Yes, that's it. The easy to remove are the legal ones. The difficult to remove are the technical and economic ones. [Laughter]

[57'14" TA]: Just for... In Spain, you have now a new government. What is the tendency as regards this possibility to remove this legal barrier? Because crisis, the economic crisis is everywhere in Europe now, and is tendering envisaged by Spanish government?

[57'42"] It's difficult to say, because, I mean, there are now many, let's say, restricted conversations going on, I mean. *But* my feeling is that the new Spanish government is certainly inclined to tendering, to favouring tendering. *But*... So... I'm pretty sure that in the next few weeks there will be important announcements by the Spanish government in this sense.

[58'16" TA]: OK. Marc, thank you very much. We will now listen to Mr Jiří NÁLEVKA and Jiří PROCKEL as regards the same question: What is the situation in Prague? And how the current contracts have been awarded? And let's look at the future and tell us a little bit what you think is going to happen.

4) Jiří PROCKEL – The situation in Prague

[58'43"] As I have mentioned yesterday, we have contracts with 17 operators and the most important contract is our city operator, Prague Public Transit Company. It just joins up company to 100% of share owns the city of Prague. The second is Czech Railways, which is state company, state joint stock company, too. Then we have contract with one small private operator. We have another contract with 12 private bus operators and 2 ferries. All contracts were awarded in 2009, at the end of November, before 1370 came into power. And they last 10 years, till 2019. There are 2 exceptions. Two contracts were closed after the 3rd of December 2009. These are the contract with Prague Public Transit Company, which is our internal operator, in compliance with 1370. And with one small bus operator we used article 5, §4, small enterprise. This was a direct awarding.

[1h00'50"] This is our situation right now. And for the future, all our contracts will be awarded in compliance with 1370, of course, but without using transition period, because we are limited strictly by our implementation law, so we have no choice. But I must tell that it's not such a great problem for us. So we will use tendering procedures for all other operators than Prague Public Transit Company.

[1h01'35" TA]: So you have a mixed system, finally, [JN: yes] with partly direct award [JN: yes] to an internal operator, tendering with many operators...

No, in... Just now, we have only contracts based on direct awarding, closed *before* 1370, in 2009.

[1h02'03" TA]: OK, so *all* contracts have been directly awarded? [JN: yes, yes] Even with the 12 bus operators?

Yes. And we prepare first new, new contract, in these days [TA: OK] and we announced it in European Journal last year, and it's tender. We have...

[1h02'22" TA]: OK, so you are going to tender these contracts, these bus contracts, mainly? [JN: yes] OK. And you even have a small contract directly awarded, according to article 5.4?

Yes. And some more to our railway contract maybe my colleague, Mr NÁLEVKA, maybe to generalise to railway contracts in Czechia?

[1h02'48" TA]: Mr NÁLEVKA?

5) Jiří NÁLEVKA – The situation in Prague (continued)

[1h02'52"] I thank you. First of all I would like to thank you for the invitation to this round table. And I would like to focus on the railway PSO contracts in the Czech Republic, and in Prague. Generally, all contracts were signed before December 3rd, 2009, so before the date when the Union regulation entered into force. And the duration of the contract generally is the

end of 2019, so for 10 years according with, in line with the transition period included in the new regulation.

[1h03'39"] Now in majority of contracts, there is no guarantee for traffic volumes. It means that in fact it is rather [...] contract, because the Czech Railways and the respective transport authority have to negotiate each coming year for the timetable period about the traffic volume and the compensation, even though there are some criteria set by contracts how the compensation shall be calculated. All the contracts are netto contracts. It means that the remuneration is bourn by the operator, Czech Railways.

[1h04'39"] In the Czech Republic, there is a quite complex organisational structure. As Mr SNOPEK from the Transport Ministry mentioned, the long distance transport is ordered by the Ministry of Transport, the regional services are ordered by the regions in Czech [...] and, regarding the bus services, there is also the possibility of the municipalities to conclude a PSO contract for their territory. It means that, for example, in the Prague metropolitan area, the bus services are compensated by three different types of competent authorities: The city of Prague for the city of Prague. The metropolitan area of Prague is the services within this territory are generally compensated by the sub-governing region of Mid-Bohemia, but only in terms of so-called basic transport needs. And if the municipality wishes to offer to their citizens more traffic volumes, then it has to pay for that. And then the municipalities are authorised to conclude PSO contracts for their territory, for additional bus services... let's say for additional public services. So, for example, on one bus line, the bus operator has to conclude three different PSO contracts in order to get the subsidies for once specific bus line. That's a little bit complex in the Czech Republic, but that is the situation as it stands now.

[1h06'40"] Regarding the Czech railways, Czech railways are owned by the state. But because of the Czech legislation, the state is not considered to be the same entity as the sub-governing regions. It means that for the award of PSO contracts for regional services, the exception of direct award for in-house operators is not applicable. So only the exception of article 5.6, it means the general exception for railway is applicable for the Czech railways. So if this opportunity is considered, then these regions would have to tender all rail contracts.

[1h07'35" – TA]: For now, all regional contracts, railway contracts are directly awarded to Czech railways. [JN: Yes, there were...] There is no exception?

[1h07'49"] There were two exceptions in the past. Well, there were... In fact, for long distance there were two tenders lacking in 2005. That was during my year as Minister of Transport, to be honest. Both were won by Czech railways. Regarding the region transport, there were two or three attempts. Two of them, they were by Czech railways, and one by the open access of new... by a new operator.

[1h08'28"] I would like also to focus on the, let's say, relationship between the PSO services and the open access, because it is also very interesting in the Czech Republic. Well, from the legal and factual point of view, the market is open within the Czech Republic, not only for international services as, let's say, stated by the European legislation, but also for domestic services. And there is no... The test of economic equilibrium is not applied within the Czech legislation. It means that there is no protection of PSO services from for example cherry picking or from the entering... the new railway operator... the new open access operator, *if* there is a potential of negative impact on the economic equilibrium of the PSO operator.

And, as I said, all the contracts are the netto ones. So, in fact, you have to bear the risk that, for example in the 5 years, the new operator who occurs and you'll be bound by the existing PSO contract. For example, you will have to provide certain capacities, some number of services, even though that in 5 years happen the... when the new operator occurs, there won't be the need for such a capacity or for such a number of services. That's a big risk, which is born by Czech railways nowadays.

