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2009

Committee on Transport and Tourism

8.3.2007

PE 386.324v01-00

AMENDMENTS 42-237

Draft recommendation for second reading

(PE 384.259v01-00)

Erik Meijer

Council common position for adopting a regulation of the European Parliament and of the Council on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70

Council common position (13736/1/2006 – C6-0042/2007 – 2000/0212(COD))

Council common position

Amendments by Parliament

Amendment by Emanuel Jardim Fernandes,

Amendment 42
Recital 3 a (new)

(3a) Article 299(2) of the EC Treaty, second subparagraph, stipulates that, taking into account their remoteness from mainland Europe, their insularity and their territorial fragmentation, their small size, their difficult topography and climate, their economic dependence on a few products, and the fact that the permanence and combination of the above factors severely restrain their development, the outermost regions require European transport policy to be adapted under specific measures and hence under this Regulation.

Or. pt

Justification

Application of Article 299(2) TEC.

Amendment by Luis de Grandes Pascual

Amendment 43
Recital 4 a (new)

(4a) This proposal should be adapted in stages in order to harmonise the conditions of access to markets in public passenger transport by coach and bus with a view to safeguarding the ultimate goal of equal competition and reciprocal access to those markets in Member States.

Or. es

Amendment by Erik Meijer, Helmuth Markov

Amendment 44
Recital 4 a (new)

(4a) The competent authorities should integrate environmental factors in the assessment of adequate quality for public passenger transport services, in the determination of selection criteria and in the allocation of public contracts. This should particularly include the rational use of energy and local, national and international environmental protection standards and norms, especially emission norms concerning air pollutants, noise and greenhouse gases.

Or. en

Justification

The text of this amendment was already adopted by the European Parliament in the first reading of 2001 and serves as a guideline for the standards, public transport provisions have to meet.

Amendment by Erik Meijer, Helmuth Markov

Amendment 45
Recital 4b (new)

(4b) Moreover, one fundamental aim of the Regulation is to achieve a substantial shift from individual motorised modes of land transport towards more sustainable modes of land transport.

Or. en

Justification

The text of this amendment was already adopted by the European Parliament in the first reading of 2001 and serves as a guideline for the standards, public transport provisions have to meet.

Amendment by Luís Queiró

Amendment 46
Recital 9

(9) To be able to organise their public passenger transport services in the manner best suited to the needs of the public, all competent authorities must be able to choose their public service operators freely, ***taking into account the interests of small and medium sized enterprises, under the conditions stipulated in this Regulation.*** To guarantee application of the principles of transparency, equal treatment of competing operators and proportionality, when compensation or exclusive rights are granted, it is essential that a public service contract between the competent authority and the chosen public service operator define the nature of the public service obligations and the agreed reward. The form or designation of the contract may vary according to the legal systems of the Member States.

(9) To be able to organise their public passenger transport services in the manner best suited to the needs of the public, all competent authorities must be able to choose their public service operators freely. To guarantee application of the principles of transparency, equal treatment of competing operators and proportionality, when compensation or exclusive rights are granted, it is essential that a public service contract between the competent authority and the chosen public service operator define the nature of the public service obligations and the agreed reward. The form or designation of the contract may vary according to the legal systems of the Member States.

Justification

The exceptions to competition should not be so sweeping as to include SMEs which already have the experience and capabilities to respond to invitations to tender. The guiding principle should be to increase competition and transparency, not to reduce them.

Amendment by Paolo Costa

Amendment 47
Recital 9

(9) To be able to organise their public passenger transport services in the manner best suited to the needs of the public, all competent authorities must be able to choose their public service operators freely, taking into account the interests of small and medium sized enterprises, under the conditions stipulated in this Regulation. To guarantee application of the principles of transparency, equal treatment of competing operators and proportionality, when compensation or exclusive rights are granted, it is essential that a public service contract between the competent authority and the chosen public service operator define the nature of the public service obligations and the agreed reward. The form or designation of the contract may vary according to the legal systems of the Member States.

(9) To be able to organise their public passenger transport services in the manner best suited to the needs of the public, all competent authorities must be able to choose their public service operators freely, taking into account the interests of small and medium sized enterprises ***and in any case ensuring an adequate level of user protection***, under the conditions stipulated in this Regulation. To guarantee application of the principles of transparency, equal treatment of competing operators and proportionality, when compensation or exclusive rights are granted, it is essential that a public service contract between the competent authority and the chosen public service operator define the nature of the public service obligations and the agreed reward. The form or designation of the contract may vary according to the legal systems of the Member States.

Or. it

Amendment by Paolo Costa

Amendment 48
Recital 10

(10) Contrary to Regulation (EEC) No 1191/69, the scope of which extends to public passenger transport services by inland

(10) Contrary to Regulation (EEC) No 1191/69, the scope of which extends to public passenger transport services by inland

waterway, it is not considered advisable for this Regulation to cover the award of public service contracts in that specific sector. The organisation of public passenger transport services by inland waterway is therefore subject to compliance with the general principles of the Treaty, unless Member States choose to apply this Regulation to **that** specific **sector**. The provisions of this Regulation do not prevent the integration of inland waterway services into a wider urban, suburban or regional public passenger transport network.

waterway, it is not considered advisable for this Regulation to cover the award of public service contracts in that specific sector. The organisation of public passenger transport services by inland waterway **and by national sea waters** is therefore subject to compliance with the general principles of the Treaty, unless Member States choose to apply this Regulation to **those** specific **sectors**. The provisions of this Regulation do not prevent the integration of services **by** inland waterway **and national sea waters** into a wider urban, suburban or regional public passenger transport network.

Or. it

Amendment by Dirk Sterckx

Amendment 49 Recital 15

(15) Contracts of long duration can lead to the closing of the market for a longer period than is necessary, thus diminishing the benefits of competitive pressure. To minimise distortions of competition while protecting the quality of services, public service contracts should be of limited duration. It is, however, necessary to make provision for extending public service contracts by a maximum of half their initial duration where the public service operator has to invest in assets for which the depreciation period is exceptional and, because of their special characteristics and constraints, in the case of the outermost regions as specified in Article 299 of the Treaty. ***In addition, where a public service operator makes investments in infrastructure or in rolling stock and vehicles which are exceptional in the sense that both concern high amounts of funds, and provided the contract is awarded after a fair competitive tendering procedure, an even longer extension should be possible.***

(15) Contracts of long duration can lead to the closing of the market for a longer period than is necessary, thus diminishing the benefits of competitive pressure. To minimise distortions of competition while protecting the quality of services, public service contracts should be of limited duration. It is, however, necessary to make provision for extending public service contracts by a maximum of half their initial duration where the public service operator has to invest in assets for which the depreciation period is exceptional and, because of their special characteristics and constraints, in the case of the outermost regions as specified in Article 299 of the Treaty.

Amendment by Paolo Costa

Amendment 50

Recital 15

(15) Contracts of long duration can lead to the closing of the market for a longer period than is necessary, thus diminishing the benefits of competitive pressure. To minimise distortions of competition while protecting the quality of services, public service contracts should be of limited duration. It is, however, necessary to make provision for extending public service contracts by a maximum of half their initial duration where the public service operator has to invest in assets for which the depreciation period is exceptional and, because of their special characteristics and constraints, in the case of the outermost regions as specified in Article 299 of the Treaty. ***In addition, where*** a public service operator makes investments in infrastructure or in rolling stock and vehicles which are exceptional in the sense that both concern high amounts of funds, and provided the contract is awarded after a fair competitive tendering procedure, ***an even longer extension should be possible.***

(15) Contracts of long duration can lead to the closing of the market for a longer period than is necessary, thus diminishing the benefits of competitive pressure. To minimise distortions of competition while protecting the quality of services, public service contracts should be of limited duration. ***The extension of the contract should be subject to positive confirmation from users, which should be periodically checked by the competent authority in accordance with prearranged procedures to ensure that it is objective.*** It is, however, necessary to make provision for extending public service contracts by a maximum of half their initial duration where the public service operator has to invest in assets for which the depreciation period is exceptional and, because of their special characteristics and constraints, in the case of the outermost regions as specified in Article 299 of the Treaty. ***Where*** a public service operator makes investments in infrastructure or in rolling stock and vehicles which are exceptional in the sense that both concern high amounts of funds, and provided the contract is awarded after a fair competitive tendering procedure, ***at the moment the investment is made, the residual cost for the part which is not amortised during the term of the contract should be determined, as it should be borne by the successful bidder who succeeds the operator who made the investment.***

Amendment by Reinhard Rack

Amendment 51

Recital 17

(17) In keeping with the principle of subsidiarity, competent authorities are free to establish quality standards for public service obligations, for instance with regard to minimal working conditions, passenger rights, the needs of persons with reduced mobility or environmental protection.

(17) In keeping with the principle of subsidiarity, competent authorities are free to establish quality standards for public service obligations, for instance with regard to minimal working conditions, passenger rights, the needs of persons with reduced mobility or environmental protection.

At any event, it needs to be ensured that the generally applicable standards in these areas are also complied with in comparable form for public road and rail passenger services.

Or. de

Amendment by Dirk Sterckx

Amendment 52

Recital 18

(18) Subject to the relevant provisions of national law, any local authority or, in the absence thereof, any national authority, may choose to provide its own public passenger transport services in the area it administers or to entrust them to an internal operator without competitive tendering. However, this self-provision option needs to be strictly controlled to ensure a level playing field. The competent authority or group of authorities providing integrated public passenger transport services, ***collectively or through its members***, should exercise the required control. In addition, a competent authority providing its own transport services or an internal operator should be prohibited from taking part in competitive tendering procedures outside the territory of that authority. The authority controlling the internal operator should also be allowed to prohibit this operator from taking part in competitive tenders organised within its

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territory. ***Restrictions on the activities of an internal operator do not interfere with the possibility of the direct award of public service contracts where they concern transport by rail with the exception of other track-based modes such as metro or tramways. Furthermore, the direct award of public service contracts for heavy rail does not preclude the possibility for competent authorities to award public service contracts for public passenger transport services on other track-based modes such as metro and tramway to an internal operator.***

Or. nl

Justification

A competent authority which has recourse to a third party other than an internal operator should normally award public service contracts via a public tendering procedure. Public service contracts for transport by rail, with the exception of other track-based modes such as metro or tramways, should not constitute an exception to this. These modes of transport must not be given preferential treatment.

Amendment by Paolo Costa

Amendment 53

Recital 18

(18) Subject to the relevant provisions of national law, any local authority or, in the absence thereof, any national authority, may choose to provide its own public passenger transport services in the area it administers or to entrust them to an internal operator without competitive tendering. However, this self-provision option needs to be strictly controlled to ensure a level playing field. The competent authority or group of authorities providing integrated public passenger transport services, collectively or through its members, should exercise the required control. In addition, a competent authority providing its own transport services or an internal operator should be prohibited from taking part in competitive

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tendering procedures outside the territory of that authority. The authority controlling the internal operator should also be allowed to prohibit this operator from taking part in competitive tenders organised within its territory. Restrictions on the activities of an internal operator do not interfere with the possibility of the direct award of public service contracts where they concern transport by rail with the exception of other track-based modes such as metro or tramways. Furthermore, the direct award of public service contracts for heavy rail does not preclude the possibility for competent authorities to award public service contracts for public passenger transport services on other track-based modes such as metro and tramway to an internal operator.

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Or. it

Amendment by Luis de Grandes Pascual

Amendment 54

Recital 18

(18) Subject to the relevant provisions of national law, any local authority or, in the absence thereof, any national authority, may choose to provide its own public passenger transport services in the area it administers or to entrust them to an internal operator without competitive tendering. However, this self-provision option needs to be strictly controlled to ensure a level playing field. The competent authority or group of authorities providing integrated public passenger transport services, collectively or through its members, should exercise the required control. In addition, a competent authority providing its own transport services or an internal operator should be prohibited from taking part in competitive tendering procedures outside the territory of that authority. The authority controlling the internal operator should also be allowed to

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prohibit this operator from taking part in competitive tenders organised within its territory. Restrictions on the activities of an internal operator do not interfere with the possibility of the direct award of public service contracts where they concern transport by rail with the exception of other track-based modes such as metro or tramways. Furthermore, the direct award of public service contracts for heavy rail does not preclude the possibility for competent authorities to award public service contracts for public passenger transport services on other track-based modes such as metro and tramway to an internal operator.

prohibit this operator from taking part in competitive tenders organised within its territory. Restrictions on the activities of an internal operator do not interfere with the possibility of the direct award of public service contracts where they concern transport by rail with the exception of **suburban train transport, which may be the subject of a tendering procedure, and** other track-based modes such as metro or tramways. Furthermore, the direct award of public service contracts for heavy rail does not preclude the possibility for competent authorities to award public service contracts for public passenger transport services on other track-based modes such as **suburban trains, metro, and** tramway to an internal operator.

Or. es

Justification

The possibility of awarding public service contracts for suburban train transport by tendering procedures marks a step forward in the gradual liberalisation of public passenger transport by rail.

Amendment by Luís Queiró

Amendment 55

Recital 18

(18) Subject to the relevant provisions of national law, any local authority or, in the absence thereof, any national authority, may choose to provide its own public passenger transport services in the area it administers or to entrust them to an internal operator without competitive tendering. However, this self-provision option needs to be strictly controlled to ensure a level playing field. The competent authority or group of authorities providing integrated public passenger transport services, **collectively or through its members**, should exercise the required control. In addition, a competent authority providing its own transport

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services or an internal operator should be prohibited from taking part in competitive tendering procedures outside the territory of that authority. The authority controlling the internal operator should also be allowed to prohibit this operator from taking part in competitive tenders organised within its territory. Restrictions on the activities of an internal operator do not interfere with the possibility of the direct award of public service contracts where they concern transport by rail with the exception of other track-based modes such as metro or tramways. Furthermore, the direct award of public service contracts for heavy rail does not preclude the possibility for competent authorities to award public service contracts for public passenger transport services on other track-based modes such as metro and tramway to an internal operator.

should be prohibited from taking part in competitive tendering procedures outside the territory of that authority. The authority controlling the internal operator should also be allowed to prohibit this operator from taking part in competitive tenders organised within its territory. Restrictions on the activities of an internal operator do not interfere with the possibility of the direct award of public service contracts where they concern transport by rail with the exception of other track-based modes such as metro or tramways. Furthermore, the direct award of public service contracts for heavy rail does not preclude the possibility for competent authorities to award public service contracts for public passenger transport services on other track-based modes such as metro and tramway to an internal operator.

Or. pt

Justification

The only groups of authorities allowed should be those with legal personality and not purely de facto groupings, the idea being to rule out cases in which the relationship of one or more members of a group to the internal operator is not such as to warrant a contract awarded directly.

Amendment by Erik Meijer, Helmuth Markov

Amendment 56
Recital 18 a (new)

(18a) Direct operation by the authority concerned, by means of a company of its own, has in many cases proved its worth in terms of winning the competitive battle against the car, meeting environmental and urban planning objectives, the expansion of metro or light rail networks, the option of introducing free public transport, the ability to respond rapidly and flexibly to constantly changing requirements of public representatives that have been democratically elected for the area

concerned, and counteracting the high public costs of planning, tendering and scrutiny. The right of local authorities to opt for the permanent continuance of such companies alongside other kinds of companies therefore deserves particular attention.

Or. en

Justification

The text of this amendment was already adopted by the European Parliament in the first reading of 2001 and serves as a guideline for the standards, public transport provisions have to meet.

Amendment by Paolo Costa

Amendment 57

Recital 19

(19) Subcontracting can contribute to more efficient public passenger transport and makes it possible for undertakings to participate, other than the public service operator which was granted the public service contract. ***However***, with a view to the best use of public funds, competent authorities should be able to determine the modalities for subcontracting their public passenger transport services, ***in particular*** in the case of services performed by an internal operator. Furthermore, a subcontractor should not be prevented from taking part in competitive tenders in the territory of any competent authority. The selection of a subcontractor by the competent ***authority or its internal operator needs to be*** carried out in accordance with Community law.

(19) Subcontracting can contribute to more efficient public passenger transport and makes it possible for undertakings to participate, other than the public service operator which was granted the public service contract. With a view to the best use of public funds, competent authorities should be able to determine the modalities for subcontracting their public passenger transport services. ***Subcontracting is not allowed*** in the case of services performed by an internal operator. Furthermore, a subcontractor should not be prevented from taking part in competitive tenders in the territory of any competent authority. The selection of a subcontractor by the competent authority ***must*** be carried out in accordance with Community law.

Or. it

Amendment by Emanuel Jardim Fernandes

Amendment 58

Recital 20

(20) Where a public authority chooses to entrust a general interest service to a third party, it must select the public service operator in accordance with Community law on public contracts and concessions, as established by Articles 43 to 49 of the Treaty, and the principles of transparency and equal treatment. In particular, the provisions of this Regulation are to be without prejudice to the obligations applicable to public authorities by virtue of the directives on the award of public contracts, where public service contracts fall within their scope.

(20) Where a public authority chooses to entrust a general interest service to a third party, it must select the public service operator in accordance with Community law on public contracts and concessions, as established by Articles 43 to 49 **and Article 299(2)** of the Treaty, and the principles of transparency and equal treatment. In particular, the provisions of this Regulation are to be without prejudice to the obligations applicable to public authorities by virtue of the directives on the award of public contracts, where public service contracts fall within their scope.

Or. pt

Justification

Application of Article 299(2) TEC.

Amendment by Mathieu Grosch, Georg Jarzembowski

Amendment 59

Recital 20

(20) Where a public authority chooses to entrust a general interest service to a third party, it must select the public service operator in accordance with Community law on public contracts and concessions, as established by Articles 43 to 49 of the Treaty, and the principles of transparency and equal treatment. In particular, the provisions of this Regulation are to be without prejudice to the obligations applicable to public authorities by virtue of the directives on the award of public contracts, where public service contracts fall within their scope.

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Regulation and those under the directives on the award of public service contracts. The provisions of Directive 89/665/EEC should therefore apply uniformly to the review of all tendering procedures.

Or. de

Justification

To avoid jeopardising the continuity of transport services, we need a legal protection procedure that will quickly produce conclusive results. To be effective, legal protection must also avoid the possibility of divergent decisions on the same case. Accordingly there needs to be uniform legal protection for the award of public service contracts, including service concessions and public service contracts covered by Directives 2004/17/EC and 2004/18/EC, in accordance with the established procedure of Directive 89/665/EEC.

Amendment by Jörg Leichtfried

Amendment 60

Recital 20

(20) Where a public authority chooses to entrust a general interest service to a third party, it must select the public service operator in accordance with Community law on public contracts and concessions, as established by Articles 43 to 49 of the Treaty, and the principles of transparency and equal treatment. ***In particular, the provisions of this Regulation are to be without prejudice to the obligations applicable to public authorities by virtue of the directives on the award of public contracts, where public service contracts fall within their scope.***

(20) Where a public authority chooses to entrust a general interest service to a third party, it must select the public service operator in accordance with Community law on public contracts and concessions, as established by Articles 43 to 49 of the Treaty, and the principles of transparency and equal treatment. ***In view of the special conditions applying to public services in the transport sector, the provisions of this Regulation must be complied with.***

Or. de

Justification

The Regulation needs to be given clear precedence over the public procurement directives. Giving the regulation precedence over public procurement law does not, according to expert legal opinion, contradict either the Treaty or the Union's international commitments. By ruling on clear precedence for the Regulation's provisions we will also create adequate legal certainty for all seeking legal redress. This was also the position taken by Parliament at first

reading.

Amendment by Georg Jarzembowski

Amendment 61
Recital 20 a (new)

(20a) Where a transport undertaking, on its own initiative, provides a passenger transport service for the first time, the competent local authority must have the right to waive the competitive tendering procedure and to promote the entrepreneurial initiative by the direct award of a temporary exclusive right to the public service operator. Under this procedure, financial compensation for the performance of public service obligations pursuant to Article 3(1) of this Regulation may not be granted. Financial compensation under Article 3(2) is not affected.

Or. de

Justification

Undertakings are often able to assess the need for public transport services better and more quickly than the local competent authorities. Where transport services are launched on the initiative of undertakings it must be possible to award the initiator exclusive rights on a temporary, once-only basis. If transport services initiated by undertakings had to be subjected to a tendering procedure by the competent authority in order to be awarded the necessary exclusive rights, this would remove any motivation for innovation on the part of undertakings.

Amendment by Luís Queiró

Amendment 62
Recital 22

(22) Invitations to tender for the award of public service contracts should not be mandatory where the contract relates to modest amounts or distances. ***In this respect, greater amounts or distances should enable competent authorities to take***

(22) Invitations to tender for the award of public service contracts should not be mandatory where the contract relates to modest amounts or distances. Competent authorities should not be permitted to split up contracts or networks in order to avoid

into account the special interests of small and medium sized enterprises. Competent authorities should not be permitted to split up contracts or networks in order to avoid tendering.

tendering.

Or. pt

Justification

The exceptions to competition should not be so sweeping as to include SMEs which already have the experience and capabilities to respond to invitations to tender. The guiding principle should be to increase competition and transparency, not to reduce them.

Amendment by Dirk Sterckx

Amendment 63

Recital 24

(24) Public passenger transport by rail raises specific issues of investment burden and infrastructure cost. In March 2004, the Commission presented a proposal to amend Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways so as to guarantee access for all Community railway undertakings to the infrastructure of all Member States for the purpose of operating international passenger services. The aim of this Regulation is to establish a legal framework for compensation and/or exclusive rights for public service contracts ***and not the further opening of the market for railway services.***

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Or. nl

Justification

The market for railway services must not be given preferential treatment in the field of public transport.

