

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	2000/0212(COD) Procedure completed
Passenger transport by rail, road, inland waterway: competition, public service exigences and contracts (repeal. Regulations (EEC) No 1191/69 and (EEC) No 1107/70)	
Amended by <a href="#">2012/0344(NLE)</a> Amended by <a href="#">2013/0028(COD)</a>	
Subject 2.40.02 Public services, of general interest, universal service 3.20.02 Rail transport: passengers and freight	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>TRAN</b> Transport and Tourism		
	Former committee responsible		
	<b>RETT</b> Regional Policy, Transport and Tourism		21/11/2000
		GUE/NGL <a href="#">MEIJER Erik</a>	
	Former committee for opinion		
	<b>ENVI</b> Environment, Public Health, Consumer Policy	The committee decided not to give an opinion.	
	<b>JURI</b> Legal Affairs and Internal Market		22/11/2000
	PPE-DE <a href="#">BRADBOURN Philip</a>		
<b>ECON</b> Economic and Monetary Affairs		08/01/2001	
	V/ALE <a href="#">JONCKHEER Pierre</a>		
<b>EMPL</b> Employment and Social Affairs	The committee decided not to give an opinion.		
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2818</a>	18/09/2007
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2772</a>	11/12/2006
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2735</a>	08/06/2006
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2721</a>	27/03/2006
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2695</a>	01/12/2005
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2420</a>	25/03/2002
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2324</a>	20/12/2000
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2292</a>	02/10/2000
European Commission	Commission DG	Commissioner	
	Energy and Transport	BARROT Jacques	

Key events			
25/07/2000	Legislative proposal published	COM(2000)0007	Summary

02/10/2000	Debate in Council	<a href="#">2292</a>	
13/11/2000	Committee referral announced in Parliament, 1st reading		
20/12/2000	Debate in Council	<a href="#">2324</a>	Summary
10/10/2001	Vote in committee, 1st reading		Summary
09/10/2001	Committee report tabled for plenary, 1st reading	<a href="#">A5-0364/2001</a>	
13/11/2001	Debate in Parliament		
14/11/2001	Decision by Parliament, 1st reading	<a href="#">T5-0597/2001</a>	Summary
20/02/2002	Modified legislative proposal published	<a href="#">COM(2002)0107</a>	Summary
25/03/2002	Debate in Council	<a href="#">2420</a>	
19/07/2005	Modified legislative proposal published	<a href="#">COM(2005)0319</a>	Summary
01/12/2005	Debate in Council	<a href="#">2695</a>	
27/03/2006	Debate in Council	<a href="#">2721</a>	Summary
10/12/2006	Council position published	<a href="#">13736/1/2006</a>	Summary
18/01/2007	Committee referral announced in Parliament, 2nd reading		
27/03/2007	Vote in committee, 2nd reading		Summary
04/04/2007	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A6-0131/2007</a>	
09/05/2007	Debate in Parliament		
10/05/2007	Results of vote in Parliament		
10/05/2007	Decision by Parliament, 2nd reading	<a href="#">T6-0174/2007</a>	Summary
18/09/2007	Act approved by Council, 2nd reading		
23/10/2007	Final act signed		
23/10/2007	End of procedure in Parliament		
03/12/2007	Final act published in Official Journal		

## Technical information

Procedure reference	2000/0212(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Amended by <a href="#">2012/0344(NLE)</a> Amended by <a href="#">2013/0028(COD)</a>
Legal basis	EC Treaty (after Amsterdam) EC 071; EC Treaty (after Amsterdam) EC 073; EC Treaty (after Amsterdam) EC 089
Stage reached in procedure	Procedure completed