[1h10'18"] Also the revenue risk: It's one... there is another issue, which is very tricky in the Czech Republic. In the region transport, let's say 70% of passengers use the Prague international transport tariff tickets. So their prices are set by the municipality of Prague. But the revenue risk is born by Czech railways. It means that we are not... we are hardly able to handle this revenue risk and it leads to a real very specific situation which... For example, before the election last year, the municipality of Prague introduced, let's say, new free fare for certain categories of travellers. Fortunately, we have managed to make an agreement on the compensation for Czech railways. But from the strictly, let's say, contractual point of view, we are supposed to bear that risk, even though we are not able to influence that. So...

[1h11'30" – TA]: OK so, if I understand you correctly, you had some compensation issues before the regulation, and you still have some compensation issues even after the entry into force of the regulation?

[1h11'50"] That's within the existing contract; it's covered by the existing contract. There was a new provision entering to the contract, that there is a specific compensation for these new, let's say, tariffs for... for example for children under the age of 15, and that's a part of the overall compensation. And so it's covered by the existing contract from 2009.

[1:12'18" – TA]: So the regulation is focussing on the issue of overcompensation, but what you are mentioning is mostly a problem of *under* compensation.

[1h12'28"] Yes. That's our perception of the current situation in the Czech Republic. And it's closely linked to the situation of the national and municipal budgets, which was mentioned by Mr SNOPEK.

[1h12'42"] I would like also to address the content of the contracts. Again, it is very interesting. For example, we have... The Czech railways are obliged to renew the rolling stock fleet so, well, we have bought almost 70 double deck EMUs for Prague suburban services. Although there is, once again, there is a risk that, if the contract in 2019 is not renewed, there will be a really very... it would be very difficult to change the deployment of this rolling stock, because this rolling stock is tailor-made for the Prague area and it is not generally deployable anywhere else within the Czech Republic. So that is another risk, which is born by Czech railways.

[1h13'53"] And regarding the opening of the market and tendering procedures, Minister of Transport announced its plans for opening up of the market. We as Czech railways, I think that, before that, some deficiencies of the market shall be solved. And there are two principal deficiencies: one is the ownership of the stations, because these stations are in the ownership of Czech railways as one of the railway undertakings in the Czech Republic. But, according to the Czech legislation, Czech railways are obliged to bear the costs. But no other undertaking is obliged to pay the cost, which is caused by their passengers when using the station buildings. It means that Czech railways are only company which...

[1h14'59" – TA] One more minute, not more.

... which bear the costs. And the second is this special fare for the employees of railway undertakings. Nowadays, there is a special fare for the employees of Czech railways as a railway operator. Also for infra manager, which is state owned but there is no ownership from the Czech railway side. So there is a special fare for the employees of Ministry of Transport, rail authority inspection... And nowadays only 20% of these special fares are the employees of Czech railways. And the tariffs are set by the Ministry of Transport. And this is, once again, this is not compensated to Czech railways.

So these are the major deficiencies within the Czech railway sector nowadays. And I think that, because of the opening up of the market, these deficiencies will be somehow recovered in order to provide all potential railway undertakings a level playing field.

[1h16'24" TA] So, before the opening of the regional railway transportation market, you think that some work has to be done, as regards the ownership of stations and the status of employees. I think, in most European countries where this process is currently envisaged, the same questions are on the table. I think, Marc, probably it is the same in the Catalonia region? I know that it is the same in the French regions, where this regional railway opening process is also more or less on the table. But, still, status of the employees and stations and assets, etc. These are questions that have to be solved before the process starts.

[1h17'27" – Marc GARCIA] About the stations: In Spain – not only in Catalonia – both the stations and the infrastructure belong to a different state-owned company, which is the ADIF, the infrastructure administrator. So there is a different separation between the provider of the services, of the public transport services, and the stations. There is an agreement between this ADIF and the national railway operator RENFE, for the management of the commuter train network stations. And these, I must say, are the stations that work well. In the other cases, all our stations that are run directly by the infrastructure manager, are working wrongly. This is important. There has to, I mean, we do not need that the national railway operator is managing the stations necessarily. But we do need, I mean, our conclusion is that we do need that the company running the transport services is the same that is running the stations service. It is the conclusion that the people in the Stockholm area reached and actually, I mean, what we learned last year, I mean, they were thinking about putting everything together into a single contract: both the management of the stations and the provision of the railway services.

[1h19'14" TA] Thank you very much for this very interesting comment. We will now listen to Mrs POSIO. She will tell us a little bit about the situation in Helsinki: how contracts have been awarded and what she thinks is going to happen.

6) Suvi POSIO – The situation in Helsinki

[1h19'20"] Thank you, Thomas, and thank you for the invitation to these round table discussions. In Helsinki, the public transport network consists of bus, tram, metro, commuter rail and ferry services. And bus services are awarded... the contracts in bus services are awarded by public tendering in the Helsinki region. The Helsinki region, I mean the region, which is the HSL area – HSL is a joint municipal authority – has 7 municipalities. This public

tendering started in this area at the end of 1990 and has continued since. And we use classical service contracts, so we haven't used any concessions.

But outside the HSL territory, the bus transport system is based on transitional period contracts. And these contracts are based on old licences and that is very controlled and closed markets. And these transition period contracts are going to expire, the first ones in the year 2014 and the last ones in the year 2019. So between those years, there shall be big changes and a mixed system. Because there are still transition period arrangements and competitive tendering and also maybe direct awards.

[1h21'20" – TA] After 2019, all these contracts shall be directly... shall be tendered?
Or...

[1h21'29"] Yes, tendered, if there isn't any chance to open market, yes. [TA: OK.]

Metro and tram services exist only in the city of Helsinki and we have an internal operator: Helsinki city transport, which is owned by the city of Helsinki. We awarded direct contracts in year 2010. Actually, it was transferred to HSL, and the contract was made before and this contract is going to end in 2015. But I don't think that there is going to be any change after that.

[1h22'13"] And in rail services, we have in Finland only one operator: state-owned state railway. And we... YTV, the predecessor of HSL, awarded direct contract in year 2006. And this contract is going to expire in 2017, at the end of the year. And we hope that we could have some competition and the market shall open. But we aren't sure what is going to happen, because there are several issues that need to be decided and solved before the competition is practically possible.

