

4 MAY 2022

## COALITION POLITICAL STATEMENT

ON THE PROPOSAL BY THE EUROPEAN COMMISSION FOR A REVISION OF THE PSO INTERPRETATIVE GUIDELINES

### Help - not hinder - public transport's ability to deliver Green Deal goals!

*Avoid undermining the legal framework for public transport organisation*

We, representatives of public transport, rail transport, and active mobility, and representatives of local & regional government, welcome the opportunity to comment on the proposal by the Commission to revise its interpretative guidelines on Regulation (EC) No 1370/2007 on public passenger transport services by rail and by road ("the PSO Regulation"), even though we regret that only a limited number of actors were initially consulted. This Regulation sets out the conditions under which transport operators can be compensated or given exclusive rights by public authorities to provide public transport services in the general interest. The regulation, and the way it is interpreted, is therefore of critical importance to the European public transport and rail sector and to competent authorities implementing EU policy goals.

The Commission's proposal has to be seen in the context of the EU's imperative to become climate neutral by 2050, which requires a 90% reduction in transport emissions. One key factor in achieving these goals is for *"the EU [...] to take more decisive action on urban mobility to shift from the current approach based on traffic flows to an approach based on moving people and goods more sustainably. This means a stronger collective / public transport backbone, better active mobility (e.g. walking, cycling) options and efficient zero-emission urban logistics and last mile deliveries."*<sup>1</sup>. The sector fully shares the European Green Deal objectives and is well placed to deliver them through decarbonisation, modal shift and modal integration. Public transport is an integral part of a city's Sustainable Urban Mobility Plan (SUMP) as the mobility backbone of our society. Major efforts to integrate all modes with public transport and deliver multi-operator transport services are paying off through increases in public transport ridership. Cross-operator fare, information, and service integration are already enjoyed by millions of public transport users today, who are multimodal by default.

It must also be acknowledged that the public transport sector has delivered beyond the call of duty during the COVID crisis. Buses, trams, metros and trains ran every day to ensure essential workers were able to move around in an efficient way. However, our sector's margins of resilience were adversely affected as the pandemic has dealt a severe blow to the finances of public transport authorities who now face the combined challenges of maintaining public transport services in spite of reduced demand, ensuring a green, digital and inclusive economic recovery, and at the same time fostering a substantial modal shift to public transport and other sustainable modes. The current rapid rise in fuel-prices is an additional challenge for our sector in these trying times. In these circumstances, public authorities need sufficient flexibility and support in the organisation and provision of transport services.

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<sup>1</sup> The New EU Urban Mobility Framework COM(2021) 811 final, para 8.

**While our coalition welcomes the Commission's initiative to revise the guidelines, which is needed to provide consistency and a clear framework at EU level, for the above reasons we believe that the current draft version risks undermining our contribution, efforts and policies in support of the development of public transport, the EU's Green Deal objectives and sustainable recovery from the pandemic.** Indeed, by proposing new legal concepts on public services, the guidelines as drafted would limit the ability of competent transport authorities and introduce legal uncertainty which will inhibit future effective investment in and development of public transport services.

In the revised guidelines, the European Commission essentially attempts to limit the scope of public service obligations, and to link them to the demonstration of an ex-ante user demand<sup>2</sup>. This seems to stem from a questionable conception according to which the general interest would simply be the sum of personal interests; i.e. if there is no user demand for a service, then there is no general interest.

This is a misconception of the governance of public transport services particularly in the local and regional context.

