



ARAF public consultation on international passenger transport services involving domestic services

FS Italiane position paper

Ferrovie dello Stato Italiane (FS Italiane) welcomes the ARAF initiative to launch a public consultation on international passenger transport services involving domestic services.

The FS Italiane Group is active in Italy and in other European and global markets in the field of railway passenger and freight transport services, railway infrastructure management, railway engineering, road public transport and other railway related activities.

In France we are active in the international conventional passenger services with Thello (a joint venture between Trenitalia and Veolia-Transdev). Moreover FS Italiane is interested to access the French rail network as soon as it will be allowed by French Law.

This paper explains our position on the issue raised in the consultation.



Question 1: How do you understand the regulatory framework? Does the draft presented below appear to respect the spirit of Directive 2007/58/EC and/or national texts (Transport Code and Decree No. 2010-932)?

Opinion on the Sections 1 and 2 of the Authority draft document

We suggest to the Authority to define in the document when the economic equilibrium of a PSC is compromised. This would clarify that not every impact on a PSC should be considered to compromise its economic equilibrium.

Such clarification is very important in France given the size of the PSC that since December 2010 has been put in place between the French Government and SNCF covering nearly all conventional (not-high speed) long distance passenger services. As a consequence every new conventional service could activate the assessment of the economic equilibrium of the PSC.

Section 3 aims to describe the procedures followed by the Authority to verify the international nature of the service.

Question 2: Do you think the procedures are clear, complete and compatible with your operations?

Please note the typo about the deadline for the Minister in the English version of the draft document (two months instead of one month).

Question 3: Is it desirable to fix a deadline by which the applying railway undertaking must refer a case to the Authority?

As for the applying railway undertaking to fix a deadline is not necessary as it is its interest to refer the case in due time. On the other hand, in order to set a time-scale compatible with the operational restrictions of the service, it is very important to fix a deadline to refer the case to the Authority by any interested railway undertaking.



Question 4: Is a fixed time-scale like that described above desirable? Do you think the one-month deadline is sufficient?

Yes, a deadline of one month for the other interested railways is sufficient.

Other issues on the procedure regarding the principal purpose test

We suggest to accord to the applying railway undertaking the faculty to ask the Authority the review of its decision. The introduction of such faculty should not prevent the right to appeal the Authority decisions set by Article 2134-3 of the Transport Code.

