



EMTA POSITION ON THE EU COMMISSION DRAFT REGULATION ON PUBLIC PASSENGER TRANSPORT SERVICES BY RAIL AND BY ROAD COM(2005)319

1 FOREWORD

The association EMTA (European Metropolitan Transport Authorities) brings together 30 authorities responsible for public transport in main European metropolitan areas, where 85 million people live, work and enjoy leisure activities.

EMTA aims to improve mobility management and enhance the quality of transport services in the urban environment of its associated European cities.

EMTA is a venue for the exchange of information, experience and knowledge between transport authorities, it anticipates future trends and raises new issues that have a potential impact on the way public transport authorities perform their role in planning and coordinating transport networks.

EMTA also participates in discussions to define and implement EU policy in the field of urban mobility.

EMTA's position on the European Commission's draft regulation on public passenger transport services by road COM(2005)319 was prepared by EMTA's EU Taskforce and has been approved by EMTA's 17th General Assembly. However, it only expresses EMTA's common position and the individual positions of EMTA members cannot be summarised by this document.

2 GENERAL POSITION

Acknowledging the development of a pan-European market for public

transport service provision, EMTA recognises the need to adopt a legal framework that prevents local public transport from becoming embroiled in legal disputes. Given that the number of such cases is increasing EMTA welcomes the publication of the new proposal.

The greater use of contracts across European cities and making them mandatory will reinforce the importance given to the clarification of roles. EMTA agrees with the principle of adopting a common framework with a minimum content, provided that this doesn't represent an overly heavy administrative burden.

However, it is important to note that European cities encompass a wide range of administrative organisations, in terms of network structure and cultural sensibility towards the provision of services of general interest. EMTA wishes to underline the importance of freedom for transport authorities to decide the way they organise public transport and calls for the regulation to limit itself to only what is needed to ensure legal certainty.

The principle of subsidiarity has to be taken in account not only at national level but also at local level. In particular EMTA underlines the importance of the ability granted to competent authorities to choose between competitive tendering or direct award to an internal operator or in the case of rail services.

EMTA has however identified three

concerns regarding the practical application of the text and has tried to propose a different formulation, which better recognises the way public transport networks are run in European cities.

3 SPECIFIC ISSUES AND SUGGESTIONS FOR IMPROVEMENTS

3.1 Definition of public service obligations and calculation of the parameters (Art. 4, Art 6. and Annex)

It can be very difficult to define precisely public service obligations and to calculate in details the parameters needed to define the appropriate financial compensations.

Financial provision in contracts, particularly incentives is often related to the quality of service delivered or to the number of trips because the net cost incurred by operators is more related to supply. In order to have efficient incentive schemes, it may be necessary to offer even higher bonus payments if passengers' satisfaction or patronage targets are met. These should be considered as a reasonable profit made by the operator without being considered as overcompensation.

EMTA considers that a competitive tendering process generally ensures that no overcompensation is given or at least, guaranteed it in the long run.

The provisions laid down in the Annex can be useful to assess the financial compensations in the case of direct award of rail services. However, they are less useful for internal operators where these activities are restricted to



the territory of the competent area. The best use of taxpayers' money is a concern for transport authorities but should not in this case be addressed at European level.

3.2 Content and duration of contracts (Art. 4, Art. 8)

EMTA stresses that minor adjustments to contracts should be compatible with this regulation, as described in the public procurement directives. Greater legal clarity would be achieved by an explicit reference in the text rather than the current implicit wording.

The maximum duration of contracts is 15 years if rail services in value account for more than 50% of the amount of the contract. In some cases, rail services can be the backbone of a network without reaching this threshold. EMTA proposes a functional approach allowing 15-years contract if rail services represent a significant part of the network.

In the case of contracts covering building, construction and operation (BOT), in the possible situation where the current regulation applies, the maximal duration of 15 years, even extended by 50% can be a too short for a return on investment made by private investors. EMTA proposes not to fix the maximum duration of contracts if significant investments in the infrastructure are made.

For the same reason, EMTA proposes to suppress in Art. 8 dealing with the transition period and the phrase of "the limited duration comparable to the durations specified in Article 4(5)" because very long duration contracts granted through an open tendering procedure are currently used and were and awarded in good faith.

3.3 Situations for which direct award is possible (Art. 5)

EMTA acknowledges the difficulty in agreeing a common definition for regional rail services and to allowing the possible direct award to rail services, provided that they are not metro or tram services.

3.4 Definition of an internal operator (Art. 2, Art. 5)

EMTA agrees with the recent law cases stating that the qualification of internal operator is not compatible with any involvement of private participation in an operator, even if it represents a very low proportion of the capital.

However, EMTA stresses the restrictive definition of the internal operator in the proposal that raises three concerns:

1. Transport authorities across Europe encompass a wide range of administrative organisation involving different levels of local government. In some cases, public transport operators who belong to cities or local governments are not fully controlled by the competent authority, but rather by one of its stakeholders. Moreover, EMTA considers that economic and legal control by a transport authority over an operator is of greater relevance than political or material control in relation to the definition of an internal operator.
2. One condition among others needed to qualify an operator as an internal operator is the geographical containment for the provision of public passenger transport. As the dissemination of the expertise of such operators is often very useful, EMTA would

like to ensure that consultancy services as other services not relating to the actual operation of a network are not defined as the "provision of public passenger transport activity".

3. The geographical containment of an internal operator to the territory of the competent authority highlights the problem of the continuity of networks which do not correspond exactly to the administrative boundaries of transport authorities. It is proposed to allow arrangements between neighbouring authorities letting them award directly "crossborder" services to an internal operator of one of them.

4 CONCLUSION

EMTA calls on the Parliament to improve the text in order to take into account the practical impacts of the regulation on the structure and functioning of public transport networks.

EMTA warmly welcomes the proposal in the regulation requiring the publication of reports to assess the impact of the new framework: the first regarding developments in the provision of public passenger transport and the second on the implementation of the regulation.



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