Documentation gateway					
Legislative proposal		<a href="#">COM(2000)0007</a> <a href="#">OJ C 365 19.12.2000, p. 0169 E</a>	26/07/2000	EC	Summary
Committee draft report		PE286.664/2	15/03/2001	EP	
Committee of the Regions: opinion		<a href="#">CDR0292/2000</a> <a href="#">OJ C 253 12.09.2001, p. 0009</a>	04/04/2001	CofR	
Committee opinion	JURI	PE294.933/DEF	08/05/2001	EP	
Committee draft report		PE286.664	21/05/2001	EP	
Economic and Social Committee: opinion, report		<a href="#">CES0703/2001</a> <a href="#">OJ C 221 07.08.2001, p. 0031</a>	30/05/2001	ESC	
Committee opinion	ECON	PE295.987/DEF	12/06/2001	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A5-0364/2001</a>	10/10/2001	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T5-0597/2001</a> <a href="#">OJ C 140 13.06.2002, p. 0164-0282 E</a>	14/11/2001	EP	Summary
Modified legislative proposal		<a href="#">COM(2002)0107</a> <a href="#">OJ C 151 25.06.2002, p. 0146 E</a>	21/02/2002	EC	Summary
Modified legislative proposal		<a href="#">COM(2005)0319</a>	20/07/2005	EC	Summary
Committee of the Regions: opinion		<a href="#">CDR0255/2005</a>	16/02/2006	CofR	
Council statement on its position		<a href="#">15864/2006</a>	04/12/2006	CSL	
Council position		<a href="#">13736/1/2006</a>	11/12/2006	CSL	Summary
Commission communication on Council's position		<a href="#">COM(2006)0805</a>	12/12/2006	EC	Summary
Committee draft report		PE384.259	12/02/2007	EP	
Amendments tabled in committee		<a href="#">PE386.324</a>	08/03/2007	EP	
Committee recommendation tabled for plenary, 2nd reading		<a href="#">A6-0131/2007</a>	04/04/2007	EP	
Text adopted by Parliament, 2nd reading		<a href="#">T6-0174/2007</a>	10/05/2007	EP	Summary
Commission response to text adopted in plenary		<a href="#">SP(2007)3179</a>	14/06/2007	EC	
Commission opinion on Parliament's position at 2nd reading		<a href="#">COM(2007)0460</a>	25/07/2007	EC	Summary
Draft final act		<a href="#">03623/2007/LEX</a>	23/10/2007	CSL	

Additional information	
National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

Final act

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

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**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.

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

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The Council held a policy debate on public service obligations in passenger transport by rail, road and inland waterway. Winding up the debate, the Presidency noted that there was a convergence of views on a number of very positive points: the fact that the Commission's proposal for a Regulation guarantees a fundamental role for public passenger services as services of general interest; - the need to recognise that the performance of public service requirements sometimes calls for financial compensation which must be clearly found to be compatible with the Treaty; - the importance of social aspects needing to be taken into account in public service contract award procedures. Environmental aspects were also mentioned. During this discussion, some Member States thought it ill-advised to open up the specific area of rail passenger transport to competition at a time when a similar approach had just been agreed regarding international rail freight carriage.

Several Member States argued the importance of ensuring the permanence of integrated services where there was a recognised need. Several Member States also thought that the responsible authorities should be able to opt for the direct management of such services. Several Member States were likewise insistent on the need to provide for more flexible provisions which would take into account both local situations and subsidiarity. Finally, it was noted that a number of Member States had, with the responsible authorities and operators concerned, set up public transport services on the basis of existing Community law which called for major investment, particularly from operators. These Member States thought that the duration of contracts should be extended and longer transitional periods provided for in order that a fair return on investment for the benefit of society at large might be guaranteed.?

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

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The committee adopted the report by Erik MEIJER (EUL/NGL, NL) amending the Commission proposal under the codecision procedure (1st reading). The committee felt that a key point was whether there would still be room, in addition to the multinational companies, for area-bound companies (often publicly-owned) in towns and regions. If the Commission proposal were adopted as it stood, the consequences for transport in these cities could be serious, as the area-bound companies often had a "public service" dimension, were important for the expansion of tram and metro services and had a key role to play in winning the "competition" with the car. The committee felt that more weight should be given to the principle of subsidiarity. As responsibility for local transport on the ground lay with local authorities, a competent authority should continue to have the right to provide transport services itself or with its own undertakings without an invitation to tender. Another amendment was adopted pointing out that longer contract periods created greater planning security for both operators and the authorities. Longer contracts could also result in more favourable tenders. To minimise the distortion of competition while protecting the quality of services, the duration of public service contracts should be up to eight years for bus services and fifteen years for rail services. Finally, the committee decided that competent authorities should be allowed to directly award public service contracts with an estimated average annual value of up to EUR 1 million (the Commission had proposed EUR 400 000). If all public services requirements were incorporated in a single contract, the ceiling should be EUR 3 million (rather than EUR 800 000 as stipulated in the Commission proposal).?

