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(Acts whose publication is obligatory)

**COUNCIL REGULATION (EEC) No 1893/91
of 20 June 1991**

amending Regulation (EEC) No 1191/69 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION :

Having regard to the Treaty establishing the European Economic Community, in particular Article 75 thereof,

Article 1

Having regard to the proposal from the Commission ⁽¹⁾,

Regulation (EEC) No 1191/69 is hereby amended as follows :

Having regard to the opinion of the European Parliament ⁽²⁾,

1. Article 1 shall be replaced by the following :

Article 1

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

1. This Regulation shall apply to transport undertakings which operate services in transport by rail, road and inland waterway.

Whereas, while maintaining the principle of the termination of public service obligations, the specific public interest of transport services may warrant the application of the concept of public service in this area ;

Member States may exclude from the scope of this Regulation any undertakings whose activities are confined exclusively to the operation of urban, suburban or regional services.

Whereas in compliance with the principle of the commercial independence of transport undertakings, the arrangements for providing transport services should be established in a contract concluded between the competent authorities of Member States and the undertaking concerned ;

2. For the purposes of this Regulation :

— "urban and suburban services" means transport services meeting the needs of an urban centre or conurbation, and transport needs between it and surrounding areas,

— "regional services" means transport services operated to meet the transport needs of a region.

Whereas, for the purposes of supply of certain services or in the interests of certain social categories of passenger, the Member States should retain an option to maintain or impose certain public service obligations ;

3. The competent authorities of the Member States shall terminate all obligations inherent in the concept of a public service as defined in this Regulation imposed on transport by rail, road and inland waterway.

Whereas it is therefore necessary to amend Regulation (EEC) No 1191/69 ⁽⁴⁾, as last amended by Regulation (EEC) No 3572/90 ⁽⁵⁾, to adapt its scope and to lay down the general rules applicable to public service contracts,

4. In order to ensure adequate transport services which in particular take into account social and environmental factors and town and country planning, or with a view to offering particular fares to certain categories of passenger, the competent authorities of the Member States may conclude public service contracts with a transport undertaking. The conditions and details of operation of such contracts are laid down in Section V.

⁽¹⁾ OJ No C 34, 12. 2. 1990, p. 8.

⁽²⁾ OJ No C 19, 28. 1. 1991, p. 254.

⁽³⁾ OJ No C 225, 10. 9. 1990, p. 27.

⁽⁴⁾ OJ No L 156, 28. 6. 1969, p. 1.

⁽⁵⁾ OJ No L 353, 17. 12. 1990, p. 12.

5. However, the competent authorities of the Member States may maintain or impose the public service obligations referred to in Article 2 for urban, suburban and regional passenger transport services. The conditions and details of operation, including methods of compensation, are laid down in Sections II, III and IV.

Where a transport undertaking not only operates services subject to public service obligations but also engages in other activities, the public services must be operated as separate divisions meeting at least the following conditions :

- (a) the operating accounts corresponding to each of these activities shall be separate and the proportion of the assets pertaining to each shall be used in accordance with the accounting rules in force ;
- (b) expenditure shall be balanced by operating revenue and payments from public authorities, without any possibility of transfer from or to another sector of the undertaking's activity.

6. Furthermore, the competent authorities of a Member State may decide not to apply paragraphs 3 and 4 in the field of passenger transport to the transport rates and conditions imposed in the interests of one or more particular categories of person.'

2. Article 10 (2) shall be deleted.

3. Article 11 (3) shall be deleted.

4. Section V shall be replaced by the following :

'SECTION V

Public service contracts

Article 14

1. "A public service contract" shall mean a contract concluded between the competent authorities of a Member State and a transport undertaking in order to provide the public with adequate transport services.

A public service contract may cover notably :

- transport services satisfying fixed standards of continuity, regularity, capacity and quality,
- additional transport services,
- transport services at specified rates and subject to specified conditions, in particular for certain categories of passenger or on certain routes,

— adjustments of services to actual requirements.

2. A public service contract shall cover, *inter alia*, the following points :

- (a) the nature of the service to be provided, notably the standards of continuity, regularity, capacity and quality ;
- (b) the price of the services covered by the contract, which shall either be added to tariff revenue or shall include the revenue, and details of financial relations between the two parties ;
- (c) the rules concerning amendment and modification of the contract, in particular to take account of unforeseeable changes ;
- (d) the period of validity of the contract ;
- (e) the penalties in the event of failure to comply with the contract.

3. Those assets involved in the provision of transport services which are the subject of a public service contract may belong to the undertaking or be placed at its disposal.

4. Any undertaking which intends to discontinue or make substantial modifications to a transport service which it provides to the public on a continuous and regular basis and which is not covered by the contract system or the public service obligation shall notify the competent authorities of the Member State thereof at least three months in advance.

The competent authorities may decide to waive such notification.

This provision shall not affect other national procedures applicable as regards entitlement to terminate or modify transport services.

5. After receiving the information referred to in paragraph 4 the competent authorities may insist on the maintenance of the service concerned for up to one year from the date of notification and they shall inform the undertaking at least one month before the expiry of the notification.

They may also take the initiative of negotiating the establishment or modification of such a transport service.

6. Expenditure arising for transport undertakings from the obligations referred to in paragraph 5 shall be compensated in accordance with the common procedures laid down in Sections II, III and IV.'

5. Article 19 shall be deleted.

Article 2

This Regulation shall enter into force on 1 July 1992.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 20 June 1991.

For the Council

The President

R. GOEBBELS
