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Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services [doc. 14184/17 - COM(2017) 647 final] – Opinion of the European Economic and Social Committee

Delegations will find attached a copy of the above-mentioned opinion.

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European Economic and Social Committee

TEN/650

Access to the international market for coach and bus services

OPINION

European Economic and Social Committee

**Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/2009
on common rules for access to the international market for coach and bus services
[COM(2017) 647 final – 2017/0288 (COD)]**

Rapporteur: **Raymond HENCKS**

Consultation	European Parliament, 29/11/2017 Council, 22/11/2017
Legal basis	Article 91(1) of the Treaty on the Functioning of the European Union
Committee Bureau decision	17/10/2017
Section responsible	Section for Transport, Energy, Infrastructure and the Information Society
Adopted in section	05/04/2018
Adopted at plenary	19/04/2018
Plenary session No	534
Outcome of vote (for/against/abstentions)	200/0/4

1. Conclusions and recommendations

- 1.1 The EESC supports the Commission's aim of improving mobility for citizens who travel long distances by coach or bus, encouraging the use of sustainable modes of transport, and making it possible to offer services that are more in line with the needs of the population, particularly those on the lowest incomes.
- 1.2 However, the proposal to extend the scope of the common rules for access to the international market for coach and bus services to cover all regular services for hire or reward, including national services, run by a non-resident carrier, is considered problematic in some Member States.
- 1.3 Applying the new rules on access to the market for regular international and national coach and bus transport services over a distance of less than 100 km or 120 km as the crow flies to urban and suburban services could, according to those countries, seriously undermine the fulfilment of the mission and public service obligations of a service of general economic interest (SGEI).
- 1.4 The proposal for a regulation does not take account of the substantial differences between Member States in how they organise their coach and bus transport services and pricing, particularly of urban and suburban services, which are often provided free of charge or at reduced rates for all or for specific categories of travellers, in response to social and environmental needs and constraints which require specific and different rules. However, there are also Member States that have a more deregulated access to public transport markets.
- 1.5 The proposed provision that, for international and national transport services (including urban and suburban services) over distances of less than 100 kilometres as the crow flies, access to the market may only be refused if the service offered would compromise the economic equilibrium of a public service contract could in some cases be difficult to reconcile with the need for a service of general interest that is affordable and of appropriate quality for all. All the market can do, in compliance with the legislation on fair competition, is offer a price determined on the basis of costs. However some Member States do have a fully or partly deregulated market, with reasonably good results. The proposal would in such cases risk a step backwards.
- 1.6 The EESC questions if the proposal for a regulation complies with Article 5(3) of the Treaty on European Union (TEU) on the subsidiarity principle, insofar as Protocol 26 to the Treaty on the Functioning of the European Union (TFEU) gives national, regional and local authorities wide discretion in providing, commissioning and organising SGEIs in order to ensure a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights. However, as the long-haul national bus and coach services above 100 km are already deregulated in some Member States the strive for free market access for bus services as such could not be put in question.
- 1.7 The EESC stresses that, if pursuant to such an application of the subsidiarity principle, the Member States are allowed the wide discretion afforded to them by the Treaty to organise their SGIs in line with the needs of the population, this of course will mean that also Member States with deregulated bus and coach markets can continue, and that the Commission's aim of a single market for such services will not be reached.

- 1.8 Finally, the EESC stresses that establishing new coach and bus routes may entail a risk of adversely affecting public services using more sustainable modes of transport. The EESC finds it therefore reasonable that authorities can safeguard that services are using efficient low carbon vehicles that do not increase emissions, particularly rail services. The EESC therefore urges the Commission to link market liberalisation of road transport to a more clear usage of the polluter pays principle in all modes of transport.

2. Introduction

- 2.1 In accordance with Article 4(2)(g) of the TFEU, the European Union has shared competence with the Member States in the area of transport, and establishes, inter alia, under Article 91 TFEU:

- *common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States;*
- *the conditions under which non-resident carriers may operate transport services within a Member State; [...]*

When the measures referred to in paragraph 1 are adopted, account shall be taken of cases where their application might seriously affect the standard of living and level of employment in certain regions, and the operation of transport facilities.

- 2.2 By amending Regulation No 1073/2009 on access to the international market for coach and bus services the Commission intends, according to its own statements, to improve mobility for citizens who travel long distances and to encourage the use of sustainable modes of transport, and it should make it possible to offer services that are more in line with the needs of the population, particularly those on the lowest incomes.
- 2.3 Some European languages do not make a distinction between "coach" and "bus". Distance is often one of the main criteria used in the regulation of long-distance coach services: for example, they must be more than 50 miles in the United Kingdom, and more than 100 kilometres in France and Sweden.
- 2.4 In some Member States, the market for long-distance coach services is already at least partially liberalised. For example, the liberalisation of the German market was subject to two conditions: the routes must cover a distance of at least 50 kilometres and must not compete with rail. In France, the "Macron Law" allows any operator to provide regular services for distances over 100 kilometres.

3. Current EU rules

- 3.1 Regulation (EC) No 1073/2009 of 21 October 2009 applies to the transport of more than nine people by coach and bus in the form of regular international passenger transport services, as well as, under certain conditions and on a temporary basis, the admission of non-resident carriers to operate national road passenger transport services in a Member State.
- 3.2 Carriage from Member States to third countries is largely covered by bilateral agreements between the Member States and those third countries. However, the EU rules apply on the territory of Member States crossed in transit.

- 3.3 EU rules do not apply to urban and suburban coach and bus services. Cabotage operations by non-resident carriers within a Member State are permitted with the exception of transport services that serve the needs of an urban centre or conurbation, or those that provide transport between such a centre and its surrounding areas. Cabotage operations may not be carried out independently of an international service.
- 3.4 By contrast, the arrangements on the posting of workers for the purposes of providing