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

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The European Parliament adopted the report by Mr Erik MEIJER (EUL/NGL, NL) by 317 votes in favour, 224 against and 7 abstentions. (Please refer to the previous text). In addition, the Parliament adopted various other amendments on the question of social dumping. Transport operators who flout their responsibilities should not be selected for public contracts. Furthermore, where the conclusion of a public contract might lead to a change of operator, the selected operator should be obliged to offer employees appointed before the contract was awarded the same rights to which they were entitled before that operator took over the business. ?

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

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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.?

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

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The development of an increasingly competitive market for the inland public transport sector requires a regulatory framework for public service obligations which is transparent and which can prevent compensation from being classed as State aid. This paper looks at developments in

the inland public transport sector over the last three decades and examines the principles governing services of general interest as well as the Altmark ruling delivered by the European Court of Justice in 2003. It presents a revised proposal to establish a framework regulating those interventions by the competent authorities ? award of exclusive rights and compensation for public service obligations ? which are most likely to affect competition and trade between the Member States.

The paper recalls that in July 2000, the Commission proposed a Regulation based on the principles of contractual relations between the authority and the operator and competitive tendering for public service contracts to make their award transparent and non-discriminatory. This proposal initially provided for a number of exceptions in which the public authority could, under certain conditions, decide to award public service contracts directly without an invitation to tender. The European Parliament adopted a position at first reading which contained more than 100 amendments. The most significant of these had the effect of protecting local public transport services from competition if the competent authority decides to provide the service itself on an exclusive basis. This position was determined by compliance with a reciprocity clause which the Commission accepted in its amended version of 2002 by including it for the transitional period. Discussions in the Council quickly showed that a sufficient majority was unlikely to emerge and that there was no real political will to see the proposal succeed. Given the vast differences between their respective attempts at opening up the market, the Member States soon expressed disagreement as to the actual extent of opening up inland transport.

The Member States had profound differences on the key elements of the proposal:

-certain States engaged at various stages in opening-up all or part of their inland public transport sectors were generally in favour of the proposal, although some regretted that it did not go far enough and left too many possibilities for the direct award of public service contracts;

-other States, especially some of those where there are still major public monopolies in the sector, were against the proposal and for the status quo;

-Member States were also divided on the scope of the Regulation and on the modes of transport that it should cover (only buses or all urban modes including trams and undergrounds? Should it apply to railways or not?).

The paper goes on to discuss the consequences of the Altmark judgment in the transport sector as well as regards public services in general, apart from inland transport.

The commission states that the new proposal is simpler and more flexible and that greater account be taken of the subsidiarity principle. The main points are as follows:

-The simplification concerns in particular the mechanisms for awarding public service contracts. One consequence is the disappearance of the formulas proposed in the 2002 proposal, which allowed public service contracts to be awarded on the basis of complicated mechanisms for comparing quality without a formal invitation to tender. The new proposal now provides for only two main methods of awarding contracts: invitations to tender and direct award.

-This same desire for simplification guided the drafting of the Annex on the rules applicable to compensation in the absence of an invitation to tender. This Annex aims to establish objective, transparent and realistic methods based on well established principles of Community law (no overcompensation or cross-subsidisation, separation of accounts, verification of costs, promotion of quality and efficiency).

-The objective of greater flexibility is seen in particular in the recognition of the competent authorities? option of providing public transport services themselves, or via an internal operator, without a competitive tendering procedure. This possibility is, however, strictly dependent on greater transparency and the establishment of precise criteria applicable to compensation for public service obligations. It is also subject to a condition concerning the geographical jurisdiction of the activity of the competent authority or its internal operator.

