

# 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) - 10/05/2007 - Text adopted by Parliament, 2nd reading

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.