[1h23'08" – TA] So you have description of the perfect mixed system, finally? [SP: Yes.] You will probably keep the internal operator... urban operator for metro and tram... [SP: Yes, yes.] ... and develop even more the tendering for bus contracts... [SP: Yes, I think so.] ... and keep the historical... the incumbent operator for railways, if competitors are not coming to the market. [SP: Yes, so we are forced to contract with it.]

[1h24'47" – TA] OK. So that's an illustration of the different possibilities offered by the regulation, as we mentioned already, as I mentioned in my introduction. The thing is... Obviously, this regulation gives different possibilities to the authorities. And I think all the examples that we just listened to, they show how competent authorities finally choose between what is going to be tendered and what is going to remain directly awarded to the internal operator, etc. So it's a good illustration of the different options.

[1h24'29" – TA] So we will now leave the floor and listen to Mr Jan SHERP. Jan, of course you can react to what you just listened. But it would be interesting for us to learn a little bit about the EU Commission's projects as regard the implementation of the regulation and also as regards the possible evolutions of this legal framework. So, the floor is yours.

7) Jan SHERP, Unit A5 – Legal matters and infringement

[1h25'11"] Yes, Thomas. Thank you very much for the floor and thank you to EMTA for the invitation to address this distinguished auditorium today, here. And, I must say, yes! I have some burning questions, you know, to the presentations that I've heard – which I found extremely interesting. I don't know, we have time for such...?

[1h25'39" – TA] I think we can take a little bit more time. So if you have some points, which you want to react on, some elements you want to react on, please do. And then tell us a little bit about what is in the EU Commission's mind.

[1h25'54"] OK. Thank you. Maybe I start with the lady first. You know, Helsinki, the last presentation... I noted, but correct me if I misunderstood, that for the bus services that you contract in your region, that there is the possibility that you *either* award on the basis of the competitive tender *or* that you have also open access services possible... or did I misunderstand you? Because you said that *after* 2019, when the provisions of the regulation applied, you would either tender out, on a competitive basis, or there will be open access... Or did I misunderstand you?

[1h26'37" – Suvi POSIO] Yes, the open access is mostly... I think that this is going to happen in the *long* distance, for services. So I think in the Helsinki region, that is competitively tendered services and agreements.

[1h26'58"] OK, so I understand that there could be some overlap of the, sort of, long distance coach services that run into your territories... [SP: Yes, yes, that's possible!] ... and then there would be some partial overlap...

[1h27'07" – SP] Yes, yes, and we are planning a system that when open market bus line comes from outside our territory, so we could use these bus services also to our customers and our passengers. So there could be some inter-created ticketing or something... kind of system. And maybe we could also purchase some journeys or somehow compensate this kind of transport journeys and services. So they could improve the quality of our services.

[1h27'52"] So if I understand you correctly, you would, sort of, put under public service contract the section of the open access services that run into your territory... [SP: Yes!] ... to improve the offer of offered services.

[1h28'08" – SP] Yes! And we hope that it is going to be possible that we could also public tender and hope that those operators who are open... who operate on open market shall take part to these tendering processes.

[1h28'24"] OK. Well, that's interesting... And then I have a second question on the rail. Because I, you know, learned interesting developments about rail services in, well, Catalonia region, but also in the Czech Republic and, in particular, the project of the government, the ministry, to have tender procedures for long distance lines, you know, in a staged manner until 2019, which I find indeed an interesting experiment. I just wanted to ask you whether you have reflected also already on the, sort of, regulatory framework, that would ensure the, I suppose, desired integration of all these services, so that the offer to the passenger is sort of coordinated in terms of timetabling, time table information provision, on the one hand...

[1h29'24"] ... and then, secondly, I would like to ask you: How could you address the issue of access to rolling stock? Because, I mean, to have a successful outcome of a public tender procedure, it would be important also to ensure that rolling stock adequate, you know, for these lines, would be available to any possible bidder, you know, so that you have a successful outcome of your tenders...

[1h29'56" – Jan SNOPEK] The thing is that rail operators will have enough time for preparing, so from that point of view I think they will have time for provision of new rolling stock. And the question of investments, I think they can use all possible advantages of different international companies or banks. Otherwise, I don't know about any special measure we can offer to railway operators.

[1h30'56"] And, last but not least, to Barcelona, Catalonia: I also found your presentation very interesting, about the... how you manage the rail contract, how you want to award... I understand, if I recollect correctly indeed, there is a Spanish law, that says that until European law would open up the market for domestic passenger services, then there could be no competitive tendering of regional services in Spain. Mainly, I don't know if I got it quite right, but indeed, I read some – 2 weeks ago, I think – a press notice that Spanish government announced that – I don't know, maybe it's only an intention – that they would give the right to the regional autonomist regions, you know, to tender out on a competitive basis from 2013 onwards. Is this correct, or...?

[1h31'49" – Marc GARCIA] Yes, this legal disposition in... this transitory disposition in law 39/2003 is a little bit more tricky. Because in the it does not say whether it is at the European level, but that the opening has to be the same. Whereas it does not happen, to say something like this, I mean, so no other... Nobody knows who is going to take the decision. *[Laughter.]* It is true that something is boiling in the cabinet office at the moment. I mean, in fact, I mean, there was a lot of expectation, as you said, 2 weeks ago. There was a... the vice prime minister almost wishing, I mean to say that it was on Wednesday... On Friday there was the council of ministers, and nothing happened! Suddenly, nothing happened. *[Laughter.]* I mean, for some strange reason. Probably, I mean, there was some, OK... some divisions in the government and also trade unions. But it's going to...

My perception of what is going to happen, actually, I mean... I bet one coffee that the Spanish government is going to – just 1 coffee – the Spanish government is going to set the opening, the liberalization of the internal railway passenger transport market. It is not clear, whether the... An official information we got is that they were going to establish possibly different deadlines for the opening at the Spanish level, for the opening at the level of the regions that have acquired their own competitive advantage. It means that both Catalonia, I mean... so that probably, I mean, the... In our case it will be shorter than the Spanish case. But it has to be decided yet, I mean, the... It's really exciting.

[1h33'54" – TA] Jan, thank you for your reactions to our speakers' presentations. Now, we will carefully listen to your words about the way regulation is going to be implemented – and is already implemented by different member states – and the views of the EU Commission as regards this implementation so far. And, maybe, what are the projects?

