



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

The Director-General

Brussels
MOVE.A.4/ [redacted] /move.a.4(2022)7590064

[redacted]
European Transport Workers'
Federation
Galerie Agora, Rue du Marché aux
Herbes 105, BTE 11
B-1000 Bruxelles

Dear [redacted]

Dear [redacted]

I would like to thank you for your letter of 29 September 2022 concerning the draft revised Interpretative Guidelines on Regulation (EC) No 1370/2007¹ ("Revised Guidelines") addressed to the Commission President and her College of Commissioners. President von der Leyen asked me to reply on her behalf.

In this letter, you express your wish that the final Revised Guidelines should address a certain number of points. Namely, that it should provide an interpretation that would not favour the award through competitive tendering over the direct award of public service contracts, detailed guidelines on staff transfer and social criteria in case of a change of operators, and accurate interpretation of the provisions on direct award and on the review of direct award decisions laid down in Regulation (EC) No 1370/2007.

I would first like to refer to the letter addressed to you by Commissioner Vălean dated 17 October 2022. It explains that under Regulation (EC) No 1370/2007, "*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*". This rule explains the general interpretation of the provisions on direct award of the Regulation provided in the draft-revised guidelines.

As regards your request to provide detailed guidelines on staff transfer and social criteria, I would like to recall that under Article 4(5) and (6) of Regulation (EC) No 1370/2007, it is up to the Member States' competent authorities to define the conditions of staff transfer and social standards, subject to compliance with Directive 2001/23/EC². The

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.

² Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L 82, 22.3.2001, p. 16.

Revised Guidelines provide some guidance on the application of that Directive, but under the principle of subsidiarity, it falls within the competence of these authorities - not the Commission - to define the conditions of transfer going beyond the requirements of that Directive. Nonetheless, ETF provided some examples of social standards in its written contribution following the consultation of stakeholders. My services are looking into the possibility of referring to them by way of examples of possible conditions that competent authorities may decide to impose.

The revision process of the Interpretative Guidelines on Regulation (EC) No 1370/2007 is still on-going. I can only confirm that their adoption is still foreseen for the end of the year.

Yours Sincerely,

Yours sincerely,



e-signed
Henrik HOLOLEI