



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

25 January 2024*

(Reference for a preliminary ruling – Transport – Regulation (EC) No 1370/2007 – Public passenger transport services by rail and by road – Public service contracts – Public service obligations – Public service compensation – Article 4(1)(b) – Mandatory content of public service contracts – Parameters for calculating public service compensation – Determination of prior, objective and transparent parameters – Absence of competitive tendering procedure – Application of the rules for calculating compensation contained in the annex to Regulation (EC) No 1370/2007 – Conditions laid down by national legislation for the payment of compensation – Determination of the amount of compensation in the law approving the State budget for the year concerned and payment of that amount to the competent national authority – Setting parameters for calculating compensation by reference to general rules)

In Case C-390/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Okrazhen sad – Burgas (Regional Court, Burgas, Bulgaria), made by decision of 7 June 2022, received at the Court on 14 June 2022, in the proceedings

Obshtina Pomorie

v

‘ANHIALO AVTO’ OOD,

THE COURT (Fifth Chamber),

composed of E. Regan (Rapporteur), President of the Chamber, Z. Csehi, M. Ilešič, I. Jarukaitis and D. Gratsias, Judges,

Advocate General: A. Rantos,

Registrar: R. Stefanova-Kamisheva, Administrator,

having regard to the written procedure and further to the hearing on 21 June 2023,

after considering the observations submitted on behalf of:

– Obshtina Pomorie, by Y. Boshnakov, advokat,

* Language of the case: Bulgarian.

– the Bulgarian Government, by T. Mitova and L. Zaharieva, acting as Agents,
– the European Commission, by P. Messina, E. Rousseva and F. Tomat, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 5 October 2023,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ 2007 L 315, p. 1), in particular Article 4(1)(b)(i) thereof.
- 2 The request has been made in proceedings between Obshtina Pomorie (Municipality of Pomorie, Bulgaria) and ‘ANHIALO AVTO’ OOD (‘Anhialo’), a transport company which holds a public service contract, concerning the compensation payable by that municipality in return for the costs incurred in discharging public service obligations regarding passenger transport by bus.

Legal context

European Union law

- 3 Recitals 9, 27 and 30 of Regulation No 1370/2007 state:

‘(9) ... In order to guarantee the application of the principles of transparency, equal treatment of competing operators and proportionality, when compensation or exclusive rights are granted, it is essential that a public service contract between the competent authority and the chosen public service operator defines the nature of the public service obligations and the agreed reward. The form or designation of the contract may vary according to the legal systems of the Member States.

...

(27) The compensation granted by competent authorities to cover the costs incurred in discharging public service obligations should be calculated in a way that prevents overcompensation. Where a competent authority plans to award a public service contract without putting it out to competitive tender, it should also respect detailed rules ensuring that the amount of compensation is appropriate and reflecting a desire for efficiency and quality of service.

...

(30) Directly awarded public service contracts should be subject to greater transparency.’

4 Article 1 of Regulation No 1370/2007, entitled ‘Purpose and scope’, states, in paragraph 1:

‘The purpose of this Regulation is to define how, in accordance with the rules of Community law, competent authorities may act in the field of public passenger transport to guarantee the provision of services of general interest which are among other things more numerous, safer, of a higher quality or provided at lower cost than those that market forces alone would have allowed.

To this end, this Regulation lays down the conditions under which competent authorities, when imposing or contracting for public service obligations, compensate public service operators for costs incurred and/or grant exclusive rights in return for the discharge of public service obligations.’

5 Article 2 of that regulation, entitled ‘Definitions’, provides:

‘For the purpose of this Regulation:

...

(h) “direct award” means the award of a public service contract to a given public service operator without any prior competitive tendering procedure;

(i) “public service contract” means one or more legally binding acts confirming the agreement between a competent authority and a public service operator to entrust to that public service operator the management and operation of public passenger transport services subject to public service obligations; depending on the law of the Member State, the contract may also consist of a decision adopted by the competent authority:

– taking the form of an individual legislative or regulatory act, or

– containing conditions under which the competent authority itself provides the services or entrusts the provision of such services to an internal operator;

...

