

In what capacity or on whose behalf are you participating in this public consultation?	Public transport consultant
Full name (of the participant or represented institution)	Patricia Perennes and Andreas Wettig, Trans-Missions S.A.R.L.
Do you wish to make your name publicly available with your answer or keep it confidential (in which case it will be published as an anonymous answer)?	Public
1. What conditions do you think a rail service should meet in order to be declared a service subject to PSO? How could the conditions required by Article 59.1 of the Spanish Rail Sector Act be verified? What elements should be part of the definition of the public service, in addition to its origin and destination (e.g. timetable, passenger ticket, etc.)? (maximum 300 words)	<p>As defined in the PSO regulation and in the Spanish Rail Act "public service obligation" means a requirement defined or determined by a competent authority in order to ensure public passenger transport services in the general interest that an operator, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions without reward". That means PSO services are defined by their need to be subsidised.</p> <p>The Altmark case law (C-280/00) gave some clarification on this definition:</p> <ul style="list-style-type: none"> - The train operating company (TOC) must perform clearly delimited PSO. - The parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner. - The compensation must not exceed what is necessary to cover all or part of the costs incurred in the discharge of the PSO. <p>Therefore, the level of detail must be as such that it allows for calculating the compensation:</p> <ul style="list-style-type: none"> - The cost of the service for the Public Transport Authority (PTA) strongly depends on the share of the cost paid by the user, that means that the fares should be set by the PTA; - Since the total cost of the service is mostly based on the number or train.km but also on the number of train set, the timetable should be set by the PTA. <p>Therefore, timetable and passenger ticket prices are elements of the PSO definition.</p>
2. Under what conditions do you consider that the publication of the intention to tender a public service contract by a competent authority (Article 5.3b of Regulation 1370/2007) is sufficient to ascertain the market's interest to participate in it? (maximum 300 words)	<p>We believe that simply publishing the intention to tender a public service contract will not be enough to attract bidders to the Spanish PSO market.</p> <p>Competition only works if there are enough bidders in the market.</p> <p>From an operator's point of view, participating in PSO tenders requires a significant investment in understanding the market, the risks and opportunities, and the behaviour of the relevant players.</p> <p>Bidding for PSO contracts requires hiring a bidding team of competent (and rare) experts. A bid costs between 0.5 and 3 million euros, depending on the complexity of the procedure and the contract. The amount may be higher for a first bid in a new market. Before making such an investment, operators assess the market's opportunities for them.</p> <p>Spain will be a new market with a rather limited market volume of PSO-services. At the same time, a number of other European countries will open their PSO market in order to meet the European legal deadline. Spain needs to attract potential bidders and convince them that the Spanish market is interesting for them. From this perspective, we believe that the following three elements are the most useful:</p> <ul style="list-style-type: none"> - Developing a tender strategy, defining the lots and the main characteristics of the markets, such as risk sharing or access to certain railway assets and staff, integration or not of station and/or infrastructure management etc. - Define and publish a calendar summarizing dates and contents of all the tendering processes. - Publish and carry out a market consultation: inform potential bidders about the forthcoming tendering processes and gather their needs and wishes.
3. What benefits and challenges do you think are posed by the tendering of rail services subject to PSO? Do you think there are specific benefits and challenges for each mode of transport (Suburban, Conventional Mid-distance, and High Speed Mid-distance)? (maximum 300 words)	<p>General:</p> <p>Delays are critical. In our experience, 6 to 9 months are needed to prepare the market strategy, including allocation, up to the pre-notification of the first tender in the Official Journal of the European Union.</p> <p>Tenders cannot all be carried out in parallel, but must be staggered in order to make good use of the operators' bidding teams and to avoid high peaks in the workload of the PTA.</p> <p>The period between the signing of the contract and the start of operations can be long if rolling stock has to be procured and/or a maintenance facility has to be built by the operator. In France the pre exploitation phase can last up to 2 or 3 years.</p> <p>The rolling stock market could be a challenge if the PSO operator were to buy new rolling stock and only one manufacturer was able to deliver suitable rolling stock within the delays of the PSO contract.</p> <p>Cercanias:</p> <p>Size is a challenge: the majority of Cercanias/Rodalies -networks consist of only 1 or 2 lines. International experience suggests that 1.5 million train-km is the minimum for an efficient operator, although there are some smaller networks.</p> <p>In some dense urban areas, the availability of land for a dedicated maintenance facility can be a challenge.</p> <p>Media Distancia :</p> <p>Rolling stock maintenance could be a major challenge as MD services can be extended geographically. PSO operators express a strong desire not to be dependent on the incumbent operator for maintenance. Today, only Renfe, as the incumbent operator, has a network of maintenance facilities throughout Spain. In France, but also in other countries, tenders in which the operator would not be independent in terms of maintenance have not received a bid other than that of the incumbent.</p>