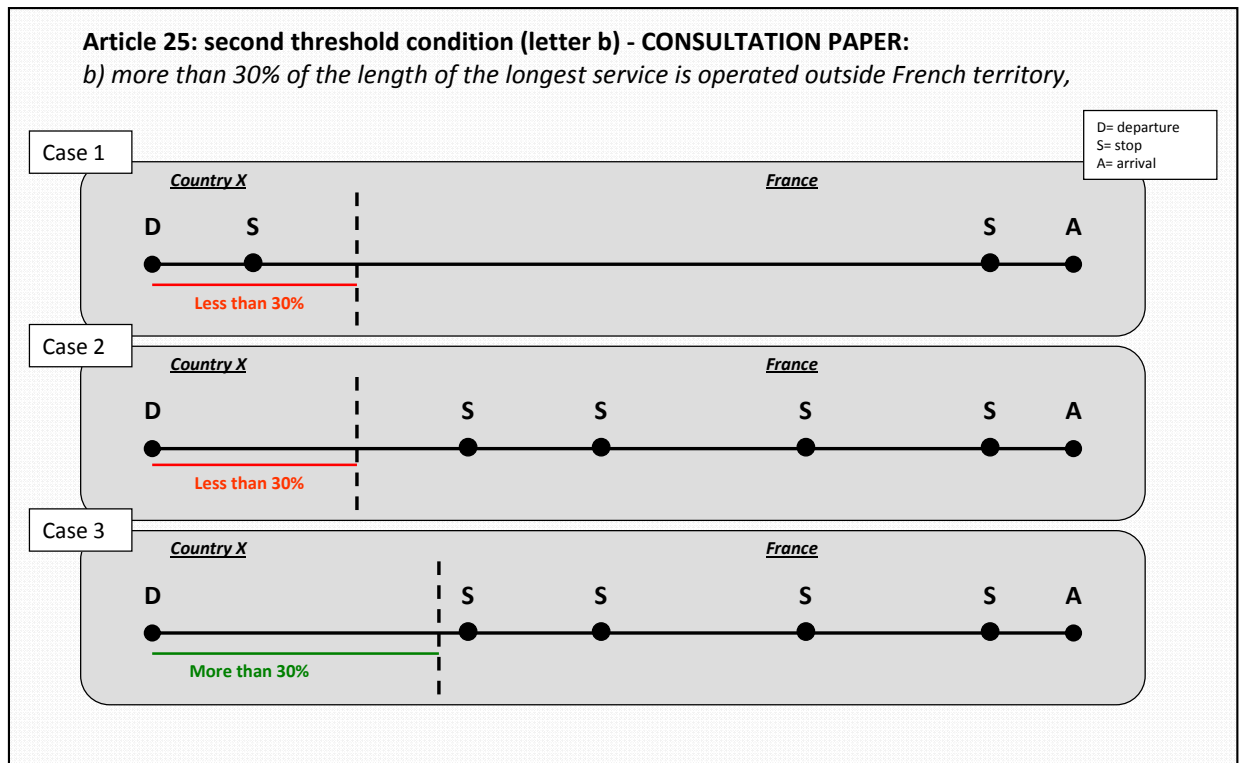
Question 5: Do you think the approach chosen in Articles 25 and 26 is appropriate? Are the threshold conditions suggested in Article 25 sufficient? Do you think the criteria set out in Article 26 are appropriate? What other, if any, criteria should be taken into consideration? Should the criteria be organised in order of priority?

The approach to set a two-tier system is appropriate as it combines legal certainty and flexibility. However, in order to grant more flexibility to the system, the Authority could consider verified the international nature of the service also when two of the three threshold conditions are satisfied.

Going to the single conditions set out in Article 25 we think that the second one (letter b) refers to a purely geographical element (the portion of the service operated outside the French territory) and it's not in line with the aim to investigate the principal purpose of the service. The picture 1 shows three cases of application of the condition as drafted in the consultation paper.



PICTURE 1



In both cases 1 and 2 the condition (b) is not satisfied even if in the case 1 is evident the aim to provide an international services. On the contrary case 3 would be compliant

In our opinion condition (b) should be removed or changed.

If the Authority aims to keep in Article 25 a criteria based on the length, rather than the length of the service operated outside French territory it would be better to refer to the length of the longest domestic service.