Amendment by Georg Jarzembowski

Amendment 64

Recital 24

(24) Public passenger transport by rail raises specific issues of investment burden and infrastructure cost. In March 2004, the Commission presented a proposal to amend Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways so as to guarantee access for all Community railway undertakings to the infrastructure of all Member States for the purpose of operating international passenger services. The aim of this Regulation is to establish a legal framework for compensation and/or exclusive rights for public service contracts ***and not the further opening of the market for railway services.***

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Or. de

Justification

Since the Third Railway Package did not include the opening of the networks to national passenger railway services, the European internal market in railways is not complete, and a further opening is still needed.

Amendment by Dirk Sterckx

Amendment 65

Recital 25

(25) In the case of public services, this Regulation allows each competent authority, within the context of a public service contract, to select its operator of public passenger transport services. ***Given the differences in the way Member States organise their territory in this respect, competent authorities may justifiably be allowed to award public service contracts directly for railway travel.***

(25) In the case of public services, this Regulation allows each competent authority, within the context of a public service contract, to select its operator of public passenger transport services.

Or. nl

Justification

A competent authority which has recourse to a third party other than an internal operator should normally award public service contracts via a public tendering procedure. Public service contracts for transport by rail, with the exception of other track-based modes such as metro or tramways, should not constitute an exception to this. These modes of transport must not be given preferential treatment.

Amendment by Luis de Grandes Pascual

Amendment 66

Recital 25

(25) In the case of public services, this Regulation allows each competent authority, within the context of a public service contract, to select its operator of public passenger transport services. Given the differences in the way Member States organise their territory in this respect, competent authorities may justifiably be allowed to award public service contracts directly for railway travel.

(25) In the case of public services, this Regulation allows each competent authority, within the context of a public service contract, to select its operator of public passenger transport services. Given the differences in the way Member States organise their territory in this respect, competent authorities may justifiably be allowed to award public service contracts directly for railway travel, ***with the exception of suburban train transport, which may be the subject of a tendering procedure.***

Or. es

Justification

See justification for the amendment to recital 18.

Amendment by Paolo Costa

Amendment 67

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competent authorities may justifiably be allowed to award *local* public service contracts directly for railway travel, ***excluding, therefore, contracts which cover the entire territory of a Member State.***

Or. it

Amendment by Gabriele Albertini, Jas Gawronski, Armando Veneto

Amendment 68

Recital 25

(25) In the case of public services, this Regulation allows each competent authority, within the context of a public service contract, to select its operator of public passenger transport services. Given the differences in the way Member States organise their territory in this respect, competent authorities may justifiably be allowed to award public service contracts directly for railway travel.

(25) In the case of public services, this Regulation allows each competent authority, within the context of a public service contract, to select its operator of public passenger transport services. Given the differences in the way Member States organise their territory in this respect, competent authorities may justifiably be allowed to award public service contracts directly for railway travel.

Or. it

Justification

Al fine di promuovere l'effettiva apertura del settore ferroviario è opportuno prevedere, alla fine del periodo provvisorio, l'attribuzione dei contratti di servizio pubblico solo attraverso le procedure di gare.

Amendment by Mathieu Grosch, Georg Jarzembowski

Amendment 69

Recital 26

(26) The compensation granted by competent authorities to cover the costs incurred in discharging public service obligations should be calculated in a way that prevents overcompensation. Where a competent authority plans to award a public service contract without putting it out to competitive tender, it should also respect

(26) The compensation granted by competent authorities to cover the costs incurred in discharging public service obligations should be calculated in a way that prevents overcompensation. Where a competent authority plans to award a public service contract without putting it out to competitive tender, it should also respect

detailed rules ensuring that the amount of compensation is appropriate and reflecting a desire for efficiency and quality of service.

detailed rules ensuring that the amount of compensation is appropriate and reflecting a desire for efficiency and quality of service.
Consideration should be given in particular to using the results of comparable services awarded in a public tendering procedure as a benchmark when calculating compensation. One way of ensuring sufficiently high quality is to make entitlement to full compensation conditional on quality standards reflecting the current state of technology.

Or. de

Justification

The logic behind the method of calculating compensation is hard to follow. One way of calculating compensation in connection with the direct award of a contract – which makes sense given that the operator is a business, and which has in some cases already been used in the law of the Member States – is to use the market price for comparable services as a benchmark. This would also comply with the 4th criterion of the Court of Justice and avoid the legal uncertainty which a conflict with the judgment of 24 July 2003 in Court of Justice case 280/00 would engender.

Amendment by Emanuel Jardim Fernandes

Amendment 70 Recital 26

(26) The compensation granted by competent authorities to cover the costs incurred in discharging public service obligations should be calculated in a way that prevents overcompensation. Where a competent authority plans to award a public service contract without putting it out to competitive tender, it should also respect detailed rules ensuring that the amount of compensation is appropriate and reflecting a desire for efficiency and quality of service.

(26) The compensation granted by competent authorities to cover the costs incurred in discharging public service obligations should be calculated in a way that prevents overcompensation ***or undercompensation***. Where a competent authority plans to award a public service contract without putting it out to competitive tender, it should also respect detailed rules ensuring that the amount of compensation is appropriate and reflecting a desire for efficiency and quality of service.

Or. pt

Justification

Legal clarification to avoid cases of overcompensation or undercompensation.

Amendment by Stanisław Jałowiecki

Amendment 71

Recital 26

(26) The compensation granted by competent authorities to cover the costs incurred in discharging public service obligations should be calculated in a way that prevents **overcompensation**. Where a competent authority plans to award a public service contract without putting it out to competitive tender, it should also respect detailed rules ensuring that the amount of compensation is appropriate and reflecting a desire for efficiency and quality of service.

(26) The compensation granted by competent authorities to cover the costs incurred in discharging public service obligations should be calculated in a way that prevents **over- or under-compensation**. Where a competent authority plans to award a public service contract without putting it out to competitive tender, it should also respect detailed rules ensuring that the amount of compensation is appropriate and reflecting a desire for efficiency and quality of service.

Or. pl

Justification

The aim is to ensure legal certainty with regard to the compensation calculation scheme contained in the Annex. The size of the compensation should be adequate to cover the costs incurred in discharging public service obligations.

Amendment by Stanisław Jałowiecki

Amendment 72

Recital 27

(27) By appropriately considering any effect of complying with the public service obligations on the demand of public passenger transport services in the calculation scheme of the Annex, the competent authority and the public service operator can prove that **overcompensation** has been avoided.

(27) By appropriately considering any effect of complying with the public service obligations on the demand of public passenger transport services in the calculation scheme of the Annex, the competent authority and the public service operator can prove that **over- or under-compensation** has been avoided.

Or. pl

Justification

The aim is to ensure legal certainty with regard to the compensation calculation scheme contained in the Annex. The size of the compensation should be adequate to cover the costs incurred in discharging public service obligations.

Amendment by Paolo Costa

Amendment 73

Recital 31

(31) During the transitional period, the introduction of the provisions of this Regulation by the competent authorities may take place at different times. It may therefore be possible, during this period, that public service operators from markets not yet affected by the provisions of this Regulation tender for public service contracts in markets that have been opened to controlled competition more rapidly. In order to avoid, by means of proportionate action, any imbalance in the opening of the public transport market, competent authorities should be able to refuse, in the second half of the transitional period, tenders from undertakings, ***more than half the value of the public transport services performed by which are not granted*** in accordance with this Regulation, provided that this is applied without discrimination and decided in advance of an invitation to tender.

(31) During the transitional period, the introduction of the provisions of this Regulation by the competent authorities may take place at different times. It may therefore be possible, during this period, that public service operators from markets not yet affected by the provisions of this Regulation tender for public service contracts in markets that have been opened to controlled competition more rapidly. In order to avoid, by means of proportionate action, any imbalance in the opening of the public transport market, competent authorities should be able to refuse, in the second half of the transitional period, tenders from undertakings, the public transport services ***of which*** are not ***awarded a contract*** in accordance with this Regulation, provided that this is applied without discrimination and decided in advance of an invitation to tender.

Or. it

Amendment by Gabriele Albertini, Jas Gawronski, Armando Veneto

Amendment 74

Recital 36

(36) The scope of Council Regulation (EEC) No 1107/70 of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway is covered by this Regulation. ***That Regulation is considered obsolete while limiting the application of Article 73 of the Treaty without granting an***

(36) The scope of Council Regulation (EEC) No 1107/70 of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway is covered by this Regulation.

appropriate legal basis for authorising current investment schemes, in particular in relation to investment in transport infrastructure in a public private partnership. It should therefore be repealed in order for Article 73 of the Treaty to be properly applied to continuing developments in the sector without prejudice to this Regulation or Council Regulation (EEC) No 1192/69 of 26 June 1969 on common rules for the normalisation of the accounts of railway undertakings . With a view to further facilitating the application of the relevant Community rules, the Commission will propose State aid guidelines for railway investment, including investment in infrastructure in 2006.

Or. it

Justification

Il Regolamento 1107/70 favorisce l'adozione di misure in favore del trasporto combinato e delle forme di trasporto eco-compatibili per cui è opportuno mantenerne la validità con riferimento ai settori non disciplinati dal presente regolamento.

Amendment by Paolo Costa

Amendment 75 Recital 36

(36) The scope of Council Regulation (EEC) No 1107/70 of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway is covered by this Regulation. That Regulation is considered obsolete while limiting the application of Article 73 of the Treaty without granting an appropriate legal basis for authorising current investment schemes, in particular in relation to investment in transport infrastructure in a public private partnership. It should therefore be repealed in order for Article 73 of the Treaty to be properly applied to continuing developments in the sector without prejudice to this Regulation or

(36) The scope of Council Regulation (EEC) No 1107/70 of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway is covered by this Regulation. That Regulation is considered obsolete while limiting the application of Article 73 of the Treaty without granting an appropriate legal basis for authorising current investment schemes, in particular in relation to investment in transport infrastructure in a public private partnership. It should therefore be repealed in order for Article 73 of the Treaty to be properly applied to continuing developments in the sector without prejudice to this Regulation or

Council Regulation (EEC) No 1192/69 of 26 June 1969 on common rules for the normalisation of the accounts of railway undertakings . With a view to further facilitating the application of the relevant Community rules, the Commission will propose State aid guidelines for railway investment, including investment in infrastructure in **2006**.

Council Regulation (EEC) No 1192/69 of 26 June 1969 on common rules for the normalisation of the accounts of railway undertakings . With a view to further facilitating the application of the relevant Community rules, the Commission will propose State aid guidelines for railway investment, including investment in infrastructure in **2007**.

Or. it

Amendment by Gilles Savary

Amendment 76
Article 1, paragraph 2

2. This 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 which are operated mainly for their historical interest or their tourist value.
Member States may apply this Regulation to public passenger transport by inland waterways.

2. This 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 which are operated mainly for their historical interest or their tourist value.

Or. fr

Justification

This provision is at variance with the title of this regulation and recital 10 thereof. It also runs counter to its objective of harmonising the rules governing the award of contracts for public passenger transport services throughout all the Member States of the Union.

Amendment by Paolo Costa

Amendment 77
Article 1, paragraph 2

2. This Regulation shall apply to the national and international operation of public

2. This Regulation shall apply to the national and international operation of ***local and***

passenger transport services by rail and other track-based modes and by road, except for services which are operated mainly for their historical interest or their tourist value. Member States may apply this Regulation to public passenger transport by inland waterways.

regional public passenger transport services, **though not covering the national territory**, by rail and other track-based modes and by road, except for services which are operated mainly for their historical interest or their tourist value. Member States may apply this Regulation to public passenger transport **in national sea waters and** by inland waterways.

Or. it

Amendment by Michael Cramer, Eva Lichtenberger

Amendment 78
Article 2, point (c)

(c) "competent local authority" means any competent authority whose geographical area of competence is **not national**;

(c) "competent **regional or** local authority" means any competent authority whose geographical area of competence is **a region, a city or a conurbation, its suburban area and the immediate surrounding area which falls within its regulatory sphere of influence**;

Or. de

Amendment by Elisabeth Jeggle

Amendment 79
Article 2, point (c)

(c) "competent local authority" means any competent authority whose geographical area of competence is **not national**;

(c) "competent local authority" means any competent authority whose geographical area of competence is **the local government unit in question; in the absence of local government units, this role shall be filled by the regional authorities; and in the absence of regional authorities, by the national authorities**.

Or. de

Justification

As a derogation from the principle of free competition, the in-house privilege must be subject to strict limitations. By imposing clear and narrow territorial restrictions it is possible to prevent internal operators from acting outside protected markets and extending their activities to other markets where they may enjoy anti-competitive advantages. The sphere of action of a competent local authority must in such cases be restricted to the area of the local government unit. If, in a centrally organised state, no such units exist, the national authorities are to take their place.

Amendment by Mathieu Grosch, Georg Jarzembowski

Amendment 80
Article 2, point (c)

(c) "competent local authority" means any competent authority whose geographical area of competence is ***not national***;

(c) "competent local authority" means any competent authority whose geographical area of competence is ***the area of the local government unit in question; in the absence of local municipalities, this role shall be filled by the regional or national authorities***;

Or. de

Justification

The objective is to create high-quality passenger transport by competition within the European internal market. The in-house privilege constitutes a derogation from this principle and must therefore be subject to strict limitations.. A narrow, clear definition of the internal operator's territorial sphere of activity is of crucial importance. The competent local authority's sphere of activity must be restricted. If, in a centrally run state, no such authorities exist, the national authorities are to take their place.

Amendment by Mathieu Grosch

Amendment 81
Article 2, point (c)

(c) "competent local authority" means any competent authority whose geographical area of competence is **not national**;

(c) "competent local authority" means any competent authority whose geographical area of competence is **smaller than that of the national territory; the Member States shall inform the Commission which authorities are to be regarded as local authorities on their territory.**

Or. de

Amendment by Erik Meijer, Saïd El Khadraoui

Amendment 82
Article 2, point (c)

(c) "competent local authority" means any competent authority whose geographical area of competence is **not national**;

(c) "competent local authority" means any competent authority whose geographical area of competence is **a region, a community or a co-operation of communities in a conurbation, and its surrounding area, falling within its regulatory and economic sphere of influence**;

Or. en

Justification

The definition of local authority as proposed by the European Commission and untouched by the Council does not take into account the specific administrative division of powers in the various Member States. In many Member States, however, the "local authority", and the "competent authority" would cover the exact same authorities. The notion of "local authority" is, meant in the Regulation to cover an authority with a smaller geographical scope of competence than the potential "competent authority".

Amendment by Willi Piecyk

Amendment 83
Article 2, point (c)

(c) "competent local authority" means any competent authority whose geographical area of competence is **not national**;

(c) "competent local authority" means any competent authority whose geographical area of competence is **an administrative district, a city or a conurbation, its**

suburban area and the surrounding area falling within its regulatory and economic sphere of influence;

Or. en

Justification

It necessary to mention all sorts of potential competent local authorities to cover the whole geographical area of the member states.

Amendment by Brian Simpson

Amendment 84
Article 2, point (c)

(c) "**competent local authority**" means any competent **authority whose geographical area of competence is not national**

(c) "**competent authority**" means any competent **local or regional government authority or passenger transport executive whose geographical area of competence is defined and is not national.**

Or. en

Justification

The definition of local authority as proposed by the Commission, and untouched by Council, does not take into account which institutional body has transport powers within Member States at below national level. This amendment clarifies the position.

Amendment by Stanisław Jałowiecki

Amendment 85
Article 2, point (c)

(c) "competent local authority" means **any** competent authority whose geographical area of competence **is not national**;

(c) "competent local authority" means **a** competent authority whose geographical area of competence **includes the area under its administration, provided it does not extend to the whole country**;

Or. pl

Justification

The amendment introduces provisions to clarify the situation in which a competent authority or group of authorities may independently provide public passenger transport services or directly award a contract without a tendering procedure.

Amendment by Mathieu Grosch, Georg Jarzembowski

Amendment 86
Article 2, point (f)

(f) "exclusive right" means a right entitling a public service operator to operate certain public passenger transport services on a particular route or network or in a particular area, **to the exclusion of any other such operator;**

(f) "exclusive right" means a right entitling a public service operator **for the purpose of performing public service obligations** to operate certain public passenger transport services on a particular route or network or in a particular area **and thereby excluding other operators wholly or partially from operating those services;**

Or. de

Justification

The exclusive rights conferred are solely those required to perform public service obligations. An exclusive right is present where other operators are excluded from operating the transport services in question. This addition is necessary because the current definition does not assume the existence of an exclusive right where two undertakings are joint contractual parties to a service contract even if, owing to these rights, no other operators can obtain authorisation to operate services.

Amendment by Ari Vatanen, Riitta Myller, Hannu Takkula,

Amendment 87
Article 2, point (f)

(f) "exclusive right" means a right entitling **a public service operator** to operate certain public passenger transport services on a particular route or network or in a particular area, to the exclusion of any other such operator;

(f) "exclusive right" means a right entitling **only one operator or several operators controlled by one operator**, to operate certain public passenger transport services on a particular route or network or in a particular area, to the exclusion of any other such operator, **without having to assume any risk or responsibility for transport planning;**

Justification

This definition is almost identical to amendments 155 (Myller) and 156 (Vatanen&Pohjamo), approved by the transport committee in the first reading in 2001. It removes a possible interpretation, which could lead to the obligation to create local or regional monopolies to the detriment of more frequent and better service and lower costs. As individual routes can be singled out for competition, also SMEs can compete for orders as in Finland, which has Europe's most efficient system in spite of the long distances (see <http://www.linja-autoliitto.fi/download/english.pdf>).

Amendment by Mathieu Grosch, Georg Jarzembowski

Amendment 88
Article 2, point (i)

(i) "public service contract" means one or more legally binding acts confirming the agreement between a competent authority and a public service operator to entrust to that public service operator the management and operation of public passenger transport services subject to public service obligations; depending on the law of the Member States, the contract may also consist of a decision adopted by the competent authority:

Does not affect EN text

- taking the form of an individual legislative or regulatory act, or
- containing conditions under which the competent authority itself provides the services or entrusts the provision of such services to an internal operator;

Or. de

Justification

Does not affect EN text.

Amendment by Willi Piecyk

Amendment 89
Article 2, point (i)

(i) "public service contract" means one or more legally binding acts confirming the agreement between a competent authority and a public service operator to entrust to that public service operator the management and operation of public passenger transport services subject to public service obligations; depending on the law of the Member States, the contract may also consist of a decision adopted by the competent authority:

- taking the form of ***an individual*** legislative or regulatory act, or
- containing conditions under which the competent authority itself provides the services or entrusts the provision of such services to an internal operator;

"public service contract" means one or more legally binding acts confirming the agreement between a competent authority and a public service operator to entrust to that public service operator the management and operation of public passenger transport services subject to public service obligations; depending on the law of the Member States, the contract may also consist of a decision adopted by the competent authority:

- taking the form of ***a*** legislative or regulatory act ***having effects in individual cases***, or
- containing conditions under which the competent authority itself provides the services or entrusts the provision of such services to an internal operator;

Or. de

Justification

First paragraph of justification does not affect EN text. (Concerns DE translation of the EN term "management") .

The amendment of the wording "individual legislative or regulatory act" seeks to clarify that legislative and regulatory acts have a specific effect in individual cases.

Amendment by Gilles Savary

Amendment 90
Article 2, point (i)

(i) 'public service contract' means one or more legally binding acts confirming the agreement between a competent authority and a public service operator to entrust to that public service operator the management and operation of public passenger transport services subject to public service obligations; depending on the law of the

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Member States, the contract may also consist of a decision adopted by the competent authority:
- ***taking the form of an individual legislative or regulatory act, or***
- containing conditions under which the competent authority itself provides the services or entrusts the provision of such services to an internal operator;

Member States, the contract may also consist of a decision adopted by the competent authority containing conditions under which the competent authority itself provides the services or entrusts the provision of such services to an internal operator;

Or. fr

Justification

Since local government bodies and competent authorities do not enjoy legislative and regulatory powers in all Member States, this provision is likely to introduce distortions of competition in Europe and to thwart the harmonisation objective of this regulation.

Amendment by Gilles Savary

Amendment 91
Article 2, point (i)a (new)

(i)a 'internal operator' means a legally distinct entity over which the competent authority exercises complete control similar to that exercised over its own departments. For the purposes of determining whether such control exists, factors such as the degree of representation on administrative, management or supervisory bodies, specifications relating thereto in the articles of association, ownership, effective influence and control over strategic decisions and individual management decisions have to be taken into consideration;

Or. fr

Justification

Repeat of the definition of internal operator as proposed by the Commission in its proposal from July 2005 (COM(2005)0319). Only competent authorities, in conformity with the provision contained in Article 2(c), may constitute themselves as an internal operator in the

name of the principle of free administration of public authorities in application of the subsidiarity principle set out in Article 5 of the EC Treaty.

Amendment by Gilles Savary

Amendment 92
Article 2, point (l)

(l) 'integrated public passenger transport services' means ***interconnected*** transport services ***within a determined geographical area*** with a single information service, ticketing scheme and timetable.

(l) 'integrated public passenger transport services' means transport services with a single information service, ticketing scheme and timetable ***catering for the needs of a region, an urban centre or a conurbation and for the transport requirements between this centre or conurbation and its suburbs.***

Or. fr

Justification

This regulation is an adaptation of Regulation (EEC) No 1191/69. The basic definitions should as far as possible be preserved, particularly the one concerning integrated services which seems clearer and less open to dispute.