4. Under what circumstances do you think the public transport authority could invoke one of the exceptions in Article 5 of Regulation 1370/2007 and not tender a PSO service? What structural or geographical characteristics could justify a direct award? What criteria could be considered to justify a direct award due to the complexity of the network? What threshold should be considered to justify a direct award due to service improvement and/or cost efficiency? (300 words maximum)	<p>Exceptions in Article 5 of Regulation 1370/2007 are not easy to implement (for more details see attached the article "Opening regional rail to competition – Can the member states circumvent the compulsory rail market opening for regional rail? The French example").</p> <p>In particular, Renfe cannot be considered as an "Internal operator" (Art. 5(2)) since it is offering rail service all over Spain. Directly attributing of regional services (Cercanias networks) would require creating local operators under the direct control of the comunidades autónomas.</p> <p>Small contracts (Art. 5(4)) may be considered for some small networks (<0.5 million train-km).</p> <p>The ability of using the "Exceptional circumstances" (Art. 5(3a)) and/or the "Performance exception" (Art. 5(4a)) depends on the Spanish context. First, they should be allowed, or at least, not forbidden, by the Spanish national law. Second, as the European Commission mentioned in its guidelines regarding the PSO regulation, these exceptions must be interpreted strictly. Therefore, if the Spanish state or the comunidades autónomas choose to use them, they must justify why these exceptions are relevant in their context. If these preconditions are fulfilled, the "exceptional circumstances" exception can be relevant in the Spanish Context, at the end of the current contract with Renfe. At that time numerous tenders will take place at the same time in order to tender the whole Spanish non high-speed rail. Having too many procedures at the same time is indeed one of the "exceptional circumstances" singled out by the European Commission in its guidelines. In such circumstances, operators would not be able to cope with a large number of proceedings taking place at the same time. It is better for proceedings to be spread over time so that competition can be established more effectively.</p>
5. If you wish, please provide additional comments on the issues addressed in this block of questions (maximum 500 words))	For successful tenders, it is essential to gain the trust of the market: Always be transparent, develop a strategy, publish it and stick to it.

<p>6. Which elements of the regulatory framework are most relevant and which best practices should be observed to ensure competition and a level playing field for operators in the bidding process? (select one or more elements):</p> <ul style="list-style-type: none"> - Development of a common regulation applicable to all competent authorities (state and regional) for the competitive tendering of services subject to PSO. - Independent authority supervising the tender procedure. - Coordination between competent authorities for the establishment of an indicative tendering schedule. - Publication of an indicative timetable on the various milestones of the specific bidding process. - Access to relevant market information. - Design of specifications and award criteria. - Other (specify) 	<p>Development of a common regulation applicable to all competent authorities (state and regional) for the competitive tendering of services subject to PSO.;</p> <p>Independent authority supervising the tender procedure.;</p> <p>Coordination between competent authorities for the establishment of an indicative tendering schedule.;</p> <p>Publication of an indicative timetable on the various milestones of the specific bidding process.;</p> <p>Access to relevant market information.;</p> <p>Design of specifications and award criteria.</p>
<p>If you wish, you may justify your previous answer (maximum 300 words)</p>	<p>An important issue is the access to rolling stock. The PSO regulation has dedicated provisions to tackle this issue. A "simple" way to solve this issue is to include in the regulatory framework the compulsory transfer of rolling stock from one company to another at the end of the contract. In this hypothesis, the regulatory framework should also include provisions regarding the compulsory transfer of the maintenance history of the different train sets and compulsory access to spare parts stocks.</p> <p>The access to maintenance workshops can also be an issue, especially in dense urban areas where it might be difficult to acquire a plot of land to create a dedicated workshop.</p>
<p>7. What information should be made available to bidders to enable them to formulate competitive bids on equal terms? For example, demand information that is not publicly available (passengers boarded and alighted by origin and destination, and with the highest frequency available -daily, weekly, monthly-), as well as other aspects such as current schedules and frequencies, the current state and maintenance of inherited rolling stock, the number, characteristics and conditions of personnel in case of subrogation, location and capacity of service facilities, or other relevant information. Specify the level of detail, frequency and format in which you consider this information should be made available to bidders, and whether it is public or private information (maximum 300 words)</p>	<ul style="list-style-type: none"> - Non-public information on infrastructure and stations, e.g. condition of infrastructure, major works to be carried out, etc. - Information on rolling stock, if transferred, e.g. full technical information, manufacturer's maintenance recommendations, maintenance history, current maintenance costs, report of a recent PTA audit, etc. - Information on maintenance facilities and sidings, if transferred, e.g. full technical information, plans, current maintenance costs, possibly contaminated soils, report of a recent PTA audit, etc. - Information on stations, if their operation is included in the contract, e.g. plans, structural condition, occupation of spaces, rental income, current maintenance and operation cost, etc. - Information on personnel, if transferred: anonymised list of transferred staff with competencies, age, salaries, etc. - Detailed information on patronage, per train, per section, per type of day - Detailed information on fare revenue if the operator has to take a revenue risk (as we have underlined, it may not be a good option for the first generation of contracts) - And, of course, the most precise information on the scope of services required, including the exact timetable on the basis of which the technical and financial offer must be made.
