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) - 11/12/2006 - Council position

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 Positions 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.