**Methodology for principal purpose test and economic equilibrium test**

**INTRODOCTION**

According to Article 19(1) of Commission Implementing Regulation (EU) No 869/2014 of 11 August 2014 on new rail passenger services[[1]](#footnote-1), the regulatory bodies shall develop a methodology for principal purpose tests and, if appropriate, for economic equilibrium tests of new rail passenger services. This methodology shall be clear, transparent and non-discriminatory and shall be published on the website of the regulatory body. According to Article 19(2), the methodology shall be established in a way consistent with market developments, allowing it to evolve over time, in particular in the light of the experience of regulatory bodies. In addition, according to recital 13, the tests should rely on a case-by-case analysis, rather than simple application of predetermined thresholds.

The principal purpose test assesses whether the service is intended to carry passengers between stations located in different Member States and, depending on the result of this test, the economic equilibrium test may assess whether the international rail passenger service jeopardises the economic equilibrium of a public rail service contract. If the economic equilibrium is compromised, Member States may limit the right of access to the rail lines in which services are operated under such public service contracts[[2]](#footnote-2).

In addition to the tests, the Implementing Regulation sets requirements for the processes related to the notification of a planned new international rail passenger service, requests for a principal purpose test andrequests for economic equilibrium tests.

**Principal purpose test**

### **Methodology**

According to recital 2 of the Implementing Regulation, the introduction of new, open-access international rail passenger services with intermediate stops should not be used to open up the market for domestic passenger services, but should merely focus on stops that are ancillary to the international service. The principal purpose of the new services should be to carry passengers travelling on an international journey.

The Regulatory Body will carry out a case-by-case assessment following the assessment criteria specified in Article 8 of Commission Implementing Regulation (EU) No 869/2014 in order to determine whether the principal purpose of a new rail service is to carry passengers between stations located in different Member States. The assessment is carried out in accordance with Article 8(1), i.e. the Regulatory Body will carry out both a qualitative and quantitative analysis that takes into account the foreseeable evolution of the service as well as foreseeable changes in market conditions during the period covered in the applicant’s notification (the first 3–5 years of operation).

On a case-by-case basis, the Regulatory Body assesses particularly the criteria set out in the five points of Article 8(2), taking into account relevant information in relation to each criteria. The weighting allocated to each criterion may vary depending on the case.

If the regulatory body considers that the requesting entity has not provided full information with their request, it may request further information within three weeks of receipt of the request. If the requesting entity replies to this request for further information, and its reply is still incomplete, the regulatory body may make a second request for further information within three weeks of receipt of the response to the first request for further information.

In the first phase, the Regulatory Body assesses the quantitative distribution of the turnover and of the volume derived from the transport of passengers between stations located in different Member States and the transport of passengers between stations located in Denmark.

In this assessment, the Regulatory Body takes into account the estimate provided by the applicant and performs a verifying calculation where necessary, which in particular takes into account the distance covered by the proposed new service in different Member States and the location of the stops; passenger demand for the new service; the marketing strategy of the applicant; nature of the rolling stock to be used in the new service as well as other more specific information. The applicant shall take these factors into account in the calculation that they submit to the Regulatory Body and sufficiently substantiate the calculation. The aim of the verifying calculation is to assess, on the basis of the factors mentioned above, how demand is divided between cabotage service and international service.

If the expected turnover and volume derived from the transport of passengers is distributed in such a way that less than 50 per cent of both of these is derived from the transport of passengers between stations located in different Member States this would indicate that such transport is not the principal purpose of the service.

The preliminary result obtained is supplemented by a more detailed qualitative analysis determining whether the proposed service and/or its individual characteristics assessed in the first phase indicate that the rail passenger service is more of an international or of a domestic nature. The outcome of this phase may be either the confirmation of the result of the first phase, the detection of inconsistencies or the completion of the assessment for borderline cases.

**Economic equilibrium test**

***Methodology***

In accordance with Article 11(1) of Directive 2012/34/EU, Member States may limit the right of access to the national railway network for operating international rail passenger services and the right of a railway undertaking to pick up and set down passengers along routes on which another railway undertaking operates rail passenger services under a public service contract where that right would compromise the economic equilibrium of those public service contracts.

The Regulatory Body will carry out a case-by-case assessment in order to determine, whether the economic equilibrium of a public service contract is compromised by the proposed new international service. The assessment is carried out following the criteria specified in Article 13 and particularly the assessment criteria specified in Article 14 of Commission Implementing Regulation (EU) No 869/2014. In its analysis, the Regulatory Body focuses on the economic impact of the proposed new service on the public service contract as a whole, not on individual services operated under it, over its entire duration (Article 13(2)). According to Article 13(1), the economic equilibrium of a public service contract shall be considered as compromised, when the proposed new service has a substantial negative impact on: (i) the profitability of services operated under the public service contract, and/or (ii) the net cost for the competent authority awarding the public service contract.

The starting point for the assessment carried out by the Regulatory Body is the impact of the new service on the net financial effect[[3]](#footnote-3) of services under the public service contract considered over the duration of this contract (Article 14(a)), taking particularly into account points (b)–(d) of Article 14:

* Possible competitive responses by the railway undertaking performing the public service contract;
* Possible cost savings to be made by the railway undertaking performing the public service contract (such as in terms of non-replacement of rolling stock coming to expiration or staff whose contract ends) as well as potential benefits for this railway undertaking resulting from the proposed new service (such as by bringing international passengers who might be interested in a connection with a regional service within the public service contract);
* Possibility to narrow the scope of the public service contract, in particular when it is close to expiry at the time of the assessment.

The assessment takes into account the possibility that the new international passenger service may increase the total size of the market. If the impact on the contract is assessed as being negative and, considering the case-specific circumstances, substantial, this would indicate that the economic equilibrium of the contract is compromised. The question of whether the negative impact is substantial can be assessed, for example, by examining profitability and turnover calculations made by the railway undertaking performing the public service contract and/or the competent authority during the preparation of the public service contract and, in particular, the range of the calculations and the actual annual fluctuations of turnover and costs in past contract years. An impact on the net financial effect that is of the same order as the fluctuations in the above-mentioned advance calculations cannot, as a rule, be considered substantial, as the operators have prepared themselves for such fluctuations at the time when they concluded the contract. Similarly, actual annual fluctuations can be used to assess whether such fluctuations can be considered normal in the business.

In addition, the final result of the assessment is also affected by the following criteria:

* Impact on the performance and quality of railway services;
* Impact on rolling stock investments by railway undertakings or competent authorities;
* Impact on timetable planning for railway services.

The weighting allocated to each criterion varies depending on each case. In addition, the Regulatory Body can take into account other objective criteria if necessary.

1. Referred to hereafter as “the Implementing Regulation”. [↑](#footnote-ref-1)
2. A contract as defined in Regulation (EC) No 1370/2007 of the European Parliament and of the Council. [↑](#footnote-ref-2)
3. ‘Net financial effect’ means the effect calculated in accordance with point 2 of the Annex to Regulation (EC) No 1370/2007. [↑](#footnote-ref-3)