

# Transport policy as a tool for effective conclusion of public service contracts in rail passenger transport

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## **Abstract**

*Current trends in rail passenger transportation lead to searching the best way of providing attractive, reliable, and economical transport services from the points of view of both the railway undertaking and the passengers. Rail transport services are specific, with two different ways being possible there. Passenger trains can be operated on a commercial basis due to the non-discriminatory open access to the railway market within many countries. In the event that operation is not possible on a commercial basis with costs being higher than revenues, rail transport services can be provided within a public service obligation. A transport authority is competent and responsible for planning and organising of transport services within a selected area, whereas a railway undertaking operates trains there. Regulated fares make the revenues lower than costs, and hence the transport authority must sponsor the operator. There is a significant pressure on public budgets because all expenses should be transparent, and it should be beneficial. The objective is to provide the best value for money, with the value being rail transport services and money coming from public budgets. This paper provides a deep analysis of the legal framework concerning rail passenger transport, which is supplemented by relevant data from selected countries.*

**Key words:** *transport services, public service obligation, public passenger transport, public tender, public service contracts*

## **1. Introduction**

Some countries have enacted legislation providing for the award of exclusive rights and public service contracts in at least part of their public transport market, based on transparent and suitable competitive award procedures. As a result, trade between these countries has develop significantly and several public service operators are now providing public passenger transport services in more than one country. However, developments in national legislation have led to disparities in the procedures applied and have created legal uncertainty as to the rights of public service operators and the duties of the competent authorities. Studies carried out and the experience where competition in the public transport sector has been in place for some years show positive results. (Beck, 2011) With appropriate safeguards, the introduction of regulated competition between operators leads to more attractive and innovative services at lower cost and is not likely to obstruct the performance of the specific tasks assigned to public service operators. Passenger transport markets which are deregulated and in which there are no

exclusive rights should be allowed to maintain their characteristics and way of functioning as far as these are compatible with international requirements. (Bougna and Crozet, 2016)

## **2. Literature Review, Material, and Methods**

Transport authorities include various levels of regional or country administration. Proceedings provided by these authorities may vary according to specific conditions, mostly geographical, technical, technological, or economical. (Dolinayova, et al., 2016) Requirements on safety and interoperability must be similar or even identical on the international level according to the international legal framework as well as technical specifications of interoperability (Gašparík et al., 2017).

The research of Mašek et al. (2015) deals operation of regional passenger transport in Slovakia, with liberalization and competition in railway transport, principles of the contract on transport services in the public interest and with the current state of regional passenger transport on regional railway line Bratislava - Dunajska Streda – Komarno. Nash et al. (2019) in their research solve the experience of Europe's three most liberalised railways - Sweden, Germany and Britain - in opening-up rail passenger services to competition by means of competitive tendering, and seeks to draw lessons for countries that are just starting the process, such as France. It also comments on experience of competition in the market in these and other countries. It finds evidence that competitive tendering has helped increase demand for and reduce subsidies to the rail passenger sector, but that there are many decisions that have to be taken as to how it is to be implemented. Litră and Burlacu (2014) in their research paper propose to analyse the management of the public service contract through the current regulations in the field and to correlate trends in railway industry the specific situation in our country. They conducted a series of comparative analyses and SWOT considering the context of Romanian railway industry. Were defined and decontextualized concepts such as Public Service Obligation (PSO) and Public Service Contracts (PSC). Solutions have been proposed that promise social and economic benefits but were given the risks of these solutions. We remain dependent on the idea that past problems once again become current and not admit the old solutions especially after the global economic crisis. The issue of effective conclusion of public service contracts in rail passenger transport has been analysed by Dementiev (2018). Ondřej (2018) find out whether the cost shocks occur in the passenger rail transport, whether it can cause problems of financing as well as to evaluate the ways which are used by the purchaser of public transport to change the subsidy for carriers in case of cost shock. Results have shown that costs shocks can negatively influence financing of the subsidised passenger railway transport, so purchasers of the transport services must be extremely cautious in setting the tender documentation. Hensher and Stanley (2008), Alexandersson, et al. (2008) and others conducted research of the same type. Further case studies and analyses of liberalization of the railway market in individual countries, such as Sweden or Norway, have been carried out. They include for instance Nilsson and Jonsson (2011), Odolinski and Smith (2016), Alexandersson, et al. (2020). In the Slovak Republic, the research about public tenders and liberalization railway market solved Gašparík et al. (2019), Competition in the railway passenger market in the Czech Republic was analysed by Tomeš, et al. (2014) and liberalization Czech rail market and capacity allocation describes in their research Nachtigall, et al. (2020) and also Tischer, et al. (2020). Part of the proper functioning of public tenders is also the correct setting and

synchronization of timetables in regional and long-distance public transport in stochastic conditions. This problem and subsequently the simulation model of not solving this problem were proposed in their research by Bulíček, et al. (2020)

Brenck and Peter (2007), who describe a wide range of procurement procedures under the Contracts and Treaty proposals due to a large number of 33 different agencies responsible for awarding regional rail passenger subsidies in one specific area, carried out recent research, including empirical analyses. Their analysis is based on the results of a questionnaire sent by "Tender Agencies", with a subsequent analysis of several barriers to entry into the railway market. The main obstacle was the ability of the dominant carrier – the national carrier Deutsche Bahn (DB) – to discriminate. A study by Lalive and Schmutzler (2008) examines the barriers to entry in a database of 77 tenders for regional passenger rail transport. They show that such barriers exist and that they depend on the size of the network. Another finding is that DB was more successful in the initial phase of the tender in the late 1990s than in recent years. In terms of contract length, no barriers to entry were identified. Studies and analyses focusing on long-distance rail passenger transport were conducted for instance with his case study and Beckers, et al. (2010) with an analysis of railway market access. According to international regulations, there are two ways of selecting a railway undertaking in case of a public service obligation, with one way being a tender and the other way being a direct award. However, the direct award is only a contemporary option and is very limited. (Bulková, 2021)

*Table 1. Railway PSO solutions according European countries.*

<b>Country</b>	<b>Public tender</b>	<b>Direct award</b>	<b>Administration monopoly</b>
Belgium		x	
Bulgaria	x	x	
Czech Republic	x	x	
Denmark	x	x	
Germany	x	x	
Estonia		x	
Ireland		x	
Greece		x	
Spain		x	x
France		x	x
Italy	x	x	
Latvia		x	
Lithuania		x	
Luxembourg		x	
Hungary	x	x	
Netherlands	x		x
Austria	x	x	
Poland	x	x	x
Portugal	x	x	
Romania		x	
Slovenia		x	
Slovakia	x	x	
Finland		x	x
Sweden	x		

(Gašparík, et al, 2019)

In the international legal framework, there are only general conditions concerning public service obligations and related agreements. Ways of awarding are described here as well as the content and considerations. Specific explicit and transparent conditions of public service obligations are not specified there since they remain within the terms of the national legal frameworks. The duration of public service obligation contract is also specified according to international law. (EU, 2001)

**2.1. Methods of concluding public service contracts**

Some services, often associated with specific infrastructure, are operated mainly for their historical interest or tourist value. As the purpose of these operations is clearly different from the provision of public passenger transport, they do not have to follow the rules and procedures applicable to public service requirements. (Lakatos and Mandoki, 2020a) Long-term contracts can lead to market foreclosure for a longer than necessary, reducing the benefits of competitive pressure. In order to minimise distortions of competition, while protecting the quality of services, public service contracts should be of limited duration. (Lakatos and Mandoki, 2020b) The renewal of such contracts may be subject to positive confirmation from users. In this context, it is necessary to provide for the extension of public service contracts by a maximum of half their initial duration if the public service provider has to invest in assets with an exceptional depreciation period and given their special characteristics and limitations, in the case of the outermost regions. (Humic and Abramovic, 2019) In addition, if the public service operator invests in infrastructure or rolling stock and vehicles that are exceptional in the sense that both involve significant funds, and provided the contract be awarded after a fair competitive selecting procedure, even longer extension should be possible. (Široký, et al., 2020)