[1h34'28''] Thank you, Thomas. Just a question, you know. How much time would I have, now, for this presentation? I mean...

[TA] Let's say 15 or maybe 20' – that way, we can keep 10' for the question time, for a final question time – so between 15 and 20'.

[1h34'48''] Right. OK, thank you very much. I would like to present to you the current work of the Commission in two areas, no: in the area of accompanying the implementation of the PSO regulation on the one hand and, secondly, on its possible further development in the framework of the Fourth Railway Package.

[1h35'18''] Let me start with the implementation and our work in this area. Well, you know that the Commission, you know, considered this Regulation 1370 of 2007 an important legal framework, you know, to ensure sustainable financing and efficient provision of high quality public transport services by bus and rail. We know that, I mean, this framework is probably far from being a perfect legal regulatory framework. But it is sort of a first basis for establishing an internal market for public transport services in the European Union. So it is of course of foremost importance to ensure that, you know, the rules that exist, right now, today, are implemented in a manner that is, well, coherent with the internal market objectives of this regulation. And... so... What we do, because we don't have any committee, regulatory committee with, let's say, the representatives from member states... We have to get an overview of how the implementation has been done or is being done. And so, what we kind of do, we have issued a study, in 2010, to an independent consultancy:

- To document and to assess the implementation of key provisions of this regulation,
- To identify best practice implementation and also
- To make recommendations to the Commission and also to other actors on how to further facilitate, you know, a coherent internal market or ended implementation.

[1h37'01''] Thomas mentioned the DLA Piper² consultancy, who established this... who did this analysis and established the report, which we have published on our website. And we also organised a workshop, international workshop on the 14th of November in Brussels, with all stakeholders, to discuss the report and also to share experience on best practice. And Mr FRANZ, you know, was also a speaker at that occasion. So I think it was a widely regarded event. We had 230 people attending this workshop – this was quite a good number, I think – from all regions across the EU and we got generally positive feedback. So it was considered a useful event, you know, to further the implementation and exchange of best practice.

[1h37'58''] I would say the conclusions of this workshop, from my point of view, is that the majority of speakers said that, you know, it is a useful framework to enhance transparency and to set out the basis for better organisation of public transport by bus and by road and by rail transport. In particular, the exchange of information was good and really useful, also for the future. There is clearly a need to clarify a number of key provisions of that regulation, in order to ensure that, you know, these provisions are applied coherently across all member states. I mean, this is most likely also due to the very difficult negotiation process that was

² DLA Piper study see above

underlying, you know, this regulation. It is not a secret that it took more than 10 years, so to speak, from conceiving the ideas of this regulation and to its final adoption in 2007. So this shows that we had in fact three different proposals by the Commission, you know, for such regulation. It reflects the difficult power relationship that was existing, you know, when this regulation was negotiated. So some of the provisions were left a bit vague on purpose, because there was no consensus, you know, to be more clear, you know, most likely. That is my personal interpretation. But we have to live with these things. And now, you know, it is up to, first, the Commission to try to provide some clarification. And well if need be of course, this is only one opinion, the Commission's opinion, but other actors may not be of the opinion of the Commission. It has to be decided maybe finally also by the European Court of Justice.

[1h40'06"] Now I also would like underline that it's not only, you know, some work of classification needed by the Commission. But also member states have to do their job, in fact, to ensure a proper implementation of this regulation, so, for instance, to insure a proper legal review provisions in Member States and also provide adequate incentives to operators for sufficient provision of public service under contract.

[1h40'39"] Now... I mentioned that there was this request for clarification on key provisions. The Commission said, in the workshop – and it's also now part of the work program of the Commission for this year – that it would prepare interpretative guidelines on some of these key provisions and this regulation. So interpretative guidelines means a non-binding document. It is of course not a new law. It is just exposing, you know, the view of the Commission. And I think, based on discussion that we had also from contributions that we received from associations and also, of course, based on the recommendations made by the Piper Study, you know, we would address issues – but this is just an incomplete list to give some examples – of points that I would like to take up in the interpretative guidelines. For instance:

- The nature and extent of exclusive rights that can be defined by competent authorities.
- Then, of course, the issue of the appropriate compensation of public service obligations.

[1h42'12"] This was an issue that was underlined by our Czech friends today. You know, avoiding sustained under-compensation, I mean, this is also something that is clear. The intention of this regulation is, you know, to provide incentives for the provision of high-quality service. But this service must also be sort of financeable. There must be a realistic and sustainable financial framework. I mean, this was – and is still – a problem in new member states, I believe, that the operators were publicly owned, state owned, that they sort of were on a constant PSO without the appropriate sort of financial compensation. But of course, this is only one part of the issue.

Of course, the issue is also about having the right incentives, to cut costs. And this can of course be favoured by, I would say, competitive tenders, for instance. So it's not only, you know, having the right compensation, but it's also having the right incentives, you know, to reduce costs. So it's two sides of the same coin.

- Then we would also like to illustrate a bit the notion of control by competent authorities, you know, for the internal operator to provide some clarification, compared to the in-house concept and the public procurement rules.
- Then we would also like to clarify certain conditions of subcontracting. For instance, what does it mean, “a” or “the major part” of services to be provided by the operator under public service contract?
- And also, we would like to shed some light on our interpretation of the transitional periods, you know, and article 8.

[1h43'52"] We intend, you know, to establish a draft document and consult internally with the competition services of the Commission, in particular, of course, the legal service, but also the Competition, who are responsible for the compensation part, which means to state aids of the regulation and we intend to consult stakeholders – so member states and the associations – in summer this year for a scheduled adoption of this document, you know, in autumn this year. But we want to keep it separate from the Fourth Railway Package. Because we think this is really something, which is a document that should facilitate a coherent implementation of the current rules, of the existing law.

[1h44'41" – TA] Jan, do you think this concept of reasonable profit will be... could be part of these interpretative guidelines? Because we know that it is a question that is often raised by operators and authorities. It is... well, there are some difficulties to establish exactly what is a correct level for a reasonable profit and we've heard about the DSB decision, but, finally, it is not so clear. So do you think the document you are going to publish may tackle this issue?

