



EU PILOT Ref. No 6732/14

Title: Public service contract for rail services granted by Finland in non-compliance with EU law provisions - Regulation (EC) N° 1370/2007

According to the complaint received, Finland concluded a public service contract with the VR Group (**VR**) having as object the provision of passenger rail transport that is allegedly not fully compliant with Article 4(1) in combination with Art 6 and the Annex and Article 4 (4) of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road (**Regulation 1370/2007**), nor with Article 102 of the Treaty on the Functioning of the European Union.

Factual situation

1. According to information provided by the plaintiff, the Finnish Ministry of Transport and Communications signed a public service contract with the state-owned railway undertaking VR granting the latter exclusive rights to operate passenger rail transport services in Finland. Initially, the public service contract was intended to cover the period between 3 December 2009 and 31 December 2019, but according to the decision of the competent authority, the contract was extended until 31 December 2024 on the basis of VR's commitment to make significant investment in rolling stock.
2. The plaintiff states that certain parts of the rail network managed by the Finnish Transport Agency are liberalized and thus other operators are allowed to run passenger trains at their own financial risk and without receiving any PSO compensations for providing such transport services. Nevertheless, it would appear that the sections of the rail network that have been opened to other operators are not economically viable.
3. Furthermore, the plaintiff alleges that VR wishes to discontinue commuter rail services for two stops north of Helsinki because it claims that providing transport services for those lines is unprofitable.
4. Also, it appears that VR scraps perfectly usable rolling stock instead of offering it or selling it to other interested rail companies, making it more difficult for the latter operators to enter the market.

Bearing in mind the relevant primary and secondary legal provisions and the factual situation laid down above, we kindly ask the Finnish competent authorities to provide the Commission with answers to the following questions:

- 1. Are the above stated facts accurate?**
- 2. According to the complaint received, VR intends to discontinue certain rail transport services under the public service contract because they would not be profitable. Does the public service contract allow such practice? Under what conditions? How will the competent authority make sure that there is no overcompensation under this public service contract? Is a proportional reduction of the compensation envisaged bearing in mind the discontinuance of the commuter rail services for two stops?**
- 3. The Finnish authorities justify the prolongation by 50% of the initial term of the contract with VR through the fact that the latter, as public service operator, made considerable investments in rolling stock used to provide the public transport services under contract. Please provide detailed information about such investments and demonstrate that this investment in rolling stock is significant in relation to the overall assets needed to carry out the passenger transport services under the public service contract and that they are linked predominantly to the provision of passenger transport services covered by the public service contract in question.**
- 4. What are the legal and contractual provisions as well as the procedure in place for scrapping rolling stock by the incumbent VR? How do Finnish authorities ensure that VR does not abuse its dominant position on the Finnish rail passenger transport market with respect to access to second hand rolling stock for potential competitors?**

When providing answers to the questions laid down above, the Finnish authorities should bear in mind the fact that competent authorities must comply with the provisions of Regulation 1370/2007 when imposing or contracting for public service obligations in what regards the compensation granted to public service operators for costs incurred and/or granting exclusive rights in return for the discharge of public service obligations.

The Commission would therefore invite the Finnish authorities to reply to the questions above. In the absence of a satisfactory reply, the Commission may decide to initiate an infringement procedure under Article 258 of the Treaty for incorrect implementation of Regulation 1370/2007.