



**European Commission
Directorate General for Energy and Transport**

*The new Regulation on public passenger transport
services by rail and by road*



Peter Faross
peter.faross@ec.europa.eu
Tel. +32 2 295 95 66





History

26.07.2000 The Commission's initial proposal

14.11.2001 First Reading in E.P. (96 amendments)

21.02.2002 The Commission's modified proposal (no progress)

24.07.2003 The ECJ's "Altmark" judgement





History

- **Growing legal insecurity + no progress towards adoption of a common position in Council :**
- **The Commission elaborated a new proposal based on three main objectives**
 - **Simplification,**
 - **more flexibility,**
 - **and finally more room for subsidiarity.**





History

- **22nd July 2005 : Revised proposal of the Commission COM(2005)319**
- **11th December 2006 : Common position in Council**
- **10th May 2007 : Second reading in E.P.**
- **18th Septembre 2007 : Agreement between European Parliament and Council in second reading : Adoption of the new Regulation**





More room for subsidiarity

- **The new Regulation does not interfere with the institutional organisation in each Member State;**
- **It does not impose any public service obligation;**
- **It does not impose social or environmental criterias;**
- **It does not interfere with the way public transport services should be organised;**
- **Subject to the relevant provisions of national law, it recognises any competent authority's freedom to choose to entrust its own public passenger transport services in the area it administers to an internal operator without competitive tendering or to have recourse to a third party on the basis of a competitive tendering procedure.**





Key elements

- **Scope,**
- **Public service contract,**
- **Award of the contract,**
- **Entry into force and transition.**





Scope

The Regulation applies to:

- **Public Passenger transport services by rail or by road**
- **Submitted to public services obligations**
- **Requiring the granting of financial compensations and/or exclusive rights.**

The Regulation may also apply to public passenger transport by inland waterways.





Public service contract

- **Compensation and/or exclusive right shall be granted within the framework of a public service contract (with one derogation)**
- **The contract clearly defines public service obligations and establishes in a transparent manner the way compensations, if any, will be calculated; it also establishes the nature and extent of exclusive rights**
- **The contract is of a limited duration**
- **The contract limits the possibilities and imposes transparency regarding subcontracting**





Award of contracts

➤ Coordination with public procurement directives procedures

The award rules defined in article 5 of the Regulation apply :

- To all train or metro contracts,
- To any contract that takes the form of a service concession contract, whatever transport mode is concerned.

Classical contracts for the public procurement of transport services by bus or by tram (Km based, subcontracting) and work concessions contracts remain submitted to public procurement directives.





Award of contracts

Public passengers transport services by train :

Unless prohibited by national law, the Regulation gives competent authorities the possibility to award these contracts directly, without tendering, as long as :

- increased transparency,**
- shorter duration for directly awarded contracts.**





Award of contracts

Bus, tram or metro concessions :

Unless prohibited by national law, any competent authority has the freedom to choose to entrust its own public passenger transport services in the area it administers to an internal operator without competitive tendering or to have recourse to a third party on the basis of a competitive tendering procedure.

The possibility to award directly to an internal operator is submitted to a double condition :

- **The internal operator has to be controlled by the competent authority;**
- **The internal operator performs its passenger transport activity only within the territory of the competent local authority.**





Award of contracts

Whatever mode of transport is concerned, the Regulation also offers the possibility to award directly public service contracts in case of :

- low values contracts, < 1 Mio. (300 000 km/year) or 2 Mio (600 000 km/year) when the contract is awarded to a small or medium size company (operating not more than 23 vehicles)**
- emergency measures**





Award of contracts

- **When the contract is awarded on the basis of a competitive tendering procedure, the Regulation defines the procedure as open to all operators, fair, transparent and non-discriminatory, but contrarily to public procurement directives the Regulation does not enter into the details of the procedure.**





Entry into force and transition

- **Entry into force : 24 months**
- **Transition period limited to the application of article 5 on the way public service contracts have to be awarded : 10 years**
- **Specific regime for existing contracts that under certain conditions may remain in force also after the entry into force of the Regulation**

