

# European Framework

## The European Draft Regulation on Public Service Requirement

Over the past two decades, policies have been established to convert government monopoly transport systems to competitive tendering. Today's understanding is that sustainable transport policies should maximise the long-term welfare of citizens by keeping a reasonable balance between the traditional policy objectives of "secure (safe)", "competitive" and "environment-friendly" transport services.

A new regulatory framework has recently been put forward, aimed at improving the performance of public transport through controlled competition. This will establish an explicit obligation for authorities to pursue good public transport services.

In general, public bodies awarding contracts have to follow the competitive tendering rules in the public procurement directives. Contracts for services are covered by directive 93/38 (where the contracting authority is itself a public transport operator) or directive 92/50 (where it is not).

However, these directives do not require competitive tendering for:

- all contracts for conventional rail, metro and inland waterway services, whether or not they are 'concessions';
- all contracts for bus and tramway services which qualify as 'concessions';
- contracts awarded to another part of the same authority; to an entity over which the authority exercise a similar degree of; to an undertaking affiliated to the authority (in the case where the authority is itself a public transport operator); or to a body that is governed by public law and has previously been awarded, in accordance with Community law, an exclusive right to provide the service in question.

Regulation 1191/69<sup>1</sup> sets rules for the content of public transport service contracts that incorporate public service obligations, and for compensation. In principle, this includes public service contracts that are also caught by the public procurement directives. The regulation does not say how the contracts should be awarded.

In practice, the public procurement directives have not led to widespread use of competitive tendering in the field of public transport due to the various exemptions described above. However, the EC has proposed a new Regulation<sup>2</sup> (to replace 1191/69) that would require the majority of urban public transport services to be opened to competition either through free competition or controlled competition. This choice would be left to the authority but the aim of the EC is to improve the quality of public transport services by setting quality requirements. Some services would be excluded: many metro and tram systems, and contracts for low-value routes or networks. The European Parliament has completed its first reading of this proposal (November 2001) and responding to this the European Commission adopted a new proposal in 2002, but they have yet to reach a common position.

<sup>1</sup> Regulation (EEC) No 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway.

<sup>2</sup> COM(2002)107 (amended proposal)

## **Ruling of the European Court of Justice on Subsidies for Public Transport Services**

What could speed up the Commissions proposal to come into force is a ruling of the European Court of Justice on subsidies for public transport services, which took place in July 2003 (European Court of Justice decision C 280/00). The Court ruled that public subsidies can be paid without breaking EU competition rules, but only if they are for clearly-defined public service obligations.

In 1990 the company 'Altmark Trans' obtained licences and subsidies for providing bus services for the public in the district of Stendal, Germany. In 1994 the German authorities renewed Altmark's licences and rejected an application for licences by another company 'Nahverkehrsgesellschaft Altmark'. This company went to court, claiming that Altmark Trans was not financially viable because it could not have survived without public subsidies and therefore the licences were unlawful. The case was referred to the European Court of Justice resulting in the above mentioned ruling.

This ruling will have a big impact on the German public transport market, particularly on existing financial practices which now have to be changed. At present most public transport companies are receiving public money without any definition for what kind of public service obligations they are given (the subsidies are defined at the end of the year for the compensation of the companies deficit). From now on subsidies are only allowed if the following criteria are met:

- The recipient must actually have public service obligations to fulfil and these must be clearly defined.
- How the compensation is to be calculated must be established in advance in a transparent and objective way.
- Compensation cannot be greater than the costs to be covered, allowing for a reasonable profit.
- If the undertaking is not chosen by tendering, the level of compensation must be estimated on the basis of the costs which a typical enterprise would incur.

To ensure transparency and legal practice competitive tendering will be the best solution of meeting the requirements of the Court's ruling.

## **Key European Environmental Legislation Relating to Urban Public Transport**

Environmental factors are one of the quality criteria authorities should take into account to ensure the quality of public transport. This means, if a public authority wants to have clean and silent buses and trams they have to define these in the tendering process. Operators who want to run the service have to fulfil these requirements. This has been confirmed by a judgement issued by the European Court of Justice in 2002. The case had to decide whether the combination of environmental standards stricter than European standards in combination with an incentive system rewarding stricter standards by the Helsinki transport authorities was compatible with European procurement law. The court ruled that environmental criteria are compatible with the principles of the European internal market, as long as it is non-discriminatory, objective and transparent (European Court of Justice decision C-513/99).

