

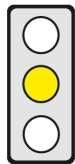
# OPENING NATIONAL AND INTERNATIONAL MARKETS FOR BUS AND COACH SERVICES

cepPolicyBrief No. 2018-12

## KEY ISSUES

**Objective of the Regulation:** The EU Commission wants to further deregulate international bus and coach services, open up national bus and coach services and give inter-urban coaches non-discriminatory access to bus stations.

**Affected parties:** Bus and coach travellers, bus and coach companies, bus station operators, rail companies, authorities



**Pro:** Further deregulation of international bus and coach services, the opening of national bus and coach services and non-discriminatory access to bus stations strengthens competition.

**Contra:** (1) Opening up national markets for inter-urban bus and coach services will not lead to the results forecast by the Commission in all Member States.

(2) Opening up purely national regular services is in breach of the principle of subsidiarity.

The most important passages in the text are indicated by a line in the margin.

## CONTENT

### Title

**Proposal COM(2017) 647** of 8 November 2017 for a **Regulation** of the European Parliament and of the Council amending Regulation (EU) 1073/2009 **on common rules for access to the international market for coach and bus services**

### Brief Summary

#### ► Context and objectives

- In order to safeguard the freedom to provide inter-urban bus and coach services in the EU, the Bus and Coach Regulation [(EC) No. 1073/2009] regulates the access of bus and coach companies to (Recitals 2 and 4)
  - international inter-urban bus and coach services [Art. 1 (1)] and
  - national inter-urban bus and coach services in Member States where they are not resident [“cabotage”; Art. 1 (4)].
- International “regular services” of inter-urban buses and coaches undertaken “regularly” on specified routes [Art. 2 No. 2], generally have to be approved by the Member States [Art. 6–11].
- Currently, approval can be refused where the “viability” of a comparable service under a public service contract for “passenger transport services by rail and road”, [Regulation (EC) No. 1370/2007] that are uneconomic but in the public interest, would be detrimentally affected [deleted Art. 8 (4) (d)].
- Currently, non-resident bus operators are only permitted to operate national inter-urban regular services where these [Art. 1 (4), Art. 2 (7), Art. 15]
  - are only part of an international regular service and not the “main purpose” or
  - are only undertaken “temporarily”.
- The Commission criticises the “patchwork” of rules in the Member States on access to national markets for inter-urban coach and bus services which prevents carriers from developing a “pan-European coach network” (p. 3).
  - In Germany, to protect local public transport services (ÖPNV), national inter-urban bus and coach services are not permitted where the route is shorter than 50 km or an alternative rail journey of less than one hour is available [Section 42a Passenger Transport Act (PBefG); Impact Assessment SWD(2017) 358, p. 129].
  - In Spain, regional monopolies [“exclusive rights”, Art. 2 (f) Regulation (EC) No. 1370/2007] are awarded for ten years by way of competitive tenders, which allow bus companies to cross-subsidise non-profitable routes within the respective region (Impact Assessment, p. 16 and 34).
- The Commission wants to remove “obstacles in national markets hindering the development of inter-urban coach and bus services” (p. 4) and further open up the national markets for inter-urban bus and coach services to competition from non-resident carriers (p. 2), in order to
  - increase the quality of inter-urban bus and coach services and bring down fares (Impact Assessment, p. 13),
  - increase the share of “sustainable transport modes” (Recitals 1 and 13),
  - connect “disadvantaged regions” of the EU to public inter-urban bus and coach services (Impact Assessment, p. 12),
  - “also” promote international inter-urban bus and coach services (p. 2).

