

Courtesy translation – only the Italian text is authentic

Annex A to Decision No 143/2018 of 20 December 2018

Draft regulatory measures on ‘Revision of Decision No 49/2015 - Regulatory measures for drawing up tender notices and related contracts for the award of local public services by rail and road on an exclusive basis and for setting the criteria for the appointment of tender evaluation committees, as well as for defining model public service contracts that are directly awarded or performed by in-house companies or publicly-owned companies. Consultation document.

CONTENTS

Definitions.....	4
Measure 1 – Purpose and scope of the Measures	7
Title I – Preliminary stages for the award of public services.....	7
Chapter I - Regulatory measures concerning lots to be awarded, content of public service contracts and capital goods	7
Measure 2 - Criteria for identifying award procedures and minimum mandatory content of public service contracts.....	7
Measure 3 – Instrumental goods for the performance of the service	8
Measure 4 - Essential, necessary and commercial goods	8
Measure 5 - Rolling Stock	9
Measure 6 - Instrumental goods acquired through public funding.....	10
Measure 7 - Provision of essential and necessary goods	10
Measure 8 - Actions by the AE to promote the availability of instrumental goods	11
Measure 9 - Criteria for determination of takeover value	11
Measure 10 - Criteria for determination of leasing fees	13
Chapter II — Regulatory measures aimed at transparency, effectiveness and efficiency of award procedures	13
Measure 11 — Regulatory accounting and accounting separation requirements for local public rail passenger transport	13
Measure 12 — Regulatory accounting and accounting separation requirements for local public road passenger transport.....	13
Measure 13 — Criteria for risk identification and allocation in the contract award.....	14
Measure 14 — Criteria for drawing up a simulated EFP in tendering procedure	15
Measure 15 — Criteria for drawing up a simulated EFP for direct or in-house awards	15
Measure 16 — Determination of effectiveness and efficiency targets.....	15
Measure 17 — Determination of the reasonable profit margin.....	16
Title II – Stages of award of the service	16
Chapter I - Regulatory measures to identify the information to be provided in the award procedures	16
Measure 18 – Provision of minimum information to participants in the award procedures .	16
Chapter II - Regulatory measures for equitable and non-discriminatory tender participation.....	17
Measure 19 - Participation requirements	17
Measure 20 – Awarding criteria	17
Measure 21 - Transfer of personnel.....	18

Measure 22 - Economic-Financial Plan of tender participants for the award of concessions.	19
Measure 23 - Deadline for tender submission.....	19
Measure 24 - Criteria for appointment of the tender evaluation committee	19
Title III – Stage of implementation of the public service contract	20
Measure 25 - Monitoring and reporting of the service	20
Measure 26 - Verification of economic and financial equilibrium	21
Measure 27 – Criteria for fare updating.....	21
Measure 28 – Contract review and renegotiation	22

Definitions

For the purpose of these regulatory measures, the following definitions shall apply:

- a) *Authority (ART)*: Transport Regulation Authority.
- b) *Awarding Entity (AE)*: public body, or entity delegated by a public body, that is entrusted with the responsibility of awarding a public service contract to a company operating local public transport services, and is in charge of the management, monitoring, verification and control of the contract. The AE may therefore be other than the public entity in charge of the service. In this case, the relationship between the two parties shall be governed by a special agreement (pursuant to Article 30 of Legislative Decree No 267 of 18 August 2000, as amended) governing their duties, roles and split responsibilities. The agreement shall cover aspects relating to the quantity of the awarded service and relevant economic aspects, service planning, tariffs, required standards, type and quantity of controls, investments, basic reporting, etc.
- c) *Contracting Company (CC)*: company operating local public transport services, that enters into a new public service contract (PSC) with the competent AE, succeeding an incumbent operator (IO) in the provision of the contracted local public transport services.
- d) *Debt Service Coverage Ratio (DSCR)*: bankability factor for enterprise's ability to produce sufficient flows to cover its debt (principal and interest); it is equal to the ratio of operating cash flow to debt servicing for interest, principal and lease payments.
- e) *Economic-Financial Plan (EFP)*: management planning document that includes the time development of economic, capital and financial data and indicators over the contract period. The EFP may be defined by the AE (hereafter: simulated EFP) or by the tender participant (TP) in the bidding stage (hereafter: tender EFP).
- f) *Instrumentality* (to be always referred to a local or regional authority): public body, special undertaking or company, including public agency or asset company, other than the service provider.
- g) *Key Performance Indicator (KPI)*: indicator that monitors the development of a business process and provides a benchmark to identify effectiveness and efficiency targets; for regional rail transport services, KPIs are defined by the Authority pursuant to Decision No 120/2018 of 29 November 2018 (hereinafter: Decision No 120/2018).
- h) *Loan Life Coverage Ratio (LLCR)*: bankability indicator for debt sustainability, given by the (cumulated and discounted) total cash-flows available for debt service (valued up to the last year of debt repayment), increased by the cash reserve for debt repayment, divided by the debt balance outstanding at the time of evaluation.
- i) *Local public transport (LPT) services*: "passenger transport services of general economic interest provided to the public on a non-discriminatory and continuous basis" (cf. art. 2 (a) of Regulation (EC) 1370/2007) provided at the local (urban, sub-urban, extra-urban) level and/or at the regional level (including trolley buses, funicular railways, trams and underground) and by rail.
- j) *LPT company*: individual or aggregated economic operator, whether governed by public or private law, that provides local public passenger transport services by road and by rail (LPT), and related ancillary and support services.
- k) *Minimum quality standards*: minimum obligations and/or performance that are measured through qualitative and quantitative indicators and standards of passenger transport services that are subject to public service obligations, as identified according to territorial demand and supply characteristics, within the meaning of Article 37 (2) (d) of Decree-Law No 201 of 6 December 2011, converted, with amendments, into Law No 214 of 22 December 2011 (hereinafter: Decree-Law No 201/2011). For local and national rail transport, the *minimum quality standards* are defined by the Authority pursuant to Decision No 16/2018 of 8 February 2018 (hereinafter: Decision No 16/2018).