-Recognition of this option of self-provision (government operated system) of transport services, which can apply whatever the mode concerned (bus, tram, underground, railway, integrated services, etc.), is accompanied by the reduction of the list of exceptions to the obligation to put public service contracts out to competitive tendering (removal in particular of exceptions in favour of direct award of underground or light rail transit services). The exception concerning integrated services had already been abolished in the 2002 amended proposal following the request by the European Parliament. Accordingly, only regional and long-distance rail remain exempted from the obligation.

-The objective is also apparent in the flexibility proposed for the duration of contracts and in the extension of the transitional period for rail transport services.

-Greater recognition of the subsidiarity principle is seen in the approach to the definition of regional or long-distance transport and the maintenance of thresholds below which direct award is possible.

-The Commission is also giving the public authorities more freedom to organise competitive tendering in detail. For example, it has not fixed the list of selection criteria that the competent authorities have to observe when awarding public service contracts. It has also decided not to lay down, for the inland public transport sector only, specific rules on subcontracting or abuse of dominant position, which, as the discussions to date have revealed, would have created undue inflexibility.

-Similarly, the Commission has opted in its new proposal not to intervene in the definition of an adequate standard of public transport or passenger information. Its aim is to give greater recognition to the diversity of approaches in this area while establishing a coherent framework.

This new proposal, which reflects the Commission?s desire to strengthen the principles of fairness, transparency and access to information, will guarantee legal certainty while preserving the specific characteristics of services in the general interest, an essential component of the European model.

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

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The Council held a policy debate on a revised proposal for a regulation of the European Parliament and of the Council on public passenger transport services by rail and by road and took note of the progress report presented by the Presidency.

The Council instructed the Permanent Representatives Committee to examine the proposal further in the light of Council's policy debate with a view to reaching political agreement at the Transport, Telecommunications and Energy (TTE) Council on 8 and 9 June.

To give structure to the policy debate, the Presidency prepared a questionnaire focusing on the following issues:

1) The sort of transport services for which competent authorities could be allowed to grant direct awards: in the light of the statement entered in the Council minutes of 5 December 2005, delegations agreed with the possibility of allowing direct awards for regional and long-distance rail transport as proposed in the draft regulation. A significant number of delegations, supported by the Commission, agreed to extend direct awards to all heavy rail services, thus including suburban rail and integrated rail networks.

Although some delegations were in favour, other delegations, including the Commission, rejected the possibility of the extension of direct awards to all public passenger transport contracts arguing that it would seriously undermine the objective of the proposed regulation.

A limited number of delegations could support the idea of allowing Member States to take measures against transport operators that had been granted a direct award elsewhere and that wanted to participate in a tendering procedure.

2) The need to allow existing contracts to continue until their expiry date, in particular as regards the manner in which these contracts have been allocated and their duration: many delegations agreed to allow public service contracts which had been awarded after a fair competitive tendering procedure to continue until their date of expiry. In addition, several delegations suggested to allowing continuation until expiry of contracts that had not been tendered, some of them mentioning that special attention must be given to the need for a solution for long term contracts.

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The Council notes that today's European market for public passenger transport services, where operators are no longer exclusively national, regional or local, is in need of a new set of rules and that any ensuing level playing field will promote safe, efficient and high-quality passenger transport services. According to the Council its Common Position strikes a balance between authorities' ability to determine the way they organise public transport themselves (regulated competition) and the need to achieve a new legislative framework that takes account of the specificities of existing public transport systems.

In summary, therefore, the Common Position is as follows:

**Scope:** The Regulation's scope will cover those public passenger transport services by rail and by road for which the public authorities compensate operators for the costs incurred and/or grant exclusive rights in return for the discharge of public service obligations. The Council is of the view that restricting the scope to local transport (as proposed by Parliament) would no longer be appropriate in light of the evolving European market for public transport. Further, the Council has decided to re-introduce public passenger transport services by inland waterways ? should a Member State wish to do so.