Amendment by Luís Queiró

Amendment 93
Article 2, point (l a) (new)

(la) “territory of the competent authority” means the geographical area in respect of which the competent authority has powers to organise public transport;

Or. pt

Justification

To avoid divergent interpretations, we are proposing to add a definition to clarify the key concept of ‘territory of the competent authority’ and spell out the fact that a competent authority is permitted to exercise its powers only on the territory that it administers within its sphere of responsibility.

Amendment by Saïd El Khadraoui

Amendment 94
Article 2, point (m) (new)

(m) "Internal operator" means a legally distinct entity over which the competent local authority, or in the case of a group of authorities at least one competent local authority, exercises control similar to that exercised over its own departments.

Or. en

Justification

The definition of the internal operator is now inserted in article 5 in a rather inelegant way. For legal and linguistic clarity, it should be inserted in the chapter "definitions".

Amendment by Gilles Savary

Amendment 95
Article 3, paragraph 2

2. By way of derogation from paragraph 1, public service obligations which aim at establishing maximum tariffs for all passengers or for certain categories of passenger may also be the subject of general rules. In accordance with the principles set out in Articles 4 and 6 and in the Annex, the competent authority shall compensate the public service operators for the net financial effect, positive or negative, on costs incurred and revenues generated in complying with the tariff obligations established through general rules in a way that prevents overcompensation. This shall be so notwithstanding the right of competent authorities to integrate public service obligations establishing maximum tariffs in public service contracts.

2. By way of derogation from paragraph 1, public service obligations which aim at establishing maximum tariffs for all passengers or for certain categories of passenger may also be the subject of general rules ***at the instigation of the competent authority or Member State.*** In accordance with the principles set out in Articles 4 and 6 and in the Annex, the competent authority ***and/or Member State*** shall compensate the public service operators for the net financial effect, positive or negative, on costs incurred and revenues generated in complying with the tariff obligations established through general rules in a way that prevents overcompensation. This shall be so notwithstanding the right of competent authorities to integrate public service obligations establishing maximum tariffs in public service contracts.

Or. fr

Justification

Exercising the subsidiarity principle, Member States and competent authorities may lay down general rules or contractual tariff conditions concerning certain types of passenger such as school-children, students, ex-servicemen, war orphans, the under-privileged, etc. It is their responsibility to provide compensation by agreement between themselves..

Amendment by Stanisław Jałowiecki

Amendment 96
Article 3, paragraph 2

2. By way of derogation from paragraph 1, public service obligations which aim at establishing maximum tariffs for all passengers or for certain categories of passenger may also be the subject of general rules. In accordance with the principles set out in Articles 4 and 6 and in the Annex, the competent authority shall compensate the public service operators for the net financial effect, positive or negative, on costs incurred and revenues generated in complying with the tariff obligations established through general rules in a way that prevents **overcompensation**. This shall be so notwithstanding the right of competent authorities to integrate public service obligations establishing maximum tariffs in public service contracts.

2. By way of derogation from paragraph 1, public service obligations which aim at establishing maximum tariffs for all passengers or for certain categories of passenger may also be the subject of general rules. In accordance with the principles set out in Articles 4 and 6 and in the Annex, the competent authority shall compensate the public service operators for the net financial effect, positive or negative, on costs incurred and revenues generated in complying with the tariff obligations established through general rules in a way that prevents **over- or under-compensation**. This shall be so notwithstanding the right of competent authorities to integrate public service obligations establishing maximum tariffs in public service contracts.

Or. pl

Justification

The aim is to ensure legal certainty with regard to the compensation calculation scheme contained in the Annex. The size of the compensation should be adequate to cover the costs incurred in discharging public service obligations.

Amendment by Gilles Savary

Amendment 97
Article 3, paragraph 3

3. Without prejudice to the provisions of Articles 73, 86, 87 and 88 of the Treaty,

deleted

Member States may exclude from the scope of this Regulation general rules on financial compensation for public service obligations which establish maximum tariffs for pupils, students, apprentices and persons with reduced mobility. These general rules shall be notified in accordance with Article 88 of the Treaty. Any such notification shall contain complete information on the measure and, in particular, details on the calculation method.

Or. fr

Justification

A paragraph of this kind enshrines a scheme of exemption which fails to take into account the institutional diversity and allocation of responsibilities between Member States, local government bodies and competent authorities; it also proposes a list of passenger categories that is open to question as being incompatible with national tariff rules.

Amendment by Stanisław Jałowiecki

Amendment 98
Article 3, paragraph 3

3. Without prejudice to the provisions of Articles 73, 86, 87 and 88 of the Treaty, Member States may exclude from the scope of this Regulation general rules on financial compensation for public service obligations which establish maximum tariffs for pupils, students, apprentices and persons with reduced mobility.

3. Without prejudice to the provisions of Articles 73, 86, 87 and 88 of the Treaty, Member States may exclude from the scope of this Regulation general rules on financial compensation for public service obligations which establish maximum tariffs for pupils, students, apprentices and persons with reduced mobility. ***Such exclusion shall not lead to over- or under-compensation of the costs incurred by the operator.***

Or. pl

Justification

The aim is to ensure legal certainty with regard to the compensation calculation scheme contained in the Annex. The size of the compensation should be adequate to cover the costs incurred in discharging public service obligations.

Amendment by Dirk Sterckx, Paolo Costa

Amendment 99
Article 3, paragraph 3

3. Without prejudice to the provisions of Articles 73, 86, 87 and 88 of the Treaty, Member States may exclude from the scope of this Regulation general rules on financial compensation for public service obligations which establish maximum tariffs for pupils, students, apprentices and persons with reduced mobility. These general rules shall be notified in accordance with Article 88 of the Treaty. Any such notification shall contain complete information on the measure and, in particular, details on the calculation method. ***deleted***

Or. nl

Justification

Article 3(2) offers an adequate number of possibilities, rendering Article 3(3) superfluous. Moreover Article 3(3) implies an application to the Commission pursuant to Article 88 of the Treaty, which does not tie in with the purpose of this regulation.

Amendment by Mathieu Grosch, Georg Jarzembowski

Amendment 100
Article 3, paragraph 3a (new)

3a. An operator of a public service who wishes to discontinue or make substantial modifications to his public passenger transport service, provided the service is not subject to any public service obligations, shall notify the competent local authorities thereof at least three months in advance. The competent local authorities may waive the notification requirement.

Or. de

Justification

Where operators provide a service in their own economic interest which meets a public service requirement, a public service contract is not essential. However, the competent local authorities must be notified of any substantial modification to the service with adequate notice, in order to give them time to take appropriate action. The amendment thus complies with the rules currently in force (Article 14(4) of Regulation (EEC) 1191/69).

Amendment by Mathieu Grosch, Georg Jarzembowski

Amendment 101

Article 4, paragraph 1, point (i)

(i) clearly define the public service obligations with which the public service operator is to comply, and the geographical areas concerned.

(i) clearly define the public service obligations, ***nature and extent of the exclusive rights granted***, with which the public service operator is to comply, and the geographical areas concerned.

Or. de

Justification

To enable the operator to calculate the potential risk to its income, the nature and extent of the exclusive rights must be regulated in the service contract. This is also necessary to enable further exclusive rights to be awarded to third parties without any overlap, and therefore needs to meet stringent requirements as regards transparency and objectivity.

Amendment by Johannes Blokland

Amendment 102

Article 4, paragraph 1, point (i)

(i) clearly define the public service obligations with which the public service operator is to comply, ***and*** the geographical areas concerned;

(i) clearly define the public service obligations with which the public service operator is to comply, the geographical areas concerned ***and the consequences of failure to comply with these obligations***;

Or. nl

Justification

It is desirable to specify in the public service contract not only the operator's obligations but also the provisions which apply in the event of failure to comply with these obligations.

Amendment by Mathieu Grosch, Georg Jarzembowski

Amendment 103

Article 4, paragraph 1, point (ii)

(ii) establish in advance, in an objective and transparent manner, the parameters on the basis of which the compensation payment is to be calculated in a way that prevents overcompensation. In the case of public service contracts awarded in accordance with Article 5(2), (4), (5) and (6), these parameters shall be determined in such a way that no compensation payment may exceed the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations, taking account of revenue relating thereto kept by the public service operator and a reasonable profit.

(ii) establish in advance, in an objective and transparent manner, the parameters on the basis of which the compensation payment is to be calculated in a way that prevents overcompensation. In the case of public service contracts awarded in accordance with Article 5(2), (4), (5) and (6), these parameters shall be determined in such a way that no compensation payment may exceed the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations, taking account of revenue relating thereto kept by the public service operator and a reasonable profit. ***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 obligations in question.***

Or. de

Justification

This amendment to Article 4(1) (ii) seeks to ensure that the regulation is in line with the case law of the Court of Justice on subsidies. The criterion cited here is the fourth Altmark-Trans criterion (cf. judgment of the Court of Justice in case C-280/00 (Altmark-Trans), ground 93. This is the decisive criterion intended to ensure that the services are performed efficiently and economically even in the event of direct award of contracts, and thus effectively to rule out over-compensation.

Amendment by Johannes Blokland

Amendment 104

Article 4, paragraph 1, point (ii)

(ii) establish in advance, in an objective and transparent manner, the parameters on the basis of which the compensation payment is to be calculated in a way that prevents

(ii) establish in advance, in an objective and transparent manner, the parameters on the basis of which the compensation payment is to be calculated in a way that prevents

overcompensation. In the case of public service contracts awarded in accordance with Article 5(2), (4), (5) and (6), these parameters shall be determined in such a way that no compensation payment may exceed the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations, taking account of revenue relating thereto kept by the public service operator and a reasonable profit;

overcompensation. In the case of public service contracts awarded in accordance with Article 5(2), (4), (5) and (6), these parameters shall be determined in such a way that no compensation payment may exceed the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations, taking account of revenue relating thereto kept by the public service operator, ***the costs it has incurred*** and a reasonable profit;

Or. nl

Justification

To determine the correct amount of compensation, account should be taken not only of the revenue kept and a reasonable profit but also of the costs incurred by the operator.

Amendment by Michael Cramer, Eva Lichtenberger

Amendment 105

Article 4, paragraph 1, point (ii)

(ii) establish in advance, in an objective and transparent manner, the parameters on the basis of which the compensation payment is to be calculated in a way that prevents overcompensation. In the case of public service contracts awarded in accordance with Article 5(2), (4), (5) and (6), these parameters shall be determined in such a way that no compensation payment may exceed the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations, ***taking account of revenue relating thereto kept by the public service operator and a reasonable profit;***

(ii) establish in advance, in an objective and transparent manner, the parameters on the basis of which the compensation payment is to be calculated in a way that prevents overcompensation. In the case of public service contracts awarded in accordance with Article 5(2), (4), (5) and (6), these parameters shall be determined in such a way that no compensation payment may exceed the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations. ***To that end, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for***

discharging the obligations;

Or. de

Amendment by Stanisław Jałowiecki

Amendment 106

Article 4, paragraph 1, point (ii)

(ii) establish in advance, in an objective and transparent manner, the parameters on the basis of which the compensation payment is to be calculated in a way that prevents **overcompensation**. In the case of public service contracts awarded in accordance with Article 5(2), (4), (5) and (6), these parameters shall be determined in such a way that no compensation payment may exceed the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations, taking account of revenue relating thereto kept by the public service operator and a reasonable profit;

(ii) establish in advance, in an objective and transparent manner, the parameters on the basis of which the compensation payment is to be calculated in a way that prevents **over-or under-compensation**. In the case of public service contracts awarded in accordance with Article 5(2), (4), (5) and (6), these parameters shall be determined in such a way that no compensation payment may exceed the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations, taking account of revenue relating thereto kept by the public service operator and a reasonable profit;

Or. pl

Justification

The aim is to ensure legal certainty with regard to the compensation calculation scheme contained in the Annex. The size of the compensation should be adequate to cover the costs incurred in discharging public service obligations.

Amendment by Willi Piecyk

Amendment 107

Article 4, paragraph 1, point (iii)

(iii) determine the arrangements for the allocation of costs connected with the provision of services. These costs may include in particular the costs of staff, energy, infrastructure charges, maintenance and repair of public transport vehicles, rolling stock and installations necessary for operating the passenger transport services,

Does not affect EN text.

fixed costs and a suitable return on capital.

Or. de

Justification

Does not affect EN text (concerns DE translation of the EN term “arrangements”).

Amendment by Michael Cramer, Eva Lichtenberger

Amendment 108

Article 4, paragraph 1, point (iii)

(iii) determine the arrangements for the allocation of costs connected with the provision of services. These costs may include in particular the costs of staff, energy, infrastructure charges, maintenance and repair of public transport vehicles, rolling stock and installations necessary for operating the passenger transport services, fixed costs and a suitable return on capital.

(iii) determine the arrangements for the allocation of costs connected with the provision of services. These costs may include in particular the costs of staff, energy, infrastructure charges, maintenance and repair of public transport vehicles, rolling stock and installations necessary for operating the passenger transport services, fixed costs and a suitable return on capital.

The definition of the public service obligations and the selection and award criteria for public service contracts shall include the following criteria:

- a) cross-border regional interoperability of information, timetables, pricing and network services in general;***
- b) a guarantee that passenger transport will be provided for people living in less densely populated areas in accordance with basic mobility standards;***
- c) access for people with restricted mobility;***
- d) overall quality of service provided to the consumer, including passenger rights;***
- e) environmental factors, including the economical and efficient use of energy, improving environmental performance and compliance with local, regional, national and EU standards on noise, greenhouse gases and air pollutants;***
- f) health and safety of passengers and staff;***
- g) compliance with social security obligations in accordance with national and Community law, including obligations under collective agreements and***

obligations in connection with labour and health legislation;

Or. de

Amendment by Johannes Blokland

Amendment 109

Article 4, paragraph 1, point (iii a) (new)

(iii a) establish the extent to which the energy need, and environmental impact of the motor vehicle fleet will be reduced.

Or. nl

Justification

In view of the Commission's recently presented plans to reduce environmental pollution, provisions aimed at reducing pollution should also be included in public service contracts. Particularly in densely populated areas, this may lead to an improvement in the air quality and the living environment.

Amendment by Willi Piecyk

Amendment 110

Article 4, paragraph 2

2. Public service contracts and general rules shall determine the arrangements for the allocation of revenue from the sale of tickets which may be kept by the public service operator, repaid to the competent authority or shared between the two.

Does not affect EN text.

Or. de

Justification

Does not affect EN text (concerns DE translation of the EN term "arrangements").

Amendment by Brian Simpson, Erik Meijer

Amendment 111
Article 4, paragraph 3

3. The duration of public service contracts shall be limited and shall not exceed ten years for coach and bus services and fifteen 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 fifteen years if transport by rail or other track-based modes represents more than 50% of the value of the services in question.

3. The duration of public service contracts shall be limited and shall not exceed ten years for coach and bus services and fifteen 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 fifteen years if transport by rail or other track-based modes represents more than 50% of the value of the services in question. ***For rail transport services contracts shall be concluded, without prejudice to Article 5(5), for a minimum duration of ten years. Competent authorities may extend existing public service contracts for up to two years maximum, whilst a new contract is being negotiated, in order to guarantee the continuation of service.***

Or. en

Justification

Railway operators need a minimum of ten years contract to be able to secure the investment needed to guarantee a quality service for the rail network. On the second part of the amendment, regarding a maximum of two years' extension on the contract, this allows flexibility for competent authorities to negotiate a new contract whilst ensuring continuity of service provision.

Amendment by Jörg Leichtfried

Amendment 112
Article 4, paragraph 3

3. The duration of public service contracts shall be limited and shall not exceed ten years for coach and bus services and fifteen 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 fifteen years if transport by rail or other track-based

3. The duration of public service contracts shall be limited and shall not exceed ten years for coach and bus services and fifteen 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 fifteen years if transport by rail or other track-based

modes represents more than 50 % of the value of the services in question.

modes represents more than 50 % of the value of the services in question. ***Without prejudice to Article 5(5), contracts for rail transport services shall be concluded for a minimum of five years.***

Or. de

Justification

Operators of rail services such as railways or tramways have to make a number of investments to enable them to provide public transport services as required by the competent authorities. A contractual term of five years is the minimum needed to enable rail transport undertakings to offer their service at a low price, since they will be able to calculate the cost of their services over a reasonable period.

Amendment by Stanisław Jałowiecki

Amendment 113 Article 4, paragraph 3

3. The duration of public service contracts shall be limited and shall not exceed ten years for coach and bus services and fifteen 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 fifteen years if transport by rail or other track-based modes represents more than 50 % of the value of the services in question.

3. The duration of public service contracts shall be limited and shall not exceed ten years for coach and bus services and fifteen 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 fifteen years if transport by rail or other track-based modes represents more than 50 % of the value of the services in question. ***Without prejudice to Article 5(5), contracts for rail transport services shall be concluded for a minimum duration of three years.***

Or. pl

Justification

*If they wish to provide a high-level of service provision and meet obligations deriving from the *acquis communautaire*, railway operators must make continual investments. Given the scale of these investments and their multiannual character, railway operators must be guaranteed at least a compulsory three-year contract. Shorter contracts cannot provide railway operators with the financial stability they need to provide public services.*

Amendment by Lars Wohlin

Amendment 114
Article 4, paragraph 3

(3) The duration of public service contracts shall be limited and shall not exceed ten years **for coach and bus services and fifteen 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 fifteen years if transport by rail or other track-based modes represents more than 50 % of the value of the services in question.**

(3) The duration of public service contracts shall be limited and shall not exceed ten years.

Or. en

Justification

To long contract periods will not promote an opening of the market for public transport contracts. Most countries with already opened markets apply contract lengths of five to ten years for awards concerning public transport services exclusively. A 50% longer period will be allowed when the contracts also includes some investments for the operator.

Amendment by Lars Wohlin

Amendment 115
Article 4, paragraph 4, subparagraph 3

If justified by the amortisation of capital in relation to exceptional infrastructure, rolling stock or vehicular investment and if the public service contract is awarded in a fair competitive tendering procedure, a public service contract may have a **longer** duration. **To ensure transparency in this case, the competent authority shall transmit to the Commission within one year after the conclusion of the contract the public service contract and elements justifying its longer duration.**

If justified by the amortisation of capital in relation to exceptional infrastructure, rolling stock or vehicular investment and if the public service contract is awarded in a fair competitive tendering procedure, a public service contract may have a duration **of up to 15 years.**

Or. en

Justification

To long contract periods will not promote an opening of the market for public transport contracts. Most countries with already opened markets apply contract lengths of five to ten years for awards concerning public transport services exclusively. A 50% longer period will be allowed when the contracts also includes some investments for the operator.

Amendment by Dirk Sterckx

Amendment 116
Article 4, paragraph 4, subparagraph 3

If justified by the amortisation of capital in relation to exceptional infrastructure, rolling stock or vehicular investment and if the public service contract is awarded in a fair competitive tendering procedure, a public service contract may have a longer duration. To ensure transparency in this case, the competent authority shall transmit to the Commission within one year after the conclusion of the contract the public service contract and elements justifying its longer duration. *deleted*

Or. fr

Amendment by Paolo Costa

Amendment 117
Article 4, paragraph 4, third subparagraph

*If justified by the amortisation of capital in relation to exceptional infrastructure, rolling stock or vehicular investment and if the public service contract is awarded in a fair competitive tendering procedure, **a public service contract may have a longer duration. To ensure transparency in this case, the competent authority shall transmit to the Commission within one year after the conclusion of the contract the public service contract and elements justifying its longer duration.***

*If justified by the amortisation of capital in relation to exceptional infrastructure, rolling stock or vehicular investment and if the public service contract is awarded in a fair competitive tendering procedure, **at the moment the public service contract is concluded or the investment made, if the latter follows the former, the residual value for the part which is not amortised during the term of the contract, which may possibly be extended by 50% as under paragraph 4 of this article, should be determined and is to be charged to whichever other contractor might be***

awarded a successive contract after the operator who made the investment.

Or. it

Amendment by Jörg Leichtfried

Amendment 118
Article 4, paragraph 5

5. Without prejudice to national and Community law, including collective agreements between social partners, competent authorities *may* require the selected public service operator to grant staff previously taken on to provide services the rights to which they would have been entitled if there had been a transfer within the meaning of Directive 2001/23/EC. *Where* competent authorities require public service operators to comply with *certain* social standards, tender documents and public service contracts shall list the staff concerned and give transparent details of their contractual rights and the conditions under which employees are deemed to be linked to the services.

5. Without prejudice to national and Community law, including collective agreements between social partners, competent authorities *shall* require the selected public service operator to grant staff previously taken on to provide services the rights to which they would have been entitled if there had been a transfer within the meaning of Directive 2001/23/EC. *The* competent authorities *shall* require public service operators to comply with *at least the following* social standards: *application of the collective agreement in force at the place of performance of the service, training, health and safety of staff.* The tender documents and public service contracts shall list the staff concerned and give transparent details of their contractual rights and the conditions under which employees are deemed to be linked to the services.

Or. de

Justification

The application of Directive 2001/23/EC must be made mandatory in order to guarantee employees adequate protection in the event of a change of operator. In order to guarantee genuinely high-quality public transport services and social protection for the employees concerned, it is not sufficient to make the worker protection provisions voluntary, since this would put the social aspect at risk.

In order to guarantee the quality of the service, the competent authority must require the operator to comply with certain social standards.

