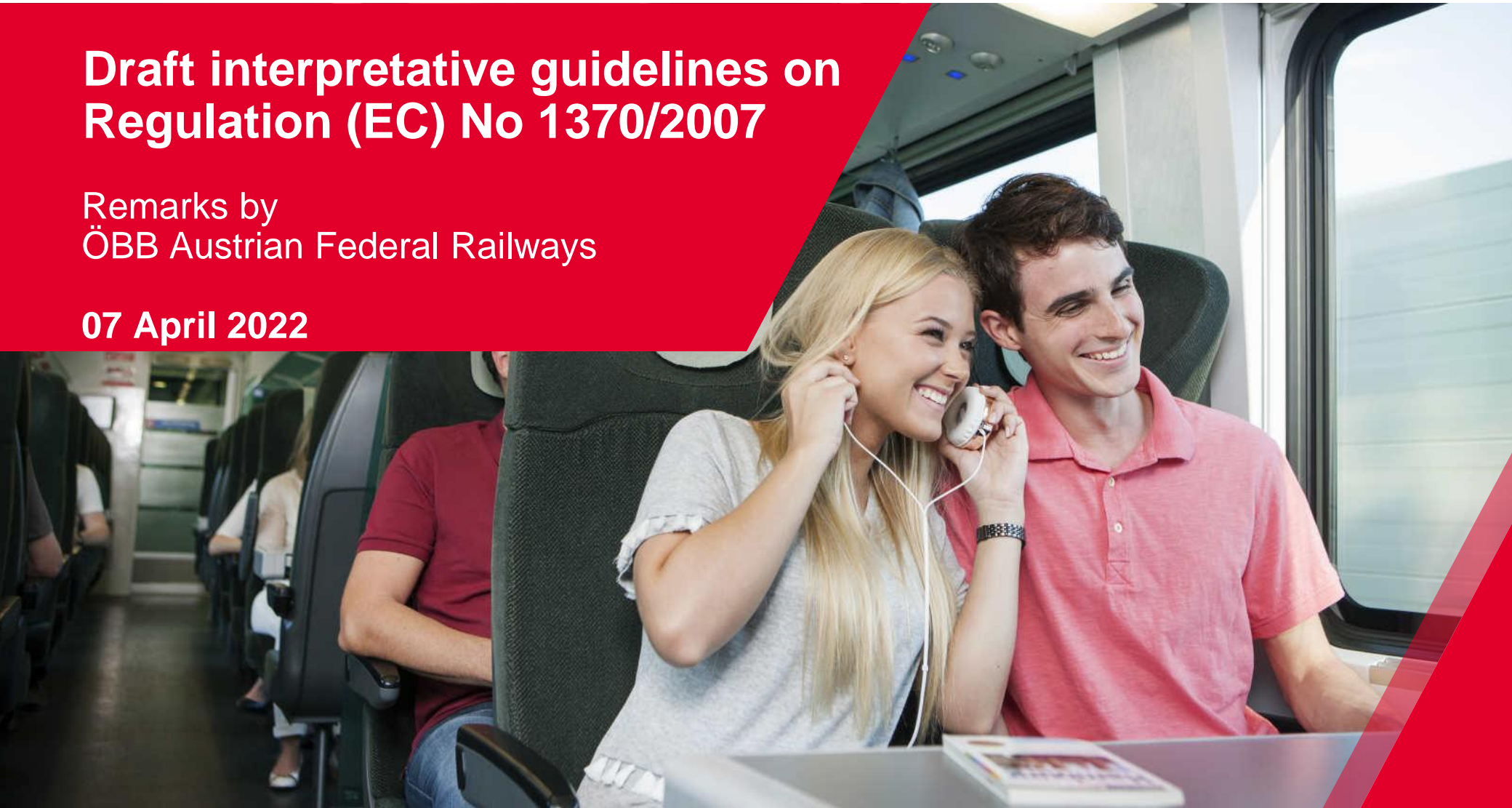


# Draft interpretative guidelines on Regulation (EC) No 1370/2007

Remarks by  
ÖBB Austrian Federal Railways

07 April 2022



- 1. Questions on specific points of the Draft Guidelines**
- 2. Political remarks**