Further, the Common Position clarifies how contracts will apply. Firstly, contracts for public passenger transport services by bus or by tram must be awarded in accordance with the procedures set out in the EU's Public Procurement Directives ? unless such contracts take the form of service concession contracts. If a public service contract entails a risk for the operator then this Regulation will apply. If not, then the Public Procurement Directives will apply. Secondly, the Common Position explicitly excludes public works concessions from the scope of the Regulation stating that the Public Procurement Directives provide the applicable regimes for this kind of contract. On a final point, the Council allows the authorities to exclude, from the Regulation's scope, general rules on financial compensation for public service obligations which set maximum tariffs for pupils, apprentices and persons with reduced mobility.

**Direct award:** The Council is of the opinion that offering competent authorities the freedom to choose between competitive tender and direct award is the best guarantee of improved public transport quality and efficiency. The Council, therefore maintains the four derogations whereby authorities may award direct contracts. At the same time, however, the Common Position introduces several modifications as regard the exact modalities.

**Internal operators:** The Common Position accepts that the competent authorities, which choose not to put their public transport services out to tender, may provide these services themselves or award them directly to a third party over which they exercise control ? the so-called ?internal operator? principle. The Council agrees with Parliament's first reading and the Commission's revised proposal that, in order to avoid the risk of distorting competition, an internal operator should in principle not participate in tendering procedures outside the area of authority from which it received its direct award. While supporting the overall concept of an internal operator the Common Position also adds a number of provisions to take account of national and local transport systems.

**Minor Contracts:** The Council leaves unchanged the thresholds below which the public service contracts may be directly awarded ? as was proposed by the Commission in light of Parliament's first reading. Taking account of Parliamentary amendments, the Council has agreed that additional thresholds for SME's operating not more than 20 vehicles should be included in the Regulation. In this case, direct awards are allowed if the average annual value of the public service contracts remains below EUR 1,7 million or if less than 500 000 km of public passenger transport are provided.

**Emergency situations:** The Council supports the Commission proposal (inspired Parliament at first reading) to award contracts directly in the event of a disruption of services or an immediate risk of such a situation. The emergency measures can take the form of a direct award, a formal agreement to extend a public service contract or a requirement to discharge certain public service obligations.

**Heavy Rail:** The Common Position allows authorities to award public service contracts directly, in the case of all heavy rail ? unless specifically prohibited by national law. This avoids difficulties which could arise if a distinction needs to be made between long-distance and regional rail on the one hand and (sub)urban rail, on the other. The Swedish Delegation made statement on this matter, which is attached to the Common Position.

**Duration of contracts:** For rail and other track-based modes the Council has kept the proposed duration of fifteen years. For coach and bus services, the Council has extended the contract duration proposed by the Commission from eight to ten years. As a way of counterbalancing the extension of direct award to all heavy rail, the initial duration of directly awarded heavy rail contract is not allowed to exceed ten years. The

Council has also kept the duration of public service contract to be extended by a maximum of 50% where necessary for investment and allowed for a 50% extension for contracts in the outermost regions if justified. Finally, the Common Position allows the duration of a contract to be extended by even more than 50% if justified by the amortisation of capital in relation to exceptional infrastructure, rolling stock or vehicular investment.

Social standards and quality of service: The Council supports the Commission's approach to allow authorities to define social and quality criteria for public passenger transport services. Further, unlike the Parliament, the Council does not consider it necessary to include a provision whereby selected public service operators would be obliged to grant staff taken on previously to provide services the same rights they would have been entitled to if there had been a transfer within the meaning of Directive 2001/23/EC.

Transparency: The Council welcomes the requirement of competent authorities to conclude a public service contract in return for the discharge of public service obligations. Transparency is considered essential if the risk of distorted competition is to be avoided. Parliament acknowledged the importance of improving transparency at several junctures during its first reading. Thus, with a view to increasing transparency, the Council has introduced an obligation for authorities to forward, at the request of an interested party, their reasoned decisions relating to a directly awarded public service contract and an obligation for authorities to make public, in the case of directly awarded public service contract for transport by rail, certain information within one year of granting the award. The Check delegation made a statement on this matter, which is attached to the Common Position.

