

Office of Rail Transport

<https://utk.gov.pl/en/market-regulation-and-l/access-to-railway-infra/faq/12568,Open-access-for-international-rail-passenger-services.html>
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Open access for international rail passenger services

Any railway undertaking wishing to perform new international rail passenger services should notify the President of the UTK thereof.

WHO CAN SUBMIT NOTICE ABOUT THEIR INTENTION TO RUN NEW INTERNATIONAL RAIL PASSENGER SERVICES?

- an applicant that wishes to start international commercial services on a specified route.

DEFINITION OF AN APPLICANT

- ‘an applicant’ means a railway undertaking or an international economic interest grouping of 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.

HOW TO NOTIFY THE PRESIDENT OF THE UTK?

The written notice of intention to carry on new international rail passenger services shall be submitted to the President of the UTK.

The notification shall be signed by the person or persons authorized to represent applicant. Persons should appear in a current extract from the appropriate register in the country of origin. Notification might also be signed by the 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.

WHEN IS AN APPLICATION FILE COMPLETE?

- 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 NOTIFICATION:

- the applicant's name, address, legal entity, registration number (if appropriate);
- name, qualification and contact details of responsible persons;
- data of licence 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 international 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;
- justification that the principal purpose of the proposed passenger service is to carry passengers between stations located in different Member States;
- the information about proportion of turnover and of volume derived from the transport of international passengers as expected by the applicant as compared to domestic passengers in the Member State where the regulatory body is established;
- the information regarding the planned operation of the proposed new international 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 UTK staff verify if notification form have been filled in correctly by the applicant and if it is complete. In the event of any missing information or documents the President of the UTK shall invite the applicant to remedy the deficiencies within such period as it may specify. After ineffective expiry of the indicated period of time, a notification is left unprocessed.
- Administrative proceedings in order to ensure the access rights to railway infrastructure for international rail passenger services shall be initiated by the President of the UTK at the request of the applicant.
- Notification shall be published on the UTK's website.
- Requests by the entities having interest as well as entities having the right to request an economic equilibrium test shall be made within four weeks from the publication of the applicant's notification on the regulatory body's website.

IF THERE IS AN ENTITY WHICH IS HAVING THE RIGHT TO REQUEST FOR A PRINCIPAL PURPOSE TEST AND THE RIGHT TO REQUEST AN ECONOMIC EQUILIBRIUM TEST, IS THERE A POSSIBILITY TO MAKE BOTH REQUESTS SIMULTANEOUSLY?

Yes, entities that have the right to make requests for both tests may do so simultaneously.

WHICH ENTITIES HAVE THE RIGHT TO REQUEST FOR A PRINCIPAL PURPOSE TEST?

- competent authorities that have concluded public service contracts for rail transport in a geographical area affected by the proposed new service;
- any railway undertaking operating international or domestic passenger rail services on the route(s) to be served by the proposed new service, whether on a commercial basis or on the basis of a public service contract.

WHAT INFORMATION SHALL BE PROVIDED IN THE REQUEST FOR A PRINCIPAL PURPOSE 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 principal purpose of the proposed new service; explanation why, in the requesting entity's opinion, the principal purpose of the proposed new service is other than to carry passengers between stations located in different Member States;
- information and documentation supporting explanations;
- justification for any proposed exclusion of commercially sensitive information.

IN WHICH CASES THE REQUEST FOR A PRINCIPAL PURPOSE 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 explanation why in its opinion, the principal purpose of the proposed new service is other than to carry passengers between stations located in different Member States.

WHAT ARE POSSIBLE RESULTS OF THE PRINCIPAL PURPOSE TEST?

- The President of the UTK shall determine whether the principal purpose of the proposed new service is to carry passengers between stations located in different Member States;

or to carry passengers between stations located in Poland;

- If the President of the UTK takes a decision that the principal purpose of the proposed new service is to carry passengers between stations located in different Member States, access to rail infrastructure shall be granted for the proposed new international passenger service
- If the President of the UTK takes a decision that, the principal purpose of the proposed new service is or to carry passengers between stations located in Poland, application shall be requalified into an application for a national passenger service and inform the applicant thereof.
- The applicant shall follow then the relevant national rules to apply for the access to railway infrastructure.
- The President of the UTK shall notify the applicant of the decision taken. The decision shall be duly justified and published without delay on its website while respecting the confidentiality of commercially sensitive information.

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 with a right to limit access under Article 11 of Directive 2012/34/EU;
- the infrastructure manager in the geographical area covered by the proposed new international 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;
- 12.8.2014 L 239/6 Official Journal of the European Union EN;
- 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 international passenger service can be run on this infrastructure. This information obligation of the infrastructure manager shall be without prejudice to its obligations under the allocation procedure referred to in Chapter IV, Section 3 of Directive 2012/34/EU.

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.

CONTENTS OF THE ECONOMIC EQUILIBRIUM TEST

The economic equilibrium of a public service contract shall be considered as compromised, when the proposed new service has a substantial negative impact on:

- the profitability of services operated under the public service contract, and/or
- the net cost for the competent authority awarding the public service contract.

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 under Article 11(1) of Directive 2012/34/EU, on the basis of which the right of access to the rail infrastructure shall be granted, modified, granted only under conditions 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.

HOW TO PREVENT NEGATIVE DECISION?

Before taking a decision that would result in denying access to rail infrastructure for the proposed new international 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.

RECONSIDERATION OF A DECISION RESULTING FROM THE ECONOMIC EQUILIBRIUM TEST

The entities listed in Article 11(3) of Directive 2012/34/EU may request a reconsideration of a decision resulting from the economic equilibrium test under the conditions set out by the regulatory body.

These conditions may include:

- o there is a significant change in the new international passenger service in comparison with the data analysed by the regulatory body; or
- o there is a substantial difference between the real and the estimated impact on the services under the public service contract; or
- o when the public service contract has expired before its initial term.

Unless the President of the UTK provides otherwise in its decision, no reconsideration of a decision may be requested within three years from the publication of the decision, except in the case described in first indent.

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

Access to rail infrastructure shall be granted for the proposed new international passenger service, if:

- as a result of the principal purpose test, the President of the UTK determines that the principal purpose of the proposed new service is to carry passengers between stations located in different Member States (or if such a request wasn't made by any competent entity);
- 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 by any competent entity).

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

- administrative decision granting access to rail infrastructure for the proposed new international 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 INTERNATIONAL PASSENGER SERVICE?

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

HOW TO NOTIFY PRESIDENT OF 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.

