

Office of Rail Transport

<https://utk.gov.pl/en/market-regulation-and-l/access-to-railway-infra/faq/12465,Open-access-for-domestic-rail-passenger-services-after-30-December-2016.html>
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Open access for domestic rail passenger services after 30 December 2016

Any railway undertaking wishing to perform new commercial domestic rail passenger services shall submit the application to the President of the UTK. It is necessary to obtain administrative decision granting access to the rail infrastructure for the proposed new service.

WHO CAN SUBMIT APPLICATION TO RUN NEW DOMESTIC RAIL PASSENGER SERVICES?

- an applicant that wishes to start domestic commercial services on a particular route

DEFINITION OF AN APPLICANT

- ‘an applicant’ means a railway undertaking or an economic interest grouping railway undertakings or other persons or legal entities with interest in procuring infrastructure capacity, in particular competent authorities under Regulation (EC) No 1370/2007, shippers, freight forwarders and combined transport operators

WHAT SHOULD BE DONE BY THE APPLICANT TO OBTAIN DECISION GRANTING DOMESTIC OPEN ACCESS?

The written application shall be submitted to the President of the UTK. The application shall be signed by the person or persons authorized to represent the applicant. Such persons should appear in a current extract from the appropriate register in the country of origin. Notification might also be signed by a proxy. According to the Polish Law the power of attorney holder shall be natural person having the capacity to perform legal acts within the meaning of the provisions of the Civil Code. All documents must be submitted in the Polish language, or translated into Polish by a sworn translator.

WHAT DOCUMENTS ARE REQUIRED?

The application shall be accompanied by the:

- Actual extract from the appropriate register (eg. National Court Register) in case of legal entities;
- An original of the power of attorney or the copy certified as consistent with the original by an

appropriate office or a notary public;

- The power of attorney shall be annexed with confirmation of payment of the required fiscal charge;
- The documents prepared in a language other than Polish should be translated into Polish by a sworn translator.

ESSENTIAL INFORMATION WHICH SHOULD BE CONTAINED IN THE APPLICATION:

- the applicant's name, address, legal entity, registration number (if appropriate);
- name, qualification and contact details of responsible persons;
- data of license and safety certificate of the applicant or indication of the stage of the procedure to obtain them;
- detailed route indicating location of departure and destination stations as well as all intermediate stops and distance between them;
- planned starting date for the operation of the proposed new domestic rail passenger service;
- timing, frequency and capacity of the proposed new service, including the proposed departure times, intermediate stops, arrival times and connections as well as any deviations in frequency or in stops from the standard timetable, per direction;
- the information regarding the planned operation of the proposed new domestic rail passenger service shall cover at least the first three years and, as far as possible, the first five years of operation.

WHAT ACTIONS MIGHT BE TAKEN BY THE PRESIDENT OF UTK?

- The President of UTK shall notify the applicant in writing of the initiation of an administrative proceedings;
- Application shall be published on the UTK's website;
- The President of UTK shall notify the entities having the right to request an economic equilibrium test. Requests by the entities shall be made within four weeks from the publication of the applicant's motion on the regulatory body's website. Requests shall be sent to the President of the UTK in electronic form;
- The President of UTK shall perform economic analysis of an impact of the proposed new service on the profitability of services operated under the public service contract on this route.

WHICH ENTITIES HAVE THE RIGHT TO REQUEST FOR AN ECONOMIC EQUILIBRIUM TEST?

- a competent authority or competent authorities that have concluded a public service contract covering a place of departure and a destination of the proposed new service;
- any other interested competent authority which can show a legitimate interest in a decision on

the economic equilibrium test;

- the infrastructure manager in the geographical area covered by the proposed new domestic passenger service;
- any railway undertaking performing the public service contract awarded by the authority that have concluded a public service contract covering a place of departure and a destination of the proposed new service.

WHAT INFORMATION SHALL BE PROVIDED IN THE REQUEST FOR AN EQUILIBRIUM TEST?

- the requesting entity's name, address, legal entity, registration number (if appropriate);
- contact data of the person responsible for queries;
- explanation of the requesting entity's interest in a decision on the economic equilibrium test;
- evidence that the economic equilibrium shall be compromised by the new service;
- information and documentation supporting explanations.

WHAT KIND OF ADDITIONAL INFORMATION MAY BE REQUESTED BY THE PRESIDENT OF THE UTK?