Transition: The Council makes several modifications to the transitional arrangement proposed by the Commission.

- Firstly, that the Regulation enter into force three years after its publication. Twelve years thereafter, public service contracts by rail and by road will need to be awarded in accordance with the Regulation.
- Secondly, the Council provides for on single transitional arrangement for road and rail transport.
- Thirdly, rather than a two-phased transition period, the Council chooses a gradual approach allowing authorities to determine for themselves how to manage the transition to the new set of rules for awarding contract. Within six months after the first half of the transition period, Member States will have to provide the Commission with progress reports.

As regards contracts concluded before the entry into force of the Regulation, the Common Position provides for a transitional arrangement that is very much in line with the proposal put forward by Parliament during its first reading.

Other significant issues: The Council agrees: not to lay down specific rules on subcontracting and to phase out Regulation. 1191/69/EEC and 1107/70/EEC rather than to repeal them upon adoption of the Regulation.

To conclude, the Council notes that its common position is based on the 2005 Commission modified proposal. As the Common Position broadly follows the approach of this revised proposal, the Council considers it a good basis for second reading talks with Parliament.

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The Common Position, adopted by qualified majority, makes certain adjustments considered acceptable by the Commission as they do not undermine the goals of legal certainty, transparency, subsidiarity and flexibility.

The Council has extended possibilities for the direct award of rail contracts to all rail transport services with the exception of underground railway and tram services, while at the same time limiting, in principle, the duration of such contracts to ten years. Further, as requested by Parliament, the Council took account of the specific situation of SMEs and revised the level of thresholds applicable to SME's only, enabling the direct award of public service contracts with an annual value of not more than EUR 1.7 million or relating to a maximum of 500 000 km per year to firms operating no more than 20 vehicles. The Council, in agreement with Parliament, confirmed the principle that local authorities are free to choose to launch an invitation to tender or to use an internal operator, particularly for bus, tram and underground railway services. In addition, the Council has:

- enhanced transparency for contracts awarded directly;
- confirmed the introduction of the principle of reciprocity (as requested by Parliament); and
- reached agreement on the arrangements applicable to existing contracts; and
- made provision for longer transitional periods for the application of provisions that apply specifically to the procedures for the award of contracts.

To conclude, therefore, the Commission is of the view that the Council's Common Position reflects the objectives of the Commission's modified proposal and is therefore acceptable to the Commission.

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

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The committee adopted the report by Erik MEIJER (GUE/NGL, NL) amending the Council's common position under the 2nd reading of the codecision procedure:

- Member States should be able to apply the regulation to public passenger transport "by national sea waters";
- the committee reinstated the definition of 'internal operator' as laid down by the Commission in its modified proposal of July 2005;
- the competent authorities should ensure that public service operators are not under-compensated for any losses incurred through complying with public service obligations;



- to avoid over-compensation, "the operator's actual costs shall be deemed to be costs incurred in discharging the public service obligations only if a typical, well-run operator would have incurred these costs in discharging the obligation in question";
- to ensure that railway operators have the financial stability they need to provide public services, contracts should be awarded for a minimum duration of 3 years;
- competent authorities should be able inter alia to penalise or terminate contracts "when operators fail to meet the quality of service or service levels required under the contract";
- where subcontracting takes place, the firm entrusted with a public service contract should be required to perform the majority of the public passenger transport services itself;
- in the case of directly awarded public service contracts, the competent authority shall provide adequate reasons for its decision to award the contract directly;
- whereas the Council had allowed for public service contracts to be awarded directly to SMEs "operating not more than 20 vehicles", the committee changed this to SMEs "employing between 50 and 250 employees". It also said that the average annual value of such contracts could be up to EUR 3 million, rather than EUR 1.7 million as proposed by Council, or could concern the annual provision of up to 1 000 000 km of public passenger transport services rather than up to 500 000 km as proposed by Council;
- the aggregated report on public service obligations which must be published each year by the competent authorities should distinguish between bus transport, rail transport and rail infrastructure and provide information on the type and extent of exclusive rights that have been granted;
- the award of public service contracts by road and by rail should comply with the new regulation within 8 years, rather than 12 years as proposed by the Council;
- the transitional period during which certain types of contracts may continue should be shortened from 30 years to 15;
- the committee introduced a new clause (Article 8a) allowing for the possibility to appeal against decisions with regard to the award of contracts;
- the regulation should enter into force within 18 months rather than 3 years.