- l) *Movable property*: e.g. hardware, software and other technological systems for performance control and assessment and for fleet monitoring (including *Automatic Vehicle Monitoring* systems, hereinafter: AVM) and related database, operation of facilities, and management of demand and ticketing data, with related database, and any other equivalent systems that are strictly necessary for the awarded services.
- m) *Net invested capital (NIC)*: relevant capital for the purpose of calculating the reasonable profit margin.
- n) *Networks, facilities and infrastructures*: e.g. tracks (for rail, underground and tram transport) and related passenger stations, bus terminals, stopping areas and related assets (range poles, shelters, any furniture) and technological monitoring safety systems on these networks, facilities and infrastructures, other than those referred to in point (c) below. For passenger stations and related buildings for the different transport modes, common areas and facilities open to the public, ticket offices and other facilities including travel information systems, suitable space for ticketing services for local public transport services and ancillary systems are included. For rail, underground and tram transport, areas and facilities for shunting and train composition are encompassed, including shunting areas, areas, facilities and buildings intended for rolling stock parking, shelter and storage, maintenance centres, except for rail transport, heavy maintenance facilities for high-speed trains or other rolling stock that require specialised centres. For road transport, depots and any other immovable property, facility or other equivalent asset.
- o) *Incumbent Operator (IO)*: economic operator providing public transport services that are regulated under an expiring contract, which is subject to a new award procedure by the competent AE.
- p) *Public Service Contract (PSC)*: agreement and contract as referred to in Article 37 (2) (f), first sentence of Decree-Law No 201/2011, Article 2 (i) of Regulation (EC) No 1370/2007 and Article 19 of Legislative Decree No 422/1997.
- q) *Public Service Obligations (PSO)*: requirement as defined or identified by a competent authority in order to ensure the provision of public passenger 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 (Regulation (EC) No 1370/2007, Article 2 (e)).
- r) *Quality Service Charter*: document whereby a CC engages in a number of commitments to its users concerning its services, specifying, in particular, the ways they are provided, the quality standards and user information on the performance achieved and the customer protection, in accordance with the provisions of Article 2 (461) of Law No 244 of 24 December 2007 (hereinafter: Law no 244/2007).
- s) *Reasonable profit margin*: rate of return on invested capital that is required by a typical company to assess the performance of the service subject to PSO over the entire contract period and taking into account the level of risk involved; see definition in the Annex to Regulation (EC) No 1370/2007.
- t) *Regulatory period*: period of up to 5 years within the time of validity of the PSC, at the end of which the economic and financial equilibrium is verified and the fares are adjusted.
- u) *Replacement value*: cost of replacing the existing facilities with new installations with similar technological characteristics and capacity as the existing equipment.
- v) *Report ex-art. 34*: report provided for in Article 34 (20) of Decree-Law No 179 of 18 October 2012, converted, with amendments, into Law No 221 of 17 December 2012, whereby the AEs “*account for the fulfilment of the requirements laid down by European law for the award chosen and motivate the reasons thereof with reference to objectives of universality and sociability, efficiency, cost-effectiveness and service quality*”.
- w) *Revamping*: general restructuring of rolling stock, concerning all vehicle equipment and including structural interventions that will also change their appearance.
- x) *Risk matrix*: document whereby the AE defines and allocates the risks between each of the contractual parties in the case of award of a concession.

- y) *Rolling stock*: e.g. means equipped with any type of wheels and traction for the carriage of people or goods, such as vehicles, coaches and wagons, engines, locomotives, shunting locomotives, railcars and first-stock spare parts and other assets that are strictly related to transport.
- z) *Service category*: categories of transport services as identified in Annex B of “*Standard form for notification in accordance with Article 7(2) of Regulation (EC) No 1370/2007*” (Standard form T01-1370/07).
- aa) *Stakeholder*: person, including collective persons, that is/are interested, whether directly or indirectly, in the proper operation and performance of local public transport services.
- bb) *Tender participant (TP)*: LPT company that meets the requirements laid down by the AE in the tender documents and therefore participates in the award procedure by presenting a technical and economic offer.
- cc) *X factor*: parameter defined in ART Decision no. 120/2018, as a percentage value for the efficiency improvement of the operating cost, to be taken as a benchmark for setting the efficiency targets, taking into account all context-related factors.

Measure 1 – Purpose and scope of the Measures

1. The present act lays down regulatory measures for the award on an exclusive basis of local public passenger transport services by rail and by road (hereinafter: LPT services), in accordance with the different procedures allowed by the law. The provisions shall apply both to contracts awarded by public procurement and to contracts awarded on a concession basis, as described in the table under Annex 1.
2. The measures contained herein are defined by reference to Article 37 (2) (a), (b), (c) and (f) of Decree-Law No 201/2011, as amended by Article 48 (6) (b) of Decree-Law No 50 of 24 April 2017, converted, with amendments, into Law No 96 of 21 June 2017 (hereinafter: Decree-Law No 50/2017, and in accordance with Article 48 (7), taking account of Article 27 (12-c) of Decree-Law No 50/2017.
3. The measures shall be applied by the awarding entities (hereinafter: AE) of LPT services, referred to in Legislative Decree No 422 of 19 November 1997 (hereinafter: lgs.d. No 422/1997), contracting companies (hereinafter: CC) and incumbent operators of the services concerned (hereinafter: IO).
4. The measures provided for herein shall apply to public service contracts (hereinafter: PSC) that are awarded by tendering procedure for which, in the case of open procedures, the tender notice is published after the date of entry into force of these measures, and, in the case of restricted procedures, the letters of invitation are sent after this date. With regard to direct or in-house awards, these measures shall apply to PSCs for which the decision approving the awarding act is published after the date of entry into force of this regulatory act.
5. The measures under Title III shall also apply to the PSCs that have been already signed on the date of entry into force of this act, which are subject to review at a later date, in accordance with Measure 28.
6. Measure 12 concerning regulatory accounting and accounting separation shall apply to all LPT companies operating road transport under a PSC as of the date of entry into force of this regulatory act.
7. The AE may extend the application of the measures provided for herein to public passenger transport services by inland waterway, in particular where those services are integrated into a wider urban, suburban or regional network.

Questions

Q 1.1 Please provide comments on the Measure concerning the scope of application of the measures.

Title I – Preliminary stages for the award of public services

Chapter I - Regulatory measures concerning lots to be awarded, content of public service contracts and capital goods

Measure 2 - Criteria for identifying award procedures and minimum mandatory content of public service contracts

1. The AE identifies the lots of LPT services to be awarded according to the criteria laid down in ART's Decision no 48/2017 of 30 March 2017.
2. The award of the public service is based on the Report ex-art. 34, which forms an integral part of the awarding procedure dossier; the report shall be published on the AE's website and at the same time transmitted to the Authority for oversight purposes.
3. Before the start of the awarded service, the AE and the CC shall conclude a public service contract, in accordance with the schemes in Annex 2, which refer to the type of service to be awarded.

Questions

Q 2.1 Please provide comments on the Measure concerning choice of award procedure, type of contract and relevant obligations for the AE to state the reasons therefor.

Q 2.2 Please provide comments on the content of Tables 1 and 2 of Annex 2.

Measure 3 – Instrumental goods for the performance of the service

1. For the purpose of launching the award procedure of the LPT service, the AE prepares the list of capital goods that are required for carrying out the service that is covered by the new awarding; this shall be published together with the documents governing the procedure.
2. The above list shall classify the goods, as far as possible, into the following three categories depending on their technical and functional features:
 - a) Networks, facilities and infrastructures;
 - b) Rolling stock;
 - c) Other movable property.