(l) “general rule” means a measure which applies without discrimination to all public passenger transport services of the same type in a given geographical area for which a competent authority is responsible;

...’

6 Article 3 of that regulation, entitled ‘Public service contracts and general rules’, provides in paragraph 1:

‘Where a competent authority decides to grant the operator of its choice an exclusive right and/or compensation, of whatever nature, in return for the discharge of public service obligations, it shall do so within the framework of a public service contract.’

- 7 Article 4 of Regulation No 1370/2007, entitled ‘Mandatory content of public service contracts and general rules’, provides in paragraph 1:

‘Public service contracts and general rules shall:

...

- (b) establish in advance, in an objective and transparent manner,
(i) the parameters on the basis of which the compensation payment, if any, is to be calculated;
and
(ii) the nature and extent of any exclusive rights granted,

in a way that prevents overcompensation. In the case of public service contracts awarded in accordance with Article 5(2), (4), (5) and (6), these parameters shall be determined in such a way that no compensation payment may exceed the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations, taking account of revenue relating thereto kept by the public service operator and a reasonable profit;

...’

- 8 Article 5 of that regulation, entitled ‘Award of public service contracts’, provides in paragraph 5:

‘In the event of a disruption of services or the immediate risk of such a situation, the competent authority may take an emergency measure. This emergency measure shall take the form of a direct award or a formal agreement to extend a public service contract or a requirement to provide certain public service obligations. ...’

- 9 Article 6 of that regulation, entitled ‘Public service compensation’, provides in paragraph 1:

‘All compensation connected with a general rule or a public service contract shall comply with the provisions laid down in Article 4, irrespective of how the contract was awarded. All compensation, of whatever nature, connected with a public service contract awarded directly in accordance with Article 5(2), (4), (5) or (6) or connected with a general rule shall also comply with the provisions laid down in the Annex.’

- 10 Point 2 of the annex to Regulation No 1370/2007, entitled ‘Rules applicable to compensation in the cases referred to in Article 6(1)’, is worded as follows:

‘The compensation may not exceed an amount corresponding to the net financial effect equivalent to the total of the effects, positive or negative, of compliance with the public service obligation on the costs and revenue of the public service operator. The effects shall be assessed by comparing the situation where the public service obligation is met with the situation which would have existed if the obligation had not been met. In order to calculate the net financial effect, the competent authority shall be guided by the following scheme:

costs incurred in relation to a public service obligation or a bundle of public service obligations imposed by the competent authority/authorities, contained in a public service contract and/or in a general rule,

minus any positive financial effects generated within the network operated under the public service obligation(s) in question,

minus receipts from tariff or any other revenue generated while fulfilling the public service obligation(s) in question,

plus a reasonable profit,

equals net financial effect.’

Bulgarian law

The Law on Road Traffic

- 11 Article 4 of the final provisions of the Zakon za avtomobilnite prevozi (Law on Road Traffic) (DV No 82 of 17 September 1999), in the version applicable to the dispute in the main proceedings, states, in paragraphs 1 and 3 thereof:

‘(1) The State budget of the Republic of Bulgaria shall each year include expenditure to:

1. subsidise passenger transport on unprofitable bus routes in urban areas and transport in mountainous and other regions, on a proposal from the Minister for Transport, Information Technology and Communications;

2. compensate for the loss of revenue resulting from the application of the fares provided for in legislative acts in respect of certain categories of passengers.

...

(3) The conditions and procedures for granting the funds referred to in paragraph 1, and also the conditions and procedures for issuing transport documents for the transport of certain categories of passengers provided for in legislative acts, shall be determined in an ordinance adopted by the Council of Ministers on a proposal from the Minister for Transport, Information Technology and Communications.’