- ▶ **Approval of international regular services of under 100 km as the crow flies**
  - Applications to operate international regular services, over a distance of less than 100 km as the crow flies, must generally be approved. This also includes a longer inter-urban bus or coach route with individual stops that are less than 100 km apart and offering tickets between these stops.
  - Approval can be rejected if it compromises the “economic equilibrium” of a public service contract for “passenger transport services by rail and road”, [Regulation (EC) No. 1370/2007] that are uneconomic but in the public interest, [amended Art. 8 (4), new Art. 8c (2) (d)].
  - The authorising authority must
    - within two weeks of receipt of the application, ask all Member States, in which passengers are picked up or set down, for their agreement and send a copy of all “relevant documentation” [amended Art. 8 (1)];
    - take a decision within four months of the application [amended Art. 8 (3)].
  - Where a Member State does not agree, the Commission may be called upon [amended Art. 8 (5)]. It must consult the Member State that disagreed and take a decision within four months [amended Art. 8 (5)].
- ▶ **Approval of international regular services of over 100 km as the crow flies**
  - The application to operate international regular services of over 100 km as the crow flies must generally be authorised [new Art. 8a (2), new Art. 8c (2) (a)–(c)].
  - It cannot be rejected even if it compromises the economic equilibrium of a public service contract.
  - The approval authority must
    - take a decision within two months of the application [new Art. 8a (1)] and
    - provide all Member States, in which passengers are picked up or set down or which are crossed, with its “assessment” just for information as well as a copy of the application and all “relevant documentation” [new Art. 8a (3)].
- ▶ **Authorisation of national regular services**
  - In future, carriers can also operate purely national regular services in Member States in which they are not resident where these [amended Art. 1 (4), amended Art. 2 No. 7]
    - are not part of an international regular service and
    - are regular and not simply “temporary”.
  - An application to operate national regular services over a distance of less than 100 km as the crow flies, must generally be approved. It may be rejected if it compromises the economic equilibrium of a public service contract [new Art. 8b (2), new Art. 8c (2) (d)].
  - An application to operate a national regular service of less than 120 km as the crow flies must generally be authorised except where [new Art. 8b (3), new Art. 8c (2) (d)].
    - it is intended to serve a point of departure and a destination which are already served by more than one public service contract and
    - it compromises the economic equilibrium of a public service contract.
  - An application to operate a national regular service of more than 120 km as the crow flies must, in principle, be approved. It cannot be refused on grounds of a possible threat to the economic equilibrium of a public service contract [new Art. 8b (2) and (3), new Art. 8c (2) (d)]
  - The approval authority must take a decision within two months - in the case of the analysis of a possible threat to the economic equilibrium of a public service contract within four months - [new Art. 8b (1)].
- ▶ **Procedures for protecting public service contracts**
  - All Member States must designate a “single national regulatory body” that is legally distinct and independent from any other public or private entity [new Art. 3a (1)].
  - On request, the regulatory body carries out an “objective economic analysis” of whether the regular service being applied for would compromise the economic equilibrium of a public service contract [Art. 3a (2)].
  - The analysis can only be requested [new Art. 8d (2)]
    - by the competent authority that awarded the public service contract (“client body”), or
    - by the operators who carry out the service contract (“operators”).
  - If a request is made, the regulatory body takes a binding decision on whether or not the economic equilibrium of a public service contract is threatened and whether the authorisation is to be granted subject to conditions or is to be rejected [new Art. 8d (3)]. The approval authority must decide accordingly.
- ▶ **Access to bus stations**
  - Bus-station operators must
    - grant bus companies, operating regular services, access to bus stations under “fair, equitable, non-discriminatory and transparent conditions”, within two months, upon request, [new Art. 5a (1) and Art. 5b (1) and (2)].
    - endeavour to accommodate all requests for access [new Art. 5a (2)].
    - in the event of refusal, indicate “any viable alternatives” [new Art. 5a (2)].
  - Appeals are decided by the regulatory body [new Art. 3a (2), new Art. 5b (4) and (5)].

## Main Changes to the Status Quo

- ▶ Until now, bus companies from other Member States could only operate national regular services if they were part of an international regular service and not the “main purpose” or only took place “temporarily”. Now they are permitted to operate national regular services on a regular basis.
- ▶ New: Member States must designate an independent “single national regulatory body” that takes binding decisions on the economic equilibrium of public service contracts.
- ▶ New: EU rules on granting access to bus stations.

## Statement on Subsidiarity by the Commission

According to the Commission, Member States acting alone cannot create a “genuine” internal market for inter-urban coach and bus services (p. 3).

## Policy Context

In its “Strategy for Low-Emission Mobility” [COM(2016) 501; see [cepPolicyBrief 2016-30](#)] the Commission set the target of reducing CO<sub>2</sub> emissions in transport by at least 60% by 2050 as compared with 1990 levels, and being “firmly on the path towards zero”. The proposal forms part of the second mobility package “Europe on the Move” which also contains a proposal for a Regulation on CO<sub>2</sub> limits on cars and light utility vehicles [COM(2017) 676; see [cepPolicyBrief 2018-02](#)].

## Legislative Procedure

8 November 2017	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

## Options for Influencing the Political Process

Directorates General:	DG Transport (leading)
Committees of the European Parliament:	Transport (leading), Rapporteur: Zile, Roberts (EKR Group, LT)
Federal Ministries:	Transport (leading)
Committees of the German Bundestag:	Transport (leading);
Decision-making mode in the Council:	Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population)

## Formalities

Legal competence:	Art. 91 TFEU (Transport)
Type of legislative competence:	Shared competence [Art. 4 (2) AEUV]
Legislative Procedure:	Art. 294 TFEU (ordinary legislative procedure)

# ASSESSMENT

## Economic Impact Assessment

**Further deregulation of international bus and coach services and the opening up of national bus and coach services** to companies from other EU countries – the main aim of the Amending Regulation – **as well as non-discriminatory access to bus stations** bring down barriers to market access and thereby basically **strengthen competition on the markets for inter-urban bus and coach services**. Contrary to the Commission’s sweeping claim based on earlier market openings, however, **opening the national markets for inter-urban bus and coach services will not necessarily lead to the results forecast by the Commission in all Member States** that have not yet opened up their markets for inter-urban bus and coach travel:

The Commission’s assumptions about the effect that deregulation of the inter-urban bus and coach markets will have on growth are largely based on Germany’s experience (Impact Assessment, p. 113 et seq.) [Support Study](#), p. 45). The situation in Germany, however, is unusual as, prior to market opening in 2013, there was an almost complete ban on inter-urban bus and coach services whilst in other national markets - not yet open to competition - inter-urban bus and coach services already formed a significant part of public passenger transport.