Questions

Q 3.1 Please provide comments on the Measure concerning the identified categories of instrumental goods.

Measure 4 - Essential, necessary and commercial goods

1. Essential goods for the performance of the local public transport service are those instrumental goods for which the following conditions are cumulatively met:
 - a) shareability;
 - b) non-substitutability;
 - c) non-duplicability at socially sustainable cost;
 - d) dominance.
2. Necessary goods for the performance of the local public transport service are those instrumental goods for which the following conditions are cumulatively met:
 - a) non-shareability;
 - b) non-substitutability;
 - c) non-duplicability at socially sustainable cost.
3. For the essential and necessary goods referred to in paragraphs 1 and 2 above, guarantees shall be provided as to their full availability from the moment the service is awarded; further, the takeover of the new operator shall be ensured, in accordance with the procedures laid down in Measure 7.
4. Commercial goods, which are therefore neither essential nor necessary, for the performance of the local public transport service are those instrumental goods which do not meet all the characteristics under paragraphs 1 or 2 and are available on the market or duplicable at socially sustainable price or cost.
5. The identification of the essential and necessary goods by the AE, and of the relevant procedures for making them available, takes into account the results of a stakeholder consultation, to be initiated before or in conjunction with the publication of the notice referred to in Article 7 (2) of Regulation (EC) No 1370/2007 and to be concluded in time for the publication of the documents governing the award procedure. The consulted stakeholders shall comprise at least the IO and other potential competitors, and may also include other interested parties such as, but not limited to, passengers and/or their associations, rolling stock providers or other undertakings holding instrumental goods for the performance of the service, any other stakeholders that are concerned at territorial level.
6. Even if the existing PSC with the IO, or any other relevant legal act, does not provide for the transfer of goods, the above consultation by the AE is aimed at verifying the IO's availability to make available the goods which meet requirements of indispensability.
7. Where the award procedure involves the construction of dedicated infrastructure in equipped areas, the above-mentioned consultation shall involve the local authorities in charge of urban and territorial policies and the holders of property rights or use of property, so as to verify that the areas concerned are available and not subject to any constraints.
8. This is without prejudice to the possibility that the AE extends the scope of the consultation to any other issue concerning the rules governing instrumental goods and/or to further elements of the award procedure.

9. The consultation procedure shall not distort competition and shall not entail a breach of the non-discrimination and transparency principles. Where a competitor, tenderer or undertaking related to a competitor or tenderer, has taken part in the consultation procedure, the AE shall take all necessary measures to ensure that competition is not distorted by the participation of the competitor or tenderer concerned.
10. The AE shall describe the results of the above-mentioned consultation procedure in the Report ex-art. 34.

Questions

Q 4.1 Please provide comments on the Measure concerning the procedures for classification of instrumental goods.

Q 4.2 Please provide comments on the arrangements for stakeholders' consultation.

Measure 5 - Rolling Stock

1. In order to verify the indispensability of rolling stock, the AE shall take account of the following:
 - a) characteristics of the services to be awarded (operational programme) and of the mobility area concerned;
 - b) performance standards required;
 - c) vehicle fleet characteristics.
2. If the AE classifies rolling stock as a necessary good for the performance of the service, the AE shall provide the appropriate guarantees that the equipment is made available to the CC, by including in the awarding procedure dossier the information referred to in Annex 6, Table 3, "Rolling Stock".
3. The AE shall set out a reasonable deadline between the date of awarding of the service and the date the service is started, in order to enable the CC, where necessary, to procure the rolling stock that is instrumental to the performance of the service. To identify this deadline, the AE shall take into account:
 - a) estimates arising from dedicated surveys carried out with rolling stock manufacturers; the estimates shall consider the non-binding nature for rolling-stock suppliers of the statements made during the surveys and their actual production capacity, including for other tender procedures, in the relevant markets, for the award of similar transport services;
 - b) presence in the market of companies and/or operators providing rental of the rolling stock concerned, under fair and non-discriminatory conditions;
 - c) quantity, specificity and complexity of the material required, with particular reference to the railway sector, also with regard to the time needed to obtain the certification required by law or the approval of the equipment, and the time needed for staff training;
 - d) availability of the IO to transfer to the CC, for consideration, the rolling stock used in the service to be awarded and considered of a commercial nature; in this case, in agreement with the IO, the AE shall include in the awarding procedure dossier the information related to the rolling stock made available by the IO, specifying the transfer arrangements.
4. The availability of the rolling stock that is necessary for the service performance shall be guaranteed by the CC only as from the commencement of the contract, and is a precondition for the signature of the PSC; therefore, such availability may not be required as a pre-requisite for admission of the tender participants (hereinafter: TP).
5. By virtue of a provision of law or of the PSC or other negotiated agreement, the IO may be required to ensure that rolling stock is available for lease, until the entry into operation of the CC's material for the performance of the service.
6. The AE specifies the measures adopted to ensure effective and non-discriminatory access to the rolling stock concerned in the Report ex-art. 34.

Questions

Q 5.1 Please provide comments on the Measure concerning the procedures for verification of the indispensability of rolling stock.

Q 5.2 Please provide comments concerning the procedures for determining the relevant time limit between the date of awarding of the service and the date of entry into operation of the service.

Measure 6 - Instrumental goods acquired through public funding

1. Instrumental goods for the provision of the awarded services, that are procured through public financing, shall keep the restrictions on use for the period specified by law, act of allocation of the funding or PSC; they are transferred onto the CC.
2. Where the public contribution has not been directly deducted from the cost of the relevant goods, the part of public contribution suspended and deferred to subsequent years, as shown in the accounts, shall constitute public financing for the CC.
3. If the existing PSC includes a provision allowing the IO to keep the financed goods, in case they are not transferred to the CC, the IO is obliged to return any funding received for expenditure on plant and equipment that was directly deducted from the cost of the goods.
4. The AE specifies in the Report ex-art. 34 the arrangements for the transfer of these goods, which are a binding condition for takeover by the CC.

Questions

Q 6.1 Please provide comments on the Measure concerning the procedures for access/provision of the goods that are publicly funded and identified as necessary.

Q 6.2 Please provide comments on the takeover conditions as defined by the Measure.

