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Comments of Finnish Public Transport Association on the proposal by the European Commission for a revision of the PSO interpretative guidelines

We the Finnish Public Transport Association fully support the UITP position paper on the matter of revision of the PSO guidelines. In this document we provide some additional comments from the point of view of Finnish competent authorities (PTAs) of urban regions.

We think that our implementation of the Regulation (EU) 1370/2007 has so far been successful ensuring the application of competitive procedures for the awarding of public services contracts and providing a stable and efficient legal framework for the provision of public transport services. Our national implementation has also provided jurisdictional and administrative remedies for unsuccessful tenderers and competitors. Directives on public procurement and their national implementations explain in detail together with European and national case law how public procurement should be done.

The new guidelines would not help our authorities. On the contrary, especially new guidelines on pre and post conditions and measures in chapters 2.2.3-2.5. would propose unnecessary, unclear and additional burden to the already thorough steps of planning, political decision making and public procurement. We also find some of the guidelines contradicting the articles of PSO. The advice on national Member State's planning process and planning of an individual service are also confusing and contradict national laws.

PSO articles complemented by procurement laws aim at competition, ensuring equal treatment of operators and also cost-efficient use of public funding. State aid should not distort the competition in the single market. Therefore, the obligations also entail the prohibition of overcompensating.

The starting point of the PSO is to define how, in accordance with the rules of Community law, competent authorities may act in the field of public passenger transport to guarantee the provision of services of general interest which are among other things more numerous, safer, of a higher quality or provided at lower cost than those that market forces alone would have allowed.

Finnish national law requires that PTA decides if it organizes some or all of its public transport services according to PSO. This process involves planning and reasoning the political decision, including chance for remedy. Our national Transport Act also requires that the PTA should take commercial transport services and all user groups into account when planning services. In these decision making processes PTAs explain their goals for the level of services and quality and estimate demand and costs.

Network effects of integrated PSO services are the greatest in urban region context and also the benefits for environment, transport system, accessibility and social inclusion. Taking a route or a connection out of integrated network, to be operated commercially – with different ticket products and customer prices - would break the interoperability, weaken all network effects and harm the sustainability goals of the public.

The guidelines present very limited description of SGEIs. It is a shared value of the Union that SGEIs strive for a high level of quality, safety, affordability, equal treatment and the promotion of universal access and the rights of users. The definition of a service of general economic interest by a competent authority, shall not be limited or linked to the commercial interest that such activity may have. The proposed guidelines would suggest that public mobility services are only complementary. This approach would leave out many reasons that justify the current intervention of the competent authorities in regulating mobility and establishing public services, including the environmental and social considerations of transport and their externalities.

In addition, establishing public transport services only on proven demand would for instance question innovation, piloting services, establishing adequate services for inhabitants of new housing areas and land use and on the other hand question many services in rural areas.

In the real life circumstances of the Finnish public transport market at least two thirds of public transport services are working under PSC:s, and an average level of subvention is around 50 % in urban regions – and more during covid crisis. Public transport of urban regions may also experience positive effects in the long run; reduced need for resources at peak hours can be used to cater increased needs for free time travel.



Commercial services typically operate on long distance and between regions. Covid pandemic has led to discontinuity of services. It is likely that commercial services in Finland will not recover to the extent they were before covid. Viability of commercial services is decreasing because of demographic changes and also due to increased practises of remote working and studying. One recent example is an operator announcing that they will permanently cancel all their commercial services operated in the Länsi-Uusimaa area about 50 km west from Helsinki. That accounts to 150 scheduled daily journeys less. <https://yle.fi/uutiset/3-12296479>

Finnish urban PTAs have implemented PSO via competitive tendering for busses and rail. All competent PTAs are according to national transport law obliged to use The Act on Procurement and Concessions for Entities in the Water and Energy, Transport and Postal Services Sectors, whether concession or gross cost contract. Minority of bus services are awarded directly to in house operators, which three of our members have. The public transport networks of urban regions are planned into sizes of procured tasks that take into account also medium size and small operators. The timing of procurement processes are designed to enable competition. Even our smaller PTAs have experienced market functioning well in terms of number of tenders.

In the cases of having only one tender you may end up with slightly higher unit prices than in a more competitive example. You have to respect the rights of the tenderers and rules of procurement, aim at a contract, but at the same time be able to assess and decide whether the price is adequate or not. Procuring from the market would still be better option than competent authorities forced to for instance establish in house companies. Following the new guidelines and its heavy methodologies in this kind of one tender case you may end up in massive administrative/transactional costs and burden for a contract or with no solution for a better price and multiple legal problems and uncertainties.

We are surprised that guidelines recommend general rules instead of tendered public service contracts. That is in conflict with the PSO articles. We consider that general rules would be difficult to implement, unefficient compared to PSC:s in reaching the objectives PTAs have, and would also bear a big risk of distorting competition in the market. Our former public transport law had concluded that government would have to set common customer prices of public transport services. The use of general rules instead of PSC:s if aiming at the same level of prices for customers in the Finnish market would shift the business risk from operators to government and municipalities. The difference of ticket income and operating costs would have to be compensated to the operators. General rules would also encourage to add services without demand but on basis of government's need to compensate, which would be unbearable for the public funding.

In our experience the implementation of PSO and competitive tendering have improved cost efficiency, provided better quality and increased demand. Until we faced the covid crisis which lead us to financial crisis due to collapse of demand and ticket income.

We need political and financial help from Europe and our government to support our efforts to come back and secure the benefits of public transport. We need legal certainty and therefore ask the Commission not to restrict the competence of local public transport authorities. We also ask not to add new legal concepts and interpretations on existing law. Those would create legal uncertainty for the sector.

Suggestions

- Clarify scope of the guidelines of each section.
- Remove advice that lead to very limited use cases of public service obligations and understanding of services of general economic interest.
- Remove the approach that Member States define public transport policy and that would define the public services obligations of other competent authorities
- Remove concepts and definitions of real need, ex ante assessment, analysis of the market failure, selection of least harmful approach, descriptions on combining cost covering and non cost covering services.
- Come back to the conclusion that tendering is a general rule for finding out market price and ruling out overcompensating. Remove need for ex post checks. The Annex of the Regulation does not apply to competitively tendered contracts.

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