Ordinance No 3 of 4 April 2005

- 12 La Naredba no 3 za usloviata i reda za predostavyane na sredstva za subsidirane na prevoza na patnitsite po nerentabilni avtobusni linii vav vatreshnogradskia transport i transporta v planinski i drugi rayoni (Ordinance No 3 on the conditions and procedures for granting funds to subsidise passenger transport on unprofitable bus routes in urban transport and transport in mountainous and other areas) (DV No 33 of 15 April 2005) of 4 April 2005 provided, in Article 1(1):

‘This ordinance lays down the conditions and procedures for granting subsidies provided for in the central budget for urban passenger transport and inter-urban passenger transport in the country’s sparsely populated mountain and border areas.’

The 2015 Ordinance

- 13 La Naredba za usloviata i reda za predostavyane na sredstva za kompensirane na namalenite prihodi ot prilaganeto na tseni za obshtestveni patnicheski prevozi po avtomobilnia transport, predvideni v normativnite aktove za opredeleni kategorii patnitsi, za subsidirane na obstestveni

patnicheski prevozi po nerentabilni avtobusni linii vav vatreshnogradskia transport i transporta v planinski i drugi rayoni i za izdavane na prevozni dokumenti za izvarshvane na prevozite (Ordinance on the conditions and procedures for granting funds for compensating losses of revenue due to the application of tariffs for public passenger transport by road which are provided for in legislative acts in respect of certain categories of passengers, and for subsidising public passenger transport on unprofitable bus routes in urban transport and transport in mountainous and other areas and for issuing transport documents for the provision of transport services) (DV No 51 of 7 July 2015) of 29 March 2015, in the version applicable to the facts in the main proceedings ('the 2015 Ordinance'), provides, in Article 1(1) and (2):

'(1) This ordinance sets out the conditions and procedures for granting the funds provided for in the central budget to compensate and subsidise transport operators which fulfil public service obligations for free and reduced-price passenger transport and for urban and inter-urban passenger transport in mountainous and other sparsely populated areas of the country.

(2) The funds referred to in paragraph 1 shall constitute public service compensation for public passenger transport within the meaning of Regulation [No 1370/2007] and shall be granted subject to the conditions and procedures laid down by that Regulation and the national legislation in force.'

14 Article 2(1) of that ordinance reads as follows:

'The funds referred to in this ordinance shall be granted up to the amount specified in the Law approving the State budget for the year concerned.'

15 Under Article 3(1) and (4) of that ordinance:

'(1) The funds covered by this ordinance shall be granted in the form of targeted transfers from the central budget by means of the electronic budget payment system (SEBRA system). To this end, limits shall be set for municipalities which have complied with the legal procedure for awarding public passenger transport services under Regulation No 1370/2007 and the provisions of Law on public procurement or the Law on concessions, subject to the principles of openness and transparency, free and fair competition, and equal treatment and non-discrimination.

...

(4) The mayors of the municipalities shall remunerate the transport operators on the basis of the transport services actually provided.'

16 Article 55(1) and (2) of that ordinance states:

1. Subsidies for passenger transport shall be granted to transport operators through municipal budgets, up to an amount not exceeding the sum corresponding to the net financial effect of performing the public service obligation.

2. The net financial effect shall be obtained by adding the costs incurred in relation to the public service obligation imposed by the competent authority and contained in a public service contract and/or in a general rule, minus any positive financial effects generated within the network operated under the public service obligation in question, after deduction of tariff income or any other income generated while fulfilling the public service obligation in question, plus a reasonable profit.'

17 Article 56 of the 2015 Ordinance provides:

‘(1) Subsidies shall be granted only to transport operators with which the municipality concerned has concluded contracts which meet the requirements laid down in Regulation No 1370/2007.