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

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The European Parliament adopted the report by Erik MEIJER (GUE/NGL, NL) and made some amendments to the Council's common position. The principal amendments were as follows:

- Member States may apply the Regulation to public passenger transport by inland waterways and, without prejudice to Council Regulation (EEC) No 3577/92 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) national sea waters;
- Parliament reinstated the definition of 'internal operator' as laid down by the Commission in its modified proposal of July 2005"internal operator" means a legally distinct entity over which a competent authority exercises control similar to that exercised over its own departments;
- public service contracts and general rules shall, inter alia, establish the parameters on the basis of which the compensation payment, if any, is to be calculated, and the nature and extent of any exclusive rights granted, in a way that prevents overcompensation;
- tender documents and public service contracts shall indicate, in a transparent manner, whether, and if so to what extent, subcontracting may be considered. If subcontracting takes place, the operator entrusted with the administration and performance of public passenger transport services in accordance with the Regulation shall be required to perform a major part of the public passenger transport services itself. A public service contract covering at the same time design, construction and operation of public passenger transport services may allow full subcontracting for the operation of those services.
- if subcontracting is being considered, the internal operator shall be required to perform the major part of the passenger transport service itself;
- unless prohibited by national law, the competent authorities may decide to award public service contracts directly either where their average annual value is estimated at less than EUR 1 000 000 or where they concern the annual provision of less than 300 000 kilometres of public passenger transport services. In the case of a public service contract directly awarded to a small or medium-sized enterprise operating not more than 23 vehicles, these thresholds may be increased to either an average annual value estimated at less than EUR 2 000 000 or when they concern the annual provision of less than 600 000 kilometres of public passenger transport services;
- Parliament introduced a new clause allowing for the possibility to appeal against decisions with regard to the award of contracts decisions taken in accordance with the rules on awarding public service contracts must be able to be reviewed effectively and rapidly, at the request of any person having an interest in obtaining a particular contract and who has been harmed by an alleged infringement, on the grounds that such decisions have infringed Community law or national rules implementing that law. Where bodies responsible for review procedures are not judicial in character, written reasons for their decisions shall always be given. Furthermore, in such a case, provision must be made so that any alleged illegal measure taken by the review body or any alleged defect in the exercise of the powers conferred on it may be the subject of judicial review or review by another body which is a court or tribunal within the meaning of Article 234 of the EC Treaty and independent of both the contracting authority and the review body;
- the aggregated report on public service obligations which must be published each year by the competent authorities should distinguish between bus transport and rail transport and, if appropriate, provide information on the nature and extent of any exclusive rights granted;
- the award of public service contracts by road and by rail should comply with the new regulation within 10 years, rather than 12 years as proposed by the Council;

-the regulation should enter into force within 24 months rather than 3 years.

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

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The Commission states that it can accept all the amendments adopted by the European Parliament at second reading. It recalls that the dossier has been the subject of interinstitutional negotiations which makes it possible to conclude it at second reading. The amendments adopted by the European Parliament concern technical clarifications and certain slightly more substantial aspects. The opportunities for subcontracting are regulated and limited, to ensure that, in any event, the contractor provides the majority of the transport services. The level of the thresholds for the direct award of transport contracts to small and medium-sized enterprises has been raised slightly from an annual value of EUR 1.7 million to EUR 2 million. Mechanisms which ensure that judicial remedy is possible have been introduced. Lastly, the amendments also reduce the period for entry into force and the transition period for the Regulation from 36 to 24 months and from 12 to 10 years respectively.

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

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**PURPOSE:** to organise the modalities of intervention of the competent authorities in the inland public passenger transport services sector.