The regulatory body may request information from the entities involved in the test including but not limited to:

- from the competent authority:
 - o the copy of the public service contract;
 - o national rules for awarding and amending public service contracts;
 - o relevant journeys and revenue forecasts, including forecast methodology;
- from the railway undertaking performing the public service contract:
 - o the copy of the public service contract;
 - o the business plan of this undertaking;
 - o information on revenues gained by this undertaking;
 - o timetable information for the services, including departure times, intermediate stops, arrival times and connections;
 - o its estimated elasticities of the services (e.g. price elasticity, elasticity with respect to quality characteristics of the services) and plans for competitive responses to the new service, as well as possible cost savings induced by the new service;
- from the applicant:
 - o business plan; forecast of revenue and journeys from domestic passengers, including forecast methodology;
 - o pricing strategies; ticketing arrangements; rolling stock specifications (e.g. load factor, number of seats, wagon configuration);

- o marketing strategy; its estimated elasticities of the services (e.g. price elasticity, elasticity with respect to quality characteristics of the services);

- from the infrastructure manager:

- o information regarding the relevant lines or sections, in order to ensure that the new domestic passenger service can be run on this infrastructure.

IN WHICH CASES THE REQUEST FOR AN EQUILIBRIUM TEST MAY BE REJECTED?

- if the requesting entity does not provide full information twice, within the timescales set by the regulatory body, the request shall be rejected;
- if the requesting entity does not provide evidence that the economic equilibrium shall be compromised by the new service.

WHAT ARE POSSIBLE RESULTS OF THE ECONOMIC EQUILIBRIUM TEST?

- As a result of the economic equilibrium test, the President of UTK shall take a decision, on the basis of which the right of access to the rail infrastructure shall be granted or denied.
- The decision of the President of the UTK shall be published with its justification on the website of the regulatory body while respecting the confidentiality of commercially sensitive information.

IN WHICH CASES THE PRESIDENT OF UTK SHALL ISSUE A DECISION GRANTING THE ACCESS TO THE RAIL INFRASTRUCTURE FOR THE PROPOSED NEW DOMESTIC PASSENGER SERVICE?

Access to rail infrastructure shall be granted for the proposed new domestic passenger service, if as a result of the economic equilibrium test, the President of the UTK determines that the public service contract is not compromised by the proposed new service (or if such a request wasn't made).

HOW TO PREVENT ISSUING A DECISION DENYING THE ACCESS TO THE RAIL INFRASTRUCTURE?

Before taking a decision that would result in access to rail infrastructure for the proposed new domestic passenger service, the President of the UTK shall give the opportunity to the applicant to adjust the plan so that it would not compromise the economic equilibrium of the public service contract.

ONCE THE PRESIDENT OF THE UTK ALREADY GRANTED THE ACCESS TO THE RAIL INFRASTRUCTURE FOR THE PROPOSED NEW DOMESTIC PASSENGER SERVICE, WHAT ARE THE NEXT STEPS TO OPERATE IN POLAND?

- administrative decision granting access to rail infrastructure for the proposed new domestic passenger service does not guarantee allocation of train paths;
- applicant shall submit the application to infrastructure manager for the allocation of railway infrastructure capacity;
- an infrastructure manager and an applicant may enter into an agreement.

WHAT IS THE DURATION OF THE GRANTED ACCESS TO RAIL INFRASTRUCTURE FOR THE PROPOSED NEW DOMESTIC PASSENGER SERVICE?

the access may be granted for a period not exceeding five years.

WHAT ARE THE ELEMENTS OF DECISION GRANTING OPEN ACCESS TO RAIL INFRASTRUCTURE FOR THE PROPOSED DOMESTIC PASSENGER SERVICE?

- applicant's name, address, legal entity, registration number (if appropriate);
- routes over which the train will run;
- the duration of the granted access to rail infrastructure for the proposed new domestic passenger service;
- conditions and the extent of access to rail infrastructure.

IS THE PRESIDENT OF THE UTK ENTITLED TO CONTROL APPLICANT'S BUSINESS ACTIVITY?

Yes, the President of the UTK shall undertake periodic control of railway undertakings operating on the basis of granted access to the rail infrastructure for domestic passenger services.

WHEN THE DECISION GRANTING THE OPEN ACCESS SHALL EXPIRE?

The decision shall expire in the case of bankruptcy of the particular railway undertaking.

IS THE PRESIDENT OF THE UTK ENTITLED TO OVERRULE THE DECISION GRANTING OPEN ACCESS?

Yes, the President of UTK is the competent authority to overrule an individual decision in two cases. These are:

- serious infringement of conditions set out in decision granting access;
- at least a six months of discontinuation of the activity, for reasons attributable to the applicant.

HOW TO APPLY TO THE PRESIDENT OF THE UTK?

All information provided by the applicant in standard form and any supporting documents shall be sent to the President of the UTK in electronic form.

DURATION OF THE ADMINISTRATIVE PROCEEDINGS

within 6 weeks of receipt of the complete documentation.