(2) The contracts shall necessarily cover the following conditions:

1. the parameters on the basis of which the subsidy is calculated;
2. the nature, extent and scope of any exclusive right granted and the duration of the contract;
3. the mechanisms for determining the costs directly connected with the provision of services, such as staff costs, energy, infrastructure charges, maintenance and repair of public transport vehicles, rolling stock and installations necessary for operating passenger transport services, and also the share of indirect costs connected with the provision of services;
4. the arrangements for distributing the proceeds from the sale of tickets, which may be retained by the public service operator, paid over to the competent authority or shared between them;
5. the amount of the reasonable profit;
6. the obligation on mayors of municipalities and transport operators to carry out effective checks on passenger regularity on subsidised urban and inter-urban transport routes.

...

(4) Where transport operators fail to comply with the terms of the contracts, the mayors of the municipalities may reduce the amount of subsidies and may also suspend the grant thereof.’

The dispute in the main proceedings and the questions referred for a preliminary ruling

18 By decision of 14 August 2013, the Governor of the Burgas oblast (Bulgaria) authorised the mayor of the Municipality of Pomorie to make a direct award, for a period not exceeding six months, of a public service contract, within the meaning of Article 5(5) of Regulation No 1370/2007, for passenger transport by bus on specified routes. The conclusion of such a contract was intended to remedy the interruption of the public passenger transport service on the routes concerned due to the expiry of the contracts previously concluded and the simultaneous closure of the procedure for the award of a new public service contract.

19 On 1 November 2013, on the basis of that decision the Municipality of Pomorie, as the competent local authority, and Anhialo, as the public service operator, concluded a contract under which that operator was entrusted with the operation of the public passenger transport service on the routes concerned (‘the contract at issue’). In accordance with Article 2 of that contract, the term of the contract was to run until the conclusion of the procurement procedure provided for in the law on public procurement. In addition, under Article 5 of that contract, the competent local authority undertook to pay the operator, within the time limits set by the Ministry of Finance, the funds corresponding, where applicable, to a subsidy, in accordance with the national legislation in force, and to compensation for free and reduced-price transport for certain categories of eligible citizens, pursuant to that legislation.

- 20 On 15 January 2019, the contract at issue was terminated following a procedure laid down in the law on public procurement. Since it is common ground that Anhialo supplied the transport services provided for in that contract, that company claimed from the Municipality of Pomorie payment of the compensation due in accordance with that contract for the period from 1 January 2016 to 31 December 2018. The Municipality of Pomorie paid it the sum of 3 690 Bulgarian leva (BGN) (approximately EUR 1 886), which corresponds to the total amount of the funds set and paid by the central budget of the Republic of Bulgaria to that municipality as subsidies for urban and inter-urban transport.
- 21 Contesting the amount of that sum, Anhialo brought an action before the Rayonen sad Pomorie (District Court, Pomorie, Bulgaria). A court-appointed accountant established the net financial effect, within the meaning of the provisions of the annex to Regulation No 1370/2007 and Article 55 of the 2015 Ordinance, for that company over the period in question. That report established that the net financial effect of that company's public service obligation amounted to around BGN 86 000 (approximately EUR 43 800). Before that court, Anhialo requested payment of part of the amount due which remained unpaid, that is to say, BGN 24 931.60 (approximately EUR 12 700).
- 22 By judgment of 8 November 2021, the Rayonen sad Pomorie (District Court, Pomorie) upheld that action. That court considered in particular that the purpose of public service compensation, within the meaning of Regulation No 1370/2007, is to correct the net negative financial effect suffered by the operator for the provision of the public service. It took the view that the Municipality of Pomorie could not argue that Anhialo was not entitled to public service compensation on the ground that the contract at issue did not contain the mandatory conditions referred to in Article 56(2) of the 2015 Ordinance, since that contract had been concluded on 1 November 2013, that is to say, prior to the adoption of that ordinance.
- 23 The Municipality of Pomorie appealed against that judgment to the Okrazhen sad – Burgas (Regional Court, Burgas, Bulgaria), the referring court. It submits that, since Regulation No 1370/2007 has direct effect from the date of its adoption, namely 23 October 2007, the requirements referred to in Article 4(1) thereof are in force from that date and that the fact that they are not included in the contract at issue means there is no basis for paying a subsidy. The Municipality of Pomorie also infers from Article 5 of the contract at issue that its obligation to pay subsidies is not unconditional, but dependent on fulfilment of the conditions laid down in national law. Thus, it cannot be criticised for the fact that, in the absence of payment to the municipal budget of a subsidy from the central State budget, no public service compensation was paid to the transport operators. Finally, the municipality submits that it cannot itself determine the amount of compensation and subsidies and can only apportion the sums allocated to it for this purpose in a targeted manner.
- 24 Anhialo claims before the referring court that, as is apparent from the expert accountant's report, it complied with all the requirements laid down in Regulation No 1370/2007 and in the 2015 Ordinance. It argues that the objection that the State is responsible for the payment of subsidies to the municipality is unfounded. In its view, Article 3(1) of that ordinance provides that responsibility for ensuring that public transport contracts comply with Regulation No 1370/2007 lies entirely with the municipalities. Accordingly, the grant of subsidies from the central State budget depends solely on the municipality concerned and on its compliance with the legal requirements relating to the award of public service contracts. Therefore, the Municipality of