<p>8. What criteria and elements should the transport authority consider when designing the procurement documents and the contract? (select one or more elements):</p> <ul style="list-style-type: none"> - Access to essential elements for the provision of the service (rolling stock, maintenance workshops, personnel, etc.). - Synergies with liberalized services. - Geographical consistency in the provision of services. - Contract size. - Contract design and risk sharing. - Other (specify) 	<p>Access to essential elements for the provision of the service (rolling stock, maintenance workshops, personnel, etc.);</p> <p>Geographical consistency in the provision of services.;</p> <p>Contract size.;</p> <p>Contract design and risk sharing.</p>
<p>If you wish, you may justify your previous answer (maximum 300 words)</p>	<p>We believe that the key features are:</p> <ul style="list-style-type: none"> - Appropriate contract size (between 1.5 and 5 million trains.km is an appropriate range) and duration (in general it could be 10 to 12 years for the first contracts, depending in particular on investments by the operator). - Full control by the operator of the necessary rolling stock, workshops and personnel. Operators often do not bid, if they are to share the maintenance facility with another train operating company, especially when it is the incumbent. - Limiting the amount of capital on the operator's balance sheet. Therefore, if new rolling stock has to be acquired or a new maintenance facility has to be built, the public transport authority might think to subsidise the investment. - Ensuring a "level playing field" between the incumbent and new entrants, e.g. by providing the necessary information and neutralising in the award criteria the risks not faced, or not faced with the same magnitude, by the incumbent. - Access to essential assets and personnel, to be transferred or to be procured by the operator (same requirements for all bidders). - Geographical and technical coherence of the network, including a dedicated maintenance facility. - A feasible timetable that can be produced efficiently as the common basis for the technical and financial offers of the bidders. - Appropriate risk-sharing – the operator should not bear risks over which it has no control. - A preliminary dialogue phase may be valuable in the first procedures. - Allow sufficient time for bidders to respond and also for the preparation phase between contract signature and the start of operations. - The national market must provide a sufficient volume of bids and the dates of tenders should be predictable.
<p>9. If you wish, please provide additional comments on the issues addressed in this section (maximum 500 words)</p>	<p>Question 6. - Development of a common regulation: a stable framework is essential, homogeneous rules, for example on how to measure quality, reduces the workload for both the PTA and the bidders/ operators.</p> <ul style="list-style-type: none"> - Independent authority: it is important that there is a strong and competent body to which disputes can be referred (as in France). A weak Authority means delegating complex rail tender issues to the common jurisdiction (as in Germany), which to our experience leads to less informed decisions. - Coordination between authorities and publication of an indicative tendering timetable: important for the potential bidders to allocate their resources (bidding teams). As we have already underlined, operators would not be able to cope with a large number of proceedings taking place at the same time. It is better to spread tenders over time so that bids can be established more effectively. If it is not possible to stagger tendering processes before the end of the contract, for instance because of the provisions of the current contract with Renfe, the Spanish state may consider using the "exceptional circumstances" to stagger them after the end of the contract. - Access to relevant market information is crucial, especially if assets (rolling stock, maintenance facilities) or personnel are to be transferred, and the operator is to bear a revenue risk. - Design of specifications: be as clear as possible, neutralise risks that the incumbent does not have (e.g. if staff are to be transferred). For the first generation of "competitive contracts", it may also be more difficult for the competitors, compared to the incumbent, to evaluate ridership and revenue. Therefore, for these first contracts, gross cost contracts may be preferred to net cost contract where the risk on ticket revenues is the responsibility of the operators. - Design of award criteria: a key issue is the weighting between quality and price criteria. In France, quality criteria account for 40-50%, with several rounds of negotiations reducing the range between bids, so that the actual weight of quality is much lower (no French PTA would pay twice the price for a perfect bid). In Germany, quality criteria account for only 0-10% and quality is assured by but high-quality requirements are fixed in the contract. There is little or no negotiation. These procedures require less time and resources from bidders and are seen by the market as more transparent, but require the PTA to know exactly what it wants. Both types work, but it remains to be analysed which is the most appropriate for Spain.

10. Which measures could encourage the coordination of the different government levels for the design and integration of the land public transport network (rail, bus, etc.)? (maximum 300 words)	
11. What elements of the regulatory and institutional framework could be improved to ensure adequate management of conflicts between public services declared as PSO and commercial land transport services? (maximum 300 words)	
12. What elements of the regulatory framework could be improved to enable the joint sale of tickets from different operators or means of transport? (maximum 300 words)	
13. If you wish, please provide additional comments on the issues addressed in this section (maximum 500 words)	
14. If you wish, please provide additional comments on the opening of public passenger rail transport services to competition or on any other issue raised in this questionnaire (maximum 500 words)	