# Questions on specific points of the Draft Guidelines

by Michael Zellhofer, legal expert, ÖBB-Holding

*Article 1(2). Application of Regulation (EC) No 1370/2007 to international public transport services*

- Highly welcomed statements in the Draft Guidelines and also in the Rail Action Plan presented by the Commission in Mid December 2021 to booster cross-boarder (including night train) PSO-services
- Specific interplay between each MS's public transport policy documents and the "Agreement" between MS to be observed?
- Would it be possible for one MS to finance cross-boarder PSO-services to a higher extent than the stretch of the line on its territory (provided of course the other MS does recognize the public service status of the proposed service on its own territory)?

*General principles and definition of public service obligations*

- Competent authorities are required to apply Article 2 point (e) and Article 2a of the PSO-Regulation => how do Art 14 TFEU and Protocol No 26 annexed to the TFEU come into play?

*Consistency with the objectives of Member States' public transport policy*

- Who is to be consulted and in which phase(s)? Do the Draft Guidelines imply that additional consultations *after* the publication of public transport policy documents are needed?

*Existence of a real need for public service obligations*

- The Judgements *SNCM* and *Analir* – what is their relevance specifically for land transport/passenger rail?

*Ex ante assessment of the demand for public transport services*

- Analysis of the market failure => does the PSO-Regulation require a "*market failure test/analysis*"?

*Selection of an approach which is least harmful to the functioning of the internal market and least restrictive for the fundamental freedoms*

- How can this interpretation be aligned with Article 91 TFEU, according to which the development of the common transport policy (including, in the freedom to provide services) is reserved for the secondary EU legislation?
- Introduction of a "stricter" principle of proportionality compared to Article 2a(1)(2) of the PSO Regulation?

*Possibility to group cost-covering and non-cost-covering services in the public service contract*

- How does Recital 9 of Reg 2016/2338 fit into the Commission's interpretation, stating that "*Public service obligations should be in line with public transport policy. However, this does not entitle the competent authorities to receive a specific amount of funding.*"