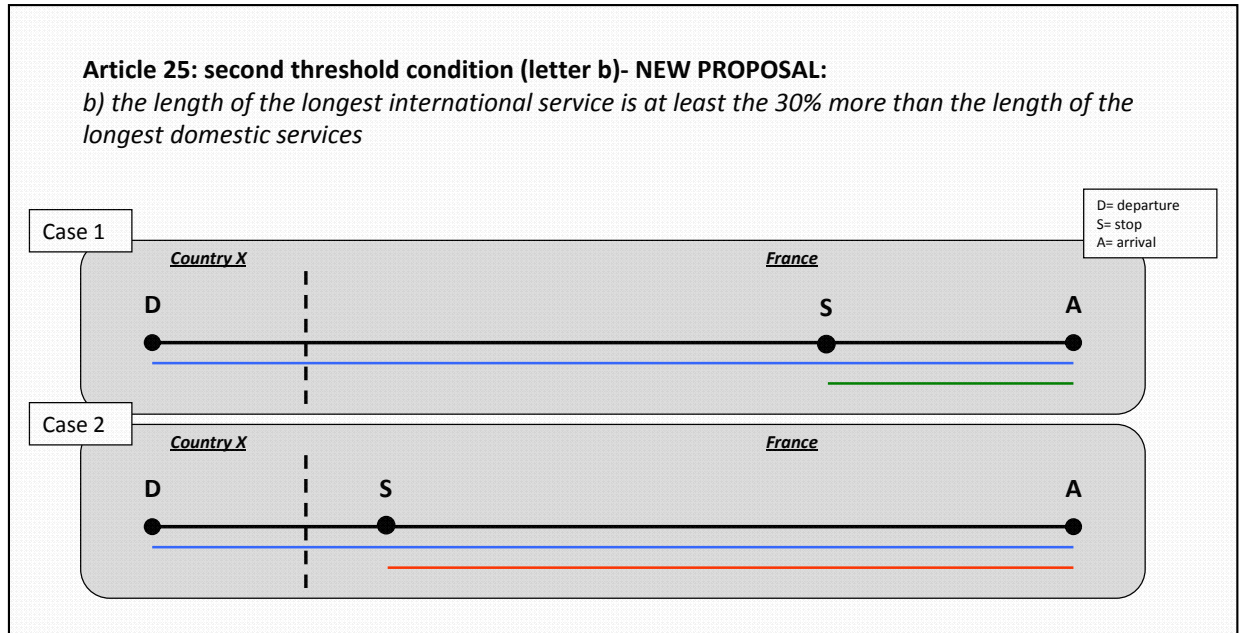
A draft for this alternative solution could be:

b) the length of the longest international service is at least the 30% more than the length of the longest domestic services,

The picture 2 shows two cases of application of the condition as re-drafted.



PICTURE 2



The length of the longest domestic service, compared to the length of the longest international service, seems to be a more reliable element to assess the international nature of the specific service.

As for the criteria set out in Article 26 we suggest to take into account also the type of rolling stock that the applying railway undertaking aims to use for the services.

Question 6: What do you think is an appropriate period of validity of the Authority's decision and what monitoring measures would you suggest?

The validity of the Authority's decision should be at least five years (same time frame proposed to be set by Article 21).

As monitoring measure the Authority may ask the applying railway undertaking an annual report containing the data to be provided according to Article 27.



Section 3 aims to describe the procedures followed by the Authority to evaluate whether the economic equilibrium of a public service contract is compromised.

Question 7: Do you think the procedures are clear, complete and compatible with your operations?

Please note the typo about the number of the section recalled before the question (Section 3 instead of Section 4)

In our opinion the obligation imposed by the Decree 2010-932 to the applying railway undertaking to inform the relevant transport organising authority is a not justified administrative burden.

Question 8: If the analysis of the Authority concludes that the economic equilibrium of a public service contract will be compromised, do you think it is desirable for the Authority to recommend restrictions in its decision? If yes, what types of restrictions can be put in place? (Restricting the number of marketable tickets on domestic routes, a ban on some stops, etc.).

Yes. Any restriction should be strictly recommended by the Authority.

Other issues on the procedure regarding the test of the PSC economic equilibrium

We suggest to accord to the applying railway undertaking the faculty to ask to the Authority the review of its decision. The introduction of such faculty should not prevent the right to appeal the Authority decisions set by Article 2134-3 of the Transport Code.

Question 9: What time frame should be used for verifying that the public service contract is not compromised, particularly in terms of the expiration of the contract?

We agree about the five years time frame proposed in Article 38.



Question 10: Do you think that the suggested criteria are relevant? What other aspects should be taken into account?

We suggest that the Authority takes into account also the type of rolling stock that the applying railway undertaking aims to use for the services as it is an indicator of the qualitative nature of the service planned.

Question 11: What do you think is an appropriate period of validity of the Authority's decision and what monitoring measures would you suggest?

The validity of the Authority's decision should be set in at least five years.

As monitoring measure the Authority may ask the applying railway undertaking an annual report containing the data to be provided according to Article 46.