

Vienna, 12 May 2022

Joint Position: The Commission's draft on the revised interpretative guidelines on the PSO Regulation (EC) 1370/2007 goes beyond the established legal framework of EU Parliament and Council

The so called PSO¹-Regulation 1370/2007² stipulates rules concerning the award of public passenger transport services for rail and road and is one of the most important legal frameworks for transport companies and contracting authorities. In 2016, the European Parliament and the Council adopted an amendment to the PSO-Regulation (Regulation 1370/2007, as amended by Regulation 2016/2338) as part of the 4th railway package. Thereby, the initial Commission proposal was amended and simplified comprehensively, inter alia, in order to continue to grant Member States the freedom to choose between direct award and tendering.

The Commission published its draft of revised interpretative guidelines³ on the PSO-Regulation on 2 December 2021. The new interpretative guidelines intend to provide assistance in the application and interpretation of the PSO-Regulation. According to the Commission, the revision's intention was to adapt the guidelines to the current text of the regulation and relevant case law. However, the legal analysis shows that the draft guidelines go well beyond the text of the PSO-Regulation in several places. De facto, the PSO interpretation guidelines would impermissibly restrict the existing broad discretion of Member States when commissioning public passenger transport services in general and the freedom of Member States to choose between tendering and direct award in particular. It should be emphasized that the agreement reached by the Parliament and the Council in the course of the 4th railway package provided the Commission with a clear framework. With the guidelines' new draft, the Commission would contradict the requirements of Union legislature – such an approach must be rejected, as it is democratically problematic.

To strengthen European Union resilience, it is necessary to maintain national authorities' freedom of choice in the provision of transport services. Public authorities must be able to act flexibly to ensure national, regional and local specificities of an attractive public transport offer in the Member States. Therefore, the current draft of the guidelines contradicts the principle of subsidiarity. Especially in times of crisis, stability and legal certainty are needed to ensure the provision of affordable and high-quality transport services for all Europeans.

¹ PSO is the abbreviation for "Public Service Obligation"

² [Regulation \(EC\) No 1370/2007 \[...\] on public passenger transport services by rail and by road](#)

³ Full name: "NON-PAPER Revised interpretative guidelines concerning Regulation (EC) No 1370/2007 on public passenger transport services by rail and by road"

With its draft, the Commission ignores the original intention of EU legislative bodies. Moreover, the proposed text is highly unsatisfactory for several reasons:

It seems as if the Commission wants to use the revision of the guidelines – as with the original guidelines from 2014 – as an opportunity to reintroduce certain contents of its original proposal for a regulation, which had to give way to the compromise with the Parliament and the Council in the legislative process. In several parts, the draft guidelines clearly go beyond the text of the PSO-Regulation. Above all, point 2.2.3 of the draft contains a very narrow definition of a public service obligation, leading to a restriction of the PSO's scope of application or its commissioning possibilities. This would mean a massive intervention in the stability of public transport in Europe: About 88 % (!) of train kilometers in the European Union are PSO-transports, corresponding to more than 81 % of total rail passenger kilometers in the EU!

Furthermore, the Commission proposes a completely new procedure for proving the existence of a real need for public service obligations. These detailed requirements for national and local authorities contradict the subsidiarity principle. In addition, several passages of the draft contain conclusions from non-relevant decisions of the European Court of Justice. For example, references are made to the "SNCM" decision, dealing (exclusively) with the freedom to provide services in maritime transport. Clearly, this decision has no relevance whatsoever for land transport and the specific regulations of the PSO-Regulation.

High social standards are one of the essential achievements of the EU and its member states distinguishing the Union as a strong business location. Unfortunately, this important significance remains unclear in the Commission's draft guidelines. In order to ensure the sustainable positive development of the European railway sector and the European economy, social standards and the associated quality criteria must continue to be given appropriate priority in the future. Unfortunately, the Commission with its draft guidelines do not take the opportunity to provide important assistance and clarification on these issues.

In their present form, the guidelines lead to uncertainty among legal practitioners and therefore fail to achieve their original goal of being an aid to application and interpretation. Consequently, the guidelines jeopardize the achievement of the Union's ambitious climate goals: The EU is to become climate-neutral by 2050, which requires a reduction of emissions by 90 %. This goal is also included in the Urban Mobility Framework⁴ published by the Commission last year, which emphasizes the promotion of public transport and the combination of public transport with supplementary new mobility services in cities as important measures for achieving the climate goals. Decarbonizing the transport sector requires a massive shift to the most sustainable modes of transport and an attractive public mobility offer.

⁴ [The New EU Urban Mobility Framework COM/2021/811 final](#)

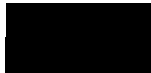
This can only be achieved through the following measures:

- Generating a supply-oriented demand for public transport services by creating capacity and public transport supply
- Use of available policy instruments (including direct award)
- Ability to respond quickly and appropriately to crises and other unexpected changes in demand

We would appreciate your support in particular with regard to the planned debate with the Commission on 17 May 2022 in the TRAN Committee for the revision and improvement of the PSO-Guidelines. We will happily answer all your questions and would be also available for an exchange meeting!

FURTHER INQUIRY

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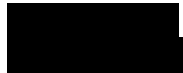
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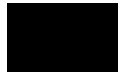
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