[1h45'23"] I presume that you ask me whether it *could* be contained in the document. Yes. And I would like to include it there indeed. Because it is an issue that is not cleared to many, in fact, you know, this concept... But this is exactly one of the provisions that certainly we would have to strongly coordinate with the Competition, because they are in charge of the compensation part, so to speak. So I don't know, you know, how our internal discussions with the, you know, results on this point... But I think I would very much like in the... We intend, I mean, in the present draft that exists internally, that we have done with our little team, in our unit, contains some provisions or some lines, some paragraphs, on this issue indeed. But we have to discuss this still with colleagues, as I said.

[1h46'18" – TA] You mention obviously... We are talking about an interpretative document, so it is a non-binding document, as you told us. But as regards some situations, this document may have very important impact. Because we know that there are some issues in different networks, some situations that are really on the table. And even if non-binding, this document may have a real influence on very important issues. I'm thinking... I will not mention any specific case, but as regards, for example, the way the transition period has to be implemented, the way contracts have to be awarded during the transition period, or the situation for existing contracts, before the regulation entered into force... There are very important *dossiers* on the table, so... You think this document will tackle even very sensitive issues? I'm pushing you a little bit.

[1h47'30''] Yes, I understand, of course. Everybody would like to know! But, I mean, you refer to the DSB case and... Yes, other cases as well, but, well, in particular the DSB case is addressed. It is the issue, of course, and... Well, we know that some provisions of this DSB decision have been challenged, so they are now being judged before the... or *will* be judged before the European court. I mean, I... Of course I understand your desire to know more. But I think it would be not very wise for me now to commit myself. As I said, this will be the result of our internal discussions, what do we do... Because, of course, the Commission will have to put its considerations in this interpretative document also on a solid reasoning and, well, ideally on existing jurisprudence. So whether we refer to a certain jurisprudence is... It's a very tricky issue to have... you know, this... to reach the objective of a coherent internal market oriented interpretation. So, if you accept, I would like to leave it at this and not... you know, myself personally, then, you know, when I come to see you next time and then something else happened, you know, that it opened... I'm sorry but...

[1h49'00" – TA] I think that everybody agrees. I let you go on with your presentation. But maybe I have just one small, I hope easier or less sensitive question. This document is going to be adopted by DG-MOVE? Or is it going to be a EU Commission document? I mean, as you think it has to be adopted by the commissioners? Or is it an internal, I mean, or is it a DG-MOVE document?

[1h49'33''] My personal desire is, you know, to have it adopted by the Commission, by the college of commissioners, because then, of course, it has two advantages. First of all, let's say more practical, it will be translated in all community languages. There will be a communication of the Commission. And secondly, more importantly, it would then clearly show that *all* the service of the Commission, you know, support it.

[1h49'49" – TA] Yes, but I think the language issue concerning an interpretative document concerning such a difficult text as the regulation, as the PSO Regulation, it's quite important. But all people may have these interpretative guidelines in their own language, I think. OK, sorry for this interruption. I let you go on with your presentation.

[1h50'28''] No, no, don't be sorry, I mean, this is of course very important.

Now I would like to turn to the second part of my presentation, which is dealing with considerations or current work on a very focussed amendment of the regulation, which we reflect on in the framework of the preparation of the so-called Fourth Railway Package. And there, the issues clearly... You know that we see that, you know, we still have some problems with rail passenger services in the European Union, be it on long distance, but also in regional transports. Often, the passenger rail services are not competitive compared to other modes, you know, car or, you know, for the long distance, you know, the plane. You know that EU modal share of rail passenger transport is 6% only. And, you know, there are a certain number of problems, not in all member states but, you know, quite a big number of member states. In particular, you know, the quality. The quality of service is not really matching the expectations of potential travellers. And also the operational efficiency, you know, is not sufficiently high in many member states. You know, that is also indicated by the fact that many railway undertakings are loss-making operations and also that there is room for improvements in terms of labour and capital productivity. And thirdly, but... A problem is also the low efficiency of the *use* of public funds. So often public funds, you know, are not put

at their best use, in the sense that it is not... Public authorities don't always get, you know, best values for money.

[1h52'35"] So we're considering, you know, what are the reasons for this, and we have asked an independent company, a consultancy, to analyse the situation and, well... The problem is that I was mentioning, well... Due to various reasons:

- First of all, you know, there are still market distortions and discrimination of new entrants in rail passenger transport,
- There is a low degree of competition in the sector and
- We also have a sub-optimal structure at EU-level of the railway market, due to the patchwork of national access regimes that exist. So the EU market and the operators that are operating on these markets, they do not have the possibility to optimise their structure and their production processes due to the fact that, you know, the legal regime is not the same, you know, for rail passenger transport, domestic rail passenger transport in all member states.

[1h53'50"] There are three drivers, you know, that determine these problems:

- They're first of all technical, of technical and administrative nature. So we still have, you know, non-harmonised technical and safety standards for rail transport, for the passenger transport. And we have also long and costly authorisation procedures, for new rolling stock, for instance. So there is one source of other problems.
- We have institutional barriers. So that we have, for instance, still not complete independence of infrastructure managers. So access to infrastructure is not always possible under non-discriminatory positions. We also have a lack of financial transparency.
- And, thirdly, we have legal barriers underline to the problems. And this is the absence of open access rights and absence of rule for competitive award of public service contracts.

[1h54'55"] Now, I mentioned the study that we have launched to assess the problems, but also to assess, let's say, the possible impacts of options, you know, to address, to overcome the problems. And, you know, the remit of the study that we have missioned... We would like to assess basically four options concerning, you know, overcoming the legal barriers.

- It's first of all, you know: the option zero, base line, you know, what would be no legislative change. We would just continue to progressive implement the existing legislation, including of the recast of the first railway package, which is still not adopted, but still be considered as, sort of, being base line, *acquis*.
- Then the first policy option would... you know: to have open access competition for domestic services.
- The second option would be, you know: to have open access for domestic services *plus* competitive, mandatory competitive tendering of public service contracts for domestic rail. But, of course, this would not... This is only applying to rail. I wanted to

highlight that, you know. This is not anything that would touch on the provisions, on the award of public service contracts for internal operators.

- And the third option would be, you know: the second one, meaning open access plus mandatory competitive tendering *and* the put in place of certain framework conditions, which could have potentially favourable impact on market access and the quality of service provided under open and competitive tendering procedures.

[1h56'53''] So, what are these framework conditions that, you know, the consultant has to consider in its assessments?