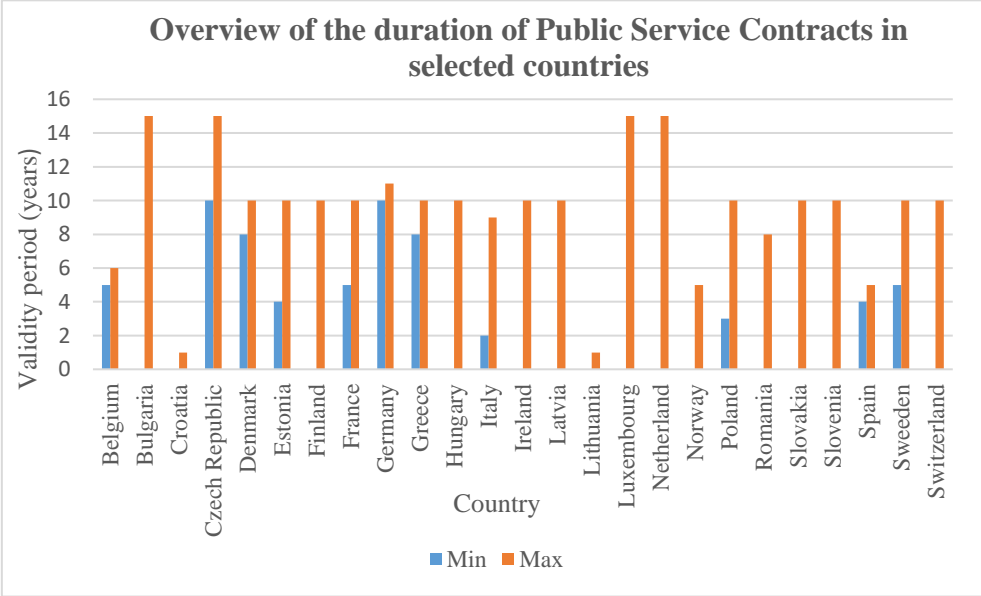


Figure 1. Duration of PSO contracts over European countries (Source: authors, according to CER, 2017)

In keeping with the principle of subsidiarity, competent authorities are free to establish social and qualitative criteria that will maintain and raise quality standards for public service obligations. This pertains for instance to minimum working conditions, passenger rights, the needs of people with reduced mobility, environmental protection, the security of passengers and employees as well as collective agreement obligations and other rules and agreements

concerning workplaces and social protection at the place where the service is provided. In order to ensure transparent and comparable conditions of competition between operators, the risk of social dumping should be avoided. Competent authorities should be able to set specific social and service quality standards. (ECMT 2007)

In accordance with the relevant provisions of national law, any local authority or, in the absence of such provisions, any national authority may decide to provide its own public passenger transport services in the area it manages or to entrust them to an internal operator without a call for tenders. However, this possibility of self-provision must be strictly controlled to ensure a level playing field. The competent authority or group of authorities providing integrated public passenger transport services, collectively or through its members, should exercise the required control. In addition, the competent authority providing its own transport services or the internal operator should be prohibited from participating in tenders outside the territory of that authority. The authority controlling the internal operator should also be able to prohibit this operator from participating in tenders organized in its territory. Restrictions on the internal operator's activities do not interfere with the possibility of direct award of public service contracts where they concern rail transport alongside other modes of rail transport, such as metro or trams. In addition, the direct award of public service contracts for heavy rail transport does not preclude the competent authorities from awarding public service contracts for public passenger transport services in other modes of rail transport, such as metro and trams, to the internal operator. (Čorejova, et al., 2020) Some calls for tenders require competent authorities to define and describe complex systems. These authorities should therefore have the power to negotiate details with some or many potential public service providers in such cases after the submission of tenders. Public passenger rail transport raises specific problems of investment burden and infrastructure costs. In the case of services of general interest, each competent authority may choose its public service operator in passenger transport under a public service contract. Given the differences in the way countries organize their territories in this respect, the competent authorities may be entitled to award public service contracts directly to rail. (Černa, et al., 2016) The compensation provided by the competent authorities to cover the costs incurred in discharging the public service obligations should be calculated in such a way as to avoid overcompensation. If the competent authority intends to award a public service contract without a call for tenders, it should also comply with detailed rules to ensure that the level of compensation is reasonable and reflects the desire for efficiency and quality of service. Directly awarded public service contracts should be subject to greater transparency. Public service obligations should be in line with public transport policy. However, this does not entitle the competent authorities to obtain a specific amount of funding. Relevant stakeholders should be consulted in accordance with national law when preparing public transport policy documents. These stakeholders may include transport operators, infrastructure managers, employee organizations and representatives of public transport users. (Stojic, et al., 2018) In the case of public service contracts, which are not awarded based on a tender, the fulfilment of public service obligations by public service operators should be adequately compensated. The aim is to ensure the long-term financial sustainability of public transport services in passenger transport in accordance with the requirements set out in public transport policy. (Stopka, et al., 2015) Compensation for the fulfilment of public service obligations should support the

maintenance or development of effective management by public service operators and the provision of passenger transport services at a sufficiently high level. (Poliak, et al., 2014)

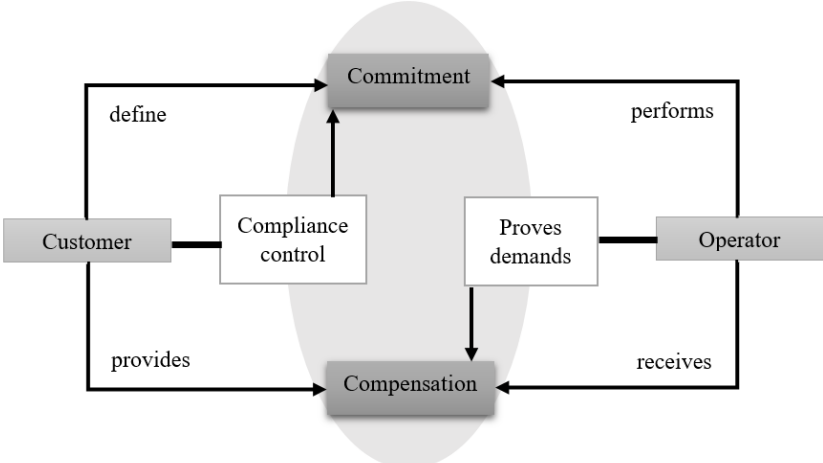


Figure 2. Rights and obligations of the parties under the service contract. (Source: authors)

Competent authorities should make relevant information available to all interested parties for the preparation of tenders, while ensuring the legitimate protection of confidential business information. Public service contracts in the field of public passenger transport services by rail should be awarded on a competitive basis. Tendering procedures for public service contracts should be open to all operators, should be fair and should respect the principles of transparency and non-discrimination. In exceptional circumstances, where public service contracts for public passenger transport services are awarded on a competitive basis, new contracts may be awarded on a temporary basis directly. (Nash, et al., 2019) This is the most cost-effective way to provide services. Such contracts should not be renewed to cover the same or similar public service obligations. If, following the publication of the intention to hold a tender, only one operator expresses an interest, the competent authorities may enter into negotiations with that operator for the award of the contract without further publication of the tender. (Filippini, et al., 2015) Competent authorities may take measures to increase competition between railway undertakings by limiting the number of contracts they award to a single railway undertaking. When preparing tendering procedures, competent authorities should assess whether measures are necessary to ensure efficient and non-discriminatory access to suitable rolling stock. The competent authorities should make the assessment report available to the public. Some key elements of the forthcoming public service tender need to be fully transparent to allow for a better-organized market response. (Nigrin, 2014) The public service contracts and general rules shall clearly set out the public service obligations to be met by the public service provider and the relevant geographical areas. Determine in advance in an objective and transparent manner the parameters based on which any compensation payment is to be calculated; and the nature and extent of any exclusive rights granted in a manner that avoids overcompensation. (EC, 2011) In other cases of public service contracts, these parameters shall be determined in such a way that no compensation payment exceeds the amount needed to cover the net financial effect on the costs and revenues incurred in discharging the public service obligations, taking into account: related revenue generated by the public service operator and a reasonable profit. (EU, 2012) Measures to share the costs associated with the provision of services should be identified. These costs include staff costs, energy, infrastructure charges, maintenance and repairs of

public transport vehicles, rolling stock and equipment needed to operate passenger transport services, fixed costs and a reasonable return on capital. (Široký, et al., 2020)

