

# **Passenger transport by rail, road, inland waterway: competition, public service exigences and contracts (repeal. Regulations (EEC) No 1191/69 and (EEC) No 1107/70)**

2000/0212(COD) - 26/07/2000 - Legislative proposal

**PURPOSE:** To develop harmonised provisions on awarding public service contracts in passenger transport by rail, road and inland waterways.

**PROPOSED ACT:** Regulation of the European Parliament and of the Council.

**CONTENT:** The European Commission is seeking to overhaul provisions governing the awarding of public service contracts for passenger transport by repealing legislation dating back to 1969. Commission justification for its proposal is the increasing trend, in some though not all of the Member States, to open the public transport sector to competitive elements. Currently, a patchwork of national regulations govern the extent to which public transport is open to competition, which has a detrimental effect on economic operators conducting cross-border activities. The Commission points out that by early 2000, at least nine companies, from the public and private sectors, were acting as public transport operators in more than one Member State and that in only four of the EU Member States was the provision of public transport services restricted to home-country operators. The cross-border aspect of providing public transport services is what has prompted the Commission to present this proposal.

The main objective of the proposal is to establish legal certainty for public transport operators originating in one Member State but who wish to establish themselves in a second Member State. To achieve this objective, the proposal sets out common rules on:

- the use of contracts between authorities and operators;
- compensating operators for the fulfilment of public service requirements;
- awarding exclusive rights;
- managing competition;
- transparency.

Essential to understanding the present proposal is the Commission's wish to introduce the key concept of "controlled competition", which is half-way between complete deregulation and a closed market. Based on the conclusions of various studies the Commission points out that whilst complete deregulation offers the cheapest fares it also affects the level of service provided. The number of people using a bus, for example, dropped (in certain metropolitan areas) by 20% where complete deregulation was the case. On the other hand, in cases where the market was completely closed to any form of competition the fares were the highest recorded. Given the social and environmental importance of public transport, therefore, the Commission is proposing that Community legislation relating to the harmonisation of public transport contracts be based on "controlled competition".

Significantly, the proposed Regulation does not set goals for public services nor does it seek to set out rules on what service operators are expected to provide. It does not lay down institutional structures for managing public transport and it does not prevent Member States from deciding which bodies should act as the competent authorities when awarding contracts. Lastly, the Regulation does not replace any of the obligations relating to Directives 92/50 and 93/38 on public procurement. In other words, where one of those Directives already requires a contract to be tendered, it will be those Directives, rather than the new Regulation, that determine the manner in which it should be done.

As far as Public Service Contracts are concerned, the proposal set out the following provisions:

- As a general rule, public sector transport should be governed by public service contracts. There are some exceptions to this rule.
- Normally, these public service contracts should be awarded by competitive tendering even though there are some circumstances in which service contracts will not have to be competitively tendered.
- In certain cases, mostly in the case of the railway sector, the authorities will be able to award public service contracts directly to a given operator.
- The establishment a simplified competitive procedure – the quality comparison, which may be used in cases where a contract includes an exclusive right but no new public money.
- The establishment of mechanisms to protect employees in cases where they have a new employer.

Chapter V on Procedural Issues establishes rules governing compensation and sets out the basic procedures for tendering and quality comparisons.