



**Position of the association of European Metropolitan Transport Authorities (EMTA) on the project of new European Regulation on public service requirements and the award of public service contracts in passenger transport by rail, road and inland waterway (2000/0212-COD), (New draft issued by the European Commission on 21<sup>st</sup> February 2002)**

## **INTRODUCTION**

The association of European Metropolitan Transport Authorities (EMTA) brings together 27 public authorities in charge of the public transport networks of the European largest cities. These authorities plan, co-ordinate, fund and improve constantly the quality of public transport systems serving more than 70 million European citizens.

The Members of EMTA feel very concerned by the proposed new European Regulation on public service requirements in the field of passenger transport services first released on 26 July 2000 by the European Commission<sup>1</sup>, adopted in first reading by the European Parliament on 14<sup>th</sup> November 2001 and modified by the Commission in February 2002. This proposed Regulation will indeed deeply influence the legal framework of public transport organisation and funding in the European cities and thus the missions of the public transport authorities (PTAs). This is why EMTA Members have already reached three common positions on this project of new Regulation<sup>2</sup>.

This new position paper reflects the opinion and wishes of the public transport authorities (PTAs) of the European metropolitan areas concerning the modified version of the draft Regulation that was issued by the European Commission on 21<sup>st</sup> February 2002 so as to be submitted to the European Council of Ministers and the European Parliament. EMTA authorities hope that this position paper will help the European institutions to improve a text which has already made lots of progress since it was first issued, but which still has to be amended so as to enable an efficient, realistic and easy implementation.

It should not be forgotten that the Regulation's main aim is to improve the efficiency and the quality of public transport systems in Europe. It will only achieve this goal if it manages to respect the principle of subsidiarity, if it can find a balance between added bureaucracy and increased opening up of markets, and, if it enables realistic transitions for those territories which currently don't comply with its principles. In addition, appropriate exemptions from tendering are needed to preserve the efficiency and quality of public transport systems.

## **GENERAL COMMENT ON THE PROPOSED NEW REGULATION**

**EMTA Members are satisfied with most of the changes brought by the European Commission to its original draft.** EMTA Members had expressed in their last position their satisfaction that the European Parliament had adopted some reasonable amendments, concerning for example the length of contracts, the transition period, the minimum value of contracts that have to be tendered, and the conditions under which metro, light rail and bus services may in some circumstances be exempted from the requirement to tender ? Today,

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<sup>1</sup> COM(2000)-7 final – 2000/0212 (COD)

<sup>2</sup> First position on the original project of the Commission (January 2001), position on the main proposals of the Meijer Report (July 2001) and position on the text adopted by the European Parliament (December 2001). These position statements can be downloaded from EMTA's website (<http://www.emta.com>)

they are satisfied that the European Commission has kept most of these amendments, even though some key elements of the text still raise questions.

## **DETAILED COMMENTS / SUGGESTIONS**

### **1- Typology of transport modes (Art. 7)**

**The distinction between transport modes mentioned in the regulation (heavy rail, metro, light rail and buses) is not pertinent** and might lead to some difficulties for its implementation. The development of new and innovative transport systems (guided buses, rubber-tyred tramways, tram-trains, etc) as well as the existence of some modes not mentioned in the regulation (trolleybuses) or the specific characteristics of some cities (tramways going underground in some city centres, etc.) make it necessary to devise a typology that won't become obsolete as soon as it is passed. In this context, EMTA authorities recommend to distinguish between **systems with fixed infrastructure** (heavy rail, metro, light rail, trolleybuses, etc.) and systems without (buses).

### **2- Possibility to modify a contract before its term without tendering again (Art. 6a)**

EMTA authorities support, in principle, the idea that the contracts shall not be changed before their term in a way that would modify profoundly the economic balance reached through the tendering procedures. However, they also think that **the obligation to go back to competition if added services make up for more than 20% of the original value of the contract is too strict**, especially in the case of large transport networks as well as for extensions of heavy rail or light rail services. That is why **EMTA authorities recommend to delete the reference to 20% in the Regulation**. However, if the Commission insists for a limitation to be set, EMTA authorities ask :

- . for it to be higher than 20%
- . to allow additional services to be added to a contract where for unforeseen circumstances this is necessary and to separate the services would cause great inconvenience or the additional services, although separable from the original contract are strictly necessary for its later stages
- . for this level to be an obligation for the authority to inform of its intention to vary the current contract rather than an obligation to bid for a new contract, thus ensuring transparency and enabling any third party to challenge if it feels that this provision has been abused.

A way to improve this principle could also be to distinguish difference between contracts for individual routes and contracts for whole networks, and also between contracts for fixed-infrastructure transport systems and contracts for other transport systems.

