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[REDACTED]
European Transport Workers'
Federation
Galerie Agora,
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Subject: Revision of the PSO guidelines

Dear [REDACTED],

I would like to thank you for your letters addressed to Executive Vice-President Timmermans and Commissioner Schmit, concerning the draft revised interpretative guidelines on Regulation (EC) No 1370/2007¹. I will reply on their behalf.

In your letters, you express concerns that the draft revised guidelines would go beyond the spirit and objectives of Regulation (EC) No 1370/2007, introducing legal changes that should instead be subject to a legislative procedure amending this act.

The dialogue between my services and stakeholders in the context of the consultation on this draft has revealed a misunderstanding as regards many of the changes introduced in this revised version. In fact, these guidelines do not create new rules, which, as you rightly point out, could only be done through the legislative procedure, but merely reflect the case law of the European Court of Justice, in particular on the specification of the scope of public service obligations (PSO). This case law is applicable to all PSOs, including in the sector of land transport.

Therefore, far from risking to provoke a series of legal conflicts, these revised guidelines should provide more legal certainty by ensuring that stakeholders are fully informed of all applicable EU rules.

¹ Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road, OJ L 315, 3.12.2007, p. 1

I also take good note of the experts' opinion attached to your letter concerning the interpretation of Article 5(4a) of Regulation (EC) No 1370/2007 on the "performance-based direct award". On this issue, I would only refer to the revised guidelines' conclusions that it clearly derives from the wording of the first sentence of Article 5(3) that the principle is the award of public service contracts through the competitive tendering procedure, while direct awards remain the exception. It derives from the constant jurisprudence of the European Court of Justice that exceptions should be interpreted restrictively.

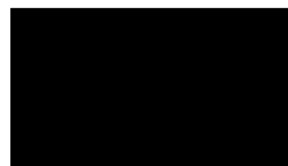
As regards the consultation process on this draft, let me recall that it has followed exactly the same methodology used for the 2014 interpretative guidelines on Regulation (EC) No 1370/2007. The same associations of operators, users and workers and naturally all Member States were involved. In total, my services have received observations from 16 Member States and 23 other stakeholders, taking also account those received after the indicated deadline. They have held about 20 meetings to explain the draft revised guidelines to stakeholders, and, as you recall in your letter, also presented them in the TRAN Committee. I believe it is an adequate process of consultation.

It is true that different consultation processes have been put in place for the implementation of the Mobility Package, which included the creation of ad hoc expert groups. I would like to recall that they correspond to different realities on the ground. In particular, the correct implementation of the Mobility Package involves a very large number of road hauliers, which are very often small undertakings. Regulation (EC) No 1370/2007 is mainly directed at competent transport authorities.

The Commission is facilitating the implementation of the fourth Railway Package, voted by the co-legislators and which indeed further liberalises the rail sector. I fully share your views that this liberalisation should be conducted with respect for workers' rights. While respecting the fact that the question of staff protection continues to be the reserve of Member States under the subsidiarity principles, the contribution of ETF to the protection of social rights and standards will be duly taken into account by my services when revising this draft.

This revision process is still on-going. The adoption of the revised guidelines is now foreseen for the end of the year. After the stakeholders' comments have been taken into account, I am confident that the revised interpretative Guidelines for Regulation (EC) No 1370/2007 will enhance legal certainty for all actors that apply this important legal act.

Yours sincerely,



Adina Valean