Amendment by Michael Cramer, Eva Lichtenberger

Amendment 119
Article 4, paragraph 5

(5) Without prejudice to national and Community law, including collective agreements between social partners, competent authorities *may* require the selected public service operator to grant staff previously taken on to provide services the rights to which they would have been entitled if there had been a transfer within the meaning of Directive 2001/23/EC. *Where* competent authorities require public service operators to comply with *certain* social standards, tender documents and public service contracts shall list the staff concerned and give transparent details of their contractual rights and the conditions under which employees are deemed to be linked to the services.

(5) Without prejudice to national and Community law, including collective agreements between social partners, competent authorities *shall* require the selected public service operator to grant staff previously taken on to provide services the rights to which they would have been entitled if there had been a transfer within the meaning of Directive 2001/23/EC. *The* competent authorities *shall* require public service operators to comply with *at least the following* social standards: *application of the collective agreement in force at the place of performance of the service, training, health and safety of staff.* The tender documents and public service contracts shall list the staff concerned and give transparent details of their contractual rights and the conditions under which employees are deemed to be linked to the services.

Or. de

Justification

The application of Directive 2001/23/EC must be made mandatory in order to guarantee employees adequate protection in the event of a change of operator.

The obligation on the competent authority to require compliance with the collective agreement applicable at the place of performance of the service (the wording is chosen to be adaptable to various national situations) and other social criteria contribute to the quality of the service and ensure that tendering takes place not on the basis of saving in staff costs but of the quality of the service offered. This is in line with Parliament's position at first reading (Amendments 41, 127, 44 and 48).

Amendment by Brian Simpson, Erik Meijer, Gilles Savary

Amendment 120
Article 4, paragraph 5 a (new)

5. Competent authorities shall have the

right and power to:

- a) ensure adequate provision of public passenger transport services.*
- b) award public service contracts or lay down the general rules in order to secure the fulfilment of these public transport services.*
- c) adopt public service requirements in order to ensure adequacy of services.*
- d) monitor and assess the performance of operators in carrying out their contracts and in complying with these general rules.*
- e) take action including the imposition of penalties or termination of public service contracts when operators fail to meet the quality of service or service levels contained within the contract.*

Or. en

Justification

This amendment enables competent authorities to penalise or terminate contracts when operators fail to comply with agreed quality standards that are part of their public service contract.

Amendment by Markus Ferber

Amendment 121
Article 4, paragraph 7

7. Tender documents and public service contracts shall be transparent as to whether **or not** subcontracting may be considered. The public service contract shall, in accordance with national and Community law, determine the conditions applied to subcontracting.

7. Tender documents and public service contracts shall be transparent as to whether, **and if so to what extent**, subcontracting may be considered. The public service contract shall, in accordance with national and Community law, determine the conditions applied to subcontracting.

Or. de

Justification

We are already seeing a trend whereby large groups submit tenders without details of equipment and staff, prevent subcontractors from doing so, and, once the concession has been awarded, have the small and medium-sized subcontractors in the palm of their hands. It may therefore be appropriate in individual cases to actively promote a market balance and to impose minimum and maximum quotas for subcontractors. Only a self-provision quota will make it possible to achieve “equality of arms” in terms of competition with the local SMEs.

Amendment by Willi Piecyk, Ulrich Stockmann

Amendment 122 Article 4, paragraph 7

7. Tender documents and public service contracts shall be transparent as to whether or not subcontracting may be considered. The public service contract shall, in accordance with national and Community law, determine the conditions applied to subcontracting.

7. Tender documents and public service contracts shall be transparent as to whether or not subcontracting may be considered. ***If subcontracting takes place, the contractor entrusted with the administration and performance of passenger transport services in accordance with the Regulation shall be required to perform the majority of the public passenger transport services itself.*** The public service contract shall, in accordance with national and Community law, determine the conditions applied to subcontracting.

Or. de

Justification

If all tests relating to deployment of vehicles and staff are passed on to subcontractors, who may in turn subcontract work, there is a risk of negative implications for existing social and quality standards. This can only be counteracted, if subcontracting does take place, by requiring the firm entrusted with a public service contract to perform the majority of the public passenger transport services itself.

Amendment by Renate Sommer

Amendment 123 Article 5, paragraph 1

1. Public service contracts shall be awarded in accordance with the rules laid down in

1. Public service contracts shall be awarded in accordance with the rules laid down in

this Regulation. *However, service contracts or public service contracts as defined in Directive 2004/17/EC or Directive 2004/18/EC for public passenger transport services by bus or tram shall be awarded in accordance with the procedures provided for under those Directives where such contracts do not take the form of service concessions contracts as defined in those Directives. Where contracts are to be awarded in accordance with Directives 2004/17/EC or 2004/18/EC, the provisions of paragraphs 2 to 6 of this Article shall not apply.*

this Regulation.

Or. de

Justification

Giving this regulation precedence over general EU public procurement law, as called for by Parliament at its first reading in 2001, creates legal certainty for authorities and transport undertakings.

Amendment by Markus Ferber

Amendment 124
Article 5, paragraph 1

1. Public service contracts shall be awarded in accordance with the rules laid down in this Regulation. *However, service contracts or public service contracts as defined in Directive 2004/17/EC or Directive 2004/18/EC for public passenger transport services by bus or tram shall be awarded in accordance with the procedures provided for under those Directives where such contracts do not take the form of service concessions contracts as defined in those Directives. Where contracts are to be awarded in accordance with Directives 2004/17/EC or 2004/18/EC, the provisions of paragraphs 2 to 6 of this Article shall not apply.*

1. Public service contracts shall be awarded in accordance with the rules laid down in this Regulation.

Directives 2004/17/EC and 2004/18/EC shall not apply.

Justification

Legal uncertainty would arise if the provisions were applied, particularly concerning the relevant authorities' freedom of choice between self-provision, direct award and competitive tender. Moreover internal operators could also operate outside the territory of the owner-authority. In the case of rail transport unlimited direct award would even be feasible. The result would be a split direct award regime, as a result of which freedom of choice would be restricted to specific transport modes for no objective reason.

Amendment by Willi Piecyk

Amendment 125
Article 5, paragraph 1

1. Public service contracts shall be awarded in accordance with the rules laid down in this Regulation. ***However, service contracts or public service contracts as defined in Directive 2004/17/EC or Directive 2004/18/EC for public passenger transport services by bus or tram shall be awarded in accordance with the procedures provided for under those Directives where such contracts do not take the form of service concessions contracts as defined in those Directives. Where contracts are to be awarded in accordance with Directives 2004/17/EC or 2004/18/EC, the provisions of paragraphs 2 to 6 of this Article shall not apply.***

1. Public service contracts shall be awarded in accordance with the rules laid down in this Regulation; ***Directives 2004/17/EC and 2004/18/EC shall not apply.***

Justification

The common position's accepted coexistence of general EU procurement law and the regulation's provisions will lead to legal uncertainty.

Accepting precedence for general EU procurement law over the regulation's provisions would create the possibility that the scope of the regulation could constantly change as a result of changing the general contract guidelines. Only with a clear and defining, sector-specific regulation can the aim of legal certainty for authorities and transport companies be fulfilled.

Amendment by Jörg Leichtfried

Amendment 126
Article 5, paragraph 1

1. Public service contracts shall be awarded in accordance with the rules laid down in this Regulation. ***However, service contracts or public service contracts as defined in Directive 2004/17/EC or Directive 2004/18/EC for public passenger transport services by bus or tram shall be awarded in accordance with the procedures provided for under those Directives where such contracts do not take the form of service concessions contracts as defined in those Directives. Where contracts are to be awarded in accordance with Directives 2004/17/EC or 2004/18/EC, the provisions of paragraphs 2 to 6 of this Article shall not apply.***

1. Public service contracts shall be awarded in accordance with the rules laid down in this Regulation.

Or. de

Justification

The Regulation needs to be given clear precedence over the public procurement directives. Giving the regulation precedence over public procurement law does not, according to expert legal opinion, contradict either the Treaty or the Union's international commitments. Cutting the text will create a uniform legal system and a uniform contract scheme for all public passenger transport services. By ruling on clear precedence for the Regulation's provisions we will also create adequate legal certainty for all seeking legal redress. The amendment must also apply by analogy to Amendment 8 to Article 8(1) and the two amendments should be decided together.

Amendment by Michael Cramer, Eva Lichtenberger

Amendment 127
Article 5, paragraph 1

1. Public service contracts shall be awarded in accordance with the rules laid down in this Regulation. ***However, service contracts or public service contracts as defined in Directive 2004/17/EC or Directive 2004/18/EC for public passenger transport services by bus or tram shall be awarded in***

1. Public service contracts ***for public passenger transport services by surface, elevated or underground railway*** shall be awarded in accordance with the rules laid down in this Regulation.

accordance with the procedures provided for under those Directives where such contracts do not take the form of service concessions contracts as defined in those Directives. Where contracts are to be awarded in accordance with *Directives 2004/17/EC or 2004/18/EC*, the provisions of *paragraphs 2 to 6 of this Article* shall not apply.

Public service contracts for public passenger transport services by bus or tram shall be awarded in accordance with this Regulation if the contract has been drawn up as a service concession as defined in Directive 2004/17/EC or Directive 2004/18/EC. Otherwise public service contracts for public passenger transport services by bus or tram shall be awarded in accordance with Directive 2004/17/EC or Directive 2004/18/EC.

Where contracts are to be awarded in accordance with *Directive 2004/17/EC*, the provisions of *paragraph 2* shall not apply.

Or. de

Amendment by Mathieu Grosch, Georg Jarzembowski

Amendment 128
Article 5, paragraph 1

1. Public service contracts shall be awarded in accordance with the rules laid down in this Regulation. However, service contracts or public service contracts as defined in Directive 2004/17/EC or Directive 2004/18/EC for public passenger transport services by bus or tram shall be awarded in accordance with the procedures provided for under those Directives where such contracts do not take the form of service concessions contracts as defined in those Directives. Where contracts are to be awarded in accordance with Directives 2004/17/EC or 2004/18/EC, the provisions of paragraphs 2 to 6 of this Article shall not apply.

1. Public service contracts shall be awarded in accordance with the rules laid down in this Regulation. However, service contracts or public service contracts as defined in Directive 2004/17/EC or Directive 2004/18/EC for public passenger transport services by bus or tram shall be awarded in accordance with the procedures provided for under those Directives where such contracts do not take the form of service concessions contracts as defined in those Directives. Where contracts are to be awarded in accordance with Directives 2004/17/EC or 2004/18/EC, the provisions of paragraphs 2 to 6 of this Article shall not apply.

Irrespective of the relevant procedural provisions, uniform legal protection shall be guaranteed by the Member States for the award of public service contracts in accordance with Directive 89/665/EEC.

Or. de

Justification

To avoid jeopardising the continuity of transport services, we need a legal protection procedure that will quickly produce conclusive results. To be effective, legal protection must also avoid the possibility of divergent decisions on the same case. Uniform legal protection for the award of public service contracts in accordance with the tried and tested procedure under Directive 89/665/EEC, which meets the needs of the transport industry, is therefore required.

Amendment by Elisabeth Jeggle

Amendment 129
Article 5, paragraph 1

1. Public service contracts shall be awarded in accordance with the rules laid down in this Regulation. However, service contracts or public service contracts as defined in Directive 2004/17/EC or Directive 2004/18/EC for public passenger transport services by bus or tram shall be awarded in accordance with the procedures provided for under those Directives where such contracts do not take the form of service concessions contracts as defined in those Directives. Where contracts are to be awarded in accordance with Directives 2004/17/EC or 2004/18/EC, the provisions of paragraphs 2 to 6 of this Article shall not apply.

1. Public service contracts shall be awarded in accordance with the rules laid down in this Regulation. However, service contracts or public service contracts as defined in Directive 2004/17/EC or Directive 2004/18/EC for public passenger transport services by bus or tram shall be awarded in accordance with the procedures provided for under those Directives where such contracts do not take the form of service concessions contracts as defined in those Directives. Where contracts are to be awarded in accordance with Directives 2004/17/EC or 2004/18/EC, the provisions of paragraphs 2 to 6 of this Article shall not apply.

The award of public service contracts should be made, depending on the circumstances of individual cases, by division into lots in the interest of the greatest possible participation by interested tenderers, with a permitted maximum lot size of 500 000 km a year of public passenger transport provision, and with an assessment of whether the award of a net service contract would be appropriate in view of the complexity of determining fares

and calculating compensation payments for fulfilling public service commitments. Award of the contract shall also be conditional on the assessment of such criteria as the economy of the tender and the taking-over and provision of transport planning services by the contractor.

Or. de

Justification

A weakness of the common position is the absence of any award criteria other than price – irrespective of whether the award is for a contract favourable to small businesses or a regular one. A lot size of 500 000 km a year for public passenger transport services represents an average annual transport provision by 10 buses in a regional area. This ensures that reliably funded small businesses with a certain prospect of success can participate in a procurement procedure of this kind and is suited to taking some administrative action to oppose the consolidation of oligopoly structures.

Amendment by Markus Ferber

Amendment 130

Article 5, paragraph 1, subparagraph 1 a (new)

The award of public service contracts shall be made, depending on the circumstances of individual cases, by division into lots in the interest of the greatest possible participation by interested tenderers, with a permitted maximum lot size of 500 000 km a year of public passenger transport provision. It shall be considered whether the award of a net service contract would be appropriate in view of the complexity of determining fares and calculating compensation payments for fulfilling public service commitments.

The award of the contract shall also be made dependent on

- the economy of the tender, and***
- the taking-over and provision of transport planning services by the contractor.***

Justification

Award criteria other than price are missing in the common position. To prevent legal uncertainty other award criteria need to be included.

The chosen lot size of 500 000 kilometres a year of public passenger transport services represents the average annual transport provision by 10 buses in a regional area. This ensures that reliably funded small businesses with a certain prospect of success can participate in an award procedure of this kind.

Amendment by Renate Sommer

Amendment 131

Article 5, paragraph 1 a (new)

1a. The award of public service contracts shall be limited to a maximum lot size of 500 000 km a year of public passenger transport services.

Justification

Fixing a lot size of 500 000 kilometres a year of public passenger transport services will give small businesses a chance of competing. This rule will also prevent a consolidation of oligopoly structures. The specified lot size represents the average annual transport provision by 10 buses in a regional area.

Amendment by Michael Cramer, Eva Lichtenberger

Amendment 132

Article 5, paragraph 2, subparagraph 1

2. Unless prohibited by national law, any competent local authority, whether or not it is an individual authority or a group of authorities providing integrated public passenger transport services, may decide to provide public passenger transport services itself or to award public service contracts directly to a legally distinct entity over which the competent local authority, or in

2. Provided that national law ***permits this option***, any competent local authority, whether or not it is an individual authority or a group of authorities providing integrated public passenger transport services, may decide to provide public passenger transport services itself or to award public service contracts directly to a legally distinct entity over which the competent local authority, or

the case of a group of authorities at least one competent local authority, exercises control similar to that exercised over its own departments (hereinafter referred to as an internal operator). Where a competent local authority takes such a decision, the following shall apply:

in the case of a group of authorities at least one competent local authority, exercises control similar to that exercised over its own departments (hereinafter referred to as an internal operator). Where a competent local authority takes such a decision, the following shall apply:

Or. de

Amendment by Dirk Sterckx

Amendment 133

Article 5, paragraph 2, subparagraph 1

2. Unless prohibited by national law, any competent local authority, whether or not it is an individual authority or a group of authorities providing integrated public passenger transport services, may decide to provide public passenger transport services itself or to award public service contracts directly to a legally distinct entity over which the competent local authority, or ***in the case of a group of authorities at least one competent local authority***, exercises control similar to that exercised over its own departments (hereinafter referred to as an internal operator). Where a competent local authority takes such a decision, the following shall apply:

2. Unless prohibited by national law, any competent local authority, whether or not it is an individual authority or a group of authorities providing integrated public passenger transport services, may decide to provide public passenger transport services itself or to award public service contracts directly to a legally distinct entity over which the competent local authority or group of authorities exercises control similar to that exercised over its own departments (hereinafter referred to as an internal operator). Where a competent local authority takes such a decision, the following shall apply:

Or. fr

Amendment by Mathieu Grosch, Georg Jarzembowski

Amendment 134

Article 5, paragraph 2, subparagraph 1

2. ***Unless prohibited by*** national law, any competent local authority, whether or not it is an individual authority or a group of authorities providing integrated public passenger transport services, may decide to provide public passenger transport services

2. ***Provided that*** national law ***so permits***, any competent local authority, whether or not it is an individual authority or a group of authorities providing integrated public passenger transport services, may decide to provide public passenger transport services

itself or to award public service contracts directly to a legally distinct entity over which the competent local authority, or in the case of a group of authorities at least one competent local authority, exercises control similar to that exercised over its own departments (hereinafter referred to as an internal operator). Where a competent local authority takes such a decision, the following shall apply:

itself or to award public service contracts directly to a legally distinct entity over which the competent local authority, or in the case of a group of authorities at least one competent local authority, exercises control similar to that exercised over its own departments (hereinafter referred to as an internal operator). Where a competent local authority takes such a decision, the following shall apply:

Or. de

Justification

It is not generally clear from national law whether a specific procedure is prohibited or not. Legal clarity can be achieved only if an unambiguous implementing instruction is required of the national law. And this meets the requirement of subsidiarity: EC law provides standardised procedural rules, but it is only the active choice of the national legislator that determines which instruments are to be implemented in the Member State concerned.

Amendment by Paolo Costa

Amendment 135

Article 5, paragraph 2, subparagraph 1

2. Unless prohibited by national law, any competent local authority, whether or not it is an individual authority *or* a group of authorities providing integrated public passenger transport services, may decide to provide public passenger transport services itself or to award public service contracts directly to a legally distinct entity over which the competent local authority, or *in the case of a group of authorities at least one competent local authority*, exercises control similar to that exercised over its own departments (hereinafter referred to as an internal operator). Where a competent local authority takes such a decision, the following shall apply:

2. Unless prohibited by national law, any competent local authority, whether or not it is an individual authority, a group of authorities *or an authority set up specially by the competent authorities* providing integrated public passenger transport services, may decide to provide public passenger transport services itself or to award public service contracts directly to a legally distinct entity over which the competent local authority or group of authorities exercises control similar to that exercised over its own departments (hereinafter referred to as an internal operator). Where a competent local authority takes such a decision, the following shall apply:

Or. fr

Amendment by Willi Piecyk

Amendment 136

Article 5, paragraph 2, subparagraph 1

2. Unless prohibited by national law, any competent local authority, whether or not it is an individual authority or a group of authorities providing integrated public passenger transport services, may decide to provide public passenger transport services itself or to award public service contracts directly to a legally distinct entity over which the competent local authority, or in the case of a group of authorities at least one competent local authority, exercises **control similar to that exercised over its own departments** (hereinafter referred to as an internal operator). Where a competent local authority takes such a decision, the following shall apply:

2. Unless prohibited by national law, any competent local authority, whether or not it is an individual authority or a group of authorities providing integrated public passenger transport services, may decide to provide public passenger transport services itself or to award public service contracts directly to a legally distinct entity over which the competent local authority, or in the case of a group of authorities at least one competent local authority, exercises **a controlling influence** (hereinafter referred to as an internal operator). Where a competent local authority takes such a decision, the following shall apply:

Or. de

Justification

Article 5(2) is intended to govern the question of control for three categories: provision by those providing their own passenger transport services, provision by internal operators wholly owned by the relevant authority and provision by internal operators with private stakeholders. For this purpose a uniform definition of control should be used. The expression 'control over its own departments' is even used in jurisprudence on general EU procurement law.

Amendment by Elisabeth Jeggle

Amendment 137

Article 5, paragraph 2, subparagraph 1

2. Unless prohibited by national law, any competent local authority, **whether or not it is an individual authority or a group of authorities providing integrated public passenger transport services**, may decide to provide public passenger transport services itself or to award public service contracts directly to a legally distinct entity over which the competent local authority, **or in**

2. Unless prohibited by national law, any competent local authority may decide to provide public passenger transport services itself or to award public service contracts directly to a legally distinct entity over which the competent local authority exercises control similar to that exercised over its own departments (hereinafter referred to as an internal operator). Where a

the case of a group of authorities at least one competent local authority, exercises control similar to that exercised over its own departments (hereinafter referred to as an internal operator). Where a competent local authority takes such a decision, the following shall apply:

competent local authority takes such a decision, the following shall apply:

Or. de

Justification

As a derogation from the principle of free competition, the in-house privilege must be subject to strict limitations. Direct award by groups of authorities to an internal operator may lead to a large-scale sealing off of transport services from competition. Groups can in theory encompass whole regions, up to and including entire Member States. This would undermine the regulation's objectives. So the direct award option for groups of authorities should be deleted.

Amendment by Gilles Savary

Amendment 138

Article 5, paragraph 2, subparagraph 1

2. Unless prohibited by national law, any competent local authority, whether or not it is an individual authority or a group of authorities providing integrated public passenger transport services, may decide to provide public passenger transport services itself or to award public service contracts directly to a legally distinct entity over which the competent local authority, or in the case of a group of authorities at least one competent local authority, exercises control similar to that exercised over its own departments (hereinafter referred to as an internal operator). Where a competent local authority takes such a decision, the following shall apply:

2. Any competent local authority or group of competent local authorities may decide to provide public transport services itself or to do so through an internal operator over which it exercises control similar to that exercised over its own departments within its own administrative territory and on condition that this internal operator does not participate in competitive tendering organised within or outside the institutional and geographical territory under the responsibility of the local authority. Where a competent local authority ***or a group of competent local authorities*** takes such a decision, the following shall apply:

Or. fr

Justification

Only competent authorities, in conformity with the provision contained in Article 2(c), may

constitute themselves as an internal operator in the name of the principle of the free administration of public authorities in application of the subsidiarity principle set out in Article 5 of the EC Treaty. Moreover, the principle of geographical demarcation enshrined by established case law must be respected in order to avoid disputes and legal challenges concerning the general principles of competition law and the Treaties governing the Union.