- So, first of all, better access to facilities and stations for the rail undertakings.
- Then also integration aspects, through ticketing or inter-availability of tickets on open markets.
- Then, thirdly, and I think most importantly, even, access to rolling stock. Because many competitive tenders for regional service, for instance, did not trigger a lot of offers, also because of difficulties to have access, under economic reasonable conditions, to rolling stock. And, so... There are some options that the consultant should look at.
- Also... Another framework condition is, you know, it was also mentioned here already by my colleagues, whether there should be further harmonisation of the rules on social standards and transfer of staff... Which exists already, but they are of course clearly are defined in a very loose way, if I may say so. So if competent authorities decide on these issues...
- Another framework condition, you know, would be definition... or to issue some general criteria on how to define public service obligations. Of course, the... this is the competence of the competent authority. And they remain free, you know, to define public services as they consider the best. But still, the idea is to prevent some excessive use of this possibility, of this power of competent authorities. In some member states, we see that these authorities, they define public service obligations, you know, covering the whole territory, in rail. And this is of course, you know, quite unhealthy for market closure in fact. So, you know, we would like to try to identify a number of criteria, based on general principles of EU law, such as the necessity and the proportionality of the obligations to achieve, you know. It's certain transport policy objectives that are defined at the national or regional level, of course. So just to create a framework, a more transparent framework, you know, for how these PSOs are defined. Always in line of, you know, supporting an internal market objective of, you know, implementation of this regulation.
- And, last but not least, we also consider – or not we, but – the consultant considers limited exemptions to mandatory tendering of public service contracts. So temporary exceptions so that direct award is possible... or maybe a gradual award of... or gradual introduction of competitive award of these contracts.

[2h00'22''] OK. These are all these options that will be assessed to address the legal barriers. But of course, as I said, there are some other barriers. And so, I mean, the

consultant also looks at other options more linked to the technical and administrative barriers. So, for instance, giving an enhanced role to the European Railway Agency, for instance in line with safety regulation and the authorisation of rolling stock to speed up, to... the process of the authorisation procedure and to avoid some discrimination that happens due to the fact that the routes are still applied at a national level. And also, you know, a further option would be to strengthen the independence of infrastructure managers.

[2h01'29"] What will be the timeline for our proposal? First of all, you know, the consultant will continue and then complete his work to assess the different options. We expect a report by summer. Then we'll do consultations to stick to... We have done them already... Or the consultant has done them. And in principle, the consultant should have contacted all the European associations, all the stakeholders, member states, authorities, in March and April this year. I suppose that EMTA has also submitted a position on this... And there will be a stakeholder workshop next week, in fact, on the 29th of May in Brussels. You know, where we... where the consultant will present the results of the consultation of stakeholders. Then the Commission itself will draft an impact assessment report that we will discuss with the other services of the Commission. We will also discuss then any draft legislation that may flow out of... or impact assessment. And after the usual inter-service consultations, we intend to make a proposal on the Fourth Railway Package by the end... or before the end of this year.

[2h03'03"] So... Now I have talked a lot. But I really would like to take advantage of this meeting to have your opinion. First on, you know, your view on the implementation of regulation in your countries, in your regions. And also, secondly, about any possible envisaged modification, which should be really a very focussed modification of the regulation in terms of, you know, competitive tendering of rail contracts. So if... I'm listening and happy to have your reactions and to reply to the questions that you may have. Thank you.

[2h03'43" – TA] Thank you, Jan. just to sum up, if I understand you correctly, most of the options – apart from option zero – in all of the cases will have introduction of open access for domestic services – this will be part of the Fourth Railway Package – and modification of 5.6, in order to go to mandatory tendering of heavy rail public service contracts. Correct? [JS: Yes.]

OK. So, thank you very much. This is very interesting. I will now ask *you* to react, if you want to react, to what has just been said. This is also the case for you, speakers on the floor. You may react or ask some questions. So react to this proposed modification of article 5.6, because basically, as regards the regulation, this is what is on the table. And I open the reaction and I open the reaction and question time to everybody... Including myself, because I have some questions.

8) Reactions and questions

[2h05'05" – TA] Marc? I will just, as we are very, very late, but this is the very interesting part of our debate, so short questions, short answers, if possible. Thank you.

[2h05'24" – Marc GARCIA] Short comment, no question and no answer. As... If you recall the position paper by EMTA – and I would like to speak on behalf of all of us – we are not so much in favour, in principle, I mean, of so early modification of the regulation. We have to

keep... I mean, we are starting! Actually, it's really useful! And we will not be so much in favour of a sudden early change of the regulation. I mean, it could be... It could have some collateral effects that would not really help, I mean, us in the process in which we are.

And one additional comment. About the diagnostics of the domestic rail, be careful when you make the statistics. This sixth per cent is totally true, I mean, for the long distance trains. But you can see, I mean, the metropolitan areas, or even the regional traffic, the shares are completely different. Railways, in many metropolitan regions, are not failing. I would say that they are not even expensive. So there are a lot of different situations with which we are familiar, that need to be, I mean, for the brochure [future guidelines] I mean... Don't let the consultants tell about simple statistics, or whatsoever. There is a clear problem, I mean, in the long distance, in the long distance rail. But, for sure... But there are many different situations in the different territories across Europe.

[2h07'22" – TA] Thank you very much, Marc. Anybody wants to raise a question or react? Yes?

[2h07'33" – Mrs PEDERSEN] My name is Dorthe PEDERSEN. I'm from Copenhagen, MOVIA. I'd like to ask what the Commission thinks about the concentration of operators, where operators... When they're big enough to really handle railway operations and going into big tenders, they're actually more or less state owned, if you see on a bigger scale: DB owning Arriva, Keolis owning big companies, DSB being a state owned company, and so forth.?

[2h08'13" – TA] This was my question as well! I share completely with... because we are talking about competition, etc. And what we see now, if we look at the market, is that before... after the regulation, closed markets are still more or less closed markets, controlled competition was already there and it's progressing, but slowly. What has changed is that private groups have more or less disappeared. European players, VEOLIA, announced that they will leave the market in the two coming years, ARRIVA has now become Deutsche Bahn, NS it's... they have ABELIO, I think even DSB has a German railway company... [*Inaudible comment from the floor.*] Yes, but they have a daughter company that's... they are present on the European market through a daughter company. So the only European players are state-owned. That probably says something about the market. I don't know what it means, but the fact that there are no more private major players – except the British ones. But the remaining British ones are mostly staying in the UK: Stage Coach, National Express, they're not very active in the European market. So, if we look, RATP with... SNCF with Keolis, Deutsche Bahn, etc., only state owned players. This may be good, this may be not so good, I don't know. But that probably says something.