Pomorie, which is required to provide public transport in its territory, is still liable to pay the full amount of the public service compensation to the public service operator concerned, regardless of whether a subsidy was granted or not.

- 25 The referring court notes that the 2015 Ordinance was adopted on the basis of the Law on road traffic, in the version applicable to the main proceedings, in particular Article 4(1) of the final provisions thereof, and that Article 2(1) of that ordinance provides that the funds are to be granted up to the amount specified in the Law approving the State budget for the year concerned. It also states that Article 56(1) of that ordinance provides that subsidies are to be granted only to public service operators with whom the municipality concerned has concluded contracts which meet the requirements laid down in Regulation No 1370/2007. The national legislation is interpreted by the competent authorities as requiring, for the payment of public service compensation, that that compensation be provided for by that law and paid to the competent authority. However, Regulation No 1370/2007, in particular Article 6(1) thereof, does not contain such a requirement as regards the payment of public service compensation.
- 26 Consequently, the referring court seeks to ascertain whether that regulation allows a Member State to lay down additional requirements and restrictions for the payment of public service compensation to a transport operator in return for the discharge by the latter of a public service obligation.
- 27 Furthermore, the contract at issue does not define the parameters on the basis of which the public service compensation is calculated, but refers in that regard to national law. In the view of the referring court, since Article 4(1)(b)(i) of Regulation No 1370/2007 provides that ‘public service contracts and general rules’ establish those parameters, the use of the conjunction ‘and’ could be interpreted as meaning that it is sufficient if the parameters on the basis of which the compensation payment is calculated are defined in general rules, that is to say, those adopted within the framework of the 2015 Ordinance and, previously, Ordinance No 3 of 4 April 2005. Another interpretation would be to take the view that those parameters must necessarily be set, not only in general rules, but also in the public service contract, within the meaning of that regulation.
- 28 In those circumstances, the Okrazhen sad – Burgas (Regional Court, Burgas) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Do the provisions of Regulation [No 1370/2007] permit a Member State to introduce, by way of national legislation or internal rules, additional requirements and restrictions in relation to the payment of compensation to a transport undertaking for the discharge of a public service obligation which are not provided for in that regulation?
- (2) Does Article 4(1)(b)(i) of Regulation [No 1370/2007] permit the payment of compensation to the transport undertaking for the discharge of a public service obligation where the parameters on the basis of which the compensation [payment] is to be calculated were not established in advance in a public service contract, but in general rules, and the net financial effect or the amount of compensation due was determined in accordance with the mechanism provided for in [that regulation]?’