## 2.2. Development of transport performance of ZSSK in Slovakia

Performances in long-distance rail transport are currently ordered by the Ministry of Transport and Construction of the Slovak Republic (hereinafter referred to as the Ministry) based on a Contract on Transport Services in the Public Interest for a period of validity of 2021–2030, which is annually amended by an amendment intended for long-distance and regional rail passenger transport, as distinguished in the partial contract. These services can also be described as transport services performed with the aim of ensuring the transport of persons to work, schools, medical facilities, offices and for satisfying cultural, recreational, and social needs, including the provision of return transport. They should be available to every citizen without the possibility of any discrimination. (SR, 2020)

The Ministry currently orders all services in the public interest in regional transport and long-distance transport on the ŽSR network. Providers offering commercial long-distance transport services at their own business risk between Bratislava – Prague, Prague – Košice, and Prague – Nitra are RegioJet, Leo Express, and Arriva trains. This includes services provided by IC trains on the Bratislava – Žilina – Košice line, which is operated by ZSSK. (Záhumenská, et al., 2018)

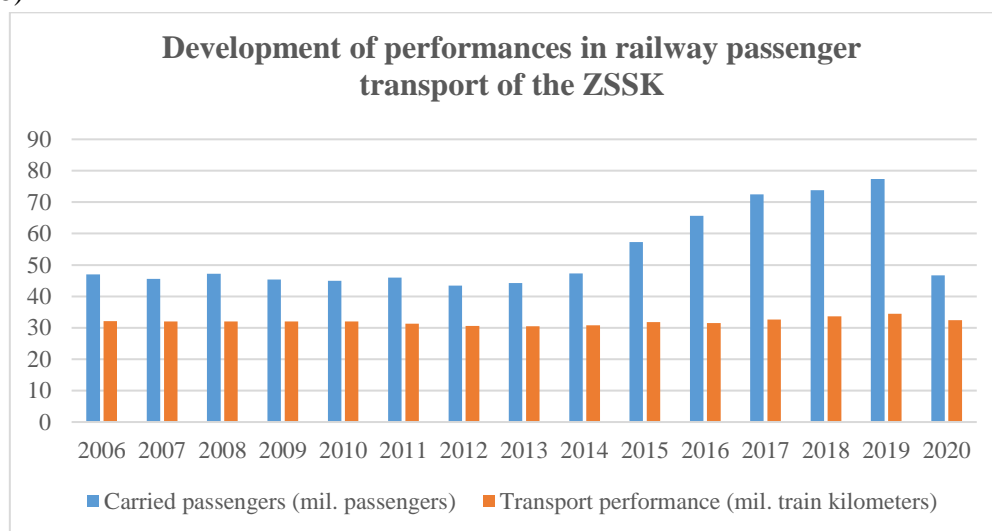


Figure 3. Progress of railway passenger transport of the ZSSK. (ZSSK Annual report, 2020)

The key parameter is the gradual liberalization of 35% of output from the initial volume in 2021 (this was also the case in the previous 10-year contract for 2011–2020, but nothing had been liberalized). However, the customer must inform ZSSK about this intention 20 months in advance (previously, 12 months in advance was sufficient). (SR, 2010)

As a regulatory body, the Transport Authority monitors competition on the railway market within the territory of the Slovak Republic. Monitoring the development of the railway market is an important tool for obtaining up-to-date information on individual segments of the railway market and analysing it. This analysis is focused on comparing performance in passenger transport (8 kilometres, sales). The data and information presented in this article comes from analyses and documents of the infrastructure manager and from the information available from railway undertakings at the end of 2020, focusing on the monitored indicators of the impact of

the pandemic during 2020. Following the outbreak of the COVID-19 pandemic, passenger volumes fell sharply due to constraints and lower demand for transport. Several players in the railway market had to close down. Rail operators had to face a sharp decline in transport services. In 2020, the demand for passenger transport was significantly lower than in the previous year. Thus, railway undertakings were not able to pay the charges for access to the railway infrastructure during the emergency caused by the COVID-19 pandemic. In passenger transport, performances were significantly affected by the pandemic due to the restriction of passenger transport trains with the public transport schedule being changed in March 2020 to “Saturday's performance regime”. The highest decrease in output was recorded in April 2020. Output (train kilometres) in that month decreased by 37.60% compared to 2019. The most significant decrease in wolf was recorded in international transport due to restrictions, or even disruption, of international rail transport. Figure 3 shows the development of total transport performance in rail passenger transport. (Transport Authority, 2021)

In figure 4 we can see the year-on-year decrease in the number of transported passengers was also reflected in the decrease in transport performance in passenger-kilometres (passenger-kilometres), which in 2020 reached a total volume of 2,117,957 thousand passengers. Compared to 2019, it is 1,885,774 thousand persons less (-47.10%). (Annual Report ZSSK, 2020)

Transport performance in train kilometres (train kilometres), including NAD in 2020, reached a total of 32,455 thousand train kilometres. Compared to the previous year, the transport performance decreased by 2,048 thousand wolf (-5.94%). (Annual Report ZSSK, 2020)

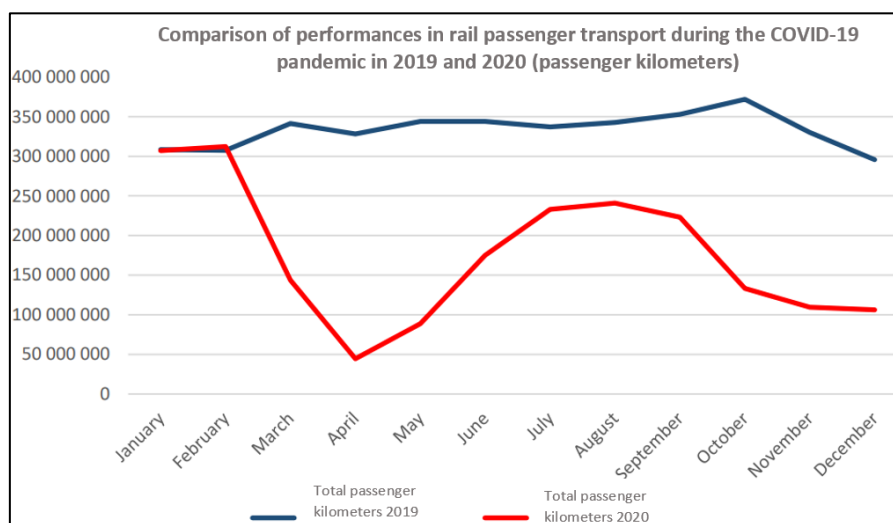


Figure 4. Development of total transport performance in passenger transport in passenger-kilometres in 2019 and 2020. (Transport Authority, 2021)

In 2020, 46,657,000 people were transported in passenger transport, which was 30,700 thousand less compared to last year, i.e., the year-on-year decrease was 39.69%; in domestic transport, the year-on-year decrease was 27,432 thousand persons (-37.84%); in commercial trains, the decrease of transported persons was 587 thousand (-71.76%), and in international transport, there was a year-on-year decrease of 3,338 thousand persons (-25.27%). Significant changes occurred in the shopping behaviour of customers who only chose train transport in the most urgent cases. (Annual Report ZSSK, 2020)

### 3. Methodology for an Efficient Process of Public Tenders

The proposal of the procedure for awarding transport services in rail passenger transport contains several important conditions that will lead to proper functioning of public tenders. The proposed methodology for ordering transport services in public interest in long-distance rail passenger transport is an example of correct and efficient functioning of public tenders in rail passenger transport. The basis for the correct and error-free functioning of public tenders, not only in long-distance rail passenger transport, is the determination of partial activities related to the provision of public tenders and competencies, or the bodies responsible for these activities. In the process, it is necessary to determine the subject of the competition itself, the requirements and conditions that the winning carrier will have to meet and determine the course of the competition. The sequence of main activities in the proposed methodology of long-distance rail procurement is shown in Figure 2. The individual activities will be performed by the responsible entities according to the specified rules.