## Air Quality

The Air Quality Framework Directive adopted in 1996 by the EU sets a general policy framework for dealing with air pollution. In practice, the Directive is applied through a set of four pollutant-specific "Daughter Directives". It should be emphasised that this legislation is about air pollution, not emissions from vehicles.

The first Daughter Directive (1999/30/EC), relating to limit values for Nitrogen Oxides (NO<sub>x</sub>), Sulphur Dioxide (SO<sub>2</sub>), Lead (Pb) and particulate matters (PM<sub>10</sub>) in ambient air, came into force in July 1999. Member States need to ensure that up-to-date information on ambient concentrations of SO<sub>2</sub>, NO<sub>x</sub>, PM<sub>10</sub> and Pb is routinely made available to the public. The limit values for NO<sub>x</sub> for the protection of vegetation should have been met by 2001. The health limit values for SO<sub>2</sub> and PM<sub>10</sub> must be met by 2005. The other health limit values for NO<sub>2</sub> and Pb must be met by 2010. In cases where the concentrations of pollutants are very high now, EU countries must prepare action plans showing how they will achieve the limit value. For the limit values see the Council Directive 1999/30/EC of 22 April 1999.

The second Daughter Directive (2000/69/EC), relating to limit values for benzene and carbon monoxide in ambient air, came into force in December 2000. This Directive establishes limit values and requires an assessment of concentrations of those pollutants in ambient air on the basis of common methods and criteria and ensure that it is made available to the public. The limit value for carbon monoxide must be met by 2005. The limit value for benzene must be met by 2010 unless an extension is granted. As with the first daughter Directive, Member States will have to prepare attainment programmes for those areas where attainments cannot be assumed without further changes. For the limit values see the Council Directive 2000/69/EC of 16 November 2000.

The third Daughter Directive (2002/3/EC) relating to ozone was adopted in February 2002. Member States must transpose it by 9 September 2003. The directive sets long-term objectives equivalent to the World Health Organisation's new guideline values and target values for ozone in ambient air to be attained where possible by 2010. Non-compliance requires Member States to work out reduction plans and programmes to be reported to the Commission and to be made available to the public so as to allow citizens to trace progress towards meeting the ozone standards. The directive includes improved and more detailed requirements to monitor and assess ozone concentrations and to inform citizens about the actual pollution load. The target values for 2010 in respect of ozone concentrations in ambient air are: information threshold - 1 hour average 180µg/m<sup>3</sup>, alert threshold 1 hour average 240µg/m<sup>3</sup>. Further information on this Directive can be found at:

[http://europa.eu.int/eurllex/pri/en/oj/dat/2002/l\\_067/l\\_06720020309en00140030.pdf](http://europa.eu.int/eurllex/pri/en/oj/dat/2002/l_067/l_06720020309en00140030.pdf).

The Commission is preparing a proposal for a fourth Directive that will cover the remaining pollutants - arsenic, cadmium, nickel, mercury and poly-aromatic hydrocarbons.

## European Union Emission Standards for Bus Engines

In 1992 European regulations came into force to set limit values for the most important pollutants emitted by heavy-duty vehicles to which buses are counted. These limit values are commonly referred to as Euro I, II, III IV and V. The EURO standards, following Directive 1999/96/EC<sup>3</sup>, regulate the legal emission levels of both new heavy-duty highway diesel engines and urban buses. These are applied progressively, becoming stricter over time. Currently the EURO III standards are in force for all new vehicles, with EURO IV to be introduced in 2005 and EURO V in 2008. These regulations also contain the new standard for Enhanced Environmentally friendly Vehicles (EEV) with even stricter limits than EURO V.

