



ROYAL NORWEGIAN
MINISTRY OF TRANSPORT

EFTA Surveillance Authority (ESA)
Avenue des Arts 19H
BE-1000 Brussels
Belgium

Your ref

Case No: 90137 Document No: 1385706

Our ref

23/17-

Date

31 August 2023

Supplementary information regarding PSO contracts for rail passenger transport in Norway

Dear Sir/Madam,

With reference to the letter from the EFTA Surveillance Authority (ESA) of 11 July, your case No 90137, the Norwegian Ministry of Transport would like to provide the following supplementary information to the questions raised:

1. Market Analysis

Information on the market analyses behind the decisions to award the two public service obligation (PSO) contracts for rail services in eastern Norway (Østlandet 1 and 2) was provided in point 4 of the letter from the Norwegian Ministry of Transport of 28 April this year. ESA now invites the Norwegian Government to provide further information regarding the market analyses. As explained in the 28 April letter, and as an introductory remark, the Norwegian Ministry of Transport considers the combined contents and outcome of the analyses and assessments undertaken in relation to the PSO contracts on the Norwegian rail network, performed by The Norwegian Railway Directorate (Jernbanedirektoratet) and other entities, sufficiently covers the requirements that follow from Regulation (EC) No 1370/2007.

In point 2.2.3 of the European Commission Notice on interpretive guidelines concerning Regulation (EC) No 1370/2007 on public transport services by rail and by road (2023/C 222/01), the competent authority should assess through three steps when establishing the genuine need for the planned public transport services:

1. assess whether there is a demand from users;
2. assess whether this demand cannot be addressed, even partly, by market operators in the absence of public service obligations; and

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3. give priority to the approach that is least restrictive for the fundamental freedoms and least harmful for the proper functioning of the internal market to meet the need thus identified.

The competent authority has a wide discretion when providing, commissioning and organising services of general economic interest (SGEIs) tailored as closely as possible to the needs of the users.

First step: Assess whether there is a demand from users

The most relevant assessment of the user demand is reflected in the cost benefit analyses for rail network development packages described in the annexed report “Rutemodell 2027 Fase 2 Utvikling og anbefaling av tilbudskonsepter Tilbudskonsept for Østlandet”. Together with later updated strategic timetables, these assessments and reports provide the required ex-ante analysis of the demand for the public transport services that are included in the PSO contracts from 2023-2024. The annexed report on “Rutemodell 2027” provides an expression of the optimum use of the available rail infrastructure capacity in the area covered by the two PSO contracts Østlandet 1 and 2.

Exhibit 1: Rutemodell 2027 Fase 2 Utvikling og anbefaling av tilbudskonsepter Tilbudskonsept for Østlandet (POU-00-A-00112)

The methods for performing those assessments are described in chapter 1.2 of and annex 2 to the report. The benefits calculated in these analyses are based on transport modelling¹. These models are based on historical data, as well as projected growth in future demand for rail passenger services. Further, the analyses done with regards to the alternative use of the train paths currently used by Flytoget AS also show the demand on the user side for the public services planned to be included in the PSOs covered by the Østlandet 2 PSO contract from 2028. The benefits in these analyses are also based on transport models.

The work and assessments behind the strategic timetables “Rutemodell 2027” and later (including the analysis of the alternative use of the train paths currently used by Flytoget AS) include optimisation of a timetable concept that best serves the anticipated demand. In the Norwegian authorities’ view, this material describe sufficiently how the identified markets are best served by passenger rail services.

On the demand side, the markets covered by the services specified in the two PSO contracts Østlandet 1 and Østlandet 2 are varied both geographically and structurally. Due to infrastructure capacity constraints, most specified rail passenger services cover multiple markets, both on their own and in combination with other specified rail passenger services².