Measure 7 - Provision of essential and necessary goods

1. The AE shall provide to the CC or shall ensure access of the CC to essential goods, i.e. networks, facilities and infrastructures that are identified as instrumental to the service performance under Measure 3, by means of loan agreements, leasing or other form of legally binding agreement, depending on the legal nature and ownership of the goods concerned.
2. In accordance with pre-established procedures, the AE shall provide the CC with the instrumental goods for the performance of the LPT service that are qualified as essential or necessary and are owned either directly or through an instrumentality. The CC is required to maintain and takeover the goods according to the legal title used and in compliance with the PSC.
3. With regard to the scope of these measures, the procedures for access to railway infrastructures and service facilities are governed by the provisions of Legislative Decree No 112 of 15 July 2015; in this context, the AE concludes a framework agreement with the rail infrastructure manager, concerning the path availability and the rules governing the use of the infrastructures and facilities, in accordance with Article 23 of the a.m. Decree; the framework agreement is attached to the awarding procedure dossier.
4. In case of availability, arising from provision of the law or of the PSC, or in case of restrictions on use of the goods, or based on a negotiated agreement, of essential or necessary goods belonging to the IO, these goods shall be made available to the CC, which is obliged to maintain and take them over by lease or transfer of ownership.
5. For necessary goods owned by third-parties, that are already covered by a contract with the IO, the takeover by the CC is guaranteed throughout the period of the new contract, in line with the constraints laid down for those goods; in case of no constraints on use, the third owner of the good may choose the type of transfer to the CC, either a sale or a lease.
6. The AE specifies the procedures adopted to make the goods available in the Report ex-art. 34.

7. The AE specifies in the PSC the intended use and constraints, if any, at the end of the awarding period, of all the goods provided to the CC in accordance with this Measure, including those which may have been acquired during the term of the contract.

Questions

Q 7.1 Please provide comments on the Measure regarding procedures for access/provision of the goods in the availability of the AE.

Q 7.2 Please provide comments on the procedures for access/provision of the goods owned by the IO or by third parties.

Q 7.3 Please indicate any further possible provisions, in addition to those already identified, which should be included to facilitate the participation in the award procedure.

Measure 8 - Actions by the AE to promote the availability of instrumental goods

1. Without prejudice to public finance needs, in compliance with EU legislation on State aid and with Article 5a (2) of Regulation (EC) No 1370/2007, and depending on the characteristics of the award procedure, the AE takes one or more of the following actions and assumes, where appropriate, specific commitments in the PSC:
 - a) acquisition, including through its instrumentalities, of rolling stock and immovable and movable property that are necessary for the performance of the service, in order to provide them to the CC;
 - b) provision of a guarantee for financing the procurement by the CC of rolling stock and of movable and immovable property for the performance of the service or for the residual value thereof;
 - c) adoption of additional financial measures to mitigate charges and risks related to the investments required from the CC, in compliance with the PSC (public procurement or concession) and the associated risk allocation;
 - d) promotion of coordination and cooperation with other competent entities/authorities in order to facilitate the availability of instrumental goods.
2. Where it is possible to carry out infrastructure works aimed at providing the instrumental immovable property for the performance of the service with logistical, technical and commercial characteristics that are necessary for the awarded services and have sustainable costs, the AE shall provide suitable facilities or equipped areas, that are not subject to planning restrictions.

Questions

Q 8.1 Please provide comments on the Measure concerning the actions to be taken by the AE to promote the acquisition of instrumental goods.

Q 8.2 Please indicate any further possible actions by the AE, in addition to those already identified, which should be included to facilitate the participation in the award procedure.

Measure 9 - Criteria for determination of takeover value

1. The takeover value of the necessary goods owned by the IO, or by any third party, to be transferred to the CC shall be identified on the basis of the market value, in accordance with the criteria laid down in this Measure.
2. The market value of immovable property, facilities or other equivalent asset shall be determined by the owner through sworn expert estimates that determine the price within the maximum and minimum values published by the Revenue Agency. The estimates shall take into account the market value of the asset as it is, as well as the net book value and the reconstruction or buy-back value of the asset or of a similar asset, if it cannot be reproduced. In the case of instrumental goods that are used exclusively for the performance of the rail service, instead of expert estimates, the market value is determined by reference to a range of values between: (i) market values for similar goods, (ii) reconstruction value of the good reduced by age. If

it is applicable to the specific case, account is taken of the available equipment of the specific facilities that cannot be separated from the building, carrying out a separate evaluation thereof.

3. In the case of post-award disputes between the parties concerning the transfer price, pending the dispute settlement, the goods are temporarily provided to the CC against payment of a fee equal to the estimated value in the sworn expert reports referred to in paragraph 2. Upon conclusion of the dispute, the transfer price will be determined on the basis of the ruling by the judicial authority and, where appropriate, it will be offset.
4. The takeover value of rolling stock for road transport shall be determined by reference to the higher of the residual value or net book value, that result from the application of national or international accounting standards adopted by the company and certified by an auditor or audit firm, and the market value. The net book value includes all increases or decreases relating to works following the acquisition or availability of the assets, which are carried out during the term of contract and are borne by the owner, for improvement, modernisation, processing and/or revamping of rolling stock, net of depreciation.
5. The market value shall be calculated taking into account the following parameters:
 - a) initial reference value, corresponding to replacement value;
 - b) residual maturity;
 - c) conditions of use;
 - d) state of conservation;
 - e) performance capacity;
 - f) reliability and availability indicators;
 - g) any increases or decreases relating to post-acquisition works for improvement, modernisation and processing, net of depreciation.
6. To determine the replacement value, the acquisition value, as revalued on the basis of the producer price index for ISTAT¹ category “means of transport”, is assumed as a reference. Revaluation is excluded if the compensation for the service provided for in the PSC includes one or more items that are explicitly intended for depreciation of individual assets and for coverage of financial charges and risks relating to the investments in rolling stock.
7. In order to determine, according to objective criteria, the parameters from (b) to (f) referred to in paragraph 5, reference is made to standard UNI 11282/2008 as amended or supplemented. The residual value thus calculated is referred to homogeneous subsets of the fleet. The resulting assessment shall be certified by a professional chosen from among those included in the list of experts of the competent court (Register of Court-appointed experts), depending on where the AE is based.
8. The takeover value of the rolling stock for rail, underground and tramway services shall be determined by reference to the residual value or net book value, as calculated in accordance with national or international accounting standards adopted by the company and certified by an auditor or audit firm. The net book value includes all increases or decreases relating to post-acquisition works for improvement, modernisation and processing, net of depreciation.
9. The value of technological systems shall be determined by reference to the higher of the residual value or net book value, that result from the application of national or international accounting standards adopted by the company and certified by an auditor or audit firm, and the market value. The market value shall be calculated on the basis of the acquisition cost entered into the accounts, as revalued on the basis of the producer price index for ISTAT category “means of transport” and by applying a linear depreciation coefficient calculated on the basis of a maximum five-year period. A residual value of the asset is guaranteed, as determined at the end of the depreciation period on the basis of a pre-determined fixed percentage of the asset cost of acquisition. Revaluation is excluded if the compensation for the service provided for in the PSC includes one or more items that are explicitly intended for depreciation of individual assets and for coverage of financial charges and risks relating to the investments in rolling stock.

¹ TN: ISTAT: Italian National Institute of Statistics.