Amendment by Saïd El Khadraoui

Amendment 139

Article 5, paragraph 2, subparagraph 1

Unless prohibited by national law, any competent local authority, whether or not it is an individual authority or a group of authorities providing integrated public passenger transport services, may decide to provide public passenger transport services itself or to award public service contracts directly to ***a legally distinct entity over which the competent local authority, or in the case of a group of authorities at least one competent local authority, exercises control similar to that exercised over its own departments (hereinafter referred to as an internal operator).*** Where a competent local authority takes such a decision, the following shall apply:

Any competent local authority, whether or not it is an individual authority or a group of authorities providing integrated public passenger transport services, may decide to provide public passenger transport services itself or to award public service contracts directly to ***an internal operator***. Where a competent local authority takes such a decision, the following shall apply:

Or. en

Justification

The definition of the internal operator is now inserted in article 5 in a rather inelegant way, and the first sentence of this paragraph seems unnecessary. This amendment is compatible with amendment 1, that inserts the definition of an "internal operator" in article 2.

Amendment by Erik Meijer

Amendment 140

Article 5, paragraph 2, subparagraph 1

2. Unless prohibited by national law, any competent local authority, whether or not it is an individual authority or a group of authorities providing integrated public

2. Unless prohibited by national law, any competent local authority, whether or not it is an individual authority or a group of authorities providing integrated public

passenger transport services, may decide to provide public passenger transport services itself or to award public service contracts directly to a legally distinct entity over which the competent local authority, or in the case of a group of authorities at least one competent local authority, exercises control *similar to that exercised over its own departments* (hereinafter referred to as an internal operator). Where a competent local authority takes such a decision, the following shall apply:

passenger transport services, may decide to provide public passenger transport services itself or to award public service contracts directly to a legally distinct entity over which the competent local authority, or in the case of a group of authorities at least one competent local authority, exercises *dominant* control (hereinafter referred to as an internal operator). Where a competent local authority takes such a decision, the following shall apply:

Or. en

Justification

Art. 5 (2) is designed to regulate control in three group cases: provision of passenger transport services by the competent authority or authorities themselves; provision by an internal operator fully owned by the competent authority or authorities; and provision via an internal operator with private co-partners. Accordingly in this case, a uniform notion of control should be used. This would then avoid any differential handling of the three group cases. Moreover, the expression “control over its own departments” is used in the jurisprudence relating to EU public procurement law.

Amendment by Mathieu Grosch

Amendment 141

Article 5, paragraph 2, subparagraph 1

2. Unless prohibited by national law, any competent local authority, whether or not it is an individual authority or a group of authorities providing integrated public passenger transport services, may decide to provide public passenger transport services directly to a legally distinct entity over which the competent local authority, or in the case of a group of authorities at least one competent local authority, exercises control similar to that exercised over its own departments (hereinafter referred to as an internal operator). Where a competent local authority takes such a decision, the following shall apply:

2. Unless prohibited by national law, any competent local authority, whether or not it is an individual authority or a group of authorities providing integrated public passenger transport services *in an economically and socially coherent transport area*, may decide to provide public passenger transport services itself or to award public service contracts directly to a legally distinct entity over which the competent local authority, or in the case of a group of authorities at least one competent local authority, exercises control similar to that exercised over its own departments (hereinafter referred to as an internal operator). Where a competent local authority takes such a decision, the following shall

apply:

Or. de

Amendment by Luís Queiró

Amendment 142

Article 5, paragraph 2, subparagraph 1

2. Unless prohibited by national law, any competent local authority, whether or not it is an individual authority or a group of authorities providing integrated public passenger transport services, may decide to provide public passenger transport services itself or to award public service contracts directly to a legally distinct entity over which the competent local authority, ***or in the case of a group of authorities at least one competent local authority***, exercises control similar to that exercised over its own departments (hereinafter referred to as an internal operator). Where a competent local authority takes such a decision, the following shall apply:

2. Unless prohibited by national law, any competent local authority, whether or not it is an individual authority or a group of authorities providing integrated public passenger transport services, may decide to provide public passenger transport services itself or to award public service contracts directly to a legally distinct entity over which the competent local authority exercises control similar to that exercised over its own departments (hereinafter referred to as an internal operator). Where a competent local authority takes such a decision, the following shall apply:

Or. pt

Justification

The only groups of authorities allowed should be those with legal personality and not purely de facto groupings, the idea being to rule out cases in which the relationship of one or more members of a group to the internal operator is not such as to warrant a contract awarded directly.

Amendment by Gilles Savary

Amendment 143

Article 5, paragraph 2, point (a)

(a) for the purposes of determining whether the competent local authority exercises control, factors such as the degree of representation on administrative, management or supervisory bodies, ~~*deleted*~~

specifications relating thereto in the articles of association, ownership, effective influence and control over strategic decisions and individual management decisions shall be taken into consideration. In accordance with Community law, 100 % ownership by the competent public authority, in particular in the case of public-private partnerships, is not a mandatory requirement for establishing control within the meaning of this paragraph, provided that there is a dominant public influence and that control can be established on the basis of other criteria;

Or. fr

Justification

The definition of internal operator as proposed by the Commission in its July 2005 proposal is clearer.

Amendment by Michael Cramer, Eva Lichtenberger

Amendment 144

Article 5, paragraph 2, point (a)

(a) for the purposes of determining whether the competent local authority exercises control, factors such as the degree of representation on administrative, management or supervisory bodies, specifications relating thereto in the articles of association, ownership, effective influence and control over strategic decisions and individual management decisions shall be taken into consideration. ***In accordance with Community law, 100 % ownership by the competent public authority, in particular in the case of public-private partnerships, is not a mandatory requirement for establishing control within the meaning of this paragraph, provided that there is a dominant public influence and that control can be established on the basis of other***

(a) for the purposes of determining whether the competent local authority exercises control, factors such as the degree of representation on administrative, management or supervisory bodies, specifications relating thereto in the articles of association, ownership, effective influence and control over strategic decisions and individual management decisions shall be taken into consideration.

criteria;

Or. de

Amendment by Dirk Sterckx, Jean-Louis Bourlanges

Amendment 145

Article 5, paragraph 2, point (a)

(a) for the purposes of determining whether the competent local authority exercises control, factors such as the degree of representation on administrative, management or supervisory bodies, specifications relating thereto in the articles of association, ownership, effective influence and control over strategic decisions and individual management decisions shall be taken into consideration. In accordance with Community law, 100 % ownership by the competent public authority, in particular in the case of public-private partnerships, is not a mandatory requirement for establishing control within the meaning of this paragraph, provided that ***there is a dominant public influence and that control can be established on the basis of other criteria;***

a) for the purposes of determining whether the competent local authority exercises control, factors such as the degree of representation on administrative, management or supervisory bodies, specifications relating thereto in the articles of association, ownership, effective influence and control over strategic decisions and individual management decisions shall be taken into consideration. In accordance with Community law, 100 % ownership by the competent public authority, in particular in the case of public-private partnerships, is not a mandatory requirement for establishing control within the meaning of this paragraph, provided that ***all the private partners have been selected on the basis of an invitation to tender valid for the duration of the public service contract. Moreover, private partners may not individually or collectively have a significant influence on the public operator as defined in the international accounting standard IAS 28 laid down in Commission Regulation (EC) No. 2238/2004 of 29 December 2004 amending Regulation (EC) No. 1725/2003 adopting certain international accounting standards in accordance with Regulation (EC) No. 1606/2002 of the European Parliament and of the Council as regards IASs IFRS 1, IASs Nos. 1 to 10, 12 to 17, 19 to 24, 27 to 38, 40 and 41 and SIC Nos. 1 to 7, 11 to 14, 18 to 27 and 30 to 33¹.***

¹OJ L 394, 31.12.2004, p. 1.

Or. fr

Amendment by Paolo Costa

Amendment 146

Article 5, paragraph 2, point (a)

(a) for the purposes of determining whether the competent local authority exercises control, factors such as the degree of representation on administrative, management or supervisory bodies, specifications relating thereto in the articles of association, ownership, effective influence and control over strategic decisions and individual management decisions shall be taken into consideration. In accordance with Community law, **100%** ownership by the competent public authority, in particular in the case of public-private partnerships, is **not a mandatory** requirement for establishing control within the meaning of this paragraph, provided that ***there is a dominant public influence and that control can be established on the basis of other criteria;***

(a) for the purposes of determining whether the competent local authority exercises control, factors such as the degree of representation on administrative, management or supervisory bodies, specifications relating thereto in the articles of association, ownership, effective influence and control over strategic decisions and individual management decisions shall be taken into consideration. In accordance with Community law, **70%** ownership by the competent public authority, in particular in the case of public-private partnerships, is a **sufficient** requirement for establishing control within the meaning of this paragraph, provided that ***all the private partners have been selected on the basis of an invitation to tender valid for the duration of the public service contract. Moreover, private partners may not, individually or collectively have a significant influence on the public operator as defined in the international accounting standard IAS 28 laid down in Commission Regulation (EC) No. 2238/2004 of 29 December 2004 amending Regulation (EC) No. 1725/2003 adopting certain international accounting standards in accordance with Regulation (EC) No. 1606/2002 of the European Parliament and of the Council as regards IASs IFRS 1, IASs Nos. 1 to 10, 12 to 17, 19 to 24, 27 to 38, 40 and 41 and SIC Nos. 1 to 7, 11 to 14, 18 to 27 and 30 to 33¹.***

¹OJ L 394, 31.12.2004, p. 1.

Or. fr

Amendment by Luís Queiró

Amendment 147

Article 5, paragraph 2, point (a)

(a) for the purposes of determining whether the competent local authority exercises control, factors such as the degree of representation on administrative, management or supervisory bodies, specifications relating thereto in the articles of association, ownership, effective influence and control over strategic decisions and individual management decisions shall be taken into consideration. ***In accordance with Community law, 100 % ownership by the competent public authority, in particular in the case of public-private partnerships, is not a mandatory requirement for establishing control within the meaning of this paragraph, provided that there is a dominant public influence and that control can be established on the basis of other criteria;***

(a) for the purposes of determining whether the competent local authority exercises control, factors such as the degree of representation on administrative, management or supervisory bodies, specifications relating thereto in the articles of association, ownership, effective influence and control over strategic decisions and individual management decisions shall be taken into consideration. In accordance with Community law;

Or. pt

Justification

Awarding a contract directly to a joint venture, without allowing rival companies to participate, runs counter to the aim of free competition and infringes the principle of equal treatment of the parties concerned.

Amendment by Gilles Savary

Amendment 148

Article 5, paragraph 2, point (b)

(b) the condition for applying this paragraph is that the internal operator and any entity over which this operator exerts even a minimal influence perform their public passenger transport activity within the territory of the competent local authority, notwithstanding any outgoing lines or other ancillary elements of that

deleted

activity which enter the territory of neighbouring competent local authorities, and do not take part in competitive tenders concerning the provision of public passenger transport services organised outside the territory of the competent local authority;

Or. fr

Justification

Only competent authorities, in conformity with the provision contained in Article 2(c), may constitute themselves as an internal operator in the name of the principle of the free administration of public authorities in application of the subsidiarity principle set out in Article 5 of the EC Treaty. Moreover, the principle of geographical demarcation enshrined by established case law must be respected in order to avoid disputes and legal challenges concerning the general principles of competition law and the Treaties governing the Union.

Amendment by Stanisław Jałowiecki

Amendment 149

Article 5, paragraph 2, point (b)

(b) the condition for applying this paragraph is that the internal operator and any entity over which this operator exerts even a minimal influence perform their public passenger transport activity within the territory of the competent local authority, notwithstanding any outgoing lines or other ancillary elements of that activity which enter the territory of neighbouring competent local authorities, and do not take part in competitive tenders concerning the provision of public passenger transport services organised outside the territory of the competent local authority;

(b) the independent provision of public services or the direct award of a contract may apply only to the territory of the local authority concerned, without the right to perform transport services entering the territory of neighbouring competent local authorities. The internal operator and any other entity over which this operator exerts an influence shall not be entitled to take part in tenders for the provision of public passenger transport services by bus outside this territory.

Or. pl

Justification

The amendment introduces provisions to clarify the situation in which a competent authority or group of authorities may independently provide public passenger transport services or directly award a contract without a tendering procedure.

Amendment by Michael Cramer, Eva Lichtenberger

Amendment 150

Article 5, paragraph 2, point (b)

(b) the condition for applying this paragraph is that the internal operator and any entity over which this operator exerts even a minimal influence perform their public passenger transport activity within the territory of the competent local authority, notwithstanding any outgoing lines or other ancillary elements of that activity which enter the territory of neighbouring competent local authorities, ***and do not take part in competitive tenders concerning the provision of public passenger transport services organised outside the territory of the competent local authority;***

(b) the condition for applying this paragraph is that the internal operator and any entity over which this operator ***or the competent local authority*** exerts even a minimal influence perform their public passenger transport activity within the territory of the competent local authority, notwithstanding any outgoing lines or other ancillary elements of that activity which enter the territory of neighbouring competent local authorities;

Or. de

Amendment by Jörg Leichtfried

Amendment 151

Article 5, paragraph 2, point (b)

(b) the condition for applying this paragraph is that the internal operator and any entity over which this operator exerts even a minimal influence perform their public passenger transport activity within the territory of the competent local authority, notwithstanding any outgoing lines or other ancillary elements of that activity which enter the territory of ***neighbouring*** competent local authorities, and do not take part in competitive tenders concerning the provision of public passenger transport services organised outside the territory of the

(b) the condition for applying this paragraph is that the internal operator and any entity over which this operator exerts even a minimal influence perform their public passenger transport activity within the territory of the competent local authority, notwithstanding any outgoing lines or other ancillary elements of that activity which ***in coherent transport areas*** enter the territory of ***other*** competent local authorities, and do not take part in competitive tenders concerning the provision of public passenger transport services organised outside the

competent local authority;

territory of the competent local authority;

Or. de

Justification

Through the amendment for direct award to internal operators the best possible flexible legal framework can be created in the area of urban conurbations that will also make it possible to connect up with large neighbouring authorities, where this makes transport policy sense, on the basis of legal certainty. The change of wording also allows changing contextual conditions to be taken into account, such as planning new transport routes for better connection with neighbouring areas, and hence better public transport integration.

The proposal also increases legal certainty, as the vague legal concept of 'neighbouring' is dropped and there is thus no cause for differing interpretations.

Amendment by Georg Jarzembowski

Amendment 152

Article 5, paragraph 2, point (b)

(b) the condition for applying this paragraph is that the internal operator and any entity over which this operator exerts even a minimal influence perform their public passenger transport activity within the territory of the competent local authority, ***notwithstanding any outgoing lines or other ancillary elements of that activity which enter the territory of neighbouring competent local authorities***, and do not take part in competitive tenders concerning the provision of public passenger transport services organised outside the territory of the competent local authority;

(b) the condition for applying this paragraph is that the internal operator and any entity over which this operator ***or the competent local authority*** exerts even a minimal influence perform their public passenger transport activity within the territory of the competent local authority and do not take part in competitive tenders concerning the provision of public passenger transport services organised outside the territory of the competent local authority;

Or. de

Justification

The additional wording ensures that the ban on extraterritorial participation in the tender cannot be circumvented easily with the aid of the internal operator's affiliated companies.

In the interest of competition free of discrimination the exemption of direct award to internal operators must be restricted as tightly as possible. The crucial factor is the territorial restriction. This prevents internal operators in protected markets from moving out to operate in other markets and enjoy anti-competitive advantages there. A tight and clear definition of the internal operator's territorial area is crucial. Extending the area to 'outgoing lines and other ancillary elements' in the territory of

neighbouring authorities should therefore be deleted.

Amendment by Dirk Sterckx, Paolo Costa

Amendment 153

Article 5, paragraph 2, point (b)

(b) the condition for applying this paragraph is that the internal operator and any entity over which this operator exerts even a minimal influence perform their public passenger transport activity within the territory of the competent local authority, ***notwithstanding any outgoing lines or other ancillary elements of that activity which enter the territory of neighbouring competent local authorities***, and do not take part in competitive tenders concerning the provision of public passenger transport services organised outside the territory of the competent local authority;

(b) the condition for applying this paragraph is that the internal operator and any entity over which this operator exerts even a minimal influence perform their public passenger transport activity within the territory of the competent local authority and do not take part in competitive tenders concerning the provision of public passenger transport services organised outside the territory of the competent local authority;

Or. fr

Amendment by Elisabeth Jeggle

Amendment 154

Article 5, paragraph 2, point (b)

(b) the condition for applying this paragraph is that the internal operator and any entity over which this operator exerts even a minimal influence ***perform*** their public passenger transport activity within the territory of the competent local authority, ***notwithstanding any outgoing lines or other ancillary elements of that activity which enter the territory of neighbouring competent local authorities***, and do not take part in competitive tenders concerning the provision of public passenger transport services organised outside the territory of the competent local authority;

(b) the condition for applying this paragraph is that the internal operator and any entity over which this operator ***or the competent local authority*** exerts even a minimal influence perform their public passenger transport activity within the territory of the competent local authority and do not take part in competitive tenders concerning the provision of public passenger transport services organised outside the territory of the competent local authority;

Or. de

Justification

The addition makes clear that geographical restriction of the internal operator's activities to the territory of the competent local authority is not to be circumvented by excluding the operator's subsidiary companies, but not the operator's affiliated companies, from participation in tendering procedures outside the territory of the competent local authority. Extending the area to 'outgoing lines' would severely weaken the territorial restriction and permit activity on the territory of several neighbouring authorities.

Amendment by Michael Cramer, Eva Lichtenberger

Amendment 155

Article 5, paragraph 2, point (c)

(c) notwithstanding point (b), an internal operator may participate in fair competitive tenders as from two years before the end of its directly awarded public service contract under the condition that a final decision has been taken to submit the public passenger transport services covered by the internal operator contract to fair competitive tender and that the internal operator has not concluded any other directly awarded public service contract; ***deleted***

Or. de

Amendment by Georg Jarzembowski

Amendment 156

Article 5, paragraph 2, point (c)

(c) notwithstanding point (b), an internal operator may participate in fair competitive tenders as from two years before the end of its directly awarded public service contract under the condition that a final decision has been taken to submit the public passenger transport services covered by the internal operator contract to fair competitive tender and that the internal operator has not concluded any other directly awarded public service contract; ***deleted***

Or. de

Justification

One of the regulation's aims is to create high-value passenger transport by establishing competition in the European internal market (cf. Recital 4). The in-house privilege is an exception from the principle of free competition and must for this reason be strictly delimited (cf. Recital 15). A provision enabling internal operators from the protected market to participate – as much as two years before their own market is opened up to competition – in a competition with other operators who are not protected by in-house contracts will lead to substantial competitive distortions at the expense of private firms. So this transitional provision should be deleted.

Amendment by Elisabeth Jeggle

Amendment 157

Article 5, paragraph 2, point (c)

<i>(c) notwithstanding point (b), an internal operator may participate in fair competitive tenders as from two years before the end of its directly awarded public service contract under the condition that a final decision has been taken to submit the public passenger transport services covered by the internal operator contract to fair competitive tender and that the internal operator has not concluded any other directly awarded public service contract;</i>	<i>deleted</i>
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Or. de

Justification

As a derogation from the principle of free competition, the in-house privilege must be subject to strict limitations. A provision enabling internal operators from the protected market to participate – as much as two years before their own market is opened up to competition – in a competition with other operators who are not protected by in-house contracts will lead to substantial competitive distortions at the expense of private firms. So this transitional provision should be deleted.

Amendment by Gilles Savary

Amendment 158

Article 5, paragraph 2, point (c)

<i>(c) notwithstanding point (b), an internal operator may participate in fair competitive tenders as from two years before the end of</i>	<i>(a) an internal operator may participate in fair competitive tenders as from two years before the end of its directly awarded public</i>
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its directly awarded public service contract under the condition that a final decision has been taken to submit the public passenger transport services covered by the internal operator contract to fair competitive tender and that the internal operator has not concluded any other directly awarded public service contract;

service contract under the condition that a final decision has been taken to submit the public passenger transport services covered by the internal operator contract to fair competitive tender and that the internal operator has not concluded any other directly awarded public service contract. ***In the event of his being awarded one or more public service contracts after competitive tendering within this period, the direct award from which he is benefiting would lapse and become open to challenge as such before the competent courts;***

Or. fr

J

Amendment by Luís Queiró

Amendment 159

Article 5, paragraph 2, point (c)

(c) notwithstanding point (b), an internal operator may participate in fair competitive tenders as from two years before the end of its directly awarded public service contract under the condition that a final decision has been taken to submit the public passenger transport services covered by the internal operator contract to fair competitive tender and that the internal operator has not concluded any other directly awarded public service contract;

(c) notwithstanding point (b), an internal operator may participate in fair competitive tenders as from two years before the end of its directly awarded public service contract under the condition that a final decision has been taken to submit the public passenger transport services covered by the internal operator contract to fair competitive tender and that the internal operator has not concluded any other directly awarded public service contract. ***If the competent authority reverses the above decision within two years, all contracts awarded to the internal operator in the intervening period shall automatically lapse;***

Or. pt

Justification

The purpose of this article is to gradually open up the market to competition. However, the principle of administrative freedom allows public authorities to change earlier decisions at any time, not least after an election. The necessary provision should therefore be made to

prevent discrimination between competing operators. If a competent authority changes the decision to award an operating contract directly to its internal operator, the contracts concluded with that operator in the two preceding years should lapse automatically.