[2h10'00" – JS] Yes, now I fully share your concern about the fact that private capital is leaving the sector. That's certainly an issue and, yes, the answer to your question "Why is the capital leaving the sector?" is not straightforward. But maybe it's several elements that could partly explain that. I mean, first of all, I guess, one can... one may say that, let's say, the requirement in terms of return to capital are lower or not as high as, I mean, in the public sector, meaning that companies under public ownership have more flexibility in terms of expanding in business, you know, where the rate of return of business is not as high as, you know, which would be required for a private company, based on private capital, you know,

the owner comparing the return in public transport business, you know, with the return that he or she could earn in other sectors. So this is maybe one element.

And so why... you know, what could we do against this? Of course, the Commission cannot make any recommendations in terms of privatisation. It wouldn't help, because private capital does not come in. And why doesn't it go into the sector? Maybe it's also due to the fact that the margins are low. And that is maybe due to the fact that costs are still high. When you talk about railway at least, you know, we *know* and, I mean, it's *said*: it's also about the impact assessment that, you know, the technical and safety procedures, you know, in terms of the costs and the length of rolling stock authorisation procedure is very high. All this adds up to a very high entry cost to the market and reduces the margin, the return on invested capital. So there we have certainly to improve the situation, to make, you know, rail more attractive.

[2h12'11" – JS] But also, of course, I also mentioned it earlier, you know, the sustainability of financing of public transport activities that are under PSO must be ensured. Because if, let's say, a private company is considering participating in a tender in a country where before, let's say, public authority, you know, sort of pressure on the publicly owned operator and the service is provided... were not provided in a financially stable framework, to say the least, then the trust in the authority that will have to compensate the public service obligations that may be tendered is not so fully ensured. So there must be effort made to... transparent on *what* authority, you know, want and can finance in terms of public transport, that it would like to be provided by operators under public service contracts.

[2h13'20" – JS] So this is also, I mean that there are many, many reasons, which would explain, you know, why it is not attractive for private capital, you know, to invest in the railway sector. So all these things have to be looked at in detail, market segment by market segment, of course. And I don't want to give an answer that fits all, but... Yes, I agree that it is a problem, but you know, we have to take the different problems in a coherent manner. And I hope that, let's say, our proposal will contribute to finding a solution, you know, to make, you know, the railway sector and the public transport more attractive for private capital.

[2h14'05" – TA] Yes, thank you. We would have... Maybe a tariff question will have to be one day on the table as well? And probably the... We'll have to have a look at the situation of... I'm talking about urban transport situations, where networks have many contracts, line per line, and a situation of one contract for the whole network. So these may be also factors and ways to make the sector... the market more dynamic, maybe? But I fully agree. There are a number of factors that have to be examined.

[2h14'52" – Jiří NÁLEVKA] Good. Just one remark. Well, for example in Germany, the number of bids submitted within tender is still declining. Now it's about 2.3 average bids per one tender, so in fact these are just two bidders submitting a bid within a tender. So it's really... it shows the process of concentration. And, well, one of my other remarks is: I think it could be because of the PTAs tend to be very strict regarding the contracts. They really try to fix almost everything within the contract and not giving to the railway undertaking the flexibility, you know, in order to change the timetable in order to address new passengers. Because once you have to accept the tariff, then you cannot change the tariff, in order... for example to make an effective yield management.

[2h15'55" – JN] And the other issue is the, let's say long time validity of the contract. Let's say, for example, now a days we are preparing the bid for the call... the tender of the Ministry of Transport. And we have to make a bid for the period of 2014 until the end of 2029 and we do not know *anything* about the situation in 2025 to 2029. And because we are under the public procurement or, let's say, under the need of transparency, you cannot adjust the contract within its validity in order to, for example, give certain... to raise the compensation to the undertaking. So the rail undertaking has to think really about *all* the risks at the beginning. And it has to be calculated. And therefore it's, let's say, a side discussion. But it should be *also* checked whether the tender itself has proved under the average price of the, let's say, contract, has fallen or not. Because I saw certain studies, which showed that the average price was almost the same before the start of tendering and after the tendering.

[2h17'29" – JN] So you, know, there are... It's a really complex issue and I'm convinced that it's really very, very difficult to find, let's say, equilibrium between the interest of the PTAs and the interests of the rail undertakings in order to give the rail undertaking the chance to really make a really *good* bid, which is, let's say, reasonable from the economic point of view.

[2h18'00" – TA] Thank you. One more question?

[2h18'05" – Eike ARNOLD] One last question and remark. Eike ARNOLD from Berlin, In Germany we have... There was... The question was infrastructure costs, and they are increasing. Why are they increasing? In Germany is... the networks and operators, they are not segregated. Deutsche Bahn owns this monopoly and earns per year approximately 1 billion euro – a year! We're talking about 700 or 800 million euro a year. And they will not reinvest it in the system. At the same time, the money for public transport given by the Federal Government is more or less at stagnation. We'll say stagnation. That's why the market has less money in it, so less public transport can be ordered by the PTAs. And the money is earned by the Deutsche Bahn, and they take it to other businesses abroad, and so on. So there's a lot of money in the game, but network fees must be reinvested. If you don't segregate network from the operator, there must be the rule that the fees earned by the network must be reinvested. Otherwise, we have big problems. Maybe we could get two or three sentences of answer for this.

[2h19'55" – JN] No, I fully share your view. And that's also the reason why in the Fourth Railway Package, you know, we intend to push further with the independence of the infrastructure manager. Because, in fact, the situation that you describe is partly due also to the fact that, you know, infrastructure management is provided within the holding, together with the railway operator, where such possibilities, you know, to – what shall I say? – to modulate the access fee by the infrastructure manager in a manner that transport operations provided by the operators under the same group, you know, have an advantage. Because, you know, there is some link between these issues. So if the infrastructure management would be done more independently, including, you know, the charging, setting... you know, we could cut the link, you know, to the operators in a group, for instance. Then this would clearly create more transparency and also would hinder, you know, this outflow of funds, you know, that you mention, you know, to other activities and not reinvestment in the infrastructure. So, I think, if we succeed, then we could maybe make a first step, you know, to a better world, that you describe there.