10. The AE specifies the takeover value of each asset that is identified as necessary in the Report ex-art. 34, together with the procedures for updating/reviewing the evaluation depending on the effective date of commencement of the award and conclusion of the PSC.

Questions

Q 9.1 Please provide comments on the Measure concerning the conditions for takeover of road transport rolling stock.

Q 9.2 Please provide comments on the Measure concerning the conditions for takeover of rail rolling stock.

Q 9.3 Please provide comments on the Measure concerning the conditions for takeover of technological systems.

Measure 10 - Criteria for determination of leasing fees

1. Where it is provided for the allocation of leased assets to the CC, the awarding procedure dossier shall specify fees, terms of lease, including the ordinary maintenance requirements, and other asset-related contract terms.
2. The annual leasing fee is calculated by reference to the market value as determined under Measure 9 above for each type of asset. In any event, it shall ensure recovery of depreciation costs, including recapitalization for any extraordinary maintenance, financial costs, provisions for cyclical maintenance and reasonable profit. Any public contributions that are not yet used as they are related to the applicable depreciation plan shall be deducted from the asset value, as determined in accordance with this paragraph.

Questions

Q 10.1 Please provide comments on the Measure concerning the procedures to define the criteria for determination of leasing fees.

Chapter II — Regulatory measures aimed at transparency, effectiveness and efficiency of award procedures**Measure 11 — Regulatory accounting and accounting separation requirements for local public rail passenger transport**

1. The CC shall adopt the regulatory accounting formats referred to in Decision No 120/2018, in compliance with the effective date of application provided for therein.

Measure 12 — Regulatory accounting and accounting separation requirements for local public road passenger transport

1. The CC shall adopt the regulatory accounting formats (income statements, balance sheets and technical data) referred to in Annex 3, which are differentiated according to the annual value of the PSC, and allocate, on the basis of the criteria set out below, the income statement and balance sheet items, in line with the annual financial statements, to each PSC that has been concluded.
2. The regulatory accounting formats in respect of each PSC and each mode of transport, where the LPT company holds several PSCs or operates several activities, shall be supplied separately from:
 - a) other PSCs for the same or for other mode of transport;
 - b) other services of general economic interest (SGEI);
 - c) other non-ancillary commercial activities.
3. For regulatory accounting purposes, the income statement and balance sheet items relating to the management of services pertaining to each PSC may be:
 - a) of direct and exclusive relevance of the cost centre represented by the PSC;
 - b) attributable to several PSCs; in this case, they must be allocated on the basis of specific drivers.

4. The regulatory accounting formats shall differentiate, for balance sheet accounts, the balance sheet items, assets and liabilities, (i) for each PSC concerning LPT by road and (ii) for all the activities operated by the LPT company.
5. The LPT company shall provide for direct and exclusive allocation of income statement and balance sheet items which, on the basis of documentary evidence, may be objectively and exclusively allocated to the relevant PSC.
6. For the income statement and balance sheet items that are related to a plurality of cost centres, the allocation to each of them is carried out in an objective and analytical manner, on the basis of drivers chosen for their suitability to measure the consumption of resources or the allocation of assets under a PSC, by applying causality and relevance principles based on FDC (Fully Distributed Costing) methodology. The drivers used shall be described in any detail, both methodological and quantitative, in the explanatory report referred to in paragraph 9 below.
7. The income statement items (including indirect costs related to the central structure) and balance sheet items that are attributable to the LPT company's organisational units as a whole, as well as those that may not be otherwise attributed to the different cost centres based on relevant and objective drivers, are allocated to the various cost centres in proportion to what has been previously allocated directly and pro-quota.
8. In general terms, each PSC may be assigned exclusively those income statement and balance sheet items which, in the light of the relevance criterion, are attributable to the ordinary production process.
9. Every year the CC shall draw up the regulatory accounting formats for the previous year, as referred to in Annex 3, by using the formats made available on the Authority's institutional website; the formats shall be accompanied by an explanatory report of content, methodology and choice of allocation.
10. The above regulatory accounting schemes and the explanatory report shall be accompanied by a certification, drawn up by an audit firm which is independent from the LPT company that was awarded the PSC, attesting their compliance with the criteria laid down in this Measure.

Questions

Q 12.1 Please provide comments on the Measure concerning the regulatory accounting and accounting separation requirements and on the format referred to in Annex 3.

Q 12.2 Please provide comments on the possibility to adopt regulatory accounting formats that allocate income statement and balance sheet items to a lower level of aggregation than the PSC (e.g.: by deposit, line or other).

Measure 13 — Criteria for risk identification and allocation in the contract award

1. For the purpose of drawing up the simulated EFP, the AE shall identify and assess the risks associated with the performance of the awarded service.
2. In the case of a concession, on the basis of the matrix model set out in Annex 4, the AE shall define and allocate the risks to each of the contractual party (AE and CC) and identify any additional risks supplementing the matrix.
3. In the PSC, the AE may decide to provide for revenue collection by the CC (net cost contracts) or to retain the revenues (gross cost contracts), with particular reference to the services for which fare integration is provided among different operators and which are divided in several lots under the responsibility of the same AE. In the case of net cost contracts, the business risk is allocated to the CC.
4. Concerning the nature and level of the different risks identified, and their allocation to each contracting party, the AE shall identify and describe in the risk matrix any mitigation measures of the allocated risks.
5. At the end of each regulatory period, the AE shall assess whether the risks still remain allocated to the parties and whether the mitigation measures or other elements of the risk matrix should be reviewed.
6. The risk matrix drawn up by the AE is an integral part of the award procedure dossier and an integral part of the related PSC. The matrix provides the references to the PSC that regulates the contractual obligations associated with the risks identified.

Questions

Q 13.1 Please provide comments on the Measure concerning the criteria for risk identification and allocation and, in particular, on Annex 4.

Measure 14 — Criteria for drawing up a simulated EFP in tendering procedure

1. In accordance with the provisions of Article 4(1)(a) of Regulation (EC) No 1370/2007 and Articles 17 and 19 of Legislative Decree No 422/1997, the AE shall draw up a simulated EFP for all the years of the contract period, in accordance with the formats referred to under Nos 1 to 4 of Annex 5.
2. The simulated EFP, which is developed by taking as a reference, *inter alia*, the efficient operating cost, is aimed at verifying the economic and financial equilibrium of the PSC throughout the contract period and the comparison with the tenders submitted by each TP.
3. Upon publication of the tender notice, the AE shall describe the methodology and criteria used to define the simulated EFP in the Report ex-art. 34.
4. The simulated EFP is adopted in the case of services that are awarded by concession. In order to pursue management efficiency, the AE may provide for the adoption of the simulated EFP also in the case of the award of services by public procurement procedure.

Questions

Q 14.1 Please provide comments on the Measure concerning the drawing up of the simulated EFP in case of award by tendering procedure and on the formats under Nos 1-4 of Annex 5.