*Performance based direct award pursuant to Art 5 (4a):*

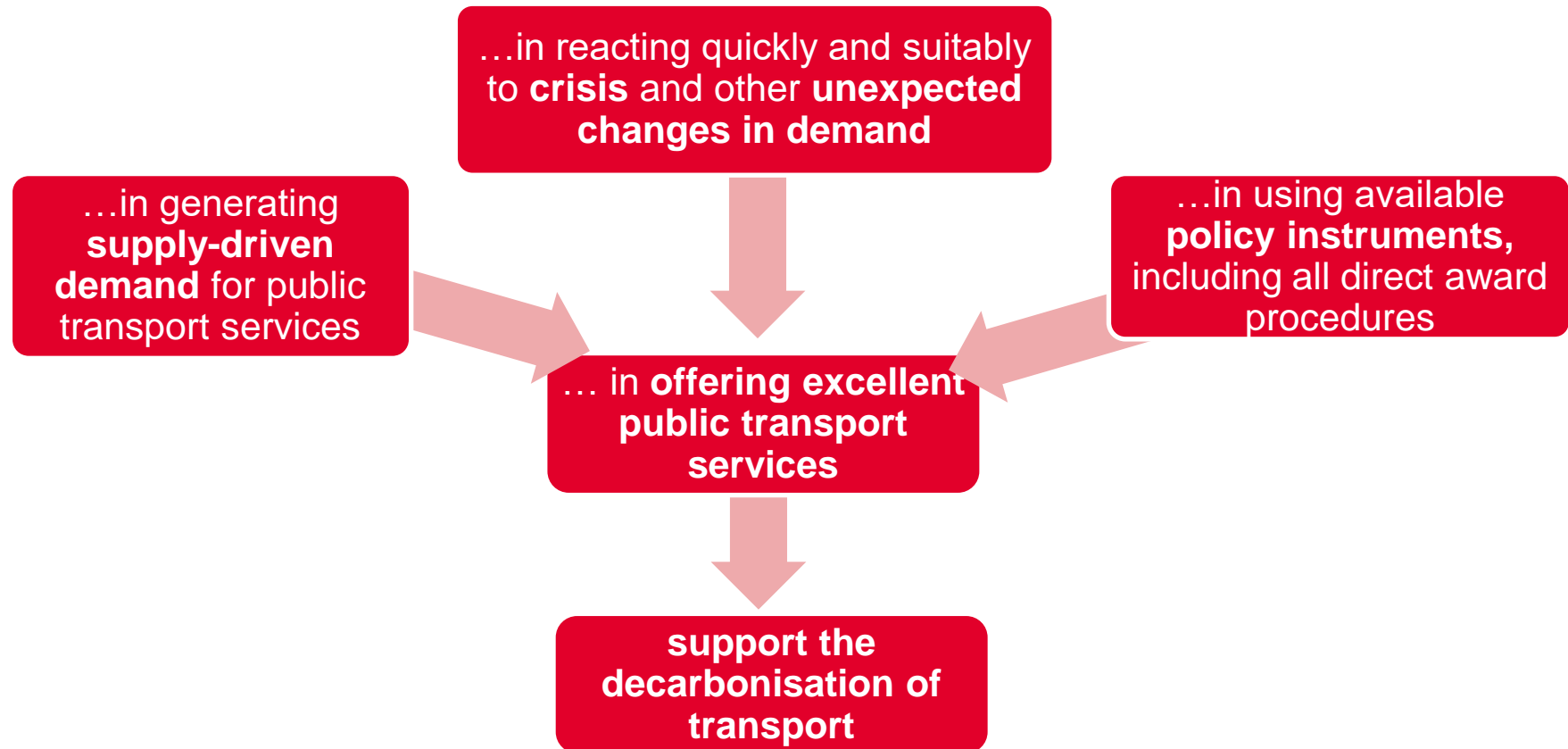
- Wording "where it [the competent authority] considers that the direct award is justified by (...)" not mentioned and not further elaborated on in the Draft Guidelines  
- not relevant for interpreting the provision?
- “Justification”: (hypothetical) comparison between the results of a hypothetical tender and the direct award considered by the competent authority required by Article 5(4a)?

