

(MOVE)

**From:** (MOVE)  
**Sent:** jeudi 13 janvier 2022 12:16  
**To:** BJORKLUND Mona (MOVE); (MOVE); (COMP);  
(COMP)  
**Cc:** (MOVE); (MOVE); (MOVE)  
**Subject:** Minutes of meeting with UTP on Regulation 1370/2007

Dear colleagues

On 12 January, at their request, A4 held a meeting with UTP (French association of public transport operators) and some of its members such as for instance SNCF, KEOLIS, Transdev, AGIR Transport, RATP and Getlink. The objective was to discuss the draft revised guidelines on Regulation 1370/2007.

The first set of questions concerned the articulation between the proposed guidelines and other Commission initiatives (revision of railway State aid guidelines, action plan for long distance rail transport for passenger, urban mobility framework). We explained that the initiatives were complementary and that consistency (in particular with forthcoming State aid guidelines) would be guaranteed.

The main discussion focussed on the application of the so-called SNCM test, taken from the Court's eponymous judgement. It provides that in order to define public service obligations, a competent authority must 1) make an ex-ante assessment of the demand for public transport services, 2) assess whether the identified demand cannot be met by operators on open access and 3) select the least harmful approach to the functioning of the internal market.

UTP expressed reservation on the application of the test to land PSO. They perceived as ill-suited to this sector and introducing totally new requirements. In particular, they see part 1) of SNCM test (ex-ante assessment of demand) as a constraint on the freedom of public authorities to determine the scope of their PSOs and to promote certain policy objectives, such as green transport. They also questioned how part 2) and 3) of the test could be applied to sectors not subject to open access yet (which is the case of urban bus, tram and metro in most Member States).

We confirmed that the SNCM test applies to all public services, including transport. The objective of the guidelines is to ensure that MSs comply with this jurisprudence, which is in their interest: this is essential to ensure the legal soundness of the public service contracts. The possibility of taking into account policy objectives such as environment when assessing demand for public transport is specifically stated in the guidelines. Moreover, the assessment of such demand is only legally problematic when the national authorities make a "manifest error" in the assessment and in the definition of the PSOs, which confirms these authorities' large room for manoeuvre when applying the SNCM test. As to the fact that part 2) and 3) of the SNCM test is only relevant when there is open access (essentially relevant for rail), this is obvious but we can clarify this point in the final version of the guidelines.

Finally, UTP expressed concern about the reference to the mobilisation period (time before the conclusion of the contract and the start of the transport services) and the fact that the operators may not be able to get compensation over that period. We clarified that eligible costs incurred over that period could be included in the compensation to be granted once transport services are actually provided.

On a more general note, UTP emphasized the need of ensuring legal certainty and stability of the rules applicable to the passenger sector.

Best regards



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