Measure 15 — Criteria for drawing up a simulated EFP for direct or in-house awards

1. In compliance with the provisions laid down in Article 4(1) (a) and (b) and in the Annex to Regulation (EC) No 1370/2007, and in Articles 17 and 19 of Legislative Decree No 422/1997, the AE shall draw up a simulated EFP, for all the years of the contract period, in accordance with the formats under Nos 1-4 of Annex 5.
2. In the context of the simulated EFP, the AE shall specify the targets to be pursued by the CC, for gradually improving the effectiveness of the service and the efficiency of the management throughout the duration of the contract.
3. The simulated EFP drawn up by the AE is attached to the PSC and forms an integral and substantial part thereof.

Questions

Q 15.1 Please provide comments on the Measure concerning the criteria adopted by the AE to draw up the EFP in case of direct/in-house award and on the formats under 1-4 of Annex 5.

Measure 16 — Determination of effectiveness and efficiency targets

1. For local public passenger transport services, the AE shall define the objectives to be pursued by the CC throughout the duration of the contract, in respect of at least the following:
 - a) effectiveness-profitability, with reference to the number of passengers carried and the load factor and, for net cost contracts, the increase in profitability which can be achieved through reactions to fare fraud and other commercial policies of the CC;
 - b) efficiency, with reference to operating costs per vehicle-km of service, in terms of reduction of unit costs and increase in productivity of different inputs. The system of cost efficiency is applied in the EFP. For rail services this system is related to the X factor;
 - c) effectiveness-quality, in terms of improving the levels corresponding to the minimum quality standards laid down by the Authority pursuant to Article 37 (2) (d) of Legislative Decree No 201/2011. For rail services, reference is made to ART Decision No 16/2018.
2. In the case of the award of road transport services, the contractual objectives are measured by means of qualitative and quantitative indicators, as regulated by the AE in the PSC, corresponding to at least the

minimum set in Annex 7. For direct and in-house awards, the targets of these indicators are identified within the simulated EFP.

3. In the case of the award of rail services covered by this regulatory act, the indicators measuring the contractual objectives shall at least correspond to the KPIs as defined by the Authority under Decision No 120/2018.

Questions

Q 16.1 Please provide comments on the Measure concerning the procedures to define the objectives of effectiveness and efficiency referred to under 1 and 2 above.

Measure 17 — Determination of the reasonable profit margin

1. For the purpose of drafting a simulated EFP, and in case of its revision or updating, the AE acknowledges to the CC, for the provision of the PSO service during the award period, a reasonable profit margin that is equal to the rate of return on net invested capital (NIC) as defined by the Authority. This value, which is published on the Authority's website every year and is regularly updated, shall be taken as a reference by the AE as the maximum threshold in the case of award in the form of a public procurement.
2. The NIC rate of return is determined by the Authority by applying the Weighted Average Cost of Capital method (WACC), according to the following formula:

$$R = g \cdot \frac{R_d \cdot (1 - t)}{1 - T} + (1 - g) \cdot \frac{R_e}{1 - T}$$

where:

g (<i>gearing</i>)	% of financial debt;
R_d	allowed cost of debt;
t	IRES tax rate (<i>tax shield</i>);
T	income tax rate (IRES + IRAP);
$(1-g)$	% of equity;
R_e	nominal rate of return on equity.

Questions

Q 17.1 Please provide comments on the measure concerning the determination of the reasonable profit margin.

Title II – Stages of award of the service

Chapter I - Regulatory measures to identify the information to be provided in the award procedures

Measure 18 – Provision of minimum information to participants in the award procedures

1. The AE shall provide the minimum information set, referred to in Annex 6, at the different stages of the award procedure.
2. At the pre-information stage, regardless of the award procedure adopted, the AE shall publish at least the information listed in Annex 6, Table 1.
3. This is without prejudice to the possibility for the AE to launch, prior to the publication of the tender notice, a consultation procedure with all stakeholders, with particular reference to the quality of the LPT service to be awarded.

Questions

Q 18.1 Please provide comments on the information fields identified in Annex 6.

Q 18.2. Please provide proposals on further data or information to be considered in Annex 6.

Chapter II - Regulatory measures for equitable and non-discriminatory tender participation

Measure 19 - Participation requirements

1. The AE shall lay down in the tender dossier the conditions for participation of the undertakings concerned.
2. Among the financial capacity requirements, in accordance with Article 48 (7) (b) of Decree Law No 50/2017, the AE sets out the obligation for each TP to hold a net worth of at least 15% of the annual amount established as basic tender compensation.
3. Where the AE lays down further eligibility requirements for tender participation in addition to those required under the legislation in force, in order to ensure maximum participation in the tendering procedures of the operators concerned, such requirements shall be laid down, in particular, in accordance with the following general principles:
 - (a) relevance and proportionality with respect to the service to be awarded;
 - (b) reciprocity and non-discrimination, by ensuring equal treatment where a substantial level playing field is in place, in order to protect all potential TPs.
4. The AE shall appropriately quantify and harmonise the tender requirements, especially those concerning economic and financial capacity and technical and operational suitability, so as to:
 - a) avoid over-sizing of the technical and economic parameters of reference, that would lead to substantial barriers to the participation of potentially interested parties;
 - b) reconcile the specific requirements imposed on the undertakings concerned with the subjective characteristics of tenderers (single or multiple operators), without prejudice to the prohibition to discriminate against an economic operator located in a specific territory.
5. In accordance with the general principles of non-discrimination and equal treatment, and with the principle of freedom of establishment, the AE provides that:
 - a) in the bidding stage, the TPs commit to obtain all the necessary administrative titles for the performance of the service, such as licences and security certificates, prior to the beginning of the operation of the service that is awarded;
 - b) as part of the tender dossier, the AE complies with the obligation to provide the TPs and the CC all the information and documents that are needed to obtain such administrative deeds, in the stages provided for in the tender (i.e. data room) and at the time of the final award;
 - c) the afore-mentioned administrative titles are held upon beginning of the operation of the service that is awarded.
6. In the context of the Report ex-art 34, the AE specifies the reasons for the introduction of any additional participation requirement, showing that such provision is reasonable and proportionate to the tender specificities, and that no discrimination is in place to the detriment of potential TPs.

Questions

Q 19.1 Please provide comments on the Measure concerning participation requirements.

Measure 20 – Awarding criteria

1. In order to award the contract to the most economically advantageous tender, the AE shall set out in the tender dossier:
 - a) the awarding criteria, that are linked to the identified objectives of effectiveness and efficiency, by differentiating the technical and qualitative parameters from the economic parameters;
 - b) the ways these criteria are assessed and the relevant weighting and scoring systems.