### EU Emission standards for HD Diesel Engines, g/kWh (smoke in m-1)

	EURO I	EURO II	EURO III		EURO IV		EURO V		EEV
Directive	91/542/EWG		1999/96/EG						
Year	1992/93	1995/96	2000/2001		2005/2006		2008/2009		
Test cycle <sup>1</sup>	ECE R-49		ESC & ELR	ETC	ESC & ELR	ETC	ESC & ELR	ETC	ETC
CO	4,9	4,0	2,1	5,45	1,5	4,0	1,5	4,0	3,0
HC	1,23	1,1	0,66		0,46		0,46		0,4
NMHC				0,78		0,55		0,55	
Methane				1,6 <sup>3</sup>		1,1 <sup>3</sup>		1,1 <sup>3</sup>	0,66
NOx	9,0	7,0	5,0	5,0	3,5	3,5	2,0	2,0	2,0
PM	0,4	0,5	0,10/ 0,13 <sup>2</sup>	0,16 <sup>4</sup>	0,02	0,03 <sup>4</sup>	0,02	0,03 <sup>4</sup>	0,02
Smoke	-		0,8 m <sup>-1</sup>	-	0,5 m <sup>-1</sup>	-	0,5 m <sup>-1</sup>	-	0.15 m <sup>-1</sup>

<sup>1</sup> ECE R-49 is the old steady-state engine test cycle, which is to be replaced by two cycles: a stationary cycle ESC (European Stationary Cycle) for all diesel engines and a transient cycle ETC (European Transient Cycle) for all diesel engines with after treatment and for all gas engines. Smoke opacity is measured on the ELR (European load Response) test.

<sup>2</sup> for engines of less than 0.75 dm<sup>3</sup> swept volume per cylinder and a rated power speed of more than 3000 min<sup>-1</sup>

<sup>3</sup> for gas engines only

<sup>4</sup> for diesel engines only

Note: ETC is for diesel engines with after treatment and for engines which run by gas; in ETC instead of HC NMHC (not methane hydrogen carbonates) is the indicator; EURO III – EURO V: levels for PM only for diesel engines

<sup>3</sup> Directive 1999/96/EC of the European Parliament and on the Council, of 13<sup>th</sup> Dec 1999 on the approximation of the laws of the Member States relating to measures to be taken against the emission of gaseous and particulate pollutants from compression ignition engines for use in vehicles, and the emission of gaseous pollutants from positive ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles and amending Council Directive 88/77/EEC

## Noise

Legislation governing sound levels for motor vehicles (Cars, Lorries and Buses) was adopted in 1970 (directive 70/157/EEC) and has since been amended nine times. The limit values for bus and lorries have been reduced by over 10 dB(A) over the period that the legislation has been in place. The latest amendment by directive 92/97/EEC came into force in 1996. All vehicles must meet the limits and therefore production models need to be designed to -1dB(A) below the limits to allow for production tolerances. As the limits have fallen, tyre noise has become more significant and with the new limits will be the main source of noise at speeds above 50 km/h.

**EC noise emission limits for heavy duty vehicles > 3,5 t, >= 150 kW)**

Vehicle Category	1972	1982	1988/90	1995/96
Urban Bus	91 dB(A)	88 dB(A)	84 dB(A)	80 dB(A)

## Tram and Railway Noise

One of the key environmental criteria to consider with regards to trams and buses is noise. Noise depends on the kind of vehicle and railway infrastructure. Special emission limits for trams do not exist. When developing new trams the manufacturers only have to consider best techniques which will ensure low noise emissions. At present, therefore it is up to the operators to set noise limits when purchasing new trams.

Within the EU there are generally no limits for railway noise except for high speed trains in where a new European Guideline has been adopted at the end of 2002 which sets limits. At present there is much activity from the EC to establish limits for new rail vehicles. A working group for railway noise is measuring options for noise regulation. In addition to the railway package directives it is intended to set maximum values for the TEN-T routes which contain technical specifications for high speed trains and conventional trains, including maintenance of rolling stock and infrastructure.

A range of techniques have been developed and tested to improve the measurement of railway noise. This is to support the regulatory approval of rolling stock, monitoring of ambient noise and diagnosis of the sources of noise. These results have fed into a new version of the ISO standard for exterior noise type testing of rail vehicles, increasing its reproducibility. In the longer term, the results will assist national authorities in determining measures needed for compliance with future EU legislation on noise. For example, the techniques proved capable of quantifying the noise reductions due to technologies such as improved braking systems and bogie shrouds. For more information visit: the METARAIL website: <http://www.schreiner.at/metarail/>.