The first question

- 29 By its first question, the referring court asks, in essence, whether Article 4(1)(b) of Regulation No 1370/2007 must be interpreted as precluding legislation of a Member State under which compensation paid by the competent authority to a public service operator in connection with the performance of a public service contract may be granted to that operator only if the funds corresponding to that compensation were provided for in the law on the budget of that Member State for the year concerned and were paid to that authority.
- 30 It must be borne in mind that, according to the first subparagraph of Article 1(1) of Regulation No 1370/2007, the purpose of that regulation is to define how, in accordance with the rules of EU law, competent authorities may act in the field of public passenger transport to guarantee the provision of services of general interest which are, among other things, more numerous, safer, of a higher quality or provided at lower cost than those that market forces alone would have allowed.
- 31 To that end, the regulation defines, in accordance with the second subparagraph of Article 1(1) of Regulation No 1370/2007, the conditions under which competent authorities, where they impose public service obligations or entrust the performance of such obligations to an undertaking, compensate public service operators for costs incurred and/or grant exclusive rights in return for the discharge of public service obligations.
- 32 Regulation No 1370/2007 thus contains special rules laying down detailed rules for intervention in general public procurement schemes, the purpose of which is to establish a legal framework for the grant of compensation and/or exclusive rights for the costs incurred in discharging public service obligations (judgment of 21 December 2023, *DOBELES AUTOBUSU PARKS and Others*, C-421/22, EU:C:2023:1028, paragraph 35 and the case-law cited).
- 33 Among the provisions forming that legal framework, Article 3(1) of that regulation provides that, where a competent authority of a Member State decides to grant the operator of its choice an exclusive right and/or public service compensation, of whatever nature, in return for the discharge of public service obligations, it does so within the framework of a public service contract, that provision thus laying down the principle that public service obligations and the associated compensation must be established in the context of such a contract (judgment of 21 December 2023, *DOBELES AUTOBUSU PARKS and Others*, C-421/22, EU:C:2023:1028, paragraph 36 and the case-law cited).
- 34 It follows from the express terms of the first sentence of Article 6(1) of Regulation No 1370/2007 that compensation connected to such a public service contract, irrespective of how the contract was awarded, must comply with the requirements laid down in Article 4 of that regulation, which determines its mandatory content.
- 35 Furthermore, according to the second sentence of Article 6(1) of Regulation No 1370/2007, where compensation is awarded in the absence of any competitive tendering procedure, it must also comply with the detailed provisions laid down in the annex to Regulation No 1370/2007 concerning the calculation of the compensation, which are intended, as is apparent from recital 27 thereof, to ensure both the adequacy of the amount of compensation and the efficiency and quality of the public service. That is the case, inter alia, of a public service contract, as in the case in the main proceedings, awarded directly, within the meaning of Article 2(h) of that regulation, by the competent local authority to a public service operator, as an emergency measure, under Article 5(5) of that regulation.