¹ See Vedlegg 2 in ATTACHMENT *Rutemodell 2027 Fase 2 Utvikling og anbefaling av tilbudskonsepter Tilbudskonsept for Østlandet*

² As mentioned on page 3 in the letter of 28 April, since 2007 the rail infrastructure between Oslo and Lysaker has been declared congested according to Directive 2012/34/EU Article 47, see chapter 4.6.2 of Bane NOR’s Network Statement: [4. Kapasitetsfordeling \[Network statement\] \(banenor.no\)](#). Even though the available number of train paths has increased substantially in the period due to capacity-enhancing measures, the growth in rail traffic in the same period still makes the line congested according to the same criteria.

Most notably the currently five different regional and regional express service groups that serve the main stations between Drammen/Asker, Oslo and Lillestrøm both serve outlying markets in their own right (in hourly or half hourly intervals in each direction). As a result, the combined train service groups provide a high frequency/high capacity service with six trains per hour per direction (or more) between Asker, Oslo and Lillestrøm (five of these also serve Drammen). Out of these, three services per hour per direction also combine to serve Oslo Airport and Eidsvoll in a semi high frequency. When the train paths currently used by Flytoget AS becomes available, the frequency will increase to nine trains per hour between Drammen and Lillestrøm, and six trains per hour between Lillestrøm and Oslo Airport. For the PSO contract Østlandet 1, a similar set-up is achieved on the new route between Oslo and Ski, where a frequency of six trains per hour is established from Oslo to Ski by the combined services from Oslo to Ski, Moss, Halden and Mysen.

This combination of different rail passenger services and lines into both a high capacity/high frequency service and acceptable service of outlying areas, both increases the attractiveness of the total service offering, and reduces the cost to government. A more attractive customer offering leads to increased demand, and increases the performance of the public service obligations in regards to their objectives, in particular that the rail passenger services should contribute to more customers, higher satisfaction rates and reducing the use of cars for personal transport. The costs to government are reduced both through optimised production of rail passenger services and increased passenger demand, as well as reduced or postponed need for costly infrastructure development. The passenger rail services are the backbone of the public transport system, in particular in the greater Oslo area, and is highly integrated with other modes of public transport with fixed interconnections, timetables and frequencies. Due to capacity constraints in the road network, bus lines are often feeding passengers to the rail services in public transport hubs. The public planning during the last decades have led to the development of increased housing and placing of public service facilities in areas close to the public transport hubs. This has contributed to a major increase in the use of public transport and rail.

The Norwegian authorities consider such an efficient use of the capacity to provide both a high frequency of services on a central section, and regular services to outlying areas, requires that all of the services that make up the integrated/combined passenger offering are included in one or more PSOs. This is necessary in order to ensure that rail passengers may use all the alternative train services in the combined service offering using the same tickets on the same conditions, as well as that the operators organise the services as an integrated offering. Within such a model, it is possible to provide network effects both on the customer/demand side and the production/operator side. Such network effects would be difficult to achieve with fragmented commercial services on individual services/lines or parts of the combined service offer. Our view is that such a fragmentation of the passenger rail services would lead to less or weaker achievement of the transport policy targets.

Second step: Assess whether this demand cannot be addressed, even partly, by market operators in the absence of public service obligations

As explained above, The Norwegian authorities consider the specified PSOs covered by the two PSO contracts Østlandet 1 and 2 as the best use of the limited capacity available to ensure an integrated offering to the public and passengers. In the letter of 28 April 2023, the Norwegian government explained, based on our experience with the PSOs in Østlandet 1 and Østlandet 2, as well as the results from the previous competitive tenders in Norway, that no operator would provide passenger rail services on the same or similar conditions as specified in the two contracts.

The bids received in the cancelled tender for Trafikkkpakke 4, which covers the same PSOs as Østlandet 1, showed that all the bidders would require a substantial compensation to provide the specified level of services throughout the contract period. This indicates that the rail passenger services deemed necessary in the first step of the analysis, and covered by the Østlandet 1 contract are not attractive to commercial operators. Further, the analyses made in relation to the alternative use of the train paths that Flytoget AS uses today, show that introducing the same fares for all rail journeys to the airport would reduce the profitability of passenger rail services to and from the airport considerably. Combined with the experience from Trafikkkpakke 4, this makes it unlikely that the rail passenger services deemed necessary in the first step of the analysis, and covered by the Østlandet 2 contract are attractive to commercial operators.

