

IRG Rail

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IRG-Rail Workshop: industry experts discuss competition and direct award

Representatives of industry, government, passengers and regulators met this week in Bonn to debate the implementation of new procurement laws in rail.

The Fourth Railway Package decrees that public authorities must award rail PSO contracts on the basis of competitive tendering. There are, however, exceptions to this general rule. In particular, authorities may use direct award of contracts where transparently justified on the basis of performance criteria and market characteristics.

The implementation of this new law is a matter of interest and debate for passengers, industry, government and regulators. There are several open questions and areas of concern, including the role of 'independent bodies' in assessing an authority's substantiated decision to allow direct award. To discuss these, and stakeholder experiences and expectations of market opening, IRG-Rail organised an expert workshop, kindly hosted by the German regulatory body BNetzA.

Jan Scherp (DG MOVE) kicked-off the workshop by introducing the new rules, outlining the objectives of the 4th railway package and explaining the specific conditions for the application of the performance-based exemption from the principle of competitive award, ending with a call for consistent interpretation and application of the new rules.

The morning session was dedicated to presentations from representatives of stakeholder organisations and regulatory bodies, reviewing the practical experience of competition and direct award. Ivana Paniccia (ART, Italian Regulatory Body) presented the procedures and methodology used to assess the quality of PSO services. ART is one of the few regulatory bodies that already exercises such competences under domestic law.

This was followed by a presentation by Dr Patricia Perennes (Régions de France) giving an overview of the current French passenger rail market. Oliver Mietzsch (ZVNL, a German competent authority) presented the German approach to PSO services – from the perspective of a competent authority – stressing the pros and cons of the public tendering system. Coen Timmerman (ACM, Dutch Regulatory Body) then gave an overview of the railway market structure in the Netherlands and an outlook on the current discussion about a new market structure for the rail network after 2024.

The afternoon session focused on stakeholder views on the practical implementation and

impact of the new rules. Michel Quidort (President of the European Passengers Foundation) reiterated the value of competitive award in facilitating improvements in efficiency and quality, and voiced concern about the legal uncertainty of directly awarded contracts which might get challenged by competitors. He also expressed concern that continuation of direct award would favour incumbent operators at the expense of passengers. The panel also discussed whether an additional level of quality assessment might allow comparison between former PSO operations with the new contract, and whether additional voluntary commitment of operators could play a role when assessing the quality of a service.

The Chair of IRG-Rail's working group closed the workshop by reaffirming IRG-Rail's commitment to working closely with stakeholders on the implementation of the new laws. IRG-Rail will continue to follow-up the implementation and application of the rules, and plans to produce an overview paper covering the current responsibilities and experience of regulatory bodies with regard to the direct award of public service contracts.