- 36 First, Article 4(1)(b)(i) of Regulation No 1370/2007 states that public service contracts, irrespective of how they are concluded, must establish in advance, in an objective and transparent manner, the parameters on the basis of which the compensation, where provided for, is to be calculated.
- 37 Second, where the public service contract has been concluded without any competitive tendering procedure, the second sentence of Article 4(1)(b) of that regulation, read in conjunction with point 2 of the annex thereto, provides that those parameters must be determined in such a way that the compensation does not exceed an amount corresponding to the net financial effect for the public service operator of discharging the public service obligations. That amount is obtained by deducting from the costs incurred in discharging such obligations the positive financial effects of those obligations and the tariff revenue generated while discharging the public service obligations, and by increasing the result obtained by an amount representing the ‘reasonable profit’ which any operator is entitled to expect.
- 38 As is apparent from recitals 9 and 30 of Regulation No 1370/2007, such obligations concerning the consideration agreed in a public service contract are intended to ensure compliance with the principles of equal treatment, proportionality and transparency, the latter principle being all the more important where the public service contract grants compensation in the absence of a competitive tendering procedure.
- 39 It is true that it follows from Article 4(1)(b) of Regulation No 1370/2007 that the competent authorities, in so far as they are required to set the parameters for calculating the compensation payable to a public service operator, necessarily enjoy a certain margin of discretion in designing a compensation scheme (see, to that effect, judgment of 21 December 2023, *DOBELES AUTOBUSU PARKS and Others*, C-421/22, EU:C:2023:1028, paragraph 42), which is, however, strictly regulated by the second sentence of Article 4(1)(b) and by the detailed rules set out in the annex to that regulation where, as in the case in the main proceedings, compensation is granted in the context of a public service contract in the absence of a competitive tendering procedure.
- 40 However, the fact remains that, according to the case-law of the Court, the Member States, when exercising the discretion conferred on them by a regulation, which, under the second paragraph of Article 288 TFEU, is binding in its entirety and directly applicable in all Member States, must use that discretion within the limits of the provisions of that regulation, in order not to undermine the content and objectives of that regulation (see, to that effect, judgment of 28 April 2022, *Meta Platforms Ireland*, C-319/20, EU:C:2022:322, paragraphs 58 and 60 and the case-law cited).
- 41 As the Advocate General observed, in essence, in points 43 and 44 of his Opinion, compensation, the amount of which paid to a public service operator under a public service contract itself depends on the amount of the funds determined each year by the law approving the budget of the Member State concerned and on the subsequent payment of those funds to the competent local authority, is based on calculation parameters which disregard the requirements arising from Article 4(1)(b) of Regulation No 1370/2007, read in conjunction with point 2 of the annex thereto. Contrary to the requirements of those provisions, such parameters, first, are not established in advance, in an objective and transparent manner, and, second, have no connection with the net financial effect on the public transport operator of discharging the public service obligation.

- 42 It must therefore be held that such a compensation scheme does not enable the public service operator concerned to determine with all the necessary precision, when concluding the public service contract, the compensation which it is entitled to receive from the competent authority in return for the discharge of its public service obligations.
- 43 To that extent, that scheme may, on account of the uncertainty due to the lack of transparency as regards the amount of compensation which may be paid, undermine the objective pursued by Regulation No 1370/2007, which consists, as is apparent from paragraph 30 of the present judgment, in defining the conditions for the grant of compensation in order to ensure, on a level playing field, the provision of both efficient and financially profitable public passenger transport services, with a view to achieving a high level of quality of those services (judgment of 21 December 2023, *DOBELES AUTOBUSU PARKS and Others*, C-421/22, EU:C:2023:1028, paragraph 45 and the case-law cited).
- 44 It follows that such a scheme exceeds the discretion granted to the Member States by Article 4(1)(b) of Regulation No 1370/2007 for the purposes of determining public service compensation schemes.
- 45 Consequently, the answer to the first question is that Article 4(1)(b) of Regulation No 1370/2007 must be interpreted as precluding legislation of a Member State under which compensation paid by the competent authority to a public service operator in connection with the performance of a public service contract may be granted to that operator only if the funds corresponding to that compensation were provided for by the law on the budget of that Member State for the year in question and were paid to that authority.

The second question

- 46 By its second question, the referring court asks, in essence, whether Article 4(1)(b) of Regulation No 1370/2007 must be interpreted as precluding legislation of a Member State which allows the payment, by the competent authority, of compensation to a public service operator in the performance of a public service contract where the parameters on the basis of which that compensation is calculated are not laid down in that contract but are fixed in advance, in an objective and transparent manner, in general rules which determine the amount of that compensation.
- 47 According to settled case-law, for the purposes of interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, to that effect, judgment of 24 October 2019, *Autorità Garante della Concorrenza e del Mercato (Direct award of a public service contract)*, C-515/18, EU:C:2019:893, paragraph 23).
- 48 As regards, in the first place, the wording of Article 4(1)(b) of Regulation No 1370/2007, it should be noted that, according to those provisions, public service contracts ‘and’ general rules must, in accordance with point (i) of that provision, establish in advance, in an objective and transparent manner, the parameters on the basis of which the public service compensation, where provided for, is to be calculated.