### **3- Removal of the exception from competition for “integrated services” (Art. 7)**

EMTA authorities welcome this removal proposed by the Parliament and maintained by the Commission. **The integration of public transport systems is the mission of public transport authorities** and there is no direct link between competition and absence of integration of transport networks.

### **4- Exceptions from competition (Art. 7)**

As already mentioned (see point 1.), EMTA authorities think that **the typology of transport services used to determine the possible exceptions from competition is not pertinent.**

Moreover, EMTA authorities find that **the regime proposed for bus services is too strict, and might be, in the end, counter-productive.** The draft regulation says that there shall be no other exception from the rule of competition than that for small value contracts. The experience of large cities which have tendered out their bus services for some time (Copenhagen, London, Stockholm) shows that **it can be very important for an authority to be able to award directly some part of its network so as to avoid market dominance by a few large operating companies and thus be able to preserve fair competition.** The possibility granted to PTAs in article 9 to refuse to award a contract to an operating company which would thus have more than 25% of the regional market of passenger transport is not sufficiently clear.

Tendering out services doesn't automatically bring real competition, since very often, operators tacitly share the market between themselves, for example from their depots, and the competitive pressure is declining with time through territorial specialisation of companies and market concentration. That is why EMTA authorities suggest that **the regulation shall give PTAs the possibility to award up to 10% of the bus market directly without competition provided that they can justify that this direct award aims to maintain competition** and avoid excessive market concentration. They could operate these services themselves or grant them to any company they own or control.

### **5- Possibility for PTAs to refuse to grant contracts to operators with more than 25% of the market (Art. 9)**

EMTA authorities welcome the possibility given to them enabling to avoid that a few operators dominate the market, but they think that **the definition of the relevant market is not clear.** The definition of a “region” can vary a lot from one country to the other, and there is thus a risk that this exception is not used similarly in all cases. Therefore, EMTA authorities propose to replace the expression “regional market of passenger transport” by **“the relevant market within the territory of competence of the public authority”**

#### **6- Protection of employees when operators change (Art. 9.3)**

EMTA authorities welcome the possibility given to PTAs to require from a selected operator to offer to the staff previously engaged the rights seen to in Directive 2001/23/EC. However, it should be clear that an authority wishing to do so has to inform the potential bidders about this will **as part of the tendering procedure, and not once the operator has been selected**.

#### **7- General rules for public passenger transport operations (Art. 10)**

EMTA authorities **support the possibility for PTAs to define general rules** applicable without discrimination to all transport services within their territory of competence. They would also like to be able to **set general rules concerning the personnel policy of the operating companies** (for example percentage of female staff members, minority groups, and disabled people).

#### **8- Possibility to negotiate tenders with selected operators (Art. 12)**

EMTA authorities welcome the possibility granted to PTAs to negotiate with potential operators the tenders they have submitted. However, they don't **understand why this possibility is limited to contracts of more than €3,000,000 a year**. This right should be available for contracts of any value, since negotiation is the best tool to adapt the provision of services by the operator to the real needs of the people.

#### **9- Transition period (Art. 17)**

**EMTA authorities welcome the extension of the transition period to 8 years.** Concerning contracts awarded through competitive tenderings before the Regulation enters into force, EMTA authorities think that the possibility for these contracts to last up to their term provided that this term is "reasonable" is not very clear. **It would be useful to mention what is a reasonable period**, for example by taking into account payback period of investments made by the operating company (by reference to Article 6 (c)).

The requirement to have awarded at least half of an authority's public service contracts by value within four years could force those authorities with a high proportion (by value) of fixed infrastructure systems to develop such contracts unduly hastily in order to avoid being in breach of the Regulation. It would be more reasonable to oblige authorities to demonstrate that adequate steps have been taken after four years to put in place public service contracts.

List of public transport authorities belonging to the association of European Metropolitan  
Transport Authorities (EMTA) in May 2002.

AMSTERDAM (ROA)  
ATHENS (OASA)  
BARCELONA (ATM)  
BILBAO (CTB)  
BIRMINGHAM-WEST MIDLANDS (Centro)  
BRUSSELS (Ministère de la Région de Bruxelles)  
DUBLIN (DTO)  
FRANKFURT- RHEIN MAIN (RMV)  
GENEVA (Office des Transports et de la Circulation)  
HELSINKI (YTV)  
LISBON (Camara Municipal)  
LONDON (GLA)  
MADRID (CTM)  
MANCHESTER (GMPTE)  
MILAN (Comune di Milano)  
OSLO (AS Sporveier)  
PARIS-ILE DE FRANCE (STIF)  
PRAGUE (ROPID)  
ROME (Comune di Roma)  
SEVILLE (Consortio de Transportes de Sevilla)  
STOCKHOLM (AB SL)  
VALENCIA (ETM)  
VIENNA (VOR)  
VILNIUS (MECS)  
WARSAW (ZTM)  
ZURICH (ZVV)