

To:

Ms Ilze Juhansone, Secretary-General for the European Commission

Open letter:

Protect the legal framework for public transport services or undermine the Green Deal

Dear Ms Juhansone

As leaders and representatives of Europe's metropolitan transport authorities, we share the EU's objectives regarding social cohesion, economic competitiveness and liveability and strongly support the important climate neutrality objectives outlined in the European Green Deal. By facilitating the very "public transport services [...] crucial to deliver the European Green Deal goals of sustainable, smart and inclusive mobility"¹, we directly **implement EU policy**, always acting from a public value perspective and in the general economic interest, democratically legitimized by local and regional electorates.

For the sake of clarity and legal certainty, we generally welcome any effort taken by the Commission to refine the market framework of our sector and our very organisations, as defined by regulation EC 1370/2007 on public passenger transport services by rail and by road, the PSO Regulation, and its subsequent 2016 amendment. We believe that our insight is invaluable to any effective **interpretation or revision effort**. Therefore, we do regret that only a limited number of actors were initially consulted in the preparation of the draft revised interpretative guidelines, as published in the Non-Paper of December 2, 2021.

We would like to take this opportunity to express more comprehensively, why we are greatly concerned about these draft revised guidelines, adding to the strong, joint statement of non-support: "Help - not hinder - public transport's ability to deliver Green Deal goals! Avoid undermining the legal framework for public transport organisation" as published on May 4th by our coalition of **representatives of public transport, rail transport, active mobility, and local and regional government**.

To our knowledge, the status of local and regional public transport services as **service of general economic interest** is undisputed at EU, Member State and regional level. We consider recent EU legislation to even further strengthen this status, considering it states the "availability of resource-efficient and environmentally friendly public transport services is key" to achieve the EU's most strategic objectives, stipulated in the Green Deal. Clarifying this essential role of public transport and establishing the discretion required by organising authorities to ensure it can fulfil this role is the purpose and has consistently been the interpretation of the PSO Regulation.

Only a public transport system whose offer can rival the flexibility, reach and availability of individual motor vehicles is able to **stimulate and accommodate the mode shift** required to achieve the

¹ NON-PAPER Revised interpretative guidelines concerning Regulation (EC) No 1370/2007 on public passenger transport services by rail and by road (2021) p. 1

ambitious EU objectives. By introducing a limitation to service development possibilities of transport authorities - to be made dependent on the satisfaction of user demand existing in the status quo - the draft guideline disregards the fundamentals of **induced demand**² and risks a counterproductive hindrance of mode shift. Such limitation of authority initiative contradicts the very purpose of the PSO regulation, which states explicitly that “authorities may act [...] to guarantee the provision of services of general interest that are more numerous, safer, of a higher quality or provided at lower cost than those that **market forces alone** would have allowed.”

Public transport operates in a **networked market**³ and must overcome the general dysfunctions observed in such markets will it be attractive, viable and become the desired backbone of a smart and sustainable mobility system. The market structure established by the PSO regulation allows overcoming these dysfunctions through widespread authority initiative.

Integrated planning and scheduling of services, their implementation through service contracts or concessions and overarching fare, ticket and information integration allowed transport authorities to book **great successes** in their efforts to create systems of consistent and reliable services throughout the day with greatest possible geographical service coverage, accessibility and connectivity across the various modes and operators in the authority’s jurisdiction.

The PSO regulation and its standing interpretation enabled these successes against the backdrop of the current transport economic regime that fails to reflect the external benefits of public transport as well as the very substantial external cost of road transport. Transport related **externalities** - both positive and negative - are not captured in the consumer costs that determine mode choices. In this context, the creation of market-based, commercially viable public transport of the quality and reach required to achieve the EU’s policy goals is most difficult if not impossible.

The notion that authority initiative to produce public transport services is justified only in case of a **failure of the market** to produce such service on a commercial basis, as introduced in the draft guidelines, neglects this market context and the dire need for a system of integrated, quality services. The notion therefore presents a dangerous and explicit departure from standing interpretation of the PSO regulation.

Evidence from European countries suggests that **market-initiative** driven regimes for public transport, where authorities’ abilities are limited to prescribing desired outcomes or filling gaps where commercial parties have shown no interest in service production, fail to deliver the consistency, service level and network coverage required to even get close to becoming a real alternative to private car use. All of these regimes are currently being transformed into regimes with explicit authority-initiative characteristics.