There may, at least in theory, be individual services (or possibly even train service groupings if run more cost-efficiently) that a purely commercial operator may assess to have a positive margin due to high demand during parts of the day or year, or on certain route sections. However, to ensure an integrated offering throughout the day and the year, as well as reaping the benefits of positive network effects, Jernbanedirektoratet has concluded that these services must be grouped with other PSOs. According to Jernbanedirektoratet, there is little to no relevance in testing individual services or lines for whether a purely commercial operator can provide these services, as this would reduce the positive network effects of an integrated service offering. The Norwegian authorities therefore consider the possibility to achieve the transport policy targets related to having an integrated offering to the rail passengers and thereby reaping the network effects, to justify the inclusion of services with positive margins within the bundles. This is in particular related to the need for an optimum use of the scarce capacity in the Oslo area as mentioned above. Oslo central station and the line section Oslo- Lysaker is the core of the Norwegian rail network, and even minor changes in this area affect rail services in other parts of the rail network.

The first decision to bundle the routes into two separate bundles

Regarding the bundling of the public service obligations into Østlandet 1 and Østlandet 2, Jernbanedirektoratet refers to the recommendations given on 13 June 2019 for Trafikkkpakke 4 and 5, as well as the memorandum of 3 January 2022 and the Ministry's mandate of 31 March 2022.

Jernbanedirektoratets recommendation to the bundling of lines into two different contracts provides the methodology and the assessments that were undertaken to identify and describe the recommended bundles.

Exhibit 2: *Fase 2 i kjøp av persontogtjenester Forslag til endelig pakkeinndeling for det sentrale Østlandsområdet og fremdrift for konkurranseutsetting av de siste trafikkpakkene.*

Section 3 and 4.3 are of particular interest. Further, the annexed spreadsheet contains the analysis of how the different bundles were scored in assessment regarding the bidders'/operators' freedom to organise and improve the rail services.

Exhibit 3: *Analyse av inndeling og frihetsgrader.*

The subsequent decision to join the two bundles into one

In awarding both Østlandet 1 and Østlandet 2 to Vygruppen, Jernbanedirektoratet has not changed the bundling of the public service obligations into a single contract. Jernbanedirektoratet has merely awarded two separate PSO contracts to Vygruppen.

How consumer prices are set in the PSO contract and if that is considered by Norway to be part of the PSO obligation, how the prices were established and what assessment was carried out to establish those figures

Jernbanedirektoratet, being the competent authority for PSO rail passenger contracts, regulates standard fares in most of the rail passenger service contracts, as well as integrated fares with local public transport authorities where applicable. For Østlandet 1 and Østlandet 2, the main components of the pricing model are:

- A distance-based fare table for journeys outside areas with integrated fares
- A matrix of fare distances between all stations in Norway
- Agreements on integrated fares with local public transport authorities, in particular the agreement with Brakar (for the geographical area Buskerud), Østfold kollektivtrafikk and Ruter (for the geographical area Oslo and Akershus)

Ticket prices need to be balanced in order to generate sufficient income to the operator and secure affordable rail passenger services for the population. Maximum consumer prices for journeys that originate or end outside the areas of integrated pricing (in effect the Ruter travel area) are regulated based on the combination of a distance-based fare table and a matrix of fare distances. The distance based fare table is based on the prices of the previous contracts for the same public service obligations. The operator is allowed to increase prices up to core inflation (KPI-JAE) + 1 percentage point on average, and maximum +6 percentage points for individual fare distances. The matrix of fare distances is normally static, however train operators may suggest changes where appropriate.