## Political remarks

by Iga Niznik, Corporate Affairs, ÖBB-Holding



## PSO regime: support competent authorities...

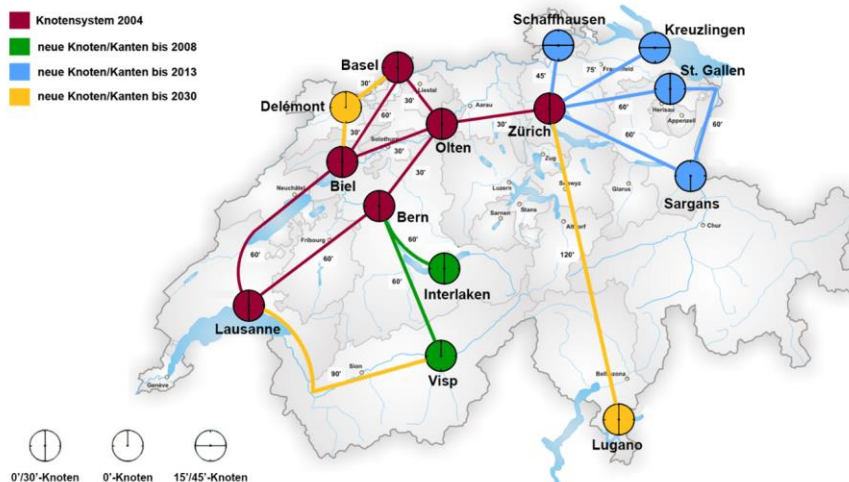


# Offer generates demand. Example 1: Switzerland.

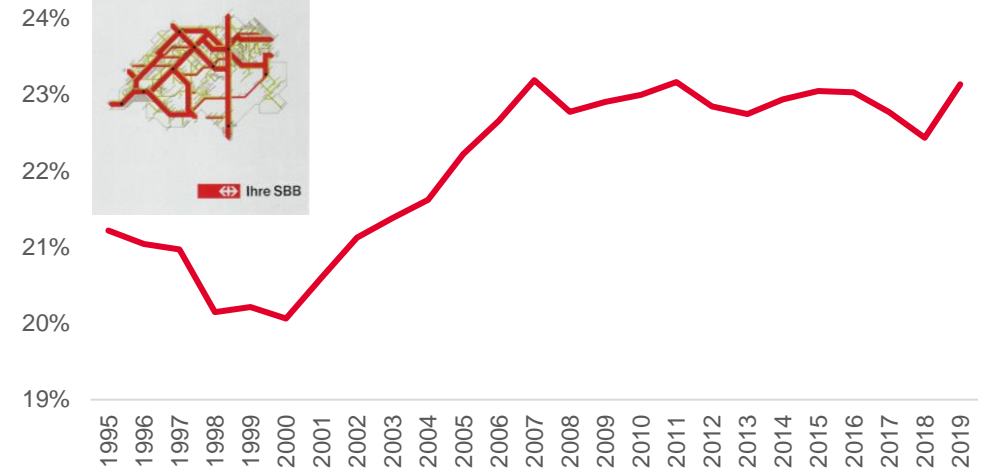
Based on a commitment to public transport and the associated **investments in infrastructure and operation**, Switzerland created one of the best public transport networks. For years, the railway program “Bahn 2000” has been constantly improving the public transport offer in Switzerland:

- Competitive travel times
- Integrated clockface services connecting every Swiss locality
- Synchronized network of bus and train

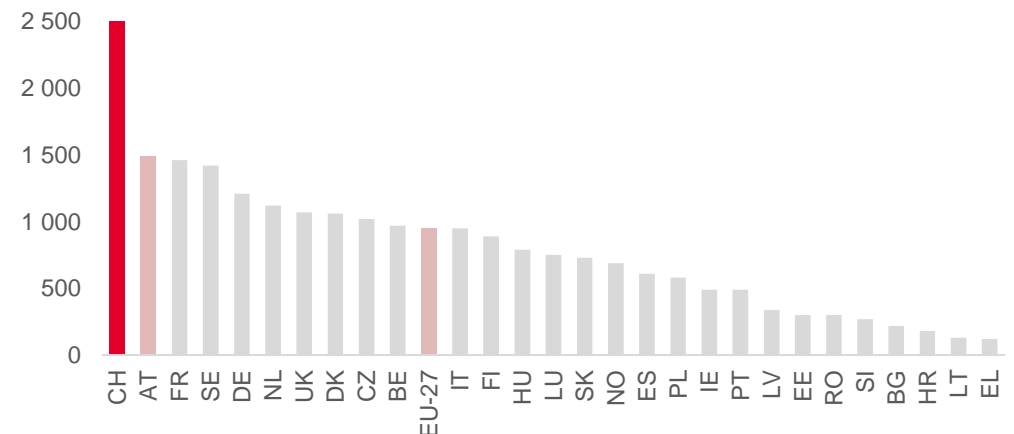
## Node system until its full expansion in 2030



modal split of public transport  
(in % of the transport capacity, share of rail, bus and tram)



Railroad kilometres per inhabitant



# Offer generates demand. Example 2: Austria.

**Regional Railway “Zillertalbahn”:** In the years before Covid, improvements in services brought passenger growth of over **80% in 14 years**. The reason for this is the improved offer:

