

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) - 21/02/2002 - Modified legislative proposal

The Commission has drafted an amended proposal which accept some of Parliament's amendments. Parliament's most far-reaching amendment would protect local public transport services from competition, if the competent authority decides to provide the services itself. The Commission recognises that, as a general rule, Community law leaves it up to the Member States to decide whether they provide public services themselves, directly or indirectly (through other public entities), or whether they entrust their provision to a third party. The amendment adopted by Parliament, however, goes much further. It would permit competent authorities to grant themselves exclusive rights to provide local public transport. Such exclusive rights distort competition and could still be challenged under the competition rules of the Treaty. The Commission therefore has included new articles which permit competent authorities to decide to provide bus services themselves for a long transition period of eight years, without the obligation to start the phasing out of these arrangements after four years. Beyond that period, authorities may only continue these arrangements on condition that no exclusive right is awarded. This means that other operators will then be free to offer additional, commercially viable services to the citizens of the area. Authorities should in such cases introduce appropriate general rules to protect quality and integration. Such a continuation of arrangements would need the approval of the Commission. On some of the other key points made by Parliament, the Commission responds as follows: - a new article extends authorities' ability to protect employees when contracts change hands. The Commission's original proposal limited this to cases where there is an exclusive right. The new text removes that limitation. The Commission does not accept Parliament's amendment which would make this provision compulsory. - The Commission accepts Parliament's amendment which increases the standard maximum duration of contracts from five years to eight years (bus)) and fifteen years (rail). Long contracts are needed to pay for long-lived investment. Particularly in rail, investments can take longer than 15 years to pay for themselves. Parliament's amendment would solve this problem by making new operators indemnify their predecessors. However, this also favours incumbents, and limits the transfer of risk to operators. The Commission does not accept this part of the amendment. Instead, the new text, like the original, provides for even longer rail contracts where this is necessary for investment. competent authorities can still introduce non-discriminatory indemnity provisions if they wish. - On the direct award of public service contracts, the Commission accepts Parliament's amendment increasing the general "de minimis" exception from an annual value of EUR 400 000 to EUR 1 million. It increases the exception for small networks to EUR 3 million. The second change will particularly affect rural areas.