2. The AE shall lay down the awarding criteria in accordance with the general transparency principles of the awarding procedure, proportionality and cost-effectiveness in respect to the characteristics of the services to be awarded, equal treatment and non-discrimination to the benefit of all potentially operators concerned, so as to ensure:
 - a) that the scope of the assessment of the technical offer of each TP is not affected by exclusively economic parameters;
 - b) that the criteria pertain to nature, scope and characteristics of the service to be awarded, also with regard to the rolling stock used.

Questions

Q 20.1 Please provide comments on the Measure concerning the awarding criteria.

Measure 21 - Transfer of personnel

1. The AE shall provide for *ad hoc* rules concerning the social clause in the tender dossier, in compliance with the following requirements set out by the Authority.
2. The AE provides for rules on the social clause where the services that are awarded (e.g. in terms of O-D relations, production volume, terms of contract performance, associated PSO) are comparable to those of the currently existing PSC. If the volume of the services to be awarded is lower than that covered by the existing PSC, these rules shall take into account the actual staffing requirements required by the new service.
3. In the tender dossier the AE provides for the obligation that the personnel already employed by the IO is taken over in the workforce of the CC, with preference over third parties, in compliance with the provisions of Article 48 of Decree-Law No 50/2017. For this purpose:
 - a) the AE shall identify the personnel to be transferred that is mainly assigned to the activities related to the awarded services, after consultation with the IO, to be carried out, if it is deemed appropriate, in the framework of the procedure referred to under paragraph 5 of Measure 4;
 - b) in the light of the results of the above consultation, the IO shall forward to the AE the list of its non-managerial staff to be transferred to the CC, including the information in Annex 6, Table 3, 'Personnel to be transferred'; this list is prepared by the IO by ensuring that the staff identified is consistent with the regulatory accounting schemes of the last available year and it is annexed to the tender dossier.
4. The application of the social clause implies for the CC:
 - a) the obligation to take over all the personnel of the IO as identified according to the provisions of the previous paragraph;
 - b) the compliance with the regulatory, legal and economic terms resulting from the relevant national collective agreement and from the second-tier or territorial contract applied by the IO, including the arrangements concerning severance payments, while ensuring equal treatment, non-discrimination, certainty of the applicable rules and guarantee of the severance payments accrued for the employees concerned.
5. These obligations shall be complied with by the CC:
 - a) for a period of not less than one year from the date of conclusion of the PSC, in accordance with the second sentence of Article 3 (3) of Directive 2001/23/EC;
 - b) or, if earlier, until the date of termination or expiry of the existing collective agreement, even where the CC has not joined the contracting associations or has retreated therefrom, or until the date of entry into force or application of another collective agreement.
6. This is without prejudice to any negotiations between the parties, that are consistent with the relevant regulatory framework, concerning appropriate harmonisation procedures in case of different treatment for specified qualifications/responsibilities, voluntary retirement or exit arrangements, conclusion of *ad hoc* derogation agreements between the CC and the trade unions.
7. In the bidding stage, each TP expressly agrees on the social clause as defined by the AE in the relevant dossier; the non-acceptance of the clause is a ground for exclusion of the bid from the tender procedure;

the mere acceptance of the obligations of personnel takeover cannot not be an evaluation criterion of the technical bid.

Questions

Q 21.1 Please provide comments on the Measure regarding the transfer of personnel.

Measure 22 - Economic-Financial Plan of tender participants for the award of concessions

1. The AE shall lay down rules for the preparation of a EFP by each TP, that includes projections of costs, revenues, investments and cash flows, for the contract period, according to the formats in Annex 5, Nos 1-5.
2. Each TP shall draw up a EFP in accordance with the above requirements provided for by the AE, that undertakes to ensure the strict confidentiality thereof.
3. Where the tender requires the submission of an investment plan, the AE shall include in the EFP schemes appropriate indices to assess the financial sustainability of the proposal, such as, but not limited to, DSCR and LLCR.
4. The tender EFP shall be accompanied by an explanatory report of the schemes, including, in particular, a description of supply and demand input data, the assumptions underlying the bid submitted and the method of calculation of the values.
5. In the case of multi-modal award, for the purpose of the reporting arrangements laid down in the PSC, a scheme shall be drawn up for each mode of the transport service to be awarded.
6. In the case of procedures involving the production of (movable and immovable) instrumental goods for the performance of the service by the CC, the tender EFP for awards exceeding EUR 10 million shall be certified by a credit institution or a service company set up by the credit institution and entered in the register of financial intermediaries pursuant to Article 106 of Legislative Decree No 385 of 1 September 1993, or by an auditing firm pursuant to Article 1 of Law No 1966 of 23 November 1939, or by statutory auditors, pursuant to Legislative Decree No 39 of 27 January 2010. In other cases, it is within the AE's remit to have the EFP assessed by credit institutions or consulting firms specialized in local public transport.
7. The tender EFP of the CC is an integral part of the PSC and is subject to update/revision at the end of each regulatory period.

Questions

Q 22.1 Please provide comments on the Measure regarding the competitors' Economic-Financial Plan and on Format 5 of Annex 5.

Measure 23 - Deadline for tender submission

1. In order to ensure maximum participation of operators, the time limit for the submission of tenders, without prejudice to paragraph 2 below, may not be less than 110 days from the date of publication of the tender notice or of transmission of the invitation, and shall be determined in the light of the complexity of the services to be awarded and of the evaluation of investments.
2. The AE may provide for a shorter deadline within the limits laid down by law, on account of the specific features and/or degree of complexity of the award procedure or of the service concerned, by appropriately specifying the reasons for its choice in the tender dossier.

Questions

Q 23.1 Please provide comments on the Measure concerning the deadline for submission of tenders.

Measure 24 - Criteria for appointment of the tender evaluation committee

1. The AE entrusts the technical and economic evaluation of the bids to an *ad hoc* designated tender committee.

2. The procedure for appointing the tender committee is carried out in compliance with the provisions of Article 77 of Legislative Decree No 50/2016 and is aimed at screening persons with adequate professional skills and competence, including with regard to the assessment of the tender EFP, as well as with particular experience in the planning of transport networks and in the scheduling, management and monitoring of LPT services.
3. The tender committee shall be appointed after the expiry of the deadline for the submission of tenders, within an appropriate timeframe that is consistent with the entry into operation of the new service, as defined by the relevant award procedure launched by the AE.
4. Following the appointment of the tender committee, the AE shall publish in the relevant dedicated section of its website the résumés attesting their competence and professional skills of the members of the board.
5. At least in the first three years following the date of conclusion of the PSC, the CC may not entrust the members of the tender committee with any tasks or functions.
6. The AE shall ensure the effective application of this Measure by providing for appropriate deterrents and penalties, in particular with respect to the provisions of Article 42 of Legislative Decree No 50/2016 on conflicts of interest and with respect to the CC that infringes the provisions under paragraph 5 above, as regulated in the PSC.
7. The provisions of this Measure shall also apply where the AE avails itself of another contracting authority pursuant to Article 27 (12) (c) of Legislative Decree No 50/2017; in this case, the provisions contained in this Measure, which include the obligations assigned to the AE as the contracting authority, shall be understood as referred to the entity through which the AE awards the service.

