

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) - 23/10/2007 - Final act

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.