The distance-based fare tables have been in use in the Norwegian rail system for decades. It is based on similar pricing systems as for other European rail operators, and the guiding principle is that the customer should pay a smaller price for each kilometer travelled when the distance increases. This reflects the operator's average costs per kilometer, which are higher for short journeys due to fixed costs in regards to train operations, ticket sales and customer support. The marginal cost of transporting a passenger an extra kilometer is relatively low. Even though adjustments are made over time, the system has been well established and used by the rail operators since long before the Østlandet 1 and 2 contracts.

With regard to ticket sales for different service levels, the operator may sell up to 20 percent of the seats over the day, and maximum 30 percent of seats on individual services, as an upgraded product (tilleggsprodukt), e.g. first class. The consumer prices for journeys with these upgraded services are not regulated.

For journeys that are entirely within the Ruter travel area, the agreement with Brakar, Østfold kollektivtrafikk and Ruter places the responsibility for consumer price setting with Ruter. In effect this means that Ruter's tickets are valid on the trains, and that Ruter decides the prices for these. The rail passenger service operator is paid a fee per passenger km, which is based on the average income per passenger km for such tickets in 2019.

The current PSO contract with Flytoget AS does not regulate consumer prices.

Third step: Give priority to the least restrictive approach for the fundamental freedoms and least harmful for the proper functioning of the internal market to meet the need thus identified

As explained above, in order to meet the transport policy targets and make the most optimum effective use of the scarce rail infrastructure capacity, the PSO contracts for the rail services in the greater Oslo area have been bundled in the two PSO contracts Østlandet 1 and 2. Meanwhile, other markets also need to use the rail infrastructure in question. Rail freight transport is an important part of the transport system, and the growth in rail freight transport is part of the explanation to why Norwegian railway lines are congested. Certain commercial or partly commercial services also request train paths from the infrastructure manager, such as the Oslo-Stockholm and (Oslo-)Halden-Gothenburg services. The infrastructure manager (Bane NOR) allocates the capacity according to the procedure and criteria described in the Network Statement, based on the provisions of Directive 2012/34/EU as transposed into Norwegian law³.

The Norwegian Government is particularly concerned with providing sufficient rail infrastructure capacity to the different end-user markets for rail transport services. In the

³ In particular [FOR-2021-06-30-2315 Jernbaneforskriften](#) (Railway Regulation), see chapter 2 and 8 for provisions on access to the rail network and the capacity allocation process, while § 9-5 contains a provision on prioritisation in case of congested lines, in accordance with Article 47 of Directive 2012/34/EU.

annual allocation letter to Jernbanedirektoratet, the Ministry of Transport therefore has requested Jernbanedirektoratet to make sure that they contribute to an efficient use of the railway network by passenger and rail freight, by means of socio-economic analyses and the use of PSOs for passenger rail services⁴. In this regard, the PSOs covered by the contracts are set at a level that leaves capacity available for freight and other commercial services.

2. Scope of concession

The objective justification for including that capacity under the scope of public service obligations significantly ahead of the start of the actual services.

Trafikkpakke 4, which now is referred to as Østlandet 1, included the rail passenger services that are currently included in the PSO contract with Vy Gjøvikbanen, namely Oslo S – Hakadal/Jaren and Oslo S – Gjøvik. In the current PSO contract for Gjøvikbanen, it is stipulated that it may only be terminated earlier in case that the routes would be competitively tendered. Jernbanedirektoratet therefore did not have any legal possibility to include these routes in the directly awarded Østlandet 1 contract before the current PSO contract expires in December 2024⁵. In the recommendation for bundling of the public service obligations from June 2019, Jernbanedirektoratet argued that leaving these routes as a smaller individual contract would not let the operator efficiently utilise their freedom to organise and improve the production of passenger services. The options including such a contract were therefore ranked lower than the preferred option⁶.

Regarding the train paths currently used by Flytoget AS, and included in Østlandet 2 from 2028, those train paths are also covered by a current PSO contract that Jernbanedirektoratet cannot terminate before its expiration.