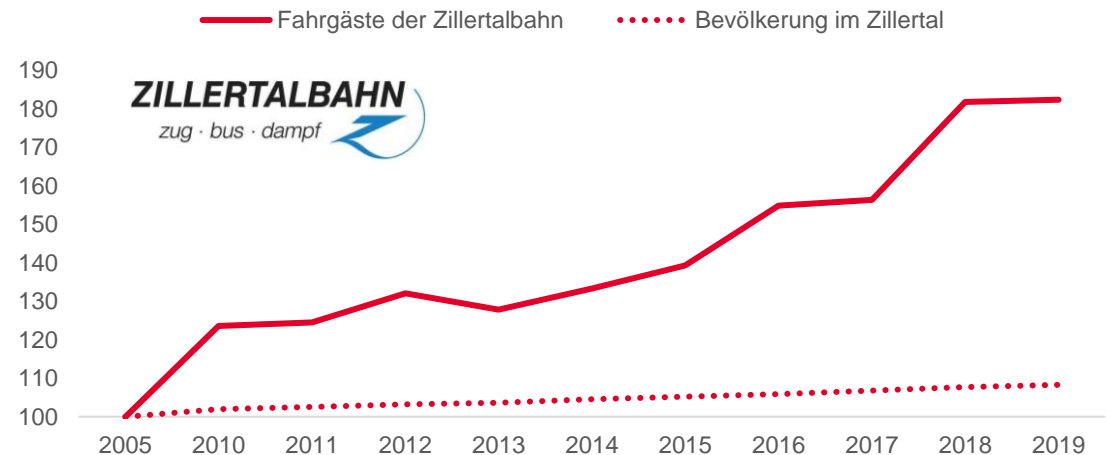
- Introduction of **integrated clockface timetable**
- **Travel time reduction** through infrastructure upgrade
- **Shorter transfer times** to regional means of transport
- Improvement of **connections** to long-distance rail

A similar trend, although not quite as pronounced, can be observed on the **Mariazell Railway**. Continuous improvements in services brought passenger growth of almost **16% in 5 years**. Decisive factors:

- Investment in modern, PRM compatible and air-conditioned **rolling stock**
- **Expansion of the offer** – more frequent services in the morning hours, alignment with school hours, expansion to the evening hours

## Development of passengers and inhabitants in Zillertal valley

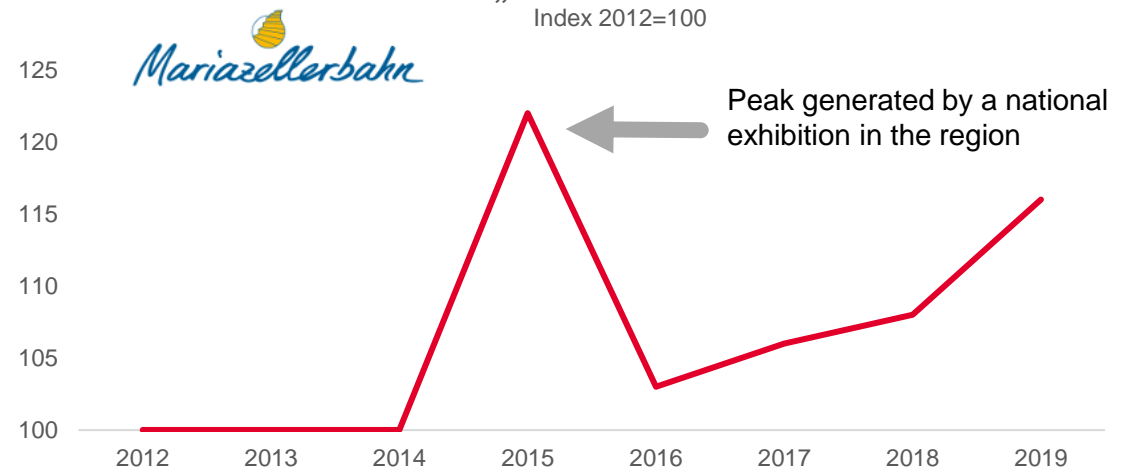
Index 2005=100



## Development of passengers of the regional railway

„Mariazellerbahn“

Index 2012=100



# Direct Award – an important instrument in most Member States

**Share of PSO in total transport services, by type of award, 2018**  
in % of total passenger kilometres; as far as available



\*Relevant changes in UK

Source: EC 2021 – 7<sup>th</sup> Rail Market Monitor

In most EU countries, the majority of transport services are provided within the framework of transport service contracts. With the exception of Bulgaria, Germany and Sweden, transport service contracts have been awarded almost exclusively directly in the recent past.

## Conclusions & questions

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- Timeline for revised non-paper?
- Informal feedback prior to publication in the Official Journal?

**Thank you for your  
attention!**



HEUTE. FÜR MORGEN. FÜR UNS.