In addition, as the Commission recognises, opening the market pushes out subsidy-free models. Thus, as a result of competitively awarded area concessions, Spain has a high-quality, nationwide inter-urban bus network (see [Eurobarometer – 457](#)), that manages without subsidies but does depend on the ability to cross-subsidise non-profitable routes by way of profitable ones. This model would no longer be possible under the Commission’s proposal. Although cross-subsidisation is not an ideal model because the costs of unprofitable routes have to be

borne by users of the profitable routes (instead of by the tax payer), it is a practical way of ensuring the Commission's envisaged supply of inter-urban bus services, particularly in times of budgetary constraint.

Furthermore, in the long term - as the Commission itself admits - opening the national market for inter-urban bus and coach services will not automatically result in lower fares or better quality of service because, after consolidation of the market, route monopolies can arise - as in the UK - which bring fares back up to the original level and beyond. In the EU, there is also no indication of differences in quality between open and non-open markets (Impact Assessment, p. 43-45). In the Commission's view, whether fares stay low in the long term, will depend on the contestability of the market and the willingness of national competition authorities to take action against the misuse of market power on individual inter-urban bus routes (Impact Assessment, p. 45). The assessment of the competition authorities can however vary depending on the competition situation with rail services as the relevant competitive market can be defined differently.

**The Commission's analysis of the impact of the planned market openings on public passenger transport** (Impact Assessment, p. 16–18 and 34) is also too superficial and **fails to take sufficient account of national peculiarities:**

The fact that public service contracts will only be protected up to 100 km may restrict the ability of sparsely populated Member States to protect routes that require protection. In substantiated cases, they should, therefore, be able to apply alternative criteria which could include the possibility of protected cross-subsidisation if the quality of the inter-urban bus network would otherwise suffer. The requirement for this, however, is the periodic competitive tendering of protected route monopolies under already applicable EU law [Regulation (EC) No. 1370/2007; Directive 2014/25/EU, see [cepPolicyBrief 32/2012](#)] (Impact Assessment, p. 16).

The fact that, in future, regular services under 100 km will have a right to authorisation provided they do not endanger the economic equilibrium of a public service contract - in Germany the ÖPNV - on the one hand facilitates market access, but on the other, will increase the burden of administration and subsidisation in some Member States, sometimes significantly. This is because the burden of proof will then be borne by the public client bodies and operators and it is expected that a large number of authorisation applications will be made for routes which were previously protected, generally giving rise to administratively onerous assessments of economic equilibrium. In Germany this applies to all transport below 50 km. The Commission ignores this, instead claiming erroneously that in Germany, the proposed "system of regulation" is already employed (Impact Assessment, p. 34) and that there is "no evidence to indicate a problematic relationship between commercial services and public service contracts". In Germany, however, this is due to the fact that inter-urban bus operators are currently not allowed to sell tickets for distances of less than 50 km. The Commission's proposal may lead to inefficiencies in the ÖPNV and increase its need for subsidies even if, overall, there is no danger to the economic equilibrium.

Overall, therefore, the planned extension of the Bus and Coach Service Regulation to include purely national regular services is not a "one size-fits-all" solution for all Member States. **The decision on opening up national markets for inter-urban bus and coach services should therefore remain with the Member States at least until the submission of an objectively substantiated legislative proposal which takes account of the peculiarities of the Member States.**

## Legal Assessment

### Legislative Competency

Unproblematic. The EU can adopt common rules on international transport between the Member States and to third countries as well as on the authorisation of transport operators to provide national transport services in Member States where they are not resident [Art. 91 AEUV].

### Subsidiarity

The Commission's proposal to **fully open up the purely national regular services** of inter-urban buses and coaches, **is in breach of the principle of subsidiarity.** The existing rule that non-resident bus operators are only permitted to operate national regular services as part of an international regular service and not as the "main purpose", involves a cross-border element. In future, however, this necessary justification for EU action will cease to apply.

Even the Commission's methodologically questionable Impact Assessment provides no basis on which to justify a need for regulation at EU level, if only due to its inadequate analysis of the situation in the Member States. In particular, the Commission has failed to give an adequate explanation of its claim that the opening of national markets for inter-urban bus and coach services was "also" necessary to promote international bus and coach services.

## Conclusion

Further deregulation of international bus and coach services and the opening of national bus and coach services, as well as non-discriminatory access to bus stations, strengthen competition on the markets for inter-urban bus and coach services. Opening national markets for inter-urban bus and coach services will not lead to the results forecast by the Commission in all Member States. The analysis of the impact of the market openings on public passenger transport in particular fails to take sufficient account of national peculiarities. The decision on opening national markets for inter-urban bus and coach services should remain with the Member States until the submission of an objectively substantiated legislative proposal which takes account of the peculiarities of the Member States. Fully opening up purely national regular services is in breach of the principle of subsidiarity.