Amendment by Dirk Sterckx, Paolo Costa

Amendment 160

Article 5, paragraph 2, point (c)

(c) notwithstanding point (b), an internal operator may participate in fair competitive tenders as from **two years** before the end of its directly awarded public service contract under the condition that a final decision has been taken to submit the public passenger transport services covered by the internal operator contract to fair competitive tender and that the internal operator has not concluded any other directly awarded public service contract;

(c) notwithstanding point (b), an internal operator may participate in fair competitive tenders as from **one year** before the end of its directly awarded public service contract under the condition that a final decision has been taken to submit the public passenger transport services covered by the internal operator contract to fair competitive tender and that the internal operator has not concluded any other directly awarded public service contract;

Or. fr

Amendment by Gilles Savary

Amendment 161

Article 5, paragraph 2, point (d)

(d) in the absence of a competent local authority, **points (a), (b) and (c)** shall apply to a national authority for the benefit of a geographical area which is not national, provided that the internal operator does not take part in competitive tenders concerning the provision of public passenger transport services organised outside the area for which the public service contract has been granted.

(b) in the absence of a competent local authority, **point (a)** shall apply to a national authority for the benefit of a geographical area which is not national, provided that the internal operator does not take part in competitive tenders concerning the provision of public passenger transport services organised outside the area for which the public service contract has been granted.

Or. fr

Justification

This amendment seeks to adapt point (d) of Article 5(2) in the light of the amendments modifying the introductory passage to paragraph 2 as well as points (a), (b) and (c) of this article.

Amendment by Elisabeth Jeggle

Amendment 162

Article 5, paragraph 2, point (d)a (new)

(da) If subcontracting under Article 4(7) is being considered the internal operator shall be required to provide the major part of the passenger transport service himself.

Or. de

Justification

The whole purpose of the regulation must in no case be undermined by internal operators passing on the major part of their directly awarded transport services to subcontractors to the exclusion of competition and thus turning themselves into a purely management operation. This is likely to lead to adverse consequences for existing social and quality standards and to further distortion of competition between internal operators and third parties. The only way to counteract this is to ensure that in the event of subcontracting the operator is required to provide the major part of the passenger transport service himself.

Amendment by Mathieu Grosch, Georg Jarzembowski

Amendment 163

Article 5, paragraph 2, point (d a) (new)

(da) If subcontracting under Article 4(7) is being considered the internal operator shall be required to provide the major part of the passenger transport service himself.

Or. de

Justification

But the whole purpose of the regulation must in no case be undermined by internal operators passing on the major part, up to 100 per cent, of their directly awarded transport services to subcontractors to the exclusion of competition and thus turning themselves into a purely management operation. If the use of vehicles and staff is exclusively devolved to subcontractors this is likely to lead to adverse consequences for existing standards and to further distortion of competition.

Amendment by Paolo Costa

Amendment 164

Article 5, paragraph 2, point (da) (new)

(d bis) in caso di aggiudicazione diretta di un contratto di servizio pubblico di trasporto l'autorità competente è tenuta a motivare adeguatamente le ragioni della sua decisione di aggiudicazione diretta.

Or. it

Amendment by Georg Jarzembowski

Amendment 165

Article 5, paragraph 2, point (d b) (new)

(db) The competent authority may decide to provide public passenger transport services itself, or award them directly to an internal operator, only if the competent, democratically authorised representative body has taken a decision to that effect.

Or. de

Justification

The subsidiarity principle should have a stronger voice in this regulation. The responsibility for local transport lies with the local authorities. The competent authority's right to provide transport services itself or through its own companies without a competitive tender should be preserved in the regulation. But to safeguard democratic legitimisation, economic efficiency and reciprocity the conditions specified here must be fulfilled.

Amendment by Georg Jarzembowski

Amendment 166

Article 5, paragraph 3

3. Any competent authority which has recourse to a third party other than an internal operator, shall award public service contracts on the basis of a competitive tendering procedure, except in the cases specified in paragraphs 4, 5 and 6. The

3. Any competent authority which has recourse to a third party other than an internal operator, shall award public service contracts on the basis of a competitive tendering procedure, except in the cases specified in paragraphs 4, 5 and 6. The

procedure adopted for competitive tendering shall be open to all operators, shall be fair and shall observe the principles of transparency and non-discrimination. Following the submission of tenders and any preselection, the procedure may involve negotiations in accordance with these principles in order to determine how best to meet specific or complex requirements.

procedure adopted for competitive tendering shall be open to all operators, shall be fair and shall observe the principles of transparency and non-discrimination. Following the submission of tenders and any preselection, the procedure may involve negotiations in accordance with these principles in order to determine how best to meet specific or complex requirements. ***An operator of a public service who has himself or whose associated undertaking has directly concluded more than 20 per cent of his public service contracts in value terms in accordance with the procedure under paragraphs 4 or 6 shall be excluded from the tendering procedure.***

Or. de

Justification

Directly contracted companies can generally apply for transport services under tender with better chances than is possible for comparable companies that do not have a starting position of this kind. So to protect tenderers making calculations without such an aid, operators who focus their acquisition of new business on directly awarded contracts should be excluded from competitive award procedures.

Amendment by Michael Cramer, Eva Lichtenberger

Amendment 167 Article 5, paragraph 3

3. Any competent authority which has recourse to a third party other than an internal operator, shall award public service contracts on the basis of a competitive tendering procedure, except in the cases specified in paragraphs 4, 5 and 6. The procedure adopted for competitive tendering shall be open to all operators, shall be fair and shall ***observe*** the principles of transparency and non-discrimination. Following the submission of tenders and any preselection, ***the procedure may involve*** negotiations in accordance with these principles in order to determine how best to meet specific or complex requirements.

3. Any competent authority which has recourse to a third party other than an internal operator, shall award public service contracts on the basis of a competitive tendering procedure, except in the cases specified in paragraphs 4, 5 and 6. The procedure adopted for competitive tendering shall be open to all operators, shall be fair and shall ***satisfy*** the principles of transparency and non-discrimination. ***The competent authority may choose freely between the procedures referred to in Directive 2001/14/EC. If it chooses the negotiated procedure, care shall be taken to ensure that*** following the submission of

tenders and any preselection, the procedure may involve negotiations in accordance with these principles in order to determine how best to meet specific or complex requirements.

Or. de

Amendment by Dirk Sterckx

Amendment 168
Article 5, paragraph 3

3. Any competent authority which has recourse to a third party other than an internal operator, shall award public service contracts on the basis of a competitive tendering procedure, except in the cases specified in paragraphs 4, **5 and 6**. The procedure adopted for competitive tendering shall be open to all operators, shall be fair and shall observe the principles of transparency and non-discrimination. Following the submission of tenders and any preselection, the procedure may involve negotiations in accordance with these principles in order to determine how best to meet specific or complex requirements.

3. Any competent authority which has recourse to a third party other than an internal operator, shall award public service contracts on the basis of a competitive tendering procedure, except in the cases specified in paragraphs **4 and 5**. The procedure adopted for competitive tendering shall be open to all operators, shall be fair and shall observe the principles of transparency and non-discrimination. Following the submission of tenders and any preselection, the procedure may involve negotiations in accordance with these principles in order to determine how best to meet specific or complex requirements.

Or. nl

Justification

A competent authority which has recourse to a third party other than an internal operator should normally award public service contracts via a public tendering procedure. Public service contracts for transport by rail, with the exception of other track-based modes such as metro or tramways, should not constitute an exception to this. These modes of transport must not be given preferential treatment.

Amendment by Michael Cramer

Amendment 169
Article 5, paragraph 4

Unless prohibited by national law, the

Provided the national law ***permits this***

competent authorities may decide to award public service contracts directly either where their average annual value is estimated at less than **EUR 1 million** 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 and medium sized enterprise operating not more than 20 vehicles, these thresholds may be increased to either an average annual value estimated at less than **EUR 1,7 million** or when they concern the annual provision of less than **500 000** kilometres of public passenger transport services.

option, the competent authorities may decide to award public service contracts directly either where their average annual value is estimated at less than **EUR 700 000** or where they concern the annual provision of less than **250 000** kilometres of public passenger transport services.

In the case of a public service contract directly awarded to a small and medium sized enterprise operating not more than 20 vehicles, these thresholds may be increased to either an average annual value estimated at less than **EUR 1.2 million** or when they concern the annual provision of less than **400 000** kilometres of public passenger transport services.

For each operator, including all undertakings associated either vertically or horizontally with the operator, the total annual value of public service contracts directly awarded in accordance with this paragraph may not exceed EUR 5 million.

Or. de

Amendment by Dirk Sterckx, Paolo Costa

Amendment 170
Article 5, paragraph 4

4. 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 million** 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 and medium sized enterprise operating not more than 20 vehicles, these thresholds may be increased to either an average annual value estimated at less than **EUR 1,7 million** or when they concern the annual provision of less than

4. 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 500 000** 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 and medium sized enterprise operating not more than 20 vehicles, these thresholds may be increased to either an average annual value estimated at less than **EUR 1 million** or when they concern the annual provision of less than **500 000** kilometres of public passenger

500 000 kilometres of public passenger transport services.

transport services.

Or. fr

Amendment by Mathieu Grosch, Georg Jarzembowski

Amendment 171

Article 5, paragraph 4, subparagraph 1

4. ***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 million or where they concern the annual provision of less than 300 000 kilometres of public passenger transport services.

4. ***Under the provisions of*** 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 million or where they concern the annual provision of less than 300 000 kilometres of public passenger transport services.

Or. de

Justification

As a rule, national law does not state unambiguously whether a particular procedure is prohibited or not. Legal clarity can only be achieved by an unambiguous implementing provision at national law level. Moreover, this is in line with the subsidiarity principle: EC law makes standardised rules of procedure available throughout Europe, but the national legislator has to actively choose which of the instruments will be applicable in that Member State.

Amendment by Gilles Savary

Amendment 172

Article 5, paragraph 4, subparagraph 2

In the case of a public service contract directly awarded to a small and medium sized enterprise operating not more than 20 vehicles, these thresholds may be increased to either an average annual value estimated at less than EUR 1,7 million or when they concern the annual provision of less than

deleted

500 000 kilometres of public passenger transport services.

Or. fr

Justification

The thresholds fixed for the direct award of contracts to SMEs seem not to be justified or even to be at variance with WTO agreements.

Amendment by Luís Queiró

Amendment 173

Article 5, paragraph 4, subparagraph 2

In the case of a public service contract directly awarded to a small and medium sized enterprise operating not more than 20 vehicles, these thresholds may be increased to either an average annual value estimated at less than EUR 1,7 million or when they concern the annual provision of less than 500 000 kilometres of public passenger transport services. ***deleted***

Or. pt

Justification

The exceptions to competition should not be so sweeping as to include SMEs which already have the experience and capabilities to respond to invitations to tender. The guiding principle should be to increase competition and transparency, not to reduce them.

Amendment by Jeanine Hennis-Plasschaert

Amendment 174

Article 5, paragraph 4, subparagraph 2

In the case of a public service contract directly awarded to a small and medium sized enterprise operating not more than 20 vehicles, these thresholds may be increased to either an average annual value estimated ***deleted***

at less than EUR 1,7 million or when they concern the annual provision of less than 500 000 kilometres of public passenger transport services.

Or. nl

Justification

The intention of the first paragraph is clear and legitimate. The second paragraph goes too far. It involves closing off substantial parts of the market, and this is undesirable. We need to avoid the risk of artificially chopping up the railway market. This paragraph would enable a group of "linked" undertakings (each operating not more than 20 vehicles) to be eligible for an unspecified number of directly awarded contracts, while at the same time having free rein to be active on other markets. SMEs benefit in any case from the thresholds for small contracts (with the result that a large portion of the market is already protected from market forces).

Amendment by Lars Wohlin

Amendment 175

Article 5, paragraph 4, subparagraph 2

In the case of a public service contract directly awarded to a small and medium sized enterprise operating not more than 20 vehicles, these thresholds may be increased to either an average annual value estimated at less than EUR 1,7 million or when they concern the annual provision of less than 500 000 kilometres of public passenger transport services. ***deleted***

Or. en

Justification

If it would be appropriate with special conditions for small and medium sized companies it should be a general proposal and not only apply to this specific area.

Amendment by Mathieu Grosch, Georg Jarzembowski

Amendment 176

Article 5, paragraph 4, subparagraph 2

In the case of a public service contract directly awarded to a small and medium sized enterprise **operating** not more than **20 vehicles**, these thresholds may be increased to either an average annual value estimated at less than EUR **1,7** million or when they concern the annual provision of less than **500 000** kilometres of public passenger transport services.

In the case of a public service contract directly awarded to a small and medium sized enterprise **with** not more than **50 or 250 staff**, these thresholds may be increased to either an average annual value estimated at less than EUR **3** million or when they concern the annual provision of less than **1 million** kilometres of public passenger transport services.

Or. de

Justification

The regulation aims to take particular account of the interests of SMEs. Under Commission Recommendation 2003/361/EG, such enterprises are defined by their number of staff, with small enterprises having fewer than 50, and medium-sized enterprises having fewer than 250 staff.

Effective account can be taken of the interests of SMEs only if the threshold is not set so low that almost all of them will always be above it. Therefore the threshold should be raised to an estimated annual average of 3 million, or 1 million kilometres of public passenger transport services.

Amendment by Markus Ferber

Amendment 177

Article 5, paragraph 4, subparagraph 2

In the case of a public service contract directly awarded to a small and medium sized enterprise **operating not more than 20 vehicles**, these thresholds may be increased to either an average annual value estimated at less than EUR 1,7 million or when they concern the annual provision of less than 500 000 kilometres of public passenger transport services..

In the case of a public service contract directly awarded to a small and medium sized enterprise **within the definition which is regularly updated by the Commission and published in the Official Journal (most recently in OJ L124, 20.5.2003, p.36-41)**, these thresholds may be increased to either an average annual value estimated at less than EUR 1.7 million or when they concern the annual provision of less than 500 000 kilometres of public passenger transport services.

Or. de

Justification

The general definition of 'small and medium-sized enterprises' must apply to the area of public transport as well. Exceptions to it cannot be recognised.

Amendment by Reinhard Rack

Amendment 178

Article 5, paragraph 4, subparagraph 2

4. In the case of a public service contract directly awarded to a small and medium sized enterprise **operating** not more than **20 vehicles**, these thresholds may be increased to either an average annual value estimated at less than EUR 1,7 million or when they concern the annual provision of less than 500 000 kilometres of public passenger transport services.

4. In the case of a public service contract directly awarded to a small and medium sized enterprise **with** not more than **50, or 250 staff**, these thresholds may be increased to either an average annual value estimated at less than EUR 1.7 million or when they concern the annual provision of less than 500 000 kilometres of public passenger transport services.

Or. de

Amendment by Elisabeth Jeggle

Amendment 179

Article 5, paragraph 4, subparagraph 2

4In the case of a public service contract directly awarded to a small and medium sized enterprise **operating not more than 20 vehicles**, these thresholds may be increased to either an average annual value estimated at less than EUR 1, 7 million or when they concern the annual provision of less than **500 000** kilometres of public passenger transport services.

4. In the case of a public service contract directly awarded to a small and medium sized enterprise **within the definition which is regularly updated by the Commission and published in the Official Journal, most recently on 6 May 2003 in OJ L124, 20.5.2003, p.36-41**), these thresholds may be increased to either an average annual value estimated at less than EUR 1.7 million or when they concern the annual provision of less than **1 million** kilometres of public passenger transport services.

Or. de

Justification

This general definition, which can be used universally in other Community law, has become

established in the Member States and should be used in this regulation as well, for the sake of a unified approach and thus legal certainty.

Amendment by Renate Sommer

Amendment 180

Article 5, paragraph 4, subparagraph 2

In the case of a public service contract directly awarded to a small and medium sized enterprise ***operating not more than 20 vehicles***, these thresholds may be increased to either an average annual value estimated at less than EUR 1,7 million or when they concern the annual provision of less than 500 000 kilometres of public passenger transport services.

In the case of a public service contract directly awarded to a small and medium sized enterprise ***as defined in Commission Recommendation 2003/361/EC***, these thresholds may be increased to either an average annual value estimated at less than EUR 1.7 million or when they concern the annual provision of less than 500 000 kilometres of public passenger transport services.

Or. de

Justification

This general definition of small and medium-sized enterprises, which can be used in other Community law, should be applied in this regulation as well. The reference to Commission Recommendation 2003/361/EC provides legal certainty and helps to standardise the law.

Amendment by Luis de Grandes Pascual

Amendment 181

Article 5, paragraph 4, subparagraph 2

In the case of a public service contract directly awarded to a small *and medium sized* enterprise ***operating*** not more than 20 ***vehicles***, these thresholds may be increased to either an average annual value estimated at less than EUR 1,7 million or when they concern the annual provision of less than 500 000 kilometres of public passenger transport services.

In the case of a public service contract directly awarded to a small *to medium-sized* enterprise ***employing*** not more than 20 ***workers***, these thresholds may be increased to either an average annual value estimated at less than EUR 1,7 million or when they concern the annual provision of less than 500 000 kilometres of public passenger transport services.

Or. es

Justification

To prevent the aim of the draft regulation being undermined, sweeping discretion in the award of public service contracts should not be made a hard and fast rule. That is why it would be advisable to narrow down the conditions under which such contracts may be awarded directly.

Amendment by Lars Wohlin

Amendment 182
Article 5, paragraph 5

(5) In the event of a disruption of services or the immediate risk of such a situation, the competent authority may take an emergency measure. This emergency measure **shall** take the form of a direct award or a formal agreement to extend a public service contract or a requirement to provide certain public service obligations. The public service operator shall have the right to appeal against the decision to impose the provision of certain public service obligations. The award **or** extension of a public service contract by emergency measure or the imposition of such a contract shall not exceed two years.

(5) In the event of a disruption of services or the immediate risk of such a situation, the competent authority may take an emergency measure. This emergency measure **may** take the form of a direct award or a formal agreement to extend a public service contract or a requirement to provide certain public service obligations. The public service operator shall have the right to appeal against the decision to impose the provision of certain public service obligations. The award, **including an eventual extension in relation to traffic volume**, of a public service contract by emergency measure or the imposition of such a contract shall not exceed two years.

Or. en

Justification

An competent authority shall not be forced to use direct awards in the case if emergency risks although this may be the most suitable measure due to the often urgent situation with a shortage of time available. A direct award in this respect would not continue with possibility for extensions I time, but a possibility for an extension in the traffic volume may be used.

Amendment by Lars Wohlin

Amendment 183
Article 5, paragraph 6

(6) Unless prohibited by national law, competent authorities may decide to make

(6) Unless prohibited by national law, competent authorities may decide to make

direct awards of public service contracts where they concern transport by *rail, with the exception of other track-based modes such as metro or tramways. In derogation from Article 4(3), such contracts shall not exceed 10 years, except where Article 4(4) applies.*

direct awards of public service contracts where they concern transport by *long-distance rail.*

Or. en

Justification

Reintroduction of the restrict the possibility to exempt public transports rail as proposed in the Commission proposal, but only for long-distance rail services.

Amendment by Georg Jarzembowski

Amendment 184

Article 5, paragraph 5 a (new)

5a. Under the provisions of national law, an operator of a public service may, on his own initiative, apply for the renewal of an exclusive right to set up a public passenger transport service. The relevant local authority must award the requested public service contract directly, if it concerns a service which is not covered by any other exclusive right and will not demonstrably endanger any public service contracts that have already been awarded.

Or. de

Justification

Enterprises can often assess the need for public transport provision better and earlier than the local authorities can. In the case of transport operations initiated by private enterprise, it must be possible for exclusive rights to be awarded once and for a limited period directly to the initiator of the transport operation. If the relevant authority had to award the necessary exclusive rights through a competitive procedure, even for transport operations initiated by private enterprise, this would immediately remove any incentive for innovation by private enterprise.

Amendment by Michael Cramer, Eva Lichtenberger

Amendment 185
Article 5, paragraph 6

6. Unless prohibited by national law, competent authorities may decide to make direct awards of public service contracts where they concern transport by rail, with the exception of other track-based modes such as metro or tramways. In derogation from Article 4(3), such contracts shall not exceed 10 years, except where Article 4(4) applies. *deleted*

Or. de

Amendment by Dirk Sterckx

Amendment 186
Article 5, paragraph 6

6. Unless prohibited by national law, competent authorities may decide to make direct awards of public service contracts where they concern transport by rail, with the exception of other track-based modes such as metro or tramways. In derogation from Article 4(3), such contracts shall not exceed 10 years, except where Article 4(4) applies. *deleted*

Or. nl

Justification

A competent authority which has recourse to a third party other than an internal operator should normally award public service contracts via a public tendering procedure. Public service contracts for transport by rail, with the exception of other track-based modes such as metro or tramways, should not constitute an exception to this. These modes of transport must not be given preferential treatment.