[2h21'40" – TA] OK, thank you. So compensation without public money is not so easy. And competition without competitors is not so funny.

OK. I just have one last question for you, Jan. Marc mentioned the fact that EMTA members were a little bit worried about this modification of article 5.6. I will raise a second point or question or concern: Is there the possibility that when the proposition for revision of the regulation arrives on the table of the European Parliament and of the Council, other articles finally are concerned and other modifications are proposed at the level of the European Parliament? Because, well, EMTA members seem to be concerned, but it's maybe a little bit too soon to modify even article 5, even *only* article 5.6. But is there the risk that the revision at the end concerns even more than the only 5.6 and, let's say, other articles or other important articles of the regulation?

[2h23'09" – JS] Well, you address two issues, in fact, in your question. The first one is, you know, how we could deal with the... the problem that you mentioned, linked to a possible introduction of mandatory tendering of public service contracts in rail, you know, let's say, to first acquire more experience and learn more about experience done with this competitive tendering, for instance at regional level. And secondly, the question, you know, would open a Pandora's box, you know, by making a proposal.

[2h23'45" – JS] Yes, so, first of all I would say, for the first part of the question, I mentioned that we are considering certain possibilities to limit, you know, this imperative mandatory tendering obligation for public service contracts. And, last but not least, I mean, it's clear that, let's be realistic, there may be also transitional periods. So I think there is, maybe, a way to address your concern. Secondly, the question is *where*, and I mentioned it also in my introduction. It was very difficult, you know, to agree on the present text. And if we would make a proposal, we risk, of course, that, even if we focus the proposal only on, you know, one article, 5.6 for instance, that the institutions would, you know, seize the opportunity... I mean, I am talking about the European Parliament, I'm talking about the Council, the member states, you know, to say: "Oh! You know, we had also some issues, you know. The last negotiations, you know, we would like to reintroduce that into the process..." That is clear. So we are aware of this problem and it is part of our strategic considerations that our political masters will undertake, you know, when they decide finally on the proposal. I hope we could limit this risk of, you know, opening a Pandora's box. So, I mean, I cannot commit myself to say, you know: "We have it under control." But I think our political masters are very much aware of this risk and, you know, we'll see how we can minimize it.

[2h25'45" – TA] Thank you very much. One last point. I'm a consultant, so if you reopen the Pandora's box, that's going to be a lot of business! [*Big laughter.*] Well, I was just thinking. I'm a *good* guy, normally, I don't think... I don't have this kind of ideas, but just now, I thought, "*Wow! That's going to be a lot of business, you know.*" So I think I have seen two... and then we'll have lunch. Please, the mike there... And then a last point by Sabine.

[2h26'23" – Maria MARCHANCOSES] Hello, Maria MARCHANCOSES from CENTRO in Birmingham, in England. Just one point to make, I mean... EMTA yesterday, we discussed about how engage better with the debate and the influence in the agenda by DG-MOVE in face of the European White Paper. You talked about the correlation between the work of the PSO and the strategic transport policy, in particular policy frameworks. The role of PSO in

encouraging standards is quite important, isn't it? And the aspirations of DG-MOVE through the White Paper in face of the decarbonization of the network and integration, particularly on rail, is one of the key things that came out from our discussion with Mrs ROSCA just a week ago. So I am just wondering, knowing how these things can operate internally between organisations as well: What is the relation, what is the bridge between the work that you're doing through the review of the regulation and the policy of the White Paper? And how we can fit into that, really, how we can engage in that?

[2h27'41" – JS] The policy that I tried to sketch out very briefly today is fully in line with the white paper, because it... the measure was announced in the white paper. So I am quite confident that we contribute also to proposals linked to, you know, the... I think you mentioned the independence of the network operator, so to... reaching the objectives of the white paper. So...

[2h28'21" – MM] It's mainly to do with the standards. Because that is one thing that we... Particularly in the UK, you know that we've got a deregulated market, completely. So there will be some services that we will tender out. But some networks, some routes will have no influence whatsoever. And on the rail side, the local operators are telling us, as many members have mentioned, that it is very expensive to invest in new rolling stock or whatever. But on the other hand, the European Commission is putting, you know, a lot of pressure in terms of lack of fuel, supply... and everything else. So it has to be the Action Plan to the level of the White Paper it has to be the mirror, with the regulations that will allow that, and then to inform or influence funding programs. So it's... We're looking at your... you know, your work as a means to help us get, you know, to speed up the process...rather than as a barrier.

[2h29'20" – JS] Yes, I mean, so standards you refer to, standards to facilitate urban transport in particular. Now, I mean, for information exchange, for, I don't know, rolling stock or...? Are you referring to the Mobility Plan implementation or...? [MM: That could be one of them. But also in terms of infrastructure that we will have to provide in the future, you know, local rail networks or whatever.] Yes, I mean, I'm not aware, I must say that there is anything in the white paper on standards concerning infrastructure, technical standards concerning infrastructure, I mean, of course, rail... We have a policy of also trying to introduce common technical specifications for inter-mobility concerning the infrastructure, but this is of course, as you know, as the investment cycle is very long, for infrastructure, in particular for rail, you know, the effects of such a policy will be felt only, yeah, I don't know, 50 or 60 years from today, I mean, on average. So it's really long term policy. But, I mean, in the short term, I mean, we have to do this work but we would not expect to have immediate effects, I mean... This is different, of course, for other technologies, you know, where the investment cycles are shorter, in particular in the information technology, of course, but I mean, you refer to infrastructure, so, I mean... Not too much could be said about, let's say, having effective policy in the immediate short term, immediate term future.

[2h31'00" – TA] Last word by Sabine...

[2h31'12" – Sabine AVRIL] A last word. I'd like to build on Marc GARCIA's remark about the position of EMTA and just to let you know that we are very happy to hand to you the written position of EMTA on the White Paper, the response we've done. So I will provide you with the text. I have it here.

[2h31'33" – TA] So, I don't know what you think, but I'm starving. We all are, I guess. So I would like to thank all our speakers: Mrs POSIO, Mr PROCKEL, Mr NALEVKA and Marc GARCIA, Jan SHERP. Thank you very much for... Sorry, I forgot Mr Jan SNOPEK, sorry. And thank you very much, thank you. Thanks for the audience, because you've been very dynamic in this last part of the debate. Thank you for your questions and thank you for your attention.

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