

**Measure 68: Public service requirements and the award of public service contracts in passenger transport by rail, road and inland waterway**

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<p><i>Policy package:</i> <b>2A:</b> Rail liberalisation and harmonisation <b>4A:</b> Sea and inland waterway liberalisation and harmonisation <b>6:</b> Urban transport package</p>
<p><i>Measure 68:</i> Amended proposal for a Regulation of the European Parliament and of the Council on action by Member States concerning the public services requirements and the award of public service contracts in passenger transport by rail, road and inland waterway.</p>
<p><i>What is the problem being addressed ?</i> The proposed regulation shall apply to national and international operation of public passenger transport by rail, road and inland waterway. It lays down the conditions under which competent authorities may compensate transport operators for the cost of fulfilling public service requirements and under which they may grant exclusive rights for the operation of public passenger transport. The proposal has been amended in response to several concerns of the European Parliament. A considerable majority of MEPs felt that responsibility for local transport services on the ground should lie with local authorities at communal level. The right of the competent authority to provide transport services itself without an invitation to tender should therefore continue to exist under this regulation. At this regard, the amended proposal now includes - besides the provisions for direct award of <b>heavy rail, metro and light rail services</b> without competition where this is the most efficient approach – also an additional provision which allows the competent authorities to decide to provide <b>bus services</b> themselves for a long transition period of eight years, without the obligation to start the phasing out of these arrangements after four years. Beyond that period authorities may only continue these arrangements on condition that no exclusive right is awarded. This means that other operators will then be free to offer supplementary and commercially viable services to the citizens of the area, and authorities should in such cases introduce appropriate general rules to protect quality and integration. Such a continuation of arrangements would need the approval of the Commission. For instance, this is the kind of decision that has been recently taken (June 2004) by the Municipality of Rome, Italy. Formerly engaged into a bus services liberalisation process, Rome has now decided to retain exclusive rights for the bulk of bus services of the town to TRAMBUS S.p.A. – the former public operator – which operates some 120 million-kms per year, while an additional 30 million-kms will continue to be assigned to other operators with a tendering procedure.</p>
<p><i>Measure's costs and/or benefits:</i> The proposal is meant to reduce the overall costs of public passenger transport by ensuring more efficient and transparent ways of awarding contracts to the operators.</p>
<p><i>Legislative implementation at EU level:</i> COM (2002) 107: Amended proposal for a Regulation of the European Parliament and of the Council on action by Member States concerning public service requirements and the award of public service contracts in passenger transport by rail, road and inland waterway.</p>
<p><i>What are the objectives ?</i> The development of the highest possible standards of public service in the provision of passenger transport by rail, road and inland waterway is, as a means of boosting the use of sustainable forms of transport, one of the primary community objectives under the Common Transport Policy. However, many socially necessary transport services are currently unable to operate on a commercial basis. Considering then that competent authorities in the Community provide public passenger transport services in different ways – by acting themselves directly, by acting indirectly through companies they control, or by entrusting provision to third parties (public or private) – it is important to clarify the legal position of such mechanisms and ways of providing services with respect to Community law. Therefore, the objectives of the Commission's original proposal were:</p> <ul style="list-style-type: none"><li>• to stimulate more efficient and attractive public transport, through the use of controlled competition and other measures;</li><li>• to promote legal certainty for authorities and operators.</li></ul>

The two objectives are linked. Legal uncertainty hinders efforts to plan better public transport. The initial emphasis of the Commission on the introduction of controlled competition in public passenger transport services was supported by the following evidence:

	Annual rate of change in numbers of passenger trips	Annual rate of change in the proportion of operating cost covered by fares
Cities using controlled competition	+ 1,8%	+ 1,7%
Cities without competition in public transport	- 0,7%	+ 0,3%
Cities using deregulation without significant control by public authorities	- 3,1%	+ 0,3%

The table compares the trends in public transport in 30 large EU cities during the 1990s. Cities using controlled competition attracted most new passengers. They also had the best financial performance. However, the balance between controlled competition and direct award of contracts was in some way shifted again towards the latter as a result of the Parliamentary debate. Direct award of heavy rail, metro and light rail services is deemed to be preferable if the size or technical uniqueness of the system means that the incumbent would have a significant advantage under competitive tendering, or if direct award will lead to public money or publicly financed assets being used more efficiently. Some scepticism on controlled competition is justified also by the fact that in several Member States which have introduced legislation providing for the award of fixed-duration exclusive rights and public service contracts real competition was fairly limited – for the lack of competitors – and in several cases de facto monopolies survived to the new legislation.

*Interactions with other WP measures:*

The final aim of this measure is to open the market of public passenger transport minimising distortion of competition while at the same protecting the quality of services and ensuring public service obligations. Therefore, the measure is strongly linked to the measures which aim to ensure the liberalisation of passenger rail, road and inland waterway services by one side, and to those pointing to ensure user rights by the other side. There is also an important link with the measures promoting good practice in urban transport, because an efficient and effective public transport is a key element for any sustainable urban transport policy.

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*Output indicators:*

The key output indicators shall point to the structure of the public passenger transport markets, distinguishing:

- Interurban heavy rail services
- Interurban road services
- Urban rail, light rail and metro services
- Urban bus services
- Inland waterway services (less relevant)

In each market segment output indicators are as follows:

- Powers of the competent authority (0 = fragmented power; 10 = fully independent authority)
- Share of public transport volumes on which the incumbent has exclusive rights
- Share and quantity of public transport volumes based on contracts awarded to new operators with tendering procedures
- Total amount of subsidies granted by the authorities to the operators to cover public service obligations

*Outcome indicators: intermediate impacts on transport markets*

The key market indicators which allow to visualise the impacts in the various segments of public passenger transport are:

- Change of patronage: annual rate of change in number of passenger trips
- Change of financial coverage: annual rate of change in the proportion of operating costs covered by fares.

- Changes of public transport fares.

*Outcome indicators: final impacts on transport users and non users*

The outcomes of public passenger transport liberalisation may be controversial. The process seems to favour in any cases the concentration of operators on most commercially viable services, and the subsidies allocated for non viable services in accordance with public service obligations can be insufficient to ensure an high quality service in less densely populated areas. This may have a negative impact on the access to basic services for people living in peripheral areas.

Another important outcome will concern employment levels and working conditions in the public transport sector. At this regard the proposed Regulation includes a provision to protect employees when contract change hands.