In the **United Kingdom**⁴, deregulation of public transport by road, while initially leading to an increase in the amount of bus kilometres, failed to achieve the expected increase in ridership and did not halt let alone turn-around ridership decline. The productivity of the sector increased, with

2 As with any mode of passenger transport, demand for public transport is induced by the quality of the service (or infrastructure in the case of individual motorized traffic)

3 the physical footprint and location dependency of networked market services results in a situation where a single service provider is incapable of servicing all customers, requiring overarching integration of services to create a viable and meaningful service market that is able to serve customer demand.

4 With the exception of Greater London, public transport services by road were deregulated in the UK in 1986.

production cost per unit halving. However, similar productivity gains were experienced in Greater London under the authority initiative-led competitive tendering regime.

The competitive tendering process – if successful – determines the best possible market price for a given service. An ex-post evaluation of potential **overcompensation** in such contracts, as suggested in the draft guidelines, is therefore unnecessary. In the draft guidelines it remains unclear why the commission sees a need for such measure.

From a competition perspective, the deregulated regime in the UK fell short of expectation. The largest operator in any given area holds a market share of some 70% with many regions not seeing any competition at all. From a customer perspective, the **competition is rare**. The British Competition Commission itself stated that “while almost every route [...] is overlapped by the route of another operator at some point, few routes are overlapped for a large proportion of their length. We conclude that a large proportion of passengers [...] are unlikely to have a choice of the operator with which they make their journey”.

The deregulated regime in the UK proclaims commercial operation, yet a substantial amount of subsidisation flows into the sector. Despite this **subsidisation** of some 40% of sector revenue, transport authorities hardly see any return on this public expenditure regarding control or steering power to ensure that production is meaningful, and services form an integrated and affordable system. Rather, the further decline in ridership was met with continued fare increases and concentration of service to commercially most viable routes, resulting in geographic fragmentation. Many communities lost access to public transport while the most viable corridors were confronted with excessive frequencies, particularly where services of several operators concentrated. This “overbusing” led to congestion and nuisance to residents and businesses.

A concentration of services to commercially viable routes and on these routes to certain **days** and **times** of the day is a phenomenon prevalent in market-initiative regimes. While such fragmented and inconsistent services may serve a specific customer demand (e.g., commuter journeys in the morning and afternoon), it fails to provide a service level that maintains, let alone increases customer demand or induce mode shift.

Evidence from **Poland**, where public transport services outside of major cities and between municipalities operated on market initiative, suggests that a concentration and decline of services exacerbates networked market dysfunctions with dire consequences for communities. The number of connections and kilometres of bus lines outside of major Polish cities decreased by almost half in a seven-year period leading up to 2013. The situation is characterized by a negative feedback loop where the concentration of services to few, inconsistent, and geographically fragmented routes provoke a slow demographic, social and eventually economic decline which in turn causes depopulation, further reducing viability of commercial public transport services.

Both Poland and the United Kingdom are in the process of undertaking major **reforms** of their public transport market regimes, strengthening the position of local and regional authorities and (re)introducing authority initiative in the development of public transport services.

In the standing interpretation of the PSO regulation, authorities can develop services independent of the existence of a potential market failure and without the need to separate profitable from unprofitable lines. This is essential to meet the ambitious objectives set for public transport by the Commission and Member States. Any party suggesting a change to this standing legislation and practice should base its proposal on a thorough **impact assessment** and provide evidence as to how

the EU's strategic policy objectives remain achievable under a changed interpretation or application of the PSO regulation.

The draft guidelines suggest such a major shift of policy. It introduces new, unproven legal concepts, break with the proven, effective common practices in the European public transport market and previous interpretations of the PSO Regulation (be that previous Commission Guidelines or interpretations by the Court) without argumentative foundation as to why such change is needed let alone desirable. On the contrary, the argumentation in the non-paper appears based on a technical misconception of the **specificities** of the market for local and regional public transport services.

The specificities and differences between local and regional public transport services and other organised transport **modes** (e.g. airlines, freight transport, short sea cabotage) are recognised by standing EU legislation - in particular the PSO regulation - and the EU's courts' interpretations thereof. Inferring changes to the interpretation of the PSO Regulation by the Commission from principles or court interpretations of legislation geared specifically at transport modes other than local and regional public transport are thus questionable at best.

An implementation of the interpretation as conveyed in the non-paper, and the resulting changes to the standing concepts and principles of the organisation of public transport in Europe, directly **undermine** our efforts. It deprives cities and regions of an effective policy instrument, and severely hinders public transports' ability to meet the expected high contributions to the European Green Deal objectives, let alone objectives of inclusive mobility and social and regional cohesion.

As Europe's metropolitan transport authorities and in view of the critical circumstances outlined above and in the coalition statement of May 4, we strongly urge the Commission to refrain from this incomprehensible change of direction in public transport policy and **consult** with all relevant stakeholders in a potential re-drafting process. We remain at your disposal.



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