Amendment by Georg Jarzembowski

Amendment 187
Article 5, paragraph 6

6. Unless prohibited by national law, competent authorities may decide to make direct awards of public service contracts where they concern transport by rail, with the exception of other track-based modes such as metro or tramways. In derogation from Article 4(3), such contracts shall not exceed 10 years, except where Article 4(4) applies. *deleted*

Or. de

Justification

There is no need for a rule on direct awards for rail transport. Treaty infringement proceedings concerning direct awards in the area of rail transport were suspended because Germany undertook to operate a fair and transparent procedure when awarding service contracts in the rail transport area in future. It is not clear what justification there is for allowing the future legal framework to fall short of this standard.

Amendment by Mathieu Grosch, Georg Jarzembowski

Amendment 188
Article 5, paragraph 6

6. Unless prohibited by national law, competent authorities may decide to make direct awards of public service contracts where they concern transport by rail, with the exception of other track-based modes such as metro or tramways. In derogation from Article 4(3), such contracts shall not exceed 10 years, except where Article 4(4) applies.

6. Under the provisions of national law, competent authorities may decide to make direct awards of public service contracts concerning exclusive rights for public service obligations where they concern transport by rail, with the exception of other track-based modes such as metro or tramways, if this is necessary so as not to endanger the economic viability or safety of the transport operation in question. In derogation from Article 4(3), such contracts shall not exceed 10 years, except where Article 4(4) applies.

Or. de

Justification

As a rule, national law does not state unambiguously whether a particular procedure is prohibited or not. Legal clarity can only be achieved by an unambiguous implementing provision at national law level. Moreover, this is in line with the subsidiarity principle: EC law makes standardised rules of procedure available throughout Europe, but the national legislator has to actively choose which of the instruments will be applicable in that Member State.

As the basic principles of this regulation state that direct awards must be an absolute exception, there must be precise conditions attached to this special arrangement for rail transport.

Amendment by Luis de Grandes Pascual

Amendment 189 Article 5, paragraph 6

6. Unless prohibited by national law, competent authorities may decide to make direct awards of public service contracts where they concern transport by rail, with the exception of other track-based modes such as metro or tramways. In derogation from Article 4(3), such contracts shall not exceed 10 years, except where Article 4(4) applies.

6. Unless prohibited by national law, competent authorities may decide to make direct awards of public service contracts where they concern transport by rail, with the exception of **suburban train transport, which may be the subject of a tendering procedure, and** other track-based modes such as metro or tramways. In derogation from Article 4(3), such contracts shall not exceed 10 years, except where Article 4(4) applies.

Or. es

Justification

The possibility of awarding public service contracts for suburban train transport by tendering procedures marks a step forward in the gradual liberalisation of public passenger transport by rail.

Amendment by Paolo Costa

Amendment 190 Article 5, paragraph 6

6. Unless prohibited by national law,

6. Unless prohibited by national law,

competent authorities may decide to make direct awards of public service contracts where they concern transport by rail, with the exception of other track-based modes such as metro or tramways. In derogation from Article 4(3), such contracts shall not exceed 10 years, except where Article 4(4) applies.

competent authorities may decide, ***but only for the transitional period set out in Article 8, paragraph 2***, to make direct awards of public service contracts where they concern transport by rail, ***provided that they do not concern services which cover the entire national territory of a Member State***, with the exception of other track-based modes such as metro or tramways. In derogation from Article 4(3), such contracts shall not exceed 10 years, except where Article 4(4) applies.

Or. it

Amendment by Marta Vincenzi

Amendment 191
Article 5, paragraph 6

6. Unless prohibited by national law, competent authorities may decide to make direct awards of public service contracts where they concern transport by rail, with the exception of other track-based modes such as metro or tramways. In derogation from Article 4(3), such contracts shall not exceed 10 years, except where Article 4(4) applies.

6. Unless prohibited by national law, competent authorities may decide, ***but only for the transitional period set out in Article 8, paragraph 2***, to make direct awards of public service contracts where they concern transport by rail, with the exception of other track-based modes such as metro or tramways. In derogation from Article 4(3), such contracts shall not exceed 10 years, except where Article 4(4) applies.

Or. it

Justification

The special features of rail transport, especially with reference to public service contracts, are protected in the medium-term by the direct award of contracts, given the time frame for entry into force (three years) and the transition period (12 years). In the long term, the award of a contract without competitive tendering, running counter to the gradual opening of the services market already set out in the first two railway packages, will not be enough to ensure that services are of quality and efficient and that consumers and their interests are protected.

Amendment 192
Article 5, paragraph 6

6. ***Unless prohibited by national law,*** competent authorities may decide to make direct awards of public service contracts where they concern transport by rail, with the exception of other track-based modes such as metro or tramways. In derogation from Article 4(3), such contracts shall not exceed 10 years, except where Article 4(4) applies.

6. ***The*** competent authorities, ***during the transitional period laid down in Article 8, paragraph 2,*** may decide to make direct awards of public service contracts where they concern transport by rail, with the exception of other track-based modes such as metro or tramways. In derogation from Article 4(3), such contracts shall not exceed 10 years, except where Article 4(4) applies.

Or. it

Justification

In order to promote the genuine opening of the railway sector, at the end of the transitional period it would be advisable to provide for the award of public service contracts only through tendering procedures.

Amendment by Luís Queiró

Amendment 193
Article 5, paragraph 6 a (new)

6a. Notwithstanding Article 4(3), where they concern public passenger transport by road and are awarded directly by the competent authority, public service contracts must not exceed eight years except in the cases provided for in Article 4(6).

Or. pt

Justification

Just as a limit is imposed, under Article 5(6), on contracts awarded directly by a competent authority for rail services, so should a limit correspondingly be imposed on the duration of contracts awarded directly for public passenger transport by road.

Amendment by Michael Cramer, Eva Lichtenberger

Amendment 194
Article 5, paragraph 6 a (new)

6a. Enterprises benefiting from the procedures under paragraphs 2, 4 and 6 shall be excluded from the procedures under paragraph 3 and Directives 2004/17/EC and 2004/18/EC. This shall not apply if the public service contract that has been awarded will irrevocably terminate within 24 months of the intended contract award. This paragraph shall apply to parent companies, sister companies and subsidiaries that are part of the same enterprise.

Or. de

Amendment by Elisabeth Jeggle

Amendment 195
Article 7, paragraph 1

1. Each competent authority shall make public ***once a year*** an aggregated 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 allow the performance, quality and financing of the public transport network to be monitored and assessed.

1. Each competent authority shall make public ***every five years*** an aggregated 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 allow the performance, quality and financing of the public transport network to be monitored and assessed.

Or. de

Justification

An annual aggregated report would place a disproportionately heavy administrative burden on the authority. A report every five years, as is customary in other areas, is also quite sufficient here.

Amendment by Reinhard Rack

Amendment 196
Article 7, paragraph 1

(1) Each competent authority shall make public ***once a year*** an aggregated 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 allow the performance, quality and financing of the public transport network to be monitored and assessed.***

(1) Each competent authority shall make public ***every five years*** an aggregated 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.

Or. de

Amendment by Georg Jarzembowski

Amendment 197
Article 7, paragraph 1

1. Each competent authority shall make public once a year an aggregated 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 allow the performance, quality and financing of the public transport network to be monitored and assessed.

1. Each competent authority shall make public once a year an aggregated 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, rail transport and rail infrastructure and*** allow the performance, quality and financing of the public transport network to be monitored and assessed ***and provide information on the type and extent of exclusivity that has been granted.***

Or. de

Justification

The report must differentiate to provide a minimum level of comparability. The extent of exclusivity must be transparent for other operators, so that that they can be aware, when taking business decisions, which part of the market is inaccessible because of exclusive rights.

Amendment by Paolo Costa

Amendment 198

Article 7, paragraph 2, point (c a) (new)

(c bis) obiettivi di qualità in relazione alla puntualità e affidabilità e premi e penalità applicabili.

Or. it

Amendment by Dirk Sterckx

Amendment 199

Article 7, paragraph 3

3. In the case of a direct award of public service contracts for transport by rail as provided for in Article 5(6), the competent authority shall make public the following information within one year after the granting of the award:

(a) name of the contracting entity and its ownership;

(b) duration of the public service contract;

(c) description of the passenger transport services to be performed;

(d) description of the parameters of the financial compensation;

(e) quality targets;

(f) conditions relating to essential assets.

deleted

Or. nl

Justification

A competent authority which has recourse to a third party other than an internal operator should normally award public service contracts via a public tendering procedure. Public service contracts for transport by rail, with the exception of other track-based modes such as metro or tramways, should not constitute an exception to this.

Amendment by Paolo Costa

Amendment 200

Article 7, paragraph 3, subparagraph 1

3. In the case of a direct award of public service contracts for transport by rail as provided for in Article 5(6), the competent authority shall make public the following information within one year after the granting of the award:

3. In the case of a direct award of public service contracts for transport by rail as provided for in Article 5(6), ***during the transitional period laid down in Article 8, paragraph 2***, the competent authority shall make public the following information within one year after the granting of the award:

Or. it

Amendment by Paolo Costa

Amendment 201

Article 7, paragraph 3, point (a)

(a) name of the contracting entity and its ownership;

(a) name of the contracting entity and its ownership, ***together with its control structure***;

Or. it

Amendment by Paolo Costa

Amendment 202

Article 7, paragraph 3, point (e)

(e) quality targets;

(e) quality targets ***relating to punctuality and reliability and rewards and penalties applicable***;

Or. it

Amendment by Lars Wohlin

Amendment 203

Article 7, paragraph 4

(4) ***When so requested by an interested***

(4) ***In advance of a decision for a direct***

party, a competent authority shall forward to it the reasons for its decision for the direct award of a public service contract.

award of a public service contract, the competent authority shall notify its intention to do so and publish its reasoning in the Official Journal, as well forward that information to the Commission

Or. en

Justification

The use of direct awards is an exception from the principle of market access of the internal market within the Community. When using such measures the public in their role as tax-payers shall be aware of the methods used by the authorities. The Commission shall as well be informed on the use of direct awards and of the reasons behind.

Amendment by Michael Cramer, Eva Lichtenberger

Amendment 204
Article 7 a (new)

Article 7a

When deciding on and awarding public service contracts under Article 5, paragraphs 2, 3, 4 and 5, the Member States shall provide legal protection for those interested in tendering which is as effective as that provided by Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts.

Or. de

Amendment by Willi Piecyk

Amendment 205
Article 8, paragraph 1

1. Public service contracts shall be awarded in accordance with the rules laid down in this Regulation. ***However, service contracts or public service contracts as defined in***

1. Public service contracts shall be awarded in accordance with the rules laid down in this Regulation; ***Directives 2004/17/EC and***

Directive 2004/17/EC or 2004/18/EC for public passenger transport services by bus or tram shall be awarded in accordance with the procedures provided for under those Directives where such contracts do not take the form of service concessions contracts as defined in those Directives. Where contracts are to be awarded in accordance with Directives 2004/17/EC or 2004/18/EC, the provisions of paragraphs 2 to 4 of this Article shall not apply.

2004/18/EG shall not apply.

Or. de

Justification

The situation of general EU public procurement law running in parallel with the provisions of this regulation, which was accepted in the common position, will lead to legal uncertainty. If the priority of general EU public procurement law over the provisions of this regulation were accepted, the possibility would arise that a change in the general directives on public procurement would constantly change the field of application of the regulation. The aim of legal certainty for authorities and transport operators can only be achieved by clear and conclusive provisions that are specific to this sector.

Amendment by Renate Sommer

Amendment 206 Article 8, paragraph 1

1. Public service contracts shall be awarded in accordance with the rules laid down in this Regulation. ***However, service contracts or public service contracts as defined in Directive 2004/17/EC or 2004/18/EC for public passenger transport services by bus or tram shall be awarded in accordance with the procedures provided for under those Directives where such contracts do not take the form of service concessions contracts as defined in those Directives. Where contracts are to be awarded in accordance with Directives 2004/17/EC or 2004/18/EC, the provisions of paragraphs 2 to 4 of this Article shall not apply.***

1. Public service contracts shall be awarded in accordance with the rules laid down in this Regulation.

Or. de

Justification

If this regulation takes priority over general EU public procurement law, which Parliament called for in the first reading in 2001, this will create legal certainty for authorities and transport operators.

Amendment by Jörg Leichtfried

Amendment 207
Article 8, paragraph 1

1. Public service contracts shall be awarded in accordance with the rules laid down in this Regulation. ***However, service contracts or public service contracts as defined in Directive 2004/17/EC or 2004/18/EC for public passenger transport services by bus or tram shall be awarded in accordance with the procedures provided for under those Directives where such contracts do not take the form of service concessions contracts as defined in those Directives. Where contracts are to be awarded in accordance with Directives 2004/17/EC or 2004/18/EC, the provisions of paragraphs 2 to 4 of this Article shall not apply.***

1. Public service contracts shall be awarded in accordance with the rules laid down in this Regulation.

Or. de

Justification

The amendment must be in line with the amendment to Article 5(1), and both amendments should be adopted together.

Amendment by Paolo Costa

Amendment 208
Article 8, paragraph 2

2. Without prejudice to paragraph 3, the award of public service contracts by rail and by road shall comply with Article 5 as from ...*. ***During this transitional period Member States shall take measures to gradually comply with Article 5 in order to***

2. Without prejudice to paragraph 3, the award of public service contracts by rail and by road shall comply with Article 5 as from ...*.

avoid serious structural problems in particular relating to transport capacity.

Within six months after the first half of the transitional period, Member States shall provide the Commission with a progress report, highlighting the implementation of any gradual award of public service contracts in line with Article 5. On the basis of the Member States' progress reports, the Commission may propose appropriate measures addressed to Member States.

Within six months after the first half of the transitional period, Member States shall provide the Commission with a progress report, highlighting the implementation of any gradual award of public service contracts in line with Article 5. On the basis of the Member States' progress reports, the Commission may propose appropriate measures addressed to Member States.

Or. it

Amendment by Willi Piecyk

Amendment 209
Article 8, paragraph 2

Without prejudice to paragraph 3, the award of public service contracts by rail and by road shall comply with **Article 5** as from ...*. During this transitional period Member States shall take measures to gradually comply with Article 5 in order to avoid serious structural problems in particular relating to transport capacity.

Within six months after the first half of the transitional period, Member States shall provide the Commission with a progress report, highlighting the implementation of any gradual award of public service contracts in line with **Article 5**. On the basis of the Member States' progress reports, the Commission may propose appropriate measures addressed to Member States.

Without prejudice to paragraph 3, the award of public service contracts by rail and by road shall comply with **this regulation** as from ...*. During this transitional period Member States shall take measures to gradually comply with Article 5 in order to avoid serious structural problems in particular relating to transport capacity.

Within six months after the first half of the transitional period, Member States shall provide the Commission with a progress report, highlighting the implementation of any gradual award of public service contracts in line with **this regulation**. On the basis of the Member States' progress reports, the Commission may propose appropriate measures addressed to Member States.

Or. de

Justification

For the sake of legal certainty and the continuity that is required during the transitional period, and in view of the regulation's provisions on award and financing, public service contracts should be safeguarded for 12 years. Thus the transitional provisions must be extended to all the provisions of the regulation, and a transitional period of 12 years should

apply to all the articles.

Amendment by Brian Simpson

Amendment 210
Article 8, paragraph 2

2. Without prejudice to paragraph 3, ***the award of public service contracts by rail and by road shall comply with Article 5 as from*. During this transitional period Member States shall take measures to gradually comply with Article 5 in order to avoid serious structural problems in particular relating to transport capacity.***

Within six months after the first half of the transitional period, Member States shall provide the Commission with a progress report, highlighting the implementation of any gradual award of public service contracts in line with Article 5. On the basis of the Member States' progress reports, the Commission may propose appropriate measures addressed to Member States.

2. Without prejudice to paragraph 5, ***each competent authority shall ensure that:***

***(a) at least half of its public service contracts for transport by coach and bus, by value, are awarded in accordance with this Regulation within four years of ...*;
and***

(b) all of its public service contracts for transport by coach and bus are awarded in accordance with this Regulation within eight years of ...*.

Or. en

Justification

The Council's common position would not require the award of public service contracts to comply with Article 5 until 15 years after the publication of the Regulation in the Official Journal. This is wholly disproportionate to the moderate degree of change to existing public transport arrangements which would be required by the Regulation. Early entry into force of the Regulation and transitional periods aligned to the Commission's proposal of 20 July 2005 would be far more appropriate.

Amendment by Michael Cramer, Eva Lichtenberger

Amendment 211
Article 8, paragraph 2, subparagraph 1

2. Without prejudice to paragraph 3, the award of public service contracts by rail and

2. Without prejudice to paragraph 3, the award of public service contracts by rail and

by road shall comply with Article 5 as from ...*. During this transitional period Member States shall take measures to gradually comply with Article 5 in order to avoid serious structural problems in particular relating to transport capacity.

* Note for OJ: **12** years after the date of entry into force of this Regulation.

by road shall comply with Article 5 as from ...*. During this transitional period Member States shall take measures to gradually comply with Article 5 in order to avoid serious structural problems in particular relating to transport capacity.

* Note for OJ: **8** years after the date of entry into force of this Regulation.

Or. de

Amendment by Georg Jarzembowski

Amendment 212

Article 8, paragraph 2, subparagraph 1

2. Without prejudice to paragraph 3, the award of public service contracts by rail and by road shall comply with Article 5 as from ...*. During this transitional period Member States shall take measures to gradually comply with Article 5 in order to avoid serious structural problems in particular relating to transport capacity.

* Note for OJ: **12** years after the date of entry into force of this Regulation

2. Without prejudice to paragraph 3, the award of public service contracts by rail and by road shall comply with Article 5 as from ...*. During this transitional period Member States shall take measures to gradually comply with Article 5 in order to avoid serious structural problems in particular relating to transport capacity.

* Note for OJ: **6** years after the date of entry into force of this Regulation

Or. de

Justification

As the legislative procedure for revision of this regulation has been in operation since 2000, this transitional provision can be substantially shortened. This would also more rapidly achieve a high quality public transport service providing good value for passengers and taxpayers.

Amendment by Jeanine Hennis-Plasschaert

Amendment 213

Article 8, paragraph 2, subparagraph 1

2. Without prejudice to paragraph 3, the award of public service contracts by rail and by road shall comply with Article 5 as from

2. Without prejudice to paragraph 3, the award of public service contracts by rail and by road shall comply with Article 5 as from

...*. During this transitional period Member States shall take measures to gradually comply with Article 5 in order to avoid serious structural problems in particular relating to transport capacity.

*Note for OJ: **12** years after the date of entry into force of this Regulation.

...*. During this transitional period Member States shall take measures to gradually comply with Article 5 in order to avoid serious structural problems in particular relating to transport capacity.

*Note for OJ: **6** years after the date of entry into force of this Regulation.

Or. en

Justification

The regulation shall enter into force three years following OJ publication (see article 12). With the proposed transitional period of 12 years, we would agree on a 15 years period in total. This is simply disproportionate. A transitional period of 6 years will be sufficient.

Amendment by Corien Wortmann-Kool

Amendment 214

Article 8, paragraph 2, subparagraph 1

2. Without prejudice to paragraph 3, the award or public service contracts by rail and road shall comply with article 5 as from (***12 years** after the date of entry into force of this Regulation). During this transitional period Member States shall take measures to gradually comply with Article 5 in order to avoid serious structural problems in particular relating to transport capacity.

2. Without prejudice to paragraph 3, the award or public service contracts by rail and road shall comply with article 5 as from (***6 years** after the date of entry into force of this Regulation). During this transitional period Member States shall take measures to gradually comply with Article 5 in order to avoid serious structural problems in particular relating to transport capacity.

Or. de

Amendment by Brian Simpson

Amendment 215

Article 8, paragraph 3

3. For the application of paragraph 2, no account shall be taken of public service contracts awarded in accordance with Community and national law:

(a) before 26 July 2000 on the basis of a

3. Each competent authority shall ensure that:

(a) at least half of its public service contracts for transport by rail, by value, are awarded in accordance with this

fair competitive tendering procedure;

(b) before 26 July 2000 on the basis of a procedure other than a fair competitive tendering procedure;

*(c) as from 26 July 2000 and before ...** on the basis of a fair competitive tendering procedure;*

*(d) as from 26 July 2000 and before ...** on the basis of a procedure other than a fair competitive tendering procedure.*

The contracts referred to in (a) may continue until they expire. The contracts referred to in (b) and (c) may continue until they expire, but for no longer than 30 years. The contracts referred to in (d) may continue until they expire, provided they are of limited duration comparable to the durations specified in Article 4.

Public service contracts may continue until they expire where their termination would entail undue legal or economic consequences and provided that the Commission has given its approval.

Regulation within five years of ...; and*

(b) all of its public service contracts for transport by rail are awarded in accordance with this Regulation within ten years of*

Or. en

Justification

The Council's common position would not require the award of public service contracts to comply with Article 5 until 15 years after the publication of the Regulation in the Official Journal. This is wholly disproportionate to the moderate degree of change to existing public transport arrangements which would be required by the Regulation. Early entry into force of the Regulation and transitional periods aligned to the Commission's proposal of 20 July 2005 would be far more appropriate

Amendment by Jeanine Hennis-Plasschaert

Amendment 216

Article 8, paragraph 3, subparagraph 2

The contracts referred to in (a) may continue until they expire. The contracts referred to in (b) and (c) may continue until they expire, but for no longer than **30 years**. The contracts referred to in (d) may continue until they expire, provided they are of limited duration comparable to the durations specified in Article 4..