As explained in our letter of 28 April 2023, the recommendation to use the train paths currently used by Flytoget AS for the general passenger rail services in Østlandet 2 will lead to better use of limited capacity in a socio-economic perspective. The main benefit of this integration is that the train paths, and thereby the potential for better exploiting the theoretical optimum transport capacity on the affected lines, will be used in an integrated passenger rail offering to the passenger. In Jernbanedirektoratet's view, this is best achieved by grouping the public service obligations on the route section Drammen – Oslo S – Oslo Airport into one contract. This allows for the operator to optimise production and the offering to the customers needs, as well as plan and execute the successful introduction of an extended offering. Such an extended offering will include the use of trains with higher passenger capacity and reduced stopping times, resulting in more passengers being able to be transported on the

⁴ See page 4 of the [allocation letter for 2023](#): "Direktoratet skal, ved bruk av samfunnsøkonomiske analyser og gjennom de persontogtilbud Jernbanedirektoratet kjøper, bidra til at kapasiteten på sporet utnyttes godt til både persontransport og godstransport."

⁵ See clause 4.1 (Varighet/Duration) of the current passenger rail service contract with Vy Gjøvikbanen AS ([Gjeldende trafikkavtaler med staten \(jernbanedirektoratet.no\)](#)).

⁶ See Exhibit 2 on page 19.

route section. In Jernbanedirektoratet's view, these factors contribute to justify the decision to include this capacity in Østlandet 2 from 2028 at the latest⁷.

Other examples of increased capacity that are foreseen included in this concession.

It is not unusual that during the long validity of a PSO contract, the amount of the rail services covered by the contract will be extended due to increased available rail infrastructure capacity. The last years have shown huge increases in public investments in order to increase rail capacity in the greater Oslo area. When the new lines are opening for service, the rail services covering those lines need to be adjusted correspondingly. Historically, this has been done by using change order mechanisms in the PSO contracts.

The most recent example is the increased capacity on the line between Oslo and Ski when the new Follobanen tunnel opened for service recently, which is now included in the current PSO contract with Vy valid for 2023⁸.

Furthermore, both PSO contracts Østlandet 1 and Østlandet 2 includes options for Jernbanedirektoratet to expand the public service obligations to use capacity that is foreseen to become available during the contract period. This includes:

- Higher rush hour frequency to between Stabekk and Moss when the double track Sandbukta – Moss – Såstad is completed.
- Quadrupling of the frequency between Tønsberg and Oslo/Lillestrøm when the double track sections Drammen – Kobbervikdalen and Nykirke – Barkåker are completed (currently expected by December 2025)
- Extension of the route Asker – Kongsvinger to Drammen – Kongsvinger when the new Drammen station is completed (currently expected by December 2025)
- Doubling of the frequency between Eidsvoll and Hamar, when the double tracking to Hamar is finished (currently expected by December 2027).

In addition the contracts have change order mechanisms that can be used for further changes as infrastructure becomes available. This has been the case in earlier PSO contracts. It also applies to planned future changes in the available infrastructure capacity which are too early to include as options in a PSO contracts⁹.

Jernbanedirektoratet has published the PSO contracts for Østlandet 1 and 2 on its website¹⁰.

⁷ This is the latest date for such an inclusion. On-going work regarding the structure of the two state-owned rail passenger undertakings Vy and Flytoget may result in other possible solutions for a more optimal use of the transport capacity on the line section in question.

⁸ [Trafikkavtale Ø23](#)

⁹ An example is future capacity enhancements due to measures in Brynsbakken in Oslo, see [Oslo / Brynsbakken: Kapasitetsøkning | Bane NOR](#).

¹⁰ [Nye trafikkavtaler på Østlandet \(jernbanedirektoratet.no\)](#)

If considered necessary, further information and explanations may also be given in a meeting.

Yours sincerely

Cecilie Taule Fjordbakk
Deputy Director General

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This document is signed electronically and has therefore no handwritten signature

Attachments