

LIBERALISATION OF ROAD TRANSPORT SERVICES: TAKING INTO ACCOUNT THE SPECIFIC FEATURES OF URBAN TRANSPORT

In the second Mobility Package published on 8th November 2017, the European Commission put forward a text aimed at pursuing the opening of national transport services by bus and coach. The proposal amends Regulation (EC) N° 1073/2009 and provides for the liberalisation of all road services, whether urban or interurban, by bus or coach.

Although broadly inspired by the French model, UTP regrets that this opening also targets urban services.

The professional association UTP is in favour of the liberalisation of regular interurban transport services by coach in Europe capable of offering a wider choice of sustainable transport services for passengers.

Nevertheless, UTP regrets that the European Commission's proposal extends to urban transport services, which would enable commercial services to compete with urban public transport services. Moreover, certain provisions of the proposal must be specified and perhaps amended to guarantee legal certainty for public transport operators and bus terminal operators alike.

THE PROPOSAL THREATENS THE ORGANISATION AND THE SUSTAINABILITY OF URBAN PUBLIC TRANSPORT

Local and multimodal urban services address different mobility challenges from those of interurban transport by coach.

In France, as in most EU Member States, urban public transport services are organised by local authorities in accordance with their specific territorial needs, policies and priorities: reduced congestion and urban pollution, social cohesion, parking management and land-use planning.

More than 74% of European citizens live in urban areas at present; this figure will rise

to 79% before 2030⁽¹⁾; the constraints on urban areas will therefore increase and the role of organising authorities will be more than fundamental as a result.

To organise urban transport services, organising authorities conclude public service contracts in which they set public service obligations for one or more transport operators, generally in return for the award of exclusive rights.

1. Sources: Eurostat and UN DAES.

Liberalisation of road transport services: taking into account the specific features of urban transport

In the same contract, the organising authority may group profitable and non-profitable lines together. Public transport is in fact generally organised as a network and operates on a principle of cross-subsidisation between lines. These new commercial services should not concentrate solely on the profitable lines to the detriment of suburban areas or other services with low service margins (cherry picking principle).

For all these reasons, an analysis of whether the economic equilibrium of a public service contract is compromised would not necessarily be sufficient to avert the risk entailed by the creation of a new commercial line on the entire public transport network and on the capacity of the competent authority to organise urban public transport. By virtue of the subsidiarity principle, UTP considers that the competence and organisational arrangements for public transport must remain at the local level.

▶ UTP therefore believes that the future amended Regulation 1073/2009 should give Member States the possibility of derogating from its application for urban transport without any time limits.

The procedure and the criteria for the analysis of whether the economic equilibrium of a public service contract would be compromised will be decisive for the sustainability of public transport, and must be the subject of a broader consultation with the relevant stakeholders.

▶ UTP asks that the procedure and the criteria for the analysis of whether the economic equilibrium of a public service contract would be compromised be not determined by a delegated act, but by an implementing act, as is the case for rail transport.

Furthermore, for legal certainty reasons, the notions of “point of departure” and “point of arrival” must be specified. These notions will be essential for an analysis of whether the economic equilibrium of a public service contract would be compromised for services over a distance of less than 100 km.

▶ UTP proposes that the notions of “point of departure” and “point of arrival” cover that of terminals and not of cities.

AN OBLIGATION OF ESTABLISHMENT THAT GUARANTEES FAIRNESS BETWEEN COMPETITORS AND COMPLIANCE WITH THE SOCIAL FRAMEWORK

The obligation of establishment ensures all the companies exercising a business activity on the national territory comply with national legislation. Such an obligation constitutes first and foremost a guarantee against social dumping. More specifically, the liberalisation of the coach market must not weaken existing social protections for workers.

Whereas experience in road freight transport has shown the limits of scrapping the obligation of establishment and whereas there are now plans to restore it, UTP is surprised that the Commission proposes to

get rid of it for passenger road transport. Furthermore, it is not certain that Member States will manage to reach a satisfactory agreement on the social aspects of the First Mobility Package.