Questions

Q 24.1 Please provide comments on the above Measure, in particular, concerning any specifications to be included as to the professional skills of the persons to be appointed in the tender committee.

Title III – Stage of implementation of the public service contract

Measure 25 - Monitoring and reporting of the service

1. The AE shall establish an adequate monitoring of the service with reference to the economic, technical, management and qualitative performance under the contract, by specifying in the PSC the responsibilities, methods, instruments and timing for collection, reporting and transmission of relevant data, information and useful documents.
2. To this end, the AE shall lay down in the contract, for each group of services:
 - a) the type of data, information and documents (reports/final statements) that the CC shall provide to the AE in relation to the indicators under the PSC, and the associated penalties in case of non-compliance;
 - b) the arrangements for carrying out the verification activities within its remit;
 - c) any obligations of the CC concerning the carrying out of regular surveys on the expected and perceived quality of the service (Customer Satisfaction surveys), by ensuring the involvement of users in the planning of the supply and in the assessment of the service quality, in accordance with the provisions of the Quality Service Charter.
3. The data, information and documents referred to above shall be transmitted by the CC in editable electronic format.
4. The above data, information and documents are in the ownership of the AE; in order to ensure maximum transparency in the contract management, they are published on the AE's website, with particular reference to:
 - a) existing PSCs;
 - b) existing Quality Service Charters;
 - c) outcome of customer satisfaction surveys;

d) main economic, technical, management and qualitative indicators under the PSC.

As for the economic data concerning, in particular, individual basic cost items, the AE shall assess whether they may be disclosed depending on their commercial sensitivity.

Questions

Q 25.1 Please provide comments on the Measure concerning the monitoring of the service with reference to the contractual performance.

Measure 26 - Verification of economic and financial equilibrium

1. The AE shall lay down rules in the PSC concerning the procedures for checking the objectives referred to in Measure 16 and the corresponding financial and economic equilibrium, by splitting the contractual term into regulatory periods of up to 5 years.
2. The AE shall define in the PSC timing and procedures for the preparation of an updated EFP by the CC at the end of each regulatory period, including the items of costs and revenues in accordance with the formats in Annex 5, taking into account the objectives referred to in Measure 16.
3. This Measure applies to all services that are awarded through a concession. In order to pursue management efficiency, the AEs, also in the case of services awarded by public procurement, shall take into account the objectives of economic and financial equilibrium, in terms of cost coverage and reasonable profit margin, through the traffic revenues and tender compensation.

Questions

Q 26.1 Please provide comments on the Measure concerning the verification of the economic and financial equilibrium.

Measure 27 - Criteria for fare updating

1. Fares of LPT services are updated by the competent authorities and transposed into the PSC already awarded at the end of each regulatory period, taking into account the need to ensure the economic equilibrium of the CC and/or of other operators concerned, and to contain costs for users, businesses and consumers; this updating is based on the application of the price-cap method referred to in Article 18 (2) (g) of Legislative Decree No 422/97 and Article 2 of Law No 481 of 14 November 1995 and is determined according to the following formula:

$$T_t = T_{t-1} * [1 + F_{t-1} + (Q_t - Q_{t-1})]$$

where:

t: regulatory period;

F: inflation rate (according to the Italian statistical index for families, workers and employees - ISTAT/FOI index - or any other rate under regional regulations) for the relevant regulatory period;

T_t: weighted average rate, as specified in paragraph 2 below;

Q: indicator of actual quality of the public transport service supplied, resulting from the weighted average of a set of indicators of delivered and perceived quality as collected in each year (t) by the competent authority; where the AE is also in charge of setting the fares, the coefficient is defined in relation to the performance achieved by the CC.

2. For the purpose of calculating the fare updating, T_t is defined as the weighted average fare for the regulatory period t expressed in terms of maximum unit price after tax, as referred to a basket of different tickets. This fare T_t is weighted on the number of tickets sold for each type (single tickets, annual, monthly, daily, multi-day season tickets, etc.), and is calculated according to the following formula:
- 3.

$$T_t = \frac{\sum_{tv=1}^n T_{tv} \cdot n_{tv}}{\sum_{tv=1}^n n_{tv}}$$

where:

TV_{tv} : maximum unit price corresponding to each ticket tv ;

n_{tv} : number of tickets sold, for each type of ticket tv , in the multiannual regulatory period t during which the fare is regulated;

4. When applying to surface transport service, a parameter related to the commercial speed may also be considered, in so far as the latter is surveyed so as to reflect solely and unambiguously the variations that can be attributed to mobility policies adopted by the competent authority that cannot be influenced by the CC.
5. The application of the price-cap method should be without prejudice to the adoption of integrated ticketing or integrated services and the annual variation in prices or fares may be accepted only up to a fixed upper limit (maximum percentage increase).

Questions

Q 27.1 Please provide comments on the Measure concerning the criteria of fare updating.

Measure 28 – Contract review and renegotiation

1. The terms of contract review are specified by the AE in the PSC, by reference to the outcome of the monitoring of the performance of the PSC, which shall take place on a regular basis and, in any case, at the end of each regulatory period.
2. With regard to existing PSCs, the occurrence of one or more of the following situations is considered for the purpose of contract review after a two-year period from the entry into force of these regulatory measures:
 - a) deviation of net result estimated by the EFP from final net result equal to or above $\pm 5\%$ of the operating revenues reported in the EFP ($\text{EFP net result} - \text{final net result} / \text{EFP operating revenues} \geq \pm 5\%$);
 - b) permanent modification of operating programme that is equal or above $\pm 20\%$ of the planned journeys as estimated upon conclusion of the PSC;
 - c) conclusion of an addendum to the contract, as a result of regulatory or administrative provisions or of statutory requirements by competent bodies or authorities, or for compliance with obligations laid down in the PSC, which entail new conditions for the operation of the service.
3. With reference to existing PSCs on the date of entry into force of these regulatory measures, quantitative adjustments (operating programme) or qualitative changes (performance) that do not have a significant impact on the EFP and/or do not exceed benchmarks (allowances), if any, that are already provided for in the PSC, shall not be considered as grounds for contract review.
4. Without prejudice to the previous paragraphs, the occurrence of unforeseen or unforeseeable events at the time of conclusion of the PSC may only involve the adoption of non-substantial contract amendments, in accordance with the principles of EU law.
5. The terms and modes of involvement of users in case of a modification of the operating programme shall be regulated by the AE in the PSC, by at least ensuring that the information to the user is supplied without delay and through any appropriate communication channel of the CC.

Questions

Q 28.1 Please provide comments on the Measure concerning contractual changes.