

CTP-EU/BR7978/SSI

Brussels, 18 February 2022

**DRAFT INTERPRETATIVE GUIDELINES CONCERNING REGULATION
(EC) No 1370/2007 ON PUBLIC PASSENGER TRANSPORT BY RAIL AND
ROAD*****IRU CONTRIBUTION TO THE INFORMAL CONSULTATION*****European Commission informal consultation on interpretative guidelines
concerning Reg. 1370/2007**

As the representative of the private bus, coach and taxi industry in the European Union, the IRU is in favour of open, fair and transparent mechanisms to introduce competition in the public transport market for bus, coach and taxi services. Constantly reiterates that equal market opportunities for operators of all sizes and ownerships (i.e. private and public) should be provided.

The IRU welcomes and supports the intention of the European Commission (EC) to provide more clarity on the implementation of the Regulation through interpretative guidelines, notably regarding the articulation between public procurement procedures, concession procedures and the Regulation. The EC's clarifications of the key concepts could help in providing a common understanding and interpretation in order to ensure harmonisation, level playing field and access to the market as well. At the same time, under the condition of proportionality, the EC should allow competent authorities in line with the general legal framework governing public service, to identify a real demand, the existence of market failure and act in the manner that does the least harm to the functioning of the market.

The main objective of the IRU's comments in relation to the EC draft interpretative guidelines is to ensure that all public passenger transport services provided by the private bus, coach and taxi operators in respect with this Regulation always take precedence over directly awarded services provided by authorities themselves or through in-house operators. This is equally confirmed by the EU's legal framework for Services of General Economic Interest that the direct award of public service contracts should be strictly limited to specific situations. For example, the choice of a direct award to an "in-house" operator by the competent authority should always be justified as the last resort option in order to ensure that the provision of passenger transport services are in the general economic interest, compared to a public transport service operated by a private operator after a competitive tendering procedure.

In the view of the IRU, the EC draft interpretative guidelines are positive for the private operators as the clarification calls for more open, fair and transparent competitive environment, allowing all private operators (larger and SMEs) to have equal market opportunities and compete on a level playing field with internal operators for contracts. The emphasis of the draft interpretative guidelines that the direct award of public service contracts to internal operators is and remains an exception to the rule of fair competition in tendering and awarding public service contracts is more than needed in the current economic climate where private investments should be encouraged and safeguarded.

In brief, would like to emphasize the following:

- The IRU is in favour of open, fair and transparent mechanisms to introduce competition in the public transport market for bus and coach services. IRU advocates for equal market opportunities for operators of all sizes.
- The IRU is opposed to the granting of exemptions from competition to “internal operators”. The general aim of the Regulation should remain the introduction of competition across the board rather than the extensive granting of exemptions from such competition.
- The IRU advocates for a level playing field between public and private operators and in addition between bus, coach and railway companies.

To ensure the draft interpretative guidelines adds legal clarity, IRU calls on policy makers to clarify further the following aspects:

- i) **Conditions of subcontracting:** For the IRU, it is important that subcontracting activity are performed by private operators. In reality, the growing trend is to reduce subcontracting in the market to commercial operators, whereby, the business sector is limited to the mere provision of driving personnel or restricted to the less financially interesting routes or services. Thus, the economic activity of the private companies is reduced to a minimum, which is not a model that is sustainable in the long term. This practice for internal operators to execute two-thirds of the transport services in terms of value or vehicle kilometres appears as an opportunity, however, this forces the authorities and internal operators to resort to considerable investments in order to fulfil the conditions, and thus, limiting the scope and market share of the private operators.
- ii) **Level playing field:** The IRU urges the EC to consider that in order to decarbonize mobility, it is necessary to promote sustainable collective passenger transport in general. Consideration should also be given to the technology that is evolving fast and sustainable solutions should be re-evaluated at very regular intervals. Buses and coaches have the potential to unlock and further enhance the mobility potential of the European transport system at all levels – local, national and international – because of their unique combination of advantages to meet the needs of the European people in terms of safety, environmental-friendliness, affordability, flexibility and accessibility, at the lowest cost for society. In that sense, the vision for the mobility sector must incorporate long-distance bus and coach as complementary to rail in the mobility mix. Affordable & sustainable mobility must be accessible to all Europeans citizens and visitors.
- iii) **Overcompensation:** The IRU cannot accept that authorities and operators should be expected to engage in contract-by-contract accounting, with the possible return of payments made under the contract. This is simply because there was one bid or few bids for a contract offered under an open, transparent and non-discriminatory tendering procedure. Adopting the practice of *ex post* accounting creates an administrative burden for the authority; and creates a one way bet against the operator, which may have the unintended consequence of reducing the number of competitive bids. The EC should clearly state in the interpretative guidelines that if a tender procedure is adequately run, it excludes State aid otherwise there would be enormous legal uncertainty.

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