The scrapping of the obligation of establishment would also have consequences on compliance with certain national rules, in particular those concerning civil liability. This could create legal uncertainty for passengers as regards compliance with the liability cap in the event of personal injuries. This would also risk creating a distortion of competition regarding insurance rules for operators established on the French territory.

▶ UTP therefore considers the obligation of establishment as an essential precondition to the provision of road services in France. The obligation of establishment in no way constitutes a barrier or a limitation, but on the contrary guarantees respect for a healthy and fair competition.

THE REGULATOR’S POWERS MUST BE SPELLED OUT

The regulator is, in particular, responsible for conducting the analysis of whether the economic equilibrium of a public service contract would be compromised by a commercial service at the request of the competent authority or of the public transport operator. Nevertheless, the text seems to indicate that the regulator has a choice on whether to conduct this assessment, without specifying what the latter can rely on to justify its refusal to do so.

➤ **UTP considers that the regulator's decision on whether to conduct an analysis of whether the economic equilibrium of a public service contract would be compromised must not be based on expediency. The regulator must be able to refuse only on the basis of objective criteria defined by the Regulation.**

THE GOVERNANCE OF TERMINALS MUST ALLOW FOR PRIORITY TO BE GIVEN TO PUBLIC SERVICES

The proposal creates a governance framework for passenger terminals that includes the obligation for the terminal operator to define rules on equal access for carriers under fair, equitable, non-discriminatory and transparent conditions. UTP believes that terminal operators must retain the option of giving priority to public transport operators.

Indeed, in the public service contract that binds it to the operator, the competent local authority determines the places and times served by public service lines. Access to terminals for commercial services must not compromise this competence of the organising authority.

➤ **UTP considers that equal access must not concern public transport services, but only commercial services.**

Furthermore, when a terminal is at full capacity, terminal operators shall indicate a "viable alternative" to the carrier whose request is turned down. According to the proposal, this viable alternative means

"another terminal which is economically acceptable to the carrier, and allows it to operate the passenger service concerned". Nevertheless, alternatives do not always exist in cities across Europe. In France, for instance, terminals are few and far between.

➤ **UTP is in favour of the obligation of indicating an alternative only insofar as such an alternative exists.**

➤ **UTP also considers that what constitutes an "economically acceptable" terminal among "viable" alternatives must be defined to guarantee legal certainty for the stakeholders concerned.**

THE TRAVEL INFORMATION OBLIGATIONS IN TERMINALS ARE NOT ADAPTED TO THE SPECIFIC FEATURES OF COACH TRANSPORT

As an additional obligation for terminal operators, the Commission's proposal requires the publication of three types of information⁽²⁾ in at least two official languages of the Union. This obligation would prove costly and disproportionate for most terminal operators.

As observed in European markets that are already open, road services by coach must remain low-cost. These travel information obligations must not prevent the deployment of services where price constitutes an essential competitive edge and allows them to appeal to citizens who could not travel otherwise.

➤ **UTP considers that the text should encourage the translation of information requested without making it an obligation.**

Furthermore, the proposal would require making this information available in electronic format. As in the case for translating information, this electronic format would entail additional costs, and must be left to the discretion of operators.

➤ **Only information that already exists in electronic format must be published online.**

² *This is a list of all services provided, and the prices for these services, the rules for scheduling the allocation of capacity and finally the current timetable and capacity allocation.*

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UTP. (Union des Transports Publics et ferroviaires) is the professional association of France's urban transport and rail transport undertakings (passengers and freight). It represents its members at the European and French levels and pursues lobbying actions aimed at authorities and decision-makers.

UTP represents over 170 urban transport undertakings all over France. Most of them are connected to international transport groups such as CarPostal France, Groupe RATP, Keolis, SNCF Mobilités, Transdev, Vectalia France. Others are independent and may be members of AGIR association.

Since 2006, UTP has gathered railway undertakings such as Agenia, CFTA, Colas Rail, Euro Cargo Rail, Europorte, Eurostar, Groupe RATP, Keolis, Objectif OFP, RRT PACA, SNCF, SNCF Mobilités, Thalys International, Thello, Transdev, VFLI.

Since January 2013, UTP also welcomed Infrastructure Managers (Eurotunnel, LISEA, SNCF Réseau) as members, thus embodying the unity of the railway sector.

