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EMTA's position on the Proposal for a modification of Regulation 1370/07 in the frame of the 4th Railway Package.

EMTA (European Metropolitan Transport Authorities) is established in 1998 as the association of Public Transport Authorities, in charge of organizing, planning and financing the urban transport networks of the major metropolitan areas across Europe with a view to achieve sustainable mobility while ensuring social cohesion and supporting economic growth and competitiveness of their cities. Some 30 organizing authorities in larger conurbations work together sharing best practices in governance, commissioning, procuring and monitoring public transport in order to deliver quality transport services, observing an optimized use of public resources for their citizens and businesses.

Less than four years after the entry into force of Regulation 1370/07, EMTA's major expectation would be that stability, clarity and legal certainty of the European legal framework is preserved.

EMTA members perceive a comprehensive modification of Regulation 1370/07 as largely premature, and therefore strongly want to emphasize the following points of comment:

Definition of competent local authority

The European Commission proposes a modification of the definition of "competent local authority" limiting the geographical scope of a competent local authority by saying their competence covers the "transport needs of an urban agglomeration or a rural district". The simple fact is that many competent local authorities cover both. EMTA is strongly against this proposal. In particular EMTA members consider that:

- The proposed definition is against the subsidiarity principle as it potentially excludes regional authorities from being considered "competent local authorities". This approach ignores reality as in many cases local and regional transports are interlinked.
- The proposed definition is against the legal security principle as it uses concepts such as "urban agglomerations" and "rural areas" which are vague and not defined in the Proposal".

Exemplary for this is the responsibility of members from the UK for urban and rural area pertaining to cities like London and Birmingham and in Paris (STIF) developing PDU's for the whole "Region Ile de France" encompassing both urbanized and rural areas. This goes for practically every EMTA-

member, few exemptions exist. Competent local authorities that do not fit in with the proposed definition would suffer from the created legal uncertainty, as will regional governments in many other countries (that would for example be the case in Barcelona, in The Netherlands (“Stadsregios”) or in Belgium where the three regions represent the competent local authorities).

To find a definition that captures all situations in Europe is difficult, but one already exists in Regulation 1370/2007. **EMTA considers that the definition of the competent local authority in current Article 2(c) of Regulation 1370/07 which provides the absolutely necessary flexibility and which is clearly respectful of the subsidiarity principle has to be maintained.**

For EMTA members it is fundamental that regions may still be considered competent local authorities potentially able to directly award a public service contract to an internal operator, like this is the case with the existing Regulation using Article 5(2) whatever transport mode is concerned.

Definition of public service obligations

The European Commission proposes a complement to the definition of Public Service Obligations (PSOs). This complement would limit the scope of PSOs to “what is necessary to reap local, regional or sub-national network effects”.

EMTA is against this proposal. In particular EMTA members consider that:

- The proposed definition is against the subsidiarity principle. It is up to competent authorities to define transport policy objectives and therefore to decide about PSOs.
- The existing definition already specifies that PSOs shall be defined “in order to ensure public passenger transport services in the general interest”.

EMTA considers that the proposed complement constitutes a limitation to the subsidiarity principle. The proposed definition has therefore to be amended in order to preserve respect of the subsidiarity principle and at the same time insure recognition of the concept of network effects which is considered crucial for public transports authorities. EMTA considers fundamental that competent authorities have the possibility to establish PSOs on a bundle of lines which includes non-profitable as well as profitable services.

Public transport plans

The European Commission proposes to introduce a new obligation for competent authorities to establish and publish “public transport plans”. The proposal contains details regarding the objectives, the content and the way these public transport plans should be established and adopted.

EMTA members have a wide experience regarding the implementation of public transport plans, like in The Netherlands making Local and Regional Transport and traffic plans and LTP’s in the UK on a compulsory level like the PDU’s in France. In Barcelona the Regional Government of Catalonia entrusts the Transport Authority (ATM) as Regional Mobility Authority with the task of drawing the

Urban Mobility Plan (PDM) including targets for reducing pollution. Such instruments are already mainstreamed and compulsory in many Member States.

Although EMTA is in principle in favor of public transport plan, EMTA considers that in this case, the European Commission proposes too detailed rules, antagonizing the subsidiarity principle once more. The contents should be left to competent authorities, many of who already put a large amount of information in the public domain. EMTA fails to see added value in having to produce a new set of documents largely duplicating existing material to comply with the public transport plans requirements.

In particular, the text should make explicitly clear that existing, easily accessible documents in the public domain could qualify as public transport plans. There should not be a requirement, either explicit or implicit, to create a single, new type of over-arching planning document. The creation of such a document would be a costly and more or less redundant bureaucratic exercise and divert already limited resources from what we should be doing – investing in the public transport infrastructure our cities so urgently need.