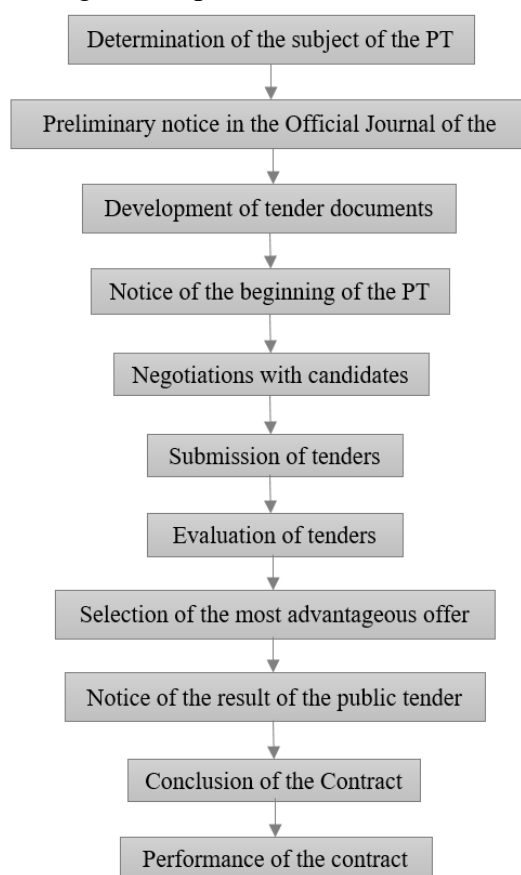


Figure 2. The sequence of main activities in proposed methodology (Source: authors)

As the entity responsible for the preparation of the tender, its announcement and the selection of the winning carrier, we propose the national Ministry of Transport or other responsible transport authorities, e.g. national or coordinating public passenger transport body. This entity will be the contracting authority for the provision of public service in rail passenger transport with its main tasks:

- definition of long-distance lines,
- defining performance and quality requirements for individual items of the public tender, in particular determining the timing on long-distance rail passenger transport lines,

scope of transport in train-kilometers, requirements for quality and equipment of railway rolling stock, etc.

- verification of track capacity, availability of additional and ancillary infrastructure services in cooperation with the infrastructure manager (eg traction current, technical inspection of rolling stock, sale of tickets, etc).
- creation of a draft train schedule for the period of validity of the public service contract,
- determination of the terms and conditions of the tender to be met by the winning operator,
- on the basis of the established timetable and in cooperation with the infrastructure manager, identify the necessary infrastructure measures to ensure compliance with the required timetable,
- publication of a preliminary notice, preparation of tender documents and determination of evaluation criteria and their weight,
- receiving and evaluating requests to participate,
- evaluation of bids and selection of the most advantageous bid according to the set criteria,
- concluding a contract for the provision of services in the public interest with the selected tenderer and evaluation of its performance.
- Adequate preparation is required before launching a call for tenders. The relevant lines will be divided into three groups depending on the need to implement infrastructure measures:
  - if no action is required,
  - if infrastructure measures are required that do not exceed a period of three years,
  - if infrastructure measures are needed for a period longer than three years.

In some cases, regional railways may also be put out to tender for an integrated transport system.

The proposed methodology contains all the essential steps for the proper functioning of the tender. This methodology is shown in Figure 3.

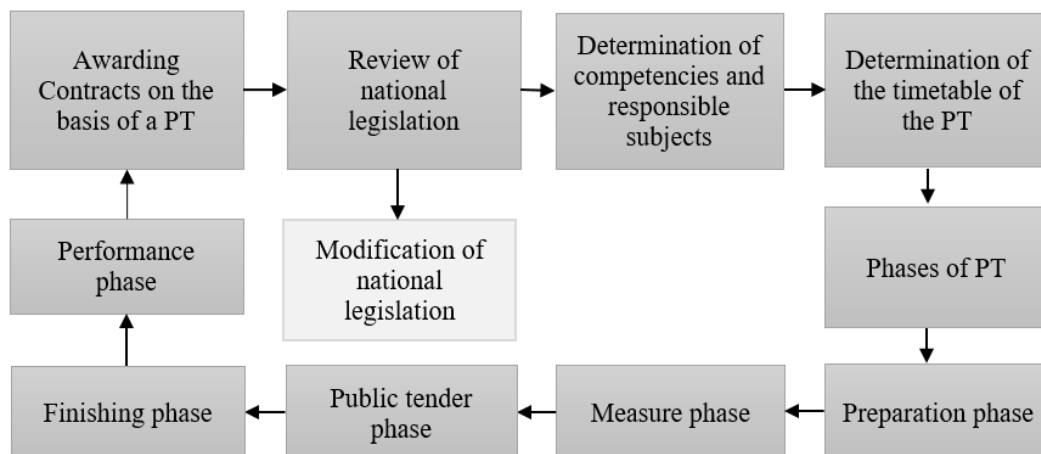


Figure 3. Proposed methodology of public tender (Source: authors)

The proposed methodology consists of steps from the actual announcement of the public tender through the review of national legislation, determination of competencies and responsible entities to the most important part of the entire public tender process. This main part is the setting of a tender timetable, which contains several stages. The individual phases

contain the detailed steps of the entire tender process. Setting a timetable is an important optimization step in launching a public tender for rail passenger transport.

Requirements for the quality of rolling stock and services provided must be processed in accordance with the requirements of quality standards - EN 13816 and EN 15140. (EN 15140, 2006; EN 13816, 2002) The notice must also include the intended method of evaluation of the tenderer information on the possibility of subcontracting or tendering by a group of carriers, information on specific conditions for foreign bidders, place and delivery of requests to participate and tenders (in writing / electronically), in which language, formal aspects of the application and tender) and deadline for submission requests to participate and tenders. Other elements must be included in the tender documents, such as conditions of tariff integration, adjustment of fares, business and payment conditions related to the contract, the need to provide a bank guarantee to the winning carriers for performance of the contract, method of processing the bid price, bid requirements, information on opening bids , deadline for submission of tenders and possible duration of tenders, reservation of the customer 's rights, all possible annexes of tender documents and other suitable additional information according to the subject of the tender.

### **Process of the public tender**

According to the regulation, the pre-tender notice must be published in the EU Gazette at least one year before the start of the tender. In addition, a pre-notification according to national rules will be published within the set deadlines.

The preferred tender is a narrower competition. Prior to the start of the tender, a notice of invitation to tender will be published in accordance with national rules, and thus a notice in the Official Journal of the EU (the notices contain the above). At this point, candidates may send requests to participate, which will be assessed by the contracting authority; Unsuitable candidates will be sent a notice of exclusion from the public tender and satisfactory candidates will receive a call for tenders within the specified time limit. After the deadline for submission of bids, the customer can open the bid and choose the most advantageous bid that meets the specified criteria in the given period. All participating carriers who submit tenders will be informed of the selection of the winning railway operator by means of a tender selection notice. If there is no objection on the part of the bidders or the winning operator, the contract may be concluded and subsequently fulfilled after the completion and approval of the public service contract by both parties.

Each contract must contain a clear definition of the obligations arising therefrom laid down by the competent authority. It must also include the geographical area covered, the parameters for calculating the public service remuneration and any exclusive rights. The methodology for determining the costs associated with the provision of services in the public interest (in particular staff, energy, infrastructure, maintenance and repair of vehicles used for the provision of public services, fixed costs and a reasonable return on capital) must also be specified in the contract.

