

News from Brussels – January 2022

Hi!

Here is this month's newsletter from Brussels where we take a look at what's going on at the EU level and at relevant news from UITP (The International Association of Public Transport).

COVID-19

For nearly two years now, the European Commission has been approving additional national aid schemes across the EU related to transport in the context of the pandemic. A few examples in the Nordic countries and elsewhere, for all types of modes, include:

- ✓ *Commission approves €133 million **Swedish** scheme to support rail freight and passenger operators affected by the coronavirus outbreak*
- ✓ *Commission approves €23,74 million **Belgian** scheme to support rail freight and passenger operators affected by the coronavirus outbreak*
- ✓ *Commission approves €88 million **German** support to compensate Deutsche Bahn for damages suffered by its subsidiary DB Cargo due to the coronavirus outbreak*
- ✓ *Commission approves €9 million **Slovak** scheme to support bus companies in the context of the coronavirus pandemic*

EU legislation and initiatives

If December witnessed the publication of a number of important legislative files for our sector, January on the other hand was a lot quieter in terms of new publications and new initiatives.

2022 Year of Youth

Every year, the European Commission chooses a specific issue to encourage debate and dialogue in and between EU countries. European years have been taking place since 1983. They act as awareness campaigns on particular issues and offer extra funding to local, national and cross-border projects that address the specific issue.

2021 was the Year of Rail. 2022 will be the Year of Youth. A dedicated website has been set up [here](#) that allows any interested and relevant stakeholder to submit an activity. UITP is currently working on a list of actions it can carry out in this context.

Fit for 55

In July 2021, the European Commission published a package of measures aimed at aligning EU legislation with Green Deal goals, specifically with the target of 55% emissions reductions by 2030. The package contains a series of legislative measures aimed at all segments of the transport

sector (maritime, aviation and road mainly). Regarding our own sector, two of the most important pieces of legislation are the new Regulation on Alternative Fuels Infrastructure as well as the revised energy Taxation Directive. This month, UITP adopted an official position on the entire package available [here](#).

Temporary measures concerning the levying of charges for the use of railway infrastructure

In March 2020, at the start of the COVID crisis, the European Commission published a Regulation providing derogations until the end of that year to certain provisions of Directive 2012/34/EU, in particular related to track access charges. The Regulation was then extended for 2021. Given the unrelenting pace of the pandemic, the Commission today is proposing to extend the derogations once again until 30th June 2022. The Commission's proposal is available [here](#). Once adopted, the Regulation will apply retroactively as of 1st January 2022, i.e. right after the end of the current reference period which ended on after 31 December 2021.

Understanding the EU better – the PSO Regulation (1370/2007) interpretative guidelines

The EU can seem quite far away at times, the legislative procedure can seem obscure and the jargon impenetrable. This is why, every month, we take a closer look at one of the cogs in the EU machinery, in relation with a relevant piece of EU legislation for the public transport sector.

This month, with the communication by the European Commission to UITP of the proposal for a revised set of guidelines on the PSO Regulation, we take a closer look at what this proposed revision would entail.

Regulation (EC) No 1370/2007 is a cornerstone of the legal framework for the organisation of land transport services across the EU. As such, the interpretative guidelines of the Regulation are of equally high importance to all European public transport authorities and operators.

Why is the Commission preparing for a revision of the guidelines?

The current guidelines, adopted in 2014, seek to harmonise the implementation of the Regulation across the EU by providing a better understanding of those provisions that are not deemed sufficiently clear.

The adoption of the fourth railway package in 2016 and the subsequent modification of the Regulation by Regulation (EU) 2016/2338, the end of the transition period in December 2019, and the many judgments handed down by the European Court of Justice since 2007, have prompted the European Commission to propose a revision of these interpretative guidelines.

Overall, what are the new guidelines like?

Overall, the proposal for a revision of the guidelines introduces a lot of legal uncertainty for the sector for the following reasons:

- it is unclear which parts apply only to mainline rail and which parts to urban transport – this causes quite a lot of confusion depending on the section and does not help in any way with the implementation of the Fourth railway package;
- the specificities of our sector are glossed over: there is no clear recognition of the importance of network effects in local public transport, limited recognition of how the implementation of the PSO Regulation might serve to reach the Green Deal objectives and finally no mention at all of the current COVID crisis and the challenges it poses to operators and authorities alike;
- some of the sections of the proposed guidelines introduce new legal concepts and questionable interpretations of existing law, which have no place in a non-binding, but nevertheless influential, interpretative document (see below).

The proposed revision specifically introduces two new and worrying interpretations:

→ A new definition of public service obligations

Indeed, the Commission sets out an entirely new procedure for the definition of public service obligations and of the scope of public service contracts. A public service contract would no longer be deemed compliant with competition law if it hasn't gone through the following procedure:

- ✓ Consistency with the objectives of Member States' public transport policy
- ✓ Existence of a real need for PSOs, including:
 - Ex ante assessment of the demand for public transport services
 - Analysis of the market failure
 - Selection of the least harmful approach to the functioning of the internal market
- ✓ Possibility to group cost-covering and non-cost-covering services in the public service contract

This new procedure can essentially be understood as an attempt to give open access services priority over services under public service obligations and to limit as much as possible the establishment of public service contracts to non-cost-covering services.