The contracts referred to in (a) may continue until they expire. The contracts referred to in (b) and (c) may continue until they expire, but for no longer than **25 years from ...** *. The contracts referred to in (d) may continue until they expire, provided they are of limited duration comparable to the durations specified in Article 4.

** Date of entry into force of this Regulation*

Or. nl

Justification

This amendment provides greater uniformity among all contracts. Moreover, given the late date of the regulation's entry into force, a 25-year period of validity is plenty.

Amendment by Georg Jarzembowski

Amendment 217

Article 8, paragraph 3, subparagraph 2

The contracts referred to in (a) may continue until they expire. The contracts referred to in (b) and (c) may continue until they expire, but for no longer than **30** years. The contracts referred to in (d) may continue until they expire, provided they are of limited duration comparable to the durations specified in Article 4.

The contracts referred to in (a) may continue until they expire. The contracts referred to in (b) and (c) may continue until they expire, but for no longer than **15** years. The contracts referred to in (d) may continue until they expire, provided they are of limited duration comparable to the durations specified in Article 4.

Or. de

Justification

As the legislative procedure for revision of this regulation has been in operation since 2000, this transitional provision can be substantially shortened. This would also more rapidly achieve a high quality public transport service providing good value for passengers and taxpayers.

Amendment by Paolo Costa

Amendment 218

Article 8, paragraph 3, subparagraph 2

The contracts referred to in (a) may continue until they expire. The contracts referred to in **(b) and** (c) may continue until they expire, but for no longer than 30 years. The contracts referred to in (d) may continue until they expire, provided they are of limited duration comparable to the durations specified in Article 4.

The contracts referred to in (a) may continue until they expire. The contracts referred to in (c) may continue until they expire, but for no longer than 30 years. The contracts referred to in **(b) and** (d) may continue until they expire, provided they are of limited duration comparable to the durations specified in Article 4.

Or. it

Amendment by Brian Simpson

Amendment 219

Article 8, paragraph 4

4. Without prejudice to paragraph 3, the competent authorities may opt, in the second half of the transitional period specified in paragraph 2, to exclude from participation in the award of contracts by invitation to tender those public service operators which cannot provide evidence that the value of the public transport services for which they are receiving compensation or enjoy an exclusive right granted in accordance with this Regulation represents at least half the value of all the public transport services for which they are receiving compensation or enjoy an exclusive right. Such exclusion shall not apply to public service operators running the services which are to be tendered. For the application of this criterion, no account shall be taken of public service contracts awarded by emergency measure as referred to in Article 5(5).

4. In the case of public service contracts covering several modes of transport, the transitional periods provided for in paragraph 3 shall apply where transport by rail represents more than 50% of the value of the services in question.

Where competent authorities make use of the option referred to in the first subparagraph, they shall do so without discrimination, exclude all potential public

service operators meeting this criterion and inform the potential operators of their decision at the beginning of the procedure for the award of public service contracts.

The competent authorities concerned shall inform the Commission of their intention to apply this provision at least two months before the publication of the invitation to tender.

Or. en

Justification

The Council's common position would not require the award of public service contracts to comply with Article 5 until 15 years after the publication of the Regulation in the Official Journal. This is wholly disproportionate to the moderate degree of change to existing public transport arrangements which would be required by the Regulation. Early entry into force of the Regulation and transitional periods aligned to the Commission's proposal of 20 July 2005 would be far more appropriate

Amendment by Marta Vincenzi

Amendment 220
Article 8, paragraph 4

4. Without prejudice to paragraph 3, the competent authorities may opt, in the second half of the transitional period specified in paragraph 2, to exclude from participation in the award of contracts by invitation to tender those public service operators which cannot provide evidence that the value of the public transport services for which they are receiving compensation or enjoy an exclusive right granted in accordance with this Regulation represents at least half the value of all the public transport services for which they are receiving compensation or enjoy an exclusive right. Such **exclusion** shall not apply to public service operators running the services which are to be tendered. For the application of **this criterion**, no account shall be taken of public

4. Without prejudice to paragraph 3, the competent authorities may opt, in the second half of the transitional period specified in paragraph 2, to exclude from participation in the award of contracts by invitation to tender those public service operators which cannot provide evidence that the value of the public transport services for which they are receiving compensation or enjoy an exclusive right granted in accordance with this Regulation represents at least half the value of all the public transport services for which they are receiving compensation or enjoy an exclusive right. **With regard to rail transport alone, in the transitional period laid down in Article 8, paragraph 2, the competent authorities may opt to exclude from participation in the award of contracts**

service contracts awarded by emergency measure as referred to in Article 5(5).

by invitation to tender those public service operators which cannot provide evidence that the value of the public transport services for which they are receiving compensation or enjoy an exclusive right further to a direct award represents less than half the value of all their public transport services. Such *exclusions* shall not apply to public service operators running the services which are to be tendered. For the application of ***these criteria***, no account shall be taken of public service contracts awarded by emergency measure as referred to in Article 5(5).

Where competent authorities make use of the option referred to in the first subparagraph, they shall do so without discrimination, exclude all potential public service operators meeting this criterion and inform the potential operators of their decision at the beginning of the procedure for the award of public service contracts.

Where competent authorities make use of the option referred to in the first subparagraph, they shall do so without discrimination, exclude all potential public service operators meeting this criterion and inform the potential operators of their decision at the beginning of the procedure for the award of public service contracts.

The competent authorities concerned shall inform the Commission of their intention to apply this provision at least two months before the publication of the invitation to tender.

The competent authorities concerned shall inform the Commission of their intention to apply this provision at least two months before the publication of the invitation to tender.

Or. it

Justification

This clause, which aims to soften the impact of the different time frames for the opening of Member States' markets, should be adapted to the special circumstances of railways, for which the Regulation grants the freedom to award public service contracts directly. In tandem with the threshold laid down for transport in general, a threshold should be set for railways in particular, based on the same principle of the preponderance of the activity offered competitively on the market.

Amendment by Michael Cramer, Eva Lichtenberger

Amendment 221
Article 8, paragraph 4

4. ***Without prejudice to paragraph 3, the***

4. ***Article 5 paragraph 7 shall be applied as follows in*** the transitional period specified in

competent authorities may opt, in the second half of the transitional period specified in paragraph 2, to exclude from participation in the award of contracts by invitation to tender those public service operators which cannot provide evidence that the value of the public transport services for which they are receiving compensation or enjoy an exclusive right granted in accordance with this Regulation represents at least half the value of all the public transport services for which they are receiving compensation or enjoy an exclusive right. Such exclusion shall not apply to public service operators running the services which are to be tendered. For the application of this criterion, no account shall be taken of public service contracts awarded by emergency measure as referred to in Article 5(5).

Where competent authorities make use of the option referred to in the first subparagraph, they shall do so without discrimination, exclude all potential public service operators meeting this criterion and inform the potential operators of their decision at the beginning of the procedure for the award of public service contracts.

The competent authorities concerned shall inform the Commission of their intention to apply this provision at least two months before the publication of the invitation to tender.

paragraph 2:

(a) In the first two years of the transitional period, this provision shall not apply.

(b) In years three to six of the transitional period, the cumulative value of the public service contracts awarded pursuant to Article 5 paragraphs 2, 4 and 6 shall not exceed 75% of the transport services that they provide; otherwise Article 5 paragraph 7 shall apply.

(c) In years seven to nine, the proportion under point (b) may not exceed 50%.

(d) In years 10 to 12, the proportion under point (b) may not exceed 25%.

Or. de

Amendment by Mathieu Grosch

Amendment 222

Article 8, paragraph 4, first subparagraph

4. Without prejudice to paragraph 3, the competent authorities may opt, in **the second half of** the transitional period specified in paragraph 2, to exclude from participation in

4. Without prejudice to paragraph 3, the competent authorities may opt, in the transitional period specified in paragraph 2, to exclude from participation in the award of

the award of contracts by invitation to tender those public service operators which cannot provide evidence that the value of the public transport services for which they are receiving compensation or enjoy an exclusive right granted in accordance with this Regulation represents at least half the value of all the public transport services for which they are receiving compensation or enjoy an exclusive right. Such exclusion shall not apply to public service operators running the services which are to be tendered. For the application of this criterion, no account shall be taken of public service contracts awarded by emergency measure as referred to in Article 5(5).

contracts by invitation to tender those public service operators which cannot provide evidence that the value of the public transport services for which they are receiving compensation or enjoy an exclusive right granted in accordance with this Regulation represents at least half the value of all the public transport services for which they are receiving compensation or enjoy an exclusive right. Such exclusion shall not apply to public service operators running the services which are to be tendered. For the application of this criterion, no account shall be taken of public service contracts awarded by emergency measure as referred to in Article 5(5).

Or. de

Amendment by Paolo Costa

Amendment 223

Article 8, paragraph 4, subparagraph 1

(4) Without prejudice to paragraph 3, the competent authorities may opt, in the second half of the transitional period specified in paragraph 2, to exclude from participation in the award of contracts by invitation to tender those public service operators which cannot provide evidence that the value of the public transport services for which they are receiving compensation or enjoy an exclusive right granted in accordance with this Regulation represents at least half the value of all the public transport services for which they are receiving compensation or enjoy an exclusive right. Such exclusion shall not apply to public service operators running the services which are to be tendered. For the application of this criterion, no account shall be taken of public service contracts awarded by emergency measure as referred to in Article 5(5).

(4) Without prejudice to paragraph 3, the competent authorities may opt, in the second half of the transitional period specified in paragraph 2, to exclude from participation in the award of contracts by invitation to tender those public service operators which cannot provide evidence that the value of the public transport services for which they are receiving compensation or enjoy an exclusive right granted in accordance with this Regulation represents at least half the value of all the public transport services for which they are receiving compensation or enjoy an exclusive right. ***With reference to transport by rail, in the transitional period specified in paragraph 2, the competent authorities may exclude from participation to tender for the award of public service contracts those operators which are receiving compensation or enjoying an exclusive right granted through direct award.*** Such exclusion shall not apply to public service operators running the services

which are to be tendered. For the application of this criterion, no account shall be taken of public service contracts awarded by emergency measure as referred to in Article 5(5).

Or. en

Amendment by Lars Wohlin

Amendment 224

Article 8, paragraph 4, subparagraph 1

Without prejudice to paragraph 3, the competent authorities may opt, ***in the second half of*** the transitional period specified in paragraph 2, to exclude from participation in the award of contracts by invitation to tender those public service operators which cannot provide evidence that the value of the public transport services for which they are receiving compensation or enjoy an exclusive right granted in accordance with this Regulation represents at least half the value of all the public transport services for which they are receiving compensation or enjoy an exclusive right. Such exclusion shall not apply to public service operators running the services which are to be tendered. For the application of this criterion, no account shall be taken of public service contracts awarded by emergency measure as referred to in Article 5(5).

(4) Without prejudice to paragraph 3, the competent authorities may opt, ***during*** the transitional period specified in paragraph 2, to exclude from participation in the award of contracts by invitation to tender those public service operators which cannot provide evidence that the value of the public transport services for which they are receiving compensation or enjoy an exclusive right granted in accordance with this Regulation represents at least half the value of all the public transport services for which they are receiving compensation or enjoy an exclusive right. Such exclusion shall not apply to public service operators running the services which are to be tendered. For the application of this criterion, no account shall be taken of public service contracts awarded by emergency measure as referred to in Article 5(5).

Or. en

Justification

After entry in to force the provisions of the Regulation will be applicable gradually and the already or fast developing open markets should be able to work on sustainable conditions. Since operators with direct awarded contracts can have benefits compared to other operators working under competitive conditions the authorities shall have the possibility to exclude the former ones in tendering procedures during to whole transition period.

Amendment by Gabriele Albertini, Jas Gawronski, Armando Veneto

Amendment 225

Article 8, paragraph 4, subparagraph 1 a (new)

Nel trasporto per ferrovia, durante il periodo transitorio di cui al paragrafo 2, le autorità competenti possono escludere dalla partecipazione alle procedure di gara per l'aggiudicazione dei contratti di servizio pubblico gli operatori che ricevono compensazioni o godono di diritti di esclusiva attraverso attribuzione diretta. Tale esclusione non può operare nei confronti degli operatori che gestiscono i servizi oggetto della gara.

Or. it

Justification

Al fine di promuovere l'effettiva apertura del settore ferroviario è opportuno prevedere, alla fine del periodo provvisorio, l'attribuzione dei contratti di servizio pubblico solo attraverso le procedure di gare.

Amendment by Brian Simpson

Amendment 226

Article 8, paragraph 4 a (new)

4a. For the application of paragraphs 2, 3 and 4, no account shall be taken of public service contracts awarded in accordance with Community and national law:

(a) before 26 July 2000 on the basis of a fair competitive tendering procedure;

(b) before 26 July 2000 on the basis of a procedure other than a fair competitive tendering procedure;

(c) as from 26 July 2000 and before ...* on the basis of a fair competitive tendering procedure;

(d) as from 26 July 2000 and before ...* on

the basis of a procedure other than a fair competitive tendering procedure.

The contracts referred to in (a) may continue until they expire. The contracts referred to in (b) and (c) may continue until they expire, but for no longer than 30 years. The contracts referred to in (d) may continue until they expire, provided they are of limited duration comparable to the durations specified in Article 4.

Public service contracts may continue until they expire where their termination would entail undue legal or economic consequences and provided that the Commission has given its approval.

Or. en

Justification

The Council's common position would not require the award of public service contracts to comply with Article 5 until 15 years after the publication of the Regulation in the Official Journal. This is wholly disproportionate to the moderate degree of change to existing public transport arrangements which would be required by the Regulation. Early entry into force of the Regulation and transitional periods aligned to the Commission's proposal of 20 July 2005 would be far more appropriate.

Amendment by Brian Simpson

Amendment 227

Article 8, paragraph 4 b (new)

4b. Without prejudice to paragraph 5, the competent authorities may opt, in the second half of the transitional periods specified in paragraphs 2 and 3, to exclude from participation in the award of contracts by invitation to tender those public service operators which cannot provide evidence that the value of the public transport services for which they are receiving compensation or enjoy an exclusive right granted in accordance with this Regulation

represents at least half the value of all the public transport services for which they are receiving compensation or enjoy an exclusive right. Such exclusion shall not apply to public service operators running the services which are to be tendered. For the application of this criterion, no account shall be taken of public service contracts awarded by emergency measure as referred to in Article 5(5).

Where competent authorities make use of the option referred to in the first subparagraph, they shall do so without discrimination, exclude all potential operators fulfilling this criterion and inform the potential operators of their decision at the beginning of the procedure for the award of public service contracts.

The competent authorities concerned shall inform the Commission of their intention to apply this provision at least two months before the publication of the invitation to tender.

Or. en

Justification

The Council's common position would not require the award of public service contracts to comply with Article 5 until 15 years after the publication of the Regulation in the Official Journal. This is wholly disproportionate to the moderate degree of change to existing public transport arrangements which would be required by the Regulation. Early entry into force of the Regulation and transitional periods aligned to the Commission's proposal of 20 July 2005 would be far more appropriate.

Amendment by Dirk Sterckx, Jean-Louis Bourlanges, Paolo Costa

Amendment 228
Article 8 a (new)

Article 8a

Appeal procedures

1. Member States shall guarantee operators and other interested parties the right to lodge an appeal with a public or judicial body against decisions and preliminary decisions taken by competent authorities under this regulation.

2. The body referred to in paragraph 1 shall be independent of the competent authorities concerned and of the operators involved and shall be empowered to request any relevant information from any party concerned, to take binding decisions and to award damages.

3. Where this body is not a judicial body, its decisions shall be subject to judicial review.

4. The provisions governing implementation of the appeal procedure shall be decided by the Member States.

5. As regards cross-border services, the authorities concerned shall agree on which appeal body shall be competent.

Or. fr

Amendment by Michael Cramer, Eva Lichtenberger

Amendment 229

Article 9, paragraph 2, subparagraph 1

2. Without prejudice to Articles 73, 86, 87 and 88 of the Treaty, Member States may continue to grant aids for the transport sector pursuant to Article 73 of the Treaty which meet the needs of coordination of transport or which represent reimbursement for the discharge of certain obligations inherent in the concept of a public service, other than those covered by this Regulation, *and in particular*:

2. Member States may on accordance with article 73 of the Treaty continue to grant aids for the transport sector which meet the need of coordination of transport or which represent reimbursement for the discharge of certain obligations inherent in the concept of a public service, other than those covered by this Regulation, *as for example* :

Or. en

Amendment by Gabriele Albertini, Jas Gawronski, Armando Veneto

Amendment 230
Article 9, paragraph 2, point (b)

(b) where the purpose of the aid is to promote either research into, or development of, transport systems and technologies which are more economic for the Community in general. ***Such aid shall be restricted to the research and development stage and may not cover the commercial exploitation of such transport systems and technologies.***

(b) where the purpose of the aid is to promote either research into, or development of, transport systems and technologies which are more economic for the Community in general.

Or. it

Justification

In order to ensure that the set targets are achieved, the measures laid down in this article should support not only the research and development stage but also the operational stage.

Amendment by Michael Cramer, Eva Lichtenberger

Amendment 231
Article 10, paragraph 2

2. Regulation (EEC) No 1107/70 shall be repealed.

2. The European Commission shall make a new proposal for Regulation to replace 1107/70. As long as this is not the case, that Regulation shall remain in force. In the proposal for a new Regulation the following elements have to be integrated : state financing for developing and maintaining infrastructure, support for combined transport and policy measures concerning goods transport in the context of environmental performance and sustainable mobility objectives and support in the context of technical harmonisation and interoperability etc.

Or. en

Amendment by Gabriele Albertini, Jas Gawronski, Armando Veneto

Amendment 232
Article 10, paragraph 2

2. Regulation (EEC) No 1107/70 shall be *repealed*.

2. ***The scope of*** Regulation (EEC) No 1107/70 shall be ***restricted to those sectors not governed by this regulation***.

Or. it

Justification

Regulation 1107/70 encourages the adoption of measures in favour of combined transport and environmentally-friendly forms of transport; it would therefore be advisable to retain its validity with reference to sectors which are not governed by this regulation.

Amendment by Brian Simpson

Amendment 233
Article 12, paragraph 1

This Regulation shall enter into force on
.....*

**** Note for OJ: three years following the publication of the Regulation in the Official Journal.***

This Regulation shall enter into force on ***the twentieth day following that of its publication in the Official Journal of the European Union.***

Or. en

Justification

The Council's common position would not require the award of public service contracts to comply with Article 5 until 15 years after the publication of the Regulation in the Official Journal. This is wholly disproportionate to the moderate degree of change to existing public transport arrangements which would be required by the Regulation. Early entry into force of the Regulation and transitional periods aligned to the Commission's proposal of 20 July 2005 would be far more appropriate.

Amendment by Georg Jarzembowski

Amendment 234
Article 12, paragraph 1

This Regulation shall enter into force on

This Regulation shall enter into force on

.....*

* Note for OJ: **three years** following publication of the Regulation in the Official Journal.

.....*

* Note for OJ: **18 months** following publication of the Regulation in the Official Journal.

Or. de

Justification

As the legislative procedure for revision of this regulation has been in operation since 2000, this transitional provision can be substantially shortened. This would also more rapidly achieve a high quality public transport service providing good value for passengers and taxpayers.

Amendment by Michael Cramer, Eva Lichtenberger

Amendment 235
Annex, paragraph 2a (new)

The costs to be included in this calculation of the amount of compensation shall be in line with an analysis of the costs that an average, well-managed enterprise, with sufficient means of transport to meet its public service requirements, would have incurred in fulfilling these obligations.

Or. de

Amendment by Mathieu Grosch, Georg Jarzembowski

Amendment 236
Annex, paragraph 3 a (new)

3a. The compensation must not exceed the amount corresponding to the net financial effect of the sum of all the (positive or negative) impact on the costs and revenue of a public service operator as a result of fulfilling public service obligations, on the basis of the costs that an average, well-managed enterprise, with sufficient means of transport to meet its public service obligations, would have incurred in

fulfilling these obligations. In analysing these costs, as far as possible reference should be made to the rates and parameters that would have applied to comparable public service obligations in the context of a tendering procedure pursuant to Article 5(3) or an open tendering procedure pursuant to Directives 2004/17/EC or 2004/18/EC.

Or. de

Justification

This addition to the annex ensures that the regulation is in line with the Court of Justice's judgment on State aid legislation. This also reflects the 'fourth Altmark-Trans' criterion (cf. ECJ judgment C-280/00 (Altmark Trans), point 93). This is the key criterion to ensure efficient and economic service provision, even when contracts are awarded directly, and thus effectively to exclude overcompensation.

Amendment by Willi Piecyk

Amendment 237

Annex, paragraph 5, indent 2

– all variable costs, an appropriate contribution to the fixed costs and a reasonable profit ***connected with any other activity of the public service operator*** may under no circumstances be charged to the public service in question;

– ***any costs in connection with any of the operator's other activities must include*** all variable costs, an appropriate contribution to the fixed costs and a reasonable profit; ***these costs*** may under no circumstances be charged to the public service in question;

Or. de

Justification

The proposal could be interpreted as a prohibition on cross-financing that is specifically applicable to passenger transport. The aim of the proposal is, however, to separate the accounts relating to the various activities of transport operators, and clearly to show where compensation from the State has actually gone. The costs of commercial business activities must not be charged to the public sector. The full Commission proposal should be adopted for the sake of clarification.