Directly awarded contracts also include performance requirements such as punctuality of services, frequency of train movements, quality of rolling stock and passenger capacity. The provider is obliged to provide the competent authority with the information necessary to award the public service contract. The competent authority is required to make relevant information necessary for the preparation of the tender available to all interested parties in order to ensure

the legitimate protection of confidential business information (passenger demand, travel, freight and revenue information) and detailed information of infrastructure specifications). The aim is to give interested parties the opportunity to draw up appropriate business plans (Position (EU) No 19/2016, Commission staff working document accompanying the White Paper - Single European Transport Area Plan). If the rolling stock is made available to a new public transport operator, the competent authority shall include in the tender dossier all available information on the costs of maintaining the rolling stock and its physical condition. This paper specifies the evaluation criteria and their weight, which can be used in the evaluation of tenders. However, it is important to always use the same evaluation criteria and their weight in each tender. The proposed evaluation is to be carried out as a multi-criteria evaluation, the weighting of the individual criteria being as follows:

- required unit compensation by the operator for the first year of validity of the public service contract at the current year's price level [€/ train-kilometres] - 90%,
- variable component of the required compensation in the event of a change in the ordered transport performance in the current year's price level [€/ train kilometres] - 3%,
- Free Wi-Fi internet access - 1%
- 230 V electrical sockets for passengers - 1%,
- possibility to sell travel documents - 2%,
- seats in 1st wagon class - 1%,
- bicycle places - 1%,
- information provided to passengers through a visual information system - 1%.

For each criterion, the candidate will be awarded a number of points, calculated as the product of the points awarded and the weight of the criterion determined; the candidate's final score is obtained as the sum of the points obtained for each criterion. The allocation of points will be the responsibility of the Ministry, which will draw up detailed rules and publish them in the tender documents for the submission of tenders.

The public service contracts and the general rules shall specify the arrangements for allocating the revenue from the sale of tickets, which the public service operator may retain, repay to the competent authority or distribute between the two. The duration of public service contracts is limited and does not exceed 10 years for coach and bus services and 15 years for passenger rail or other rail services. The duration of public service contracts for several modes of transport is limited to 15 years if rail or other rail transport represents more than 50% of the value of the services concerned. If necessary, taking into account the depreciation conditions of the asset, the duration of the public service contract may be extended by a maximum of 50% if the public service operator provides the asset. Both are significant in relation to the total assets required for the provision of the passenger transport services covered by the public service contract, which are mainly linked to the passenger transport services covered by the contract. Where justified by the amortization of capital in connection with an exceptional investment in infrastructure, rolling stock or vehicles and where the public service contract is awarded in a fair tender, the public service contract may have a longer duration. In the case of transparency, the competent authority shall send the public service contract and the reasons justifying its duration to the Commission within one year of the conclusion of the contract. In the performance of public service contracts, public service providers shall comply with the social

and labour law obligations laid down in international law, national law or collective agreements. Without prejudice to national and international law, including collective agreements between the social partners, the competent authorities may require the selected public service operator to grant the employees to whom they have been previously recruited the rights to which they would be entitled. Where the competent authorities require public service providers to comply with certain social standards, the tender documents and public service contracts shall include a list of the employees concerned and transparent details of their contractual rights and the conditions under which they are considered to be linked to the public services. Where competent authorities, in accordance with national law, require public service providers to comply with certain quality and social standards or set social and quality criteria, those standards and criteria shall be included in the tender documents and in the public service contracts. Such tender documents and public service contracts shall also contain, where appropriate, information on the rights and obligations related to the transfer of staff taken over by the previous operator. (EU, 2007)

Table 2. Essential requirements comparison according to their assignment.

Requirements		How to enter the contract	
		Direct award	Public tender
Maximum average annual value of performance		To 7.5 mil. €	not specified
Maximum annual amount of performance		to 500,000 kilometres	not specified
Maximum time of the contract		10 years	15 years
Opportunity and reason for the extension of the Contract	Depreciation of the assets	yes, maximum to 50 %	yes, maximum to 50 %
	Geographical location	no	yes, maximum to 50 %
	Amortization of capital	no	Yes, necessary justification
Obligation to publish a per-announcement in the EU Bulletin for an output range of 50,000kilometres or more		yes, 1 year before direct awarding	Yes, 1 year before starts public tendering

(EU, 2007)

The tender documents and the public service contracts shall state in a transparent manner whether and, if so, the extent to which subcontracting may be considered. In the case of subcontracting, the operator entrusted with the management and provision of services in the public interest in passenger transport is obliged to perform the majority of services in the public interest in passenger transport himself. A public service contract that covers both the design, construction and operation of public passenger transport services may allow for complete subcontracting for the operation of these services. The public service contract shall specify, in accordance with national and international law, the conditions applicable to subcontracting. (SR, 2020a)

Public service contracts shall require the operator to provide the competent authority with the information necessary for the award of the public service contracts, while ensuring the legitimate protection of confidential business information. The competent authorities shall make available to all interested parties the relevant information for the preparation of the tender, while ensuring the legitimate protection of confidential business information. This includes information on passenger demand, fares, costs and revenues related to the public passenger transport covered by the tender, and details of the infrastructure specifications relevant to the

operation of the required vehicles or rolling stock, so that interested parties can design well-informed business plans. Railway infrastructure managers shall support the competent authorities in providing all relevant infrastructure specifications. Unless prohibited by national law in the case of public service contracts in the field of public passenger transport services awarded on a competitive basis, the competent authority may decide to award new contracts on a temporary basis directly if the competent authority considers that direct award is justified. Such exceptional circumstances include situations where the competent authority or other competent authorities are already conducting several competitive tenders, which could affect the number and quality of tenders likely to be accepted if the contract is the subject of a competitive tendering procedure. . Alternatively, changes to the scope of one or more public service contracts are needed to optimize the provision of public services.

The duration of the contracts must be proportionate to the exceptional circumstances concerned and may in no case exceed 5 years. The competent authority shall publish such contracts. In so doing, it shall take into account the legitimate protection of confidential business information and business interests. A subsequent contract relating to the same public service obligations will not be awarded based on this provision. The competent authorities may make public their intention to award a public service contract for rail passenger services by publishing an information notice. This information notice shall contain a detailed description of the services, which are the subject of the contract to be awarded and the nature and duration of the contract. Operators may express their interest within a time limit set by the competent authority, which shall not be less than 60 days after the publication of the information notice. If after the expiration of that period, only one operator has expressed its interest in participating in the procedure to award the public service contract, that operator has duly proved that it will in fact be able to provide the transport service complying with the obligations established in the public service contract. The absence of competition is not the result of an artificial narrowing of the parameters of the procurement. No reasonable alternative exists. The competent authorities may enter into negotiations with that operator without further publication of a tender.

Unless prohibited by national law, the competent authority may decide to award public service contracts directly if their average annual value is estimated at less than 1 000 000 EUR or, in the case of a public service contract involving a public service in railways, passenger transport of less than 7 500 000 EUR. Where applicable, in the case of the annual provision of less than 300 000 kilometres of public passenger transport services or, in the case of a public service contract, including public passenger transport services, by less than 500 000 kilometres. In the case of a public service contract directly awarded to operating a maximum of 23 road vehicles, these thresholds may be increased either to an average annual value estimated at less than 2 000 000 EUR or to an annual reserve of less than 600 000 kilometres of public passenger transport services. Where it considers that direct award is justified by the relevant structural and geographical characteristics and the size of the relevant market and network, the characteristics of demand, the complexity of the network, the technical and geographical isolation and the services covered by the contract. In addition, if such a contract would lead to an improvement in service quality or cost-effectiveness, or both, compared to a previously awarded public service contract. On that basis, the competent authority shall publish the reasoned decision and inform the Commission thereof within one month of its publication. The competent authority may proceed with the award of the contract. Where the competent authority decides to award a

public service contract directly, it shall set measurable, transparent and verifiable performance requirements. Such requirements must be included in the contract. Performance requirements include service accuracy, train frequency, fleet quality and passenger capacity. The contract shall contain specific performance indicators that allow the competent authority to carry out regular evaluations. The contract also contains effective and dissuasive measures to be imposed in the event of a railway undertaking failing to meet performance requirements. The competent authority shall regularly assess whether the railway undertaking has achieved its objectives in order to meet the performance requirements set out in the contract and shall make its findings public. Such regular evaluations shall be carried out at least every 5 years. The competent authority shall take appropriate and timely measures, including the imposition of effective and dissuasive contractual penalties, if the required improvements in service quality or cost-effectiveness or both are not achieved. The competent authority may at any time suspend or terminate the contract awarded in accordance with this provision if the operator fails to comply with the performance requirements. Unless prohibited by national law, the competent authority may decide to award public service contracts in the field of public passenger transport services if they relate only to the operation of passenger rail services by an operator who simultaneously manages all or a large part of the railway infrastructure on which the services operate are provided. Contracts shall be made public, taking into account the legitimate protection of confidential business information and commercial interests. Unless prohibited by national law, the competent authorities may decide, in addition to other modes of rail transport, such as metro or trams, to award public service contracts directly where they concern rail transport. In order to increase competition between railway undertakings, the competent authorities may decide that public service contracts for rail passenger services covering parts of the same network or package shall be awarded to different railway undertakings. To that end, the competent authorities may, before the start of the selection procedure, decide to limit the number of contracts to be awarded to the same railway undertaking.

