



Public service contracts and contracts: scope and content

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Definition of a public service contract

A PSC is required when the CA decides to grant an operator an exclusive right and/or compensation for the discharge of a PSO

A PSC is a legally binding act confirming agreement between a CA and an operator and entrusting this operator with the operation of a public passenger transport service subject to PSO.

A PSC can also take the form of decision adopted by the CA



Mandatory content of a public service contract

- Definition of PSO and geographical area concerned
- Determination of compensation parameters and of exclusive rights
- Determination of arrangements for the allocation of costs and revenues
- Limitation on PSC duration
- When staff is transferred, list of staff concerned and rights and obligations related to the transfer
- Description of quality and social standards
- Provisions on sub-contracting



Overall context of PSO: the TFEU

- Article 14 TFEU:
 - EU and MS must ensure that the service of general economic interest operates on the basis of principles and conditions which enable them to fulfil their missions
- Protocol 26 TFEU:
 - Essential role and wide discretion of national, regional and local authorities in providing and organising the service of general economic interest

The EU fully acknowledges the value of public service



Overall context of PSO: case-law

Commission's control is limited to assessing whether a MS made a **manifest error** in the specification of the PSO

A PSO must be proportional and necessary to a real need of public service

This is the case if demand for the service cannot be met by market operators in the absence of the PSO



Relevant provisions of Regulation n°1370/2007

Article 2 (e):

"A public service obligation is a requirement defined by a competent authority in order to ensure public transport services in the general interest that an operator, if it were considering its own commercial interest would not assume or would not assume to the same extent or under the same conditions without reward"

Such requirements may concern frequency of service, service quality, intermediary stops, provision for early morning or late evening trains

Relevant provisions of Regulation n°1370/2007

Article 2a: clarification on PSO specifications

- Specifications and scope of PSO must be laid down in accordance with Article 2(e) and with the principle of proportionality
- Consistency with policy objectives stated in public transport policy documents
- Specifications and compensation must achieve these policy objectives in a cost effective manner and ensure the long term financial sustainability of the service

Conclusion/recommendation

Competent authorities should be able to demonstrate:

- Consistency with public transport policy document
- Proportionality
- Cost effectiveness
- Absence of a commercial offer to provide the PSO



Conclusion/recommendation

Risk is limited if, for example:

- Consultation of (potential) operators, e.g. following publication
- Market study, with assessment of potential demand and supply
- Appropriate ex-ante methodology

(Cf Italian regulator methodology: <http://www.autorita-trasporti.it/delibere/delibera-n-48-2017/>)