Maximum annual volume of a public service contract for transport by rail

The European Commission proposes that, for public passenger transport by rail, the maximum annual volume of a public service contract in terms of train-km shall be the higher value of either 10 million train-km or one third of the total national public rail passenger transport volume under public service contract.

The objective of this norm as such is not to be contested; nevertheless EMTA considers that the proposed ceiling raises the following problems:

- The establishment of a maximum annual volume of a public service contract may induce artificial network breakings in transport systems / geographical areas where it would have been much more appropriate to have a single contract and a single operator, because for instance of purely technical reasons;
- The proposed ceiling may have great potential impact on small and medium sized countries (Belgium, The Netherlands ...), where a public service contract may be big enough to represent one third of the volume of the national market; on the contrary it appears that the proposed ceiling will not have any impact in large countries where no contract will be big enough to represent one third of the volume of the national market.

EMTA considers that the definition of a ceiling is a decision that should be left open to the competent authorities. EMTA therefore advocates for, at least, a redrafting of Article 2(6)b).

Access to rolling stock

The European Commission refers to the access to rolling stock that is seen as a major constraint for new market entrants. The text states (5a new, paragraph 1) that "*Member States shall in compliance with State aid rules take the necessary measures to ensure effective and non-discriminatory access to suitable rolling stock for public passenger transport by rail for operators wishing to provide public*

passenger transport services by rail under public service contract."

According to the Proposal, competent authorities may comply with this requirement in one of these three ways: (a) by acquiring itself the rolling stock for the execution of the public service contract, (b) by providing a guarantee for the financing of the rolling stock, (c) by committing in the public service contract to take over of the rolling stock at the end of the contract at market price.

In order to avoid possible misinterpretation regarding the method mentioned under b) the text proposed by the EU Commission should be complemented as follows "(b) by providing a guarantee for the financing of the rolling stock provided by the rail transport operator".

EMTA members consider that access to rolling stock may indeed constitute the main barrier to a real opening of rail transport markets, they therefore agree to the main objective of this part of the Proposal. Nevertheless, the text should clarify that the different ways to fulfill the requirement are only examples of many possible solutions that might be sensible to grant access of rolling stock depending on the different circumstances. A maximum flexibility should be safeguarded and too detailed rules should be avoided.

If this clause shall be understood in a way that Passenger Rail Authorities may only comply with the requirement of paragraph 1 in one of the ways described, regional passenger rail authorities without conflicting interests concerning competition will be facing a significant limitation on their freedom of action that is not necessary at all to enhance competition. In fact today passenger rail authorities may choose among a number of further instruments in order to ensure effective and non-discriminatory access to suitable rolling stock, if such measures are necessary. Paragraphs (a), (b) and (c) are examples of regulation in terms of a non-exhaustive list of options to comply with the requirement of paragraph 1.

Moreover, EMTA members insist that when talking about the obligation "to ensure access to suitable rolling stock for public passenger transport by rail" the expression "with the exception of other track based modes such as metro and tramways" is clearly added.

Award of rail contracts (with the exception of other track based modes such as metro and tramways)

The European Commission proposes to abolish the possibility for competent authorities to directly award rail transport contracts (with the exception of metro or tram services). The general rule of tendering would therefore also apply to the award of rail contracts.

EMTA members consider that competitive tendering may in many cases improve the efficiency and the quality of the provision of rail transport services. Furthermore, competitive tendering often causes savings that can be re-invested by competent authorities in a customer-responsive way in additional services. The abolition of the possibility to directly award public service contracts for rail transport is a clear sign for operators and the industry that more competition is going to take place in the European railway market in the future. As many European authorities have made good experiences with competitive tendering in the last 15 years a majority of EMTA-members agree to this clause.

Nevertheless, EMTA would like to point out, that there could be specific situations or circumstances, where exceptions should be possible – but these cases should be strictly and clearly defined.

Thresholds for direct awards (article 5.4)

Unless prohibited by national law, passenger rail authorities according to article 5, paragraph 4 may directly award public service contracts including public transport by rail "*where their average annual value is estimated at [...] less than EUR 5 000 000 [...] or [...] where they concern the annual provision of [...] less than 150 000 kilometres.*"

These values are not compatible, because they are based on a subsidy rate of 33 Euro / train-km. Taking into account that on average price for suburban or regional rail services is around €10 to €15 per kilometer, a threshold of € 5 000 000 should represent between 350 000 and 500 000 kms. EMTA therefore suggests setting corresponding values in a realistic relation and change the threshold under "b)" from 150,000 to 350,000 train-km per year.

Furthermore, it should be clarified that options for additional services in public service contracts remain unaffected by this clause.