- 49 It is clear from those terms that the acts making it possible to determine the amount of compensation include not only public service contracts but also general rules, which are defined in Article 2(l) of Regulation No 1370/2007 as measures which apply without discrimination to all public passenger transport services of the same type in a given geographical area for which a competent authority is responsible.
- 50 It follows that Article 4(1)(b) of Regulation No 1370/2007 does not require that all the parameters for calculating the compensation provided for in a public service contract be defined in such a contract, but only that those parameters be determined in advance, in an objective and transparent manner, whether in a public service contract or in general rules.
- 51 That interpretation is supported, in the second place, by the context of that provision. Article 2(i) of Regulation No 1370/2007 provides that the concept of ‘public service contract’ covers legally binding acts confirming the agreement between a competent authority and a public service operator to entrust to the latter the management and operation of public passenger transport services subject to public service obligations. That provision further states that, depending on the law of the Member States, the public service contract may also consist of a decision adopted by the competent authority taking the form of an individual legislative or regulatory act, or containing conditions under which the competent authority itself provides the services or entrusts the provision of such services to an internal operator.
- 52 It follows that, as recital 9 of Regulation No 1370/2007 also confirms, in view of the differences between the legal systems of the Member States, the concept of a ‘public service contract’, within the meaning of that regulation, must be taken in a broad sense and covers not only acts of a contractual nature, but also acts of a different nature, in particular legislative and regulatory acts. It follows that such a contract may consist of a combination of a general legal act awarding the management of a public service to an operator and an administrative act detailing the requirements relating to that service, thus confirming, as the Advocate General stated in point 54 of his Opinion, that the parameters for calculating the public service compensation may be determined by reference to general rules of a legislative or regulatory nature.
- 53 As regards, in the third place, the objectives pursued by Regulation No 1370/2007, it should be recalled that, as has been pointed out in paragraphs 36 and 38 of the present judgment, the objective of transparency is of fundamental importance as regards the parameters for calculating public service compensation, in particular where such compensation is not granted in the context of a competitive procedure.
- 54 It is not necessary, in order to achieve that objective, for all the parameters for calculating the compensation to be laid down in the public service contract concluded between the competent national authority and the public service operator. Indeed, since the general rules relating to such parameters are, in accordance with Article 4(1)(b)(i) of Regulation No 1370/2007, established in advance in an objective and transparent manner and that they also comply, in the absence of a competitive tendering procedure, with the detailed rules set out in the annex to that regulation, a public service operator is in a position to determine, with all the requisite precision, the amount of compensation due to it for discharging its public service obligations.
- 55 Consequently, the answer to the second question is that Article 4(1)(b) of Regulation No 1370/2007 must be interpreted as not precluding legislation of a Member State which allows the payment by the competent authority of compensation to a public service operator in the performance of a public service contract where the parameters on the basis of which that

compensation is calculated are not laid down in that contract but are fixed in advance, in an objective and transparent manner, in general rules which determine the amount of that compensation.

Costs

- 56 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

- 1. Article 4(1)(b) of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70**

must be interpreted as precluding legislation of a Member State under which compensation paid by the competent authority to a public service operator in connection with the performance of a public service contract may be granted to that operator only if the funds corresponding to that compensation were provided for by the law on the budget of that Member State for the year in question and were paid to that authority.

- 2. Article 4(1)(b) of Regulation No 1370/2007**

must be interpreted as not precluding legislation of a Member State which allows the payment by the competent authority of compensation to a public service operator in the performance of a public service contract where the parameters on the basis of which that compensation is calculated are not laid down in that contract but are fixed in advance, in an objective and transparent manner, in general rules which determine the amount of that compensation.

[Signatures]