Indeed, while its primary objective is to meet the mobility needs of citizens (including all categories whatever their income or age or ability), public transport also contributes to other strategic policy objectives as elaborated in the following paragraph. Evaluating the need for a service of general economic interest based solely on user demand is counter-productive (e.g. urban motorways)<sup>3</sup>. The coalition therefore disagrees with the assertion that *"a need for public service can occur only where there is a user demand and that demand is not capable of being met by the interplay of market forces alone"*. **Public authorities have all sorts of economic, environmental and social public policy goals, such as cleaner air and public health, less congestion, safer streets, noise reduction, better use and balanced allocation of urban space, social and territorial cohesion, affordability and accessibility, energy efficiency, etc., which may require the provision of public transport services – not least in support of EU climate and air quality goals.** Moving to an almost purely demand-driven approach is incompatible with sustainable mobility planning. The modal shift that is needed can only occur if people currently dependant on private means of transport have public transport services they can switch to. Regularly, supply designed by competent authorities creates demand, i.e. the service itself creates user demand to enable modal shift for the benefit of all.

**Commercial deficiencies in networked markets like public transport:**

Moreover, the market for mobility services is characterised as a low-margin and networked market. The difficulty of creating market-based, commercially viable transport services is ultimately the reason why a publicly-controlled and compensated public transport market predominates today in most of the EU.

National, regional and local authorities enjoy a wide discretion in providing, commissioning and organising services of general economic interest. While it is important that the services offered by commercial operators are taken into consideration, it cannot be the case that Member States' power to define their public services is dependent on the existence of these commercial services. Moreover, it cannot be the case that the diversity of situations across the EU are so easily glossed over by these guidelines that in effect impose a one-size-fits all approach.

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<sup>2</sup> The Commission presents its definition of SGEIs in section 2.2.3 of the non-paper.

<sup>3</sup> Everyone now recognises that cities should not be built around cars, even though car use and urban motorways were in high demand with the users in the 1970s.

The PSO Regulation aims to improve the effectiveness and efficiency of public transport services. The Commission's new definition of SGEIs would not allow competent authorities and transport operators to properly plan for climate action and work towards modal shift. Public transport authorities and operators must be allowed to plan for new users. Open access services certainly have a role to play in Europe's liberalised rail market; these need to work alongside the underlying networks, and vice versa, for mutual benefit.

Additionally, the newly introduced requirement to perform an additional ex post overcompensation test on public service contract which have been awarded in a competitive tender procedure would be counterproductive. Such a requirement is neither in line with the PSO Regulation, nor with the overall common practice in Member States. Such a provision would lead to legal uncertainty for operators and prevent newcomers from entering markets, hindering competition. Competitive tender procedures already lead to the best market price and quality of service available.

Finally, the draft revised guidelines provide no recognition of the importance of the "network effect" and of an integrated fare policy from a user's perspective. This approach is fundamental in the definition of public service obligations themselves. This is precisely why the heavy reliance on the SNCM ruling throughout the Commission's draft is so questionable.<sup>4</sup>

#### **The network effect**

For urban transport, users don't get the right to use a line, or even a route, but the right to travel from A to B for any purpose (a "right to mobility"). An overall integrated set of services operated under public service obligations combines offers designed on the basis of several criteria and primarily on the capacity of the various options of vehicles and infrastructure: urban rail, as a backbone in larger cities, and road-based services (by bus and all other shared modes). The same is true for medium/long distance passenger rail: it is vital that seamless connections between medium/long distance mainline rail and feeder lines serving remote areas are being systematically offered throughout the day: if this goes hand in hand, passenger rail has the chance to become a real alternative both to motorised private transport and to short haul flights.

This lack of attention to the network effect of mobility is evident in the examples the Commission uses when referring to public service obligations: last mile solutions, early and late-night services, etc., as though public services could only ever serve the purpose of filling in the gaps left by open access services. Meanwhile, those potential transport services that could requalify as open access services, could primarily do so because of their integration in a network, with the advantages such a network offers in terms of connections, travel information, marketing, etc.

As representatives of the competent authorities and transport operators responsible for the implementation of the PSO Regulation and any of the Commission's transport policies, we cannot support these draft revised guidelines. While it is entirely the Commission's prerogative to provide interpretative guidelines that increase legal certainty, we are concerned that the current draft far exceeds this mandate. We believe they introduce what can be understood as new legal concepts and revised interpretations of existing law, and thus represent a restriction on the competence of

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<sup>4</sup> The Commission's statement in the guidelines whereby "a need for public service can occur only where there is a user demand and that demand is not capable of being met by the interplay of market forces alone" is directly taken from the SNCM judgment. From a legal perspective, we note that the SNCM judgement (here) is about SGEIs in the context of maritime transport services pursuant to Regulation 3577/1992 and state aid compatibility under the "SGEI Decision" and the "SGEI Framework", neither of which is applicable specifically to public passenger transport services under Regulation 1370/2007 nor to land transport in general.

transport authorities and risk undermining the principle of subsidiarity. This is not appropriate in a non-binding, but nevertheless very influential, interpretative document. The guidelines as presented will create substantial uncertainty for public transport in Europe at a time when the sector's efforts are focused on sustainable recovery from the pandemic and a just transition to a climate-neutral, resilient Europe for all.

**Therefore, we strongly urge the Commission to take into account the critical issues raised and consult with all relevant stakeholders in the drafting process.**

**Signed by:**

**For UITP**



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## About the organisations



**UITP** is the international association representing public transport stakeholders. In the European Union, UITP brings together more than 450 urban, suburban, and regional public transport operators and authorities from all Member States. UITP-Europe represents the perspective of short-distance passenger transport services by all sustainable modes: bus, regional and suburban rail, metro, light rail, tram and waterborne.



**The Council of European Municipalities and Regions (CEMR)** is the oldest and broadest European association of local and regional governments. We are the only organisation that brings together the national associations of local and regional governments from 40 European countries and represents, through them, all levels of territories – local, intermediate and regional.



**The Community of European Railway and Infrastructure Companies (CER)** brings together railway undertakings, their national associations as well as infrastructure managers and vehicle leasing companies. The membership is made up of long-established bodies, new entrants and both private and public enterprises, representing 79% of the rail network length, 77% of the rail freight business and about 90% of rail passenger operations in EU, EFTA and EU accession countries. CER represents the interests of its members towards EU policy makers and transport stakeholders, advocating rail as the backbone of a competitive and sustainable transport system in Europe.



**EMTA (European Metropolitan Transport Authorities)** is the association of European Metropolitan Transport Authorities, unites the transport authorities – public bodies with legal responsibilities in the organisation of public transport and mobility - of Europe's metropolitan areas. Through collaboration and the peer-to-peer exchange of knowledge and experiences, EMTA supports organising transport authorities (PTAs) in their strategic choices in mobility governance, tactical considerations in transport service development and operational challenges in their public transport networks. With membership available exclusively to PTAs, the association currently joins 30 authorities from 17 European countries, 15 of which EU Member States. EMTA's member PTAs organise the mobility of 95 million Europeans



**EUROCITIES** is the network of the largest European cities bringing together the local governments of more than 200 cities in 38 European countries, representing 130 million people. EURO CITIES provides a platform to share knowledge and ideas, to exchange experiences, to analyse common problems and develop innovative solutions, through a wide range of forums, working groups, projects, activities and events. EURO CITIES gives cities a voice in Europe, by engaging in dialogue with the European institutions on all aspects of EU legislation, policies and programmes that have an impact on cities and their citizens



**POLIS** is the leading network of over 90 European cities and regions working together to develop innovative technologies and policies for local transport. Our aim is to improve local transport through integrated strategies that address the economic, social and environmental dimensions of transport. We foster cooperation and partnerships across Europe with the aim of making research and innovation in transport accessible to cities and regions. At POLIS we strive to provide decision makers with the necessary information and tools for making sustainable mobility a reality.



**SGI Europe** is one of the three general cross-sectoral European Social Partners. It gathers public and private providers of services of general interest from across Europe. SGI Europe members, active in, amongst others, transport, energy, housing, water, waste management, healthcare or education, contribute to more than 26% of EU GDP and employ 30% of the EU workforce.