UITP does not agree that a Member State's discretion to establish public transport services should be "subject to the demonstration of a demand for those services", which should be established through an ex ante assessment of that demand.

Moreover, given that national, regional and local authorities enjoy a wide discretion in providing, commissioning and organising services of general economic interest, it cannot be the case that Member States' power to define their public service is dependent on the service offered by commercial operators.

UITP also 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

which may require the provision of public transport services – not least in support of EU climate and air quality goals.

Finally, it cannot be the case that the diversity of situations across the EU are so easily glossed over by these guidelines that have chosen to adopt a one-size-fits all approach. Indeed, some Member States or local competent authorities might already apply a similar type of procedure but it doesn't mean that it should necessarily be extended to all Member States and regions.

→ *Financial overcompensation is no longer ruled out for competitively tendered contracts*

Currently, the PSO Regulation as well as the 2014 interpretative guidelines set out the general principle that in the case of competitively tendered contracts, it is assumed that the price paid by the competent authority involves the least cost to the community. In other words, overcompensation is ruled out by default.

However, the Commission is now presenting a new interpretation of the Regulation in which a competitively tendered contract would no longer rule out overcompensation.

To introduce the suspicion of overcompensation for competitively tendered contracts would have far-reaching consequences. It would lead to legal uncertainty whether the requirements of Regulation 1370/07 are fulfilled and hence whether the exemption from prior notification of State aid requirement is applicable. Should this become the case, there would always be the risk that such financial compensation could be declared as illegal State aid and incompatible with the common market. The contract would then be denounced and the operator would need to reimburse the financial amount perceived. This is a worrying development and new interpretation.

What now?

UITP and its members were given till February 10th 2022 to submit their feedback on the Commission's proposal. A detailed draft position paper is currently being finalised and will soon be made available. The European Commission will then plan stakeholder events to discuss the feedback and work on an updated and final version of the revised guidelines it aims to publish before the summer.

Should you be interested in finding out more about the proposed revision of the PSO Regulation interpretative guidelines, please do not hesitate to get in touch via email.

Events

● **8th February: European Railway Awards 2022**

This yearly event organised by the Community of European Railway and Infrastructure Companies will take place online on 8th February 2022. You can register to the event [here](#). Rail has been particularly in the spotlight over the past year, as 2021 became the European Year of Rail. The award comes with prize money, donated to a charity organisation of the laureate's choice. The jury for the European Railway Award consists of railway and rail industry CEOs, EU-level political decision makers, past winners and selected journalists. They consider the nominees and select a winner through a vote. More information is available [here](#).

- **22nd February: Commission stakeholder workshop on Multimodal Digital Mobility Services (MDMS)**

On 22nd February (14:00-17:00 CET) the Commission will organise an online stakeholder workshop on the ongoing impact assessment for the initiative on Multimodal Digital Mobility Services (MDMS). In this workshop, the Commission and the contractors for the support study (led by Ricardo), will present the state of play of the support study and will focus on the definition of problems, drivers and root causes. If you are interested in participating in the workshop, please register [here](#) by 21st February.

- **23rd February: TSIs Revision Package 2022, the Tool for Sustainable Railways**

The European Commission has requested the European Rail Agency to develop, align and amend the technical specifications for interoperability (TSIs) that are the legislative tool to establish the European mandatory requirements for the rail system. The TSIs Revision Package 2022 is currently carried out by the Agency in a way that is fully transparent for Member States and sector.

This webinar aims at providing to the participants an overview of the Agency's work at the time where it is reaching the important milestone of the consultation of the rail freight customers, passengers and social partners. No registration needed. The link, accessible [here](#), will be active a few minutes before the start of the webinar broadcast.

- **3rd-4th March 2022 : European Summit of Regions and Cities**

The European Summit of regions and cities is a gathering of local representatives organised every two years by the European Committee of the Regions (CoR) to discuss the EU's future challenges. This time, the Summit aims at increasing the impact and outreach of the Conference on the Future of Europe. The summit will take place both in person in Marseille, France, under the French Presidency of the Council and remotely on the digital event platform. More information on the event is available [here](#).

Publications

- **European Commission - "Providing public transport in cross-border regions – mapping of existing services and legal obstacles"**

The European Commission published a new study entitled "Providing public transport in cross-border regions – mapping of existing services and legal obstacles". The study consists of an [inventory](#) of cross-border public transport services, which is also accessible via a very handy [web-viewer](#) ; an inventory of obstacles to CBPT provision; a set of 31 case studies detailing selected CBPT services and a [toolbox](#) indicating possible ways forward to overcome obstacles.

Not a UITP member yet?

As a UITP member, you can share knowledge with a network of more than 200 public transport authorities worldwide. Read more at <https://www.uitp.org/membership-benefits> or contact Camille Roy in UITP: camille.roy@uitp.org

Any questions? Please contact me at annabelle.huet@uitp.org

Kind regards,
Annabelle