**LEGISLATIVE ACT:** Regulation (EC) N° 1370/2007 of the European Parliament and of the Council on public passenger transport services by rail and by road, and repealing Council Regulations (EEC) N° 1191/69 and (EEC) N° 1107/70.

**CONTENT:** the Council adopted a Regulation on public passenger transport services by rail and by road, approving all the amendments proposed by the European Parliament at second reading.

The new legislative framework for public service obligations will replace the set of rules that has been in force since 1969, last amended in 1991. In today's market for public passenger transport services, operators are no longer exclusively national, regional or local, but instead they operate on a European level. A new set of rules is required that takes account of this extensive market for public passenger transport services.

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 notably more numerous, safer, of a higher quality or provided at a 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.

**Scope:** the Regulation shall apply to the national and international operation of public passenger transport services by rail and other track-based modes and by road, except for services that are operated mainly for their historical interest or their tourist value. As requested by the Parliament, Member States may apply this Regulation to public passenger transport by inland waterways and, without prejudice to Council Regulation (EEC) N° 3577/92 on the application of the principle of freedom to provide services to maritime transport within Member States (maritime cabotage), by national sea waters.

**Public service contracts and general rules:** 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. Public service contracts and general rules: (a) clearly define the public service obligations with which the public service operator is to comply, and the geographical areas concerned; (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 overcompensations; (c) determine the arrangements for the allocation of costs connected with the provision of services.

In line with the Parliament's request, the tender documents and public service contracts shall indicate, in a transparent manner, whether, and if so to what extent, subcontracting may be considered. If subcontracting takes place, the operator entrusted with the administration and performance of public passenger transport services in accordance with this Regulation shall be required to perform a major part of the public passenger transport services itself. A public service contract covering design, construction and operation of public passenger transport services simultaneously may allow full subcontracting for the operation of those services. If subcontracting is being considered, the internal operator shall be required to perform the major part of the public passenger transport service itself.

In keeping with the principle of subsidiarity, competent authorities are free to establish social and qualitative criteria in order to maintain and raise quality standards for public service obligations, for instance with regard to minimal working conditions, passenger rights, the needs of persons with reduced mobility, environmental protection, the security of passengers and employees as well as collective agreement obligations, notably in order to avert the risk of social dumping.

**Duration of contracts:** the duration of public service contracts shall be limited and shall not exceed 10 years for coach and bus services and 15 years for passenger transport services by rail or other track-based modes. The duration of public service contracts relating to several modes of transport shall be limited to 15 years if transport by rail or other track-based modes represents more than 50 % of the value of the services in question. If necessary, the duration of the public service contract may be extended by a maximum of 50%.

**Award of public service contracts:** in principle, public service contracts should be the subject of competitive tendering. Authorities are, however, allowed to award contracts directly in four specific cases:

1. if the transport operator is an internal operator, that is a legally distinct entity over which the authority exercises control similar to that exercised over its own departments;
2. if the contracts are defined as minor in terms of thresholds for value or transport kilometres (where their average annual value is estimated at less than EUR 1 000 000, or where they concern the annual provision of less than 300 000 kilometres of public passenger transport services). Higher thresholds are set in the case of small and medium-sized enterprises;

3. emergency situations;
4. heavy rail passenger services, including (sub)urban rail.

Member States shall take all necessary measures to ensure that decisions taken in terms of awarding public service contracts may be reviewed effectively and rapidly, at the request of any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement, on the grounds that such decisions have infringed Community law or national rules implementing that law.

Publication: once a year, each competent authority shall make public an overall report on the public service obligations for which it is responsible, the selected public service operators and the compensation payments and exclusive rights granted to the said public service operators by way of reimbursement. This report shall distinguish between bus transport and rail transport.

Transition: the award of public service contracts by road and by rail shall comply with the new Regulation as from 3 December 2019 (that is, 10 years from the date when the Regulation becomes effective). During this transitional period, Member States shall take measures to avoid serious structural problems in terms of transport capacity.

ENTRY INTO FORCE: 03/12/2009.