In order to launch the tender, the competent authorities shall assess whether measures are necessary to ensure effective and non-discriminatory access to the appropriate fleet. This assessment shall take into account the presence of rolling stock leasing companies or other market participants providing rolling stock leasing on the relevant market. The evaluation report shall be made available to the public. Competent authorities may decide, in accordance with national law and State aid rules, to respond appropriately to ensure effective and non-discriminatory access to an appropriate fleet. Such measures may include the acquisition of rolling stock used for the performance of a public service contract by the competent authorities in order to make it available to a selected public service operator at market price or as part of a public service contract. First, the provision of a guarantee to the competent authorities for the financing of the rolling stock used to perform the public service contract at market price or as part of the public service contract. Including guarantee covering residual value risk. An undertaking by the competent authority in a public service contract to take over rolling stock under pre-established financial conditions at the end of the contract at market price; or working with other competent authorities to develop a larger set of rolling stock. If the rolling stock is made available to a new public transport operator, the competent authority shall include in the tender dossier all available information on the costs of maintaining the rolling stock and its physical condition.

Each competent authority shall publish once a year a summary report on the public service obligations for which it is responsible. This report shall include the date of commencement and duration of the public service contracts, the selected public service operators and the compensation payments and exclusive rights granted to those public service operators in the form of compensation. The report shall distinguish between bus and rail transport, allow monitoring and evaluation of the performance, quality and financing of the public transport network and, where appropriate, provide information on the nature and extent of any exclusive rights granted. The report shall also take into account the policy objectives. Each competent authority shall take the necessary measures to ensure that at least the following information is published at least one year before the start of the selection procedure or one year before the direct award: the name and address of the competent authority; the type of valuation expected; services and areas that may be covered by the award. Estimated starting date and duration of the public service contract.

The competent authorities may decide not to disclose this information if the public service contract concerns the provision of public passenger transport services of less than 50 000 kilometres per year. If this information changes after its publication, the competent authority shall publish the corresponding correction as soon as possible. This correction shall not affect the date of commencement of the direct award or invitation to tender. The compensation may not exceed an amount corresponding to the net financial effect equal to the sum of the positive or negative effects of the public service obligation on the public service operator's costs and revenues. The effects are assessed by comparing the situation where the public service obligation is fulfilled with the situation that would have occurred if the obligation had not been fulfilled. In calculating the net financial effect, the competent authority shall follow the following system:

- costs incurred in relation to a public service obligation, or a bundle of public service obligations imposed by the competent authority/authorities, contained in a public service contract and/or in a general rule,
- minus any positive financial effects generated within the network operated under the public service obligation(s) in question,
- minus receipts from tariff or any other revenue generated while fulfilling the public service obligation(s) in question,
- plus a reasonable profit,
- equals net financial effect.

Compliance with the public service obligation may have an impact on the operator's possible transport activities beyond that of the public service obligation (s). It is therefore possible to avoid overcompensation or undercompensating when calculating the net financial impact; therefore, the quantifiable financial implications for the relevant operator's networks are taken into account. Costs and revenues must be calculated in accordance with applicable accounting and tax rules. It is possible to increase transparency and avoid cross-subsidies where the public service operator not only operates compensated services subject to public transport obligations but also carries out other activities at least the following conditions:

- the operating accounts corresponding to each of these activities must be separate and the proportion of the corresponding assets and the fixed costs must be allocated in accordance with the accounting and tax rules in force,

- all variable costs, an appropriate contribution to the fixed costs and a reasonable profit connected with any other activity of the public service operator may under no circumstances be charged to the public service in question,
- costs of the public service must be balanced by operating revenue and payments from public authorities, without any possibility of transfer of revenue to another sector of the public service operator's activity.

Reasonable profit 'must be understood as the rate of return on capital which is common to the sector in each country and which takes into account the risk or absence of risk borne by the public service provider as a result of the intervention of a public authority. The method of compensation must support the maintenance or development of effective management by the public service operator, which may be the subject of an objective assessment, and the provision of a sufficiently high level of passenger transport services.

#### **4. A Case Study of Public Tenders in Rail Passenger Transport**

As part of our research, a case study of public tenders in the Czech Republic and Slovakia was prepared. This case study compares the experience in the field of tendering in rail passenger transport and evaluates the system of tendering and their course. The case study describes and contains all public tenders that have been announced and completed in the Slovak Republic (Passenger trains on the Žilina - Rajec line, Passenger trains on the Bratislava - Komárno line and others) and the Czech Republic (Kolín - Mělník - Ústí nad Labem, Hradec Králové Region *and others*) with a successful or unsuccessful result. However, due to the scope, we mentioned in our contribution only one case of announcing a public tender in the Slovak Republic and one case in the Czech Republic. The experience of commercial trains is described at the end of the case study.

##### **4.1. Slovakia**

The current state of liberalization of rail passenger transport in Slovakia is most aptly described as tragedy. Unlike in the Czech Republic, in Slovakia only the Ministry of Transport orders the services in the public interest in rail passenger transport, so as a state authority it is fully responsible for the current situation.

##### ***Bratislava - Banská Bystrica***

A few years ago, a tender was announced for a railway undertaking that was to operate express trains on the route from Bratislava to Banská Bystrica. Express trains on this route operate in a two-hour cycle, which is supplemented during working days by one more pair of express trains in the morning rush hour in the direction of Bratislava and in the afternoon rush hour in the direction of Banská Bystrica. On Sunday, there are two reinforced trains running on this route, both in the direction from Banská Bystrica to Bratislava. The minimum number of sets per two-hour train cycle on this line is five, while another (sixth) set is required for supplemented trains during working days. This set can be used on one of the strengthening speeds on Sunday. The seventh set is necessary for the second accelerator, which only runs in one direction on Sunday. Since both accelerators only travel in one direction, it is necessary to introduce train runs for these trainsets to get the train back to the starting station. Railway vehicles are the largest item in terms of economic costs of the railway undertaking, whether it is their depreciation or rental / leasing. As the customer requested the set railway undertaking

from the tender for reinforced trains, which run only once a week in one direction, there was a disproportionate increase in the number of sets. The railway undertaking would have to procure vehicles that would have been parked in the depot the other days. It would also be necessary to increase the number of train drivers and train drivers. In the tender, the railway undertaking must follow the instructions of the customer, which have been determined in this way. However, the customer did not take into account the above-mentioned logical things arising from the technology of train operation, and therefore he received offers from the railway undertakings that did not meet his ideas in terms of financial requirements. The competition was therefore cancelled, while a new one was being considered, where regional passenger trains would be added to the express trains in question. It can be assumed that the customer has assessed the inefficiency of this model of operation, and the solution has emerged from practice, as it is common to use such kits during the week in regional transport. This reasoning is correct, but the customer should take into account which regional trains to add to the express train so that they can use the same type of railway vehicle. The regional line Banská Bystrica - Brezno planned by the client would not be a suitable choice with regard to different infrastructure parameters. A simpler solution would be to exclude reinforced trains from the timetable, leading to efficient operation of only regular trains in a two-hour cycle. However, simple and logical solutions have not yet been applied to the customer.

### ***Passenger trains on the Žilina - Rajec line***

In the recent past, the Ministry of Transport has announced tenders on three regional lines. One of them is the Žilina - Rajec line. The tender for the selection of a railway undertaking for this route was launched in the autumn of 2019, while the start of operation was set for 01.02.2020. Three railway undertakings expressed interest in participating in the tender, while in the end only one of them, the Slovak national railway undertaking, submitted a binding offer. The decision to select a railway undertaking on this route was made at the turn of 2019 and 2020, and it must be emphasized that the start of operations was set for the beginning of February 2020, so the railway undertaking had only one month to prepare for operation. If an alternative railway undertaking were to arrive on this line, the staff of the railway undertaking who operated the trains there at the time would not even have expired in one month, not to mention the other technical and technological aspects necessary for the start of train operations. The participation of alternative railway undertakings was thus practically impossible. However, it is interesting that this tender was eventually cancelled, because not a single railway undertaking that submitted a bid met the criteria set by the customer. It was not possible to find among the approved types of railway vehicles on the Slovak railway network those that would meet the set criteria. It can be stated that the conditions of the tender were incorrect and the customer is responsible for this error. The client subsequently announced a second tender for the same track, and its result was the same as in the first case. The customer was unable to learn from his own mistakes and repeated unsuccessful competition can therefore be considered a total failure and a manifestation of the inability to determine the correct and satisfactory conditions. It is also interesting that the client in the tender did not request the railway undertaking to participate in the prepared Žilina IDS and the scope of transport services on this line be not consulted with the regional coordinator. It is so demonstrable that the client did not even take into account the interests of the traveling public and the tender was thus self-serving.

### ***Passenger trains on the Bratislava - Komárno line***

Another example of misconduct by the Slovak Ministry of Transport is the still unfinished series of events concerning the Bratislava - Komárno line. The tender for the selection of a railway undertaking was also unsuccessfully repeated here, and at present, the customer wants to find a railway undertaking by entering it directly. However, it is necessary to go gradually to clarify this issue. The railway undertaking that operated the trains here terminated its contract in December 2020, which was evident since 2011, when the contract for the operation of trains was concluded with it. The first mention that the customer plans to solve this route did not appear to the public until 2019. Several railway undertakings showed interest in the tender. In this tender as well, the Ministry of Transport set conditions that were practically unsatisfactory for the railway undertakings, especially taking into account the very short time to prepare for the start of operation. As it is an attractive route from the point of view of transport performance, as there has been a major boom in passenger transport in previous years, there have been public objections to the customer. Due to inadequate conditions, the Slovak national railway undertaking did not even participate in this tender.

The tender eventually turned into embarrassment, as no railway undertaking submitted a price offer. The set conditions were practically unfeasible with regard to the time and the expected price, so the customer was still not aware of his mistakes. Therefore, there was a real threat that in December 2020 there would be no one to run trains on this line. For this reason, the customer was forced to enter into negotiations with the then railway undertaking. Due to the reluctance to find a compromise solution between the customer and the then railway undertaking, the threat of non-operation of trains was even higher. Due to the uncertainty caused by the customer, the then railway undertaking did not have contractually agreed vehicles from leasing companies for the next period and it is unrealistic to provide adequate vehicles only a few months before the start of operation on the European railway vehicle market. After unsuccessful negotiations with the then railway undertaking, the customer had to proceed to the use of the proposed operating concept of trains and railway vehicles from another alternative offer, which was submitted to the original tender and to persuade the national railway undertaking to operate trains on this line. However, due to the already mentioned shortage of vehicles on the market and with regard to time, the national railway undertaking must also use sets from abroad.

The operation of trains on this line was thus maintained even after December 2020, albeit with various restrictions. However, the national railway undertaking operates trains on this line only temporarily. The Ministry of Transport has decided to announce a new tender for the next period. However, since the customer did not learn from his own mistakes again, it turned out the same way, i.e. a fiasco. Specific errors that the customer has repeatedly made are:

- The train timetable proposed by the customer is problematic in terms of travel times and operating intervals, especially at peak times. The customer did not have any requirements regarding the dynamics of the sets, which would guarantee compliance with the submitted timetable.
- The customer required a minimum seating capacity for specific trains in a very special way, e.g. for the last train from BA to DS up to 500 seats. The required minimum seating capacity had many variants, which is a complication for train operation technology.
- Due to the parameters of the infrastructure (length of platforms), the required seating capacity could only be met by double-decker wagons which, taking into account quality requirements (air conditioning, Wi-Fi, etc.), were not available on the market.

The repeated failure to select a railway undertaking in the form of a tender led the customer to decide to change the strategy and currently plans to select the railway undertaking directly. Several Slovak and foreign railway undertakings were contacted and according to current information, nine of them showed interest in operating trains on this line. Although the customer deals with the operation of trains, it does not address the important aspect of the railway infrastructure on this line. In the past, there have been considerations of double tracking or electrification of this line, which would have a positive impact not only on the technology of train operation, but also for the traveling public. Despite the undeniable benefits, these plans are not being pushed forward at present.

In conclusion, it can be clearly stated that the failure of the liberalization of rail passenger transport in Slovakia can have only two reasons:

- it is not in the customer's interest to actually liberalize rail passenger transport and the real interest is therefore antagonistic compared to official statements and, in particular, contrary to the European legal framework,
- the specific employees of the contracting authority who are responsible for preparing tenders relating to the operation of rail passenger transport are not competent.

#### **4.2. Czech Republic**

In the Czech Republic, services in the public interest in rail passenger transport are divided into long-distance and regional transport in terms of their ordering. The transport authority of long-distance trains is the Ministry of Transport, while the transport authorities of regional trains are regional self-governments. The following chapters describe selected cases of selecting a railway undertaking to provide services in the public interest.

##### ***Pardubice - Liberec - Ústí nad Labem***

The responsible body for the order is the Czech Ministry of Transport, which, according to its own statements, solves a long-term concept for determining the schedule for the selection of railway undertakings for individual lines of long-distance rail passenger transport. The current practice of the customer proves that the choice of railway undertaking is preferred in the form of direct assignment, with the incumbent being addressed primarily. In this way, the express line in question was to be solved.

According to EC Regulation no. 1370/2007 is obliged to publish in advance in the European Gazette an intention to allocate services in the public interest. This particular line happened on 14.08.2019 and the expected start of train operation was set at 13.12.2020. It was a direct assignment. Since August 2019, time has passed and no new information has been made available to the public. The first did not appear until the beginning of 2020 and confirmed the above-mentioned information. It should be emphasized that the start of train operations was set for December 2020. The fact is, however, that if the railway undertaking is to prepare properly for the start of operations, it will take longer. Unless the railway undertaking is given sufficient, time to prepare, the railway undertaking who already operates trains on the route in question is favoured, but this is contrary to the principles of transparency and non-discriminatory railway undertaking selection. The start of train operations on the line in question was approaching and the railway undertaking selection process did not begin until three months before the sharp start of operations. The final decision was made only 2 months before the sharp start of train operation on the line in question, demonstrably because of a lower offer price. However, the decision of the customer in the conditions of the Czech Republic does not obviously mean that

the selected railway undertaking will operate real trains on the given line. The contract was finally signed only 3 days before the sharp start of operations. However, the railway undertaking expected the longer operating time of the trains to be announced. However, under the time pressure he caused himself, the customer had no choice but to use a compromise solution, otherwise there would be a risk that the trains would simply not run on the given express line. The successful fulfilment of the pre-announced call did not occur until two months after the start of operation, when the selected railway undertaking obtained security for the operation of trains on the given express line according to the conditions and for a specified period, which were pre-notified by the customer.

Nevertheless, the most important thing in the analysis - the passengers. How the passengers felt the change of the railway undertaking on the express line in question can be summarized by the headlines from the two days when the schedule changed, and thus also the railway undertaking on the line in question. It is possible to point out a clear mistake of the customer, which is the Ministry of Transport. The mistake was that he selected the railway undertaking for the express line in question insufficiently in advance. From the information given at the beginning of the subchapter, it can be concluded that the customer did not count on the participation of alternative railway undertakings and planned to keep the operation on the national line in question to the national railway undertaking. However, the customer must always take into account the participation of alternative railway undertakings and make every effort to ensure that the market is open and that access to it is non-discriminatory. For this reason, it is necessary to select a railway undertaking at least two years in advance, in the case of the use of new vehicles, or at least four years in advance, in the case of the use of new vehicles. No manufacturer of railway vehicles can guarantee the railway undertaking production capacity for less than 2 years and the next 2 years must be taken as a reserve for possible approval of a new type of vehicle and preparation for the start of their operation. Whether the customer was able to learn from this experience is summarized in the following chapter.

### ***Kolín - Mělník - Ústí nad Labem***

The publication of the plan in the European Gazette was 14.08.2019 and the expected start of operation is planned for 12.12.2021. Compared to the previous line, the customer has one extra year to prepare and select a railway undertaking. As in the previous case, nothing happened on this express line for a long time and the first information did not start to reach the public until August 2020. When it was already clear that alternative railway undertakings would also apply for this line. However, the actual submission of bids for operation was postponed until the first quarter of 2021, i.e. about 9 months before the sharp start of train operation. After submitting bids from several railway undertakings, it was subsequently decided according to the criterion of the lowest bid price about the railway undertaking that will run on the given route. It is important to remember that in the conditions of the Czech Ministry of Transport, the decision on the choice of railway undertaking does not mean signing a contract with the railway undertaking, so the railway undertaking even a few months before the start of operation does not have legal certainty that it will actually operate trains on the line. In the previous case, the contract was signed with the railway undertaking 3 days before the start of operation. Did the customer manage to learn from this situation? From the numbers, it could be stated that yes, as in this case the contract was signed not 3 days but only 3 months before the start of operation.

However, it is necessary to interpret the numbers correctly, and therefore, given the practice; it is unquestionable that even 3 months is a very short period.

At the end of this case, it is necessary to add that the customer requires new vehicles from the railway undertaking on this line. It must be emphasized again that the production of new vehicles is not possible in terms of time before 2 years and they still have to take into account the reserve for possible approval. For this reason, the customer provided the railway undertaking with the so-called a transitional period of 3 years for the acquisition of new vehicles that will meet its requirements, with the proviso that during the transitional period the railway undertaking may also use new vehicles on this route. The idea is amazing at first sight, but the customer obviously has no idea of real operation, as such, a measure means that the railway undertaking needs twice as many vehicles to run trains on the line, as it must cover a transitional period and then use new vehicles. The original idea thus leads to a redundant increase in the cost of operation, which will have a negative impact on the demands on public budgets from which services in the public interest are financed. Moreover, it is necessary to add that in this case the customer required the railway undertaking, which has to travel according to the timetable in a two-hour cycle, to set up about 10 points of sale at railway stations, although the railway undertaking would be more efficient and cheaper to handle passengers directly on the train. However, it is not possible to specify specific requirements according to which criteria the customer sets.

### ***Hradec Králové Region***

The process of selecting railway undertakings in rail passenger transport also takes place in individual regions and concerns regional trains. Each region addresses this agenda independently, so only one example is selected that is current. The Hradec Králové Region published the plan in the European Gazette on June 27, 2019, and the expected start of operation is set for December 12, 2021. This is again a direct assignment. However, the real meeting of the region's representatives with the railway undertakings who showed interest in operating the trains did not take place until the second quarter of 2020.

The railway undertakings were to anticipate their offers during the third quarter of 2020, and subsequently the region's representatives announced that they would deal with each of them. In the end, the announced negotiations took place only at the information level (more detailed explanation of the submitted offers) and subsequently the representatives of the region fell silent. Another shift in this matter did not come until the end of 2020 and practically meant that, despite the region's great ambitions announced in advance, nothing would really change and there would remain railway undertakings in the region who already operate trains there. Negotiations with selected railway undertakings, however, still took place subsequently. However, the further development of the region's negotiations with selected railway undertakings led to surprising results. Of these, it can be clearly stated that the originally announced opening of the rail passenger transport market in the region to various railway undertakings is a failed plan and from December 2021, all regional trains in the region will be operated by only one railway undertaking. The Hradec Králové Region, as the customer of rail passenger transport, made the same mistake as the Ministry of Transport, when the selection of railway undertakings began to be addressed insufficiently in advance, which favoured the railway undertakings that currently operate trains here. This is also proved by the above-mentioned result of the tender, when in the end such railway undertakings were finally selected.

### **4.3. Commercial trains**

The liberalization of rail passenger transport concerns not only services in the public interest, but also the commercial operation of passenger trains in the so-called open access. Due to the need to respect the scope of the paper and the assumption that its readers are the professional public, this section is devoted only to a brief description of current paradoxes and opportunities for improvement, i.e. active support of commercial operations. The current state of commercial operation of passenger trains in the Czech Republic results from the events of previous years, which began after the entry of the first private railway undertaking on the Prague - Ostrava line. It is currently on the mentioned line that long-distance trains with commercial risk are operated by up to three railway undertakings, while the route of their trains largely copies the lines ordered by the Ministry of Transport as part of services in the public interest. In comparison with this line, it is paradoxical that on a similar line Prague - Brno - Břeclav, two-passenger trains operate passenger trains, one of which runs within the order of the Ministry of Transport and the other at commercial risk. The situation in Slovakia is a bit different compared to the Czech Republic. Private railway undertakings only operate international trains here at commercial risk. The paradox for this is that trains ordered by the Ministry of Transport also run on similar routes. In the case of the Czech Republic and Slovakia, this is a deformation of the rail passenger transport market. If the railway undertaking wants to operate commercial trains on any line, where trains now also operate as part of services in the public interest, he may be asked to provide documents for the so-called Economic balance test. It is an assessment of whether the new (commercial) service jeopardizes the economic balance of rail passenger services operated in the public interest. In a market economy, this is a paradox, because if there is sufficient demand for a commercial service, it does not make sense to operate a subsidized service in a given place. Of course, it is important to take into account the scope of the service provided and the quality. However, in the case of different scope and quality, it also makes sense to determine the effects of a commercial service on a service in the public interest, if it is already targeted at another group of passengers, which follows precisely from its scope and quality. However, past practice shows that even in cases where an economic balance test has been carried out, no railway undertaking has been denied the option to operate new trains. The above-mentioned consideration of the paradoxical nature of this approach is thus confirmed. In addition, it is necessary to add that it is not clear to the railway undertaking how this economic balance test is carried out and there is no methodology according to which the railway undertaking could proceed when processing the documents for the required test.

In conclusion, it can be stated that repeated mistakes of customers and other responsible authorities mark the process of liberalization of rail passenger transport in the Czech Republic and Slovakia. Unsuccessful tenders for the operation of trains in the public service, as well as legal obstacles to the commercial operation of passenger trains, create an unflattering picture of the sector in the eyes of the traveling public. However, passengers should come first, because transport serves people - trains run for passengers.

## **5. Conclusion**

Rail transport has the potential to grow and increase its modal share, playing the most important role in a sustainable transport and mobility system and creating new investment opportunities and jobs. However, the growth of rail passenger transport services has not kept

pace with the evolution of other modes of transport. The transport market for international rail passenger transport services has been open to competition. In addition, some countries have opened their domestic passenger services to competition by introducing open access rights or tendering for public service contracts, or both. The opening of the market for domestic rail passenger services has a positive impact on the functioning of the single railway area, leading to better services for users. Competent authorities should define specifications of public service obligations in public passenger transport. Such specifications should be consistent with the policy objectives as stated in public transport policy documents. Specifications of public service obligations in public passenger transport should, where possible, generate positive network effects, inter alia, in terms of improved quality of services, social and territorial cohesion or the overall efficiency of the public transport system. Outsourcers' tenders in the Member States may be at varying levels of state administration, and the conditions of operation of public tenders can vary as well (e.g., due to different networks of railways different traction power supply systems used on railway lines, various signalling systems, etc.) Requirements for safety and interoperability must be common to all Member States with regard to common EU legislation and technical specifications for interoperability (rolling). One of the barriers to such public tenders is the absence of a single legislative basis for the conduct and operation of public passenger transport competition. In addition, there is currently no uniform methodology for allocating performance in rail passenger transport based on a public tender.

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