Council of the European Union

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DRAFT STATEMENT OF THE COUNCIL'S REASONS

Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail - Draft statement of the Council's reasons

I. INTRODUCTION

1. On 30 January 2013, the Commission transmitted to the Council a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail[1].

2. This proposal was presented as a part of the so-called Fourth Railway Package together with five other proposals. For the negotiations, the proposals were handled in two groups, a technical pillar and a market pillar. This proposal is part of the market pillar.

3. The European Economic and Social Committee adopted its opinion on the proposal on 10 July 2013. The Committee of the Regions adopted its opinion on 8 October 2013.

4. The European Parliament adopted its opinion at first reading on 26 February 2014.

5. On 8 October 2015, the Council (Transport, Telecommunications and Energy) reached an agreement (the 'general approach')2 on the proposal relating to domestic passenger transport services.

6. On 19 April 2016, an agreement was reached with the European Parliament on a compromise text.

7. On 20 September 2016, the Council adopted a political agreement3 on the compromise text.

8. Taking into account the agreements referred to above and following legal-linguistic revision, the Council adopted its position at first reading on 17 October 2016, in accordance with the ordinary legislative procedure laid down in Article 294 of the Treaty on the Functioning of the European Union.

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1 OJ L 315, 3.12.2007, p. 1.
2 See 12777/15 TRANS 317 CODEC 1308.
3 See 11202/16 TRANS 299 CODEC 1059.

II. OBJECTIVE

9. The main objectives of the proposal are to improve the quality of domestic rail passenger transport services in cases where such services are offered as a public service and to enhance the operational efficiency of these services.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

A) General

10. The Council considers that competitive tendering should be the preferred option when public passenger services by rail are procured. However, the size, organisation and many other characteristics of the rail passenger service markets vary widely across the Member States. Therefore, to effectively attain the main objectives of the proposal, derogations to the principle of competitive tendering, i.e. direct awards, should be allowed in certain cases and subject to specified conditions.

B) Other key policy issues

11. The Council considers that the direct award of a contract based on the performance of the service provision is justified in certain conditions as it would fulfil the objectives of this proposal effectively and efficiently. Provided they ensure that the process is transparent, the competent authorities should be allowed to award such contracts. Those contracts should define the objectives in line with the Regulation and the necessary indicators to monitor these objectives.

12. There are also other cases, such as emergencies, low values of contracts or transitional situations between competitive awards, where direct awards are appropriate and where they should be allowed, subject to specified conditions.

13. Furthermore, competent authorities have signed ongoing contracts on the provision of rail passenger services with railway undertakings. A reasonable transitional period is necessary to ensure legal certainty, to avoid such contracts being breached or compensation being required for their premature termination.

14. Appropriate access to rail rolling stock is needed for the provision of passenger transport services, to ensure fair competition. The competent authorities should assess whether rail rolling stock is available on their market. While complying with the rules on state aid, they should be allowed to take measures to facilitate the provision of rolling stock, if necessary.

IV. CONCLUSION

15. The Council's position at first reading reflects the compromise agreed between the Council and the European Parliament, with the support of the Commission.

16. This compromise was confirmed by a letter from the Chair of the European Parliament's Committee on Transport and Tourism addressed to the Chair of the Permanent Representatives Committee (Part 1) on 13 July 2016.

17. The position of the Council takes full account of the Commission proposal and the amendments proposed by the European Parliament at first reading. The Council therefore believes that its position at first reading represents a major step forward towards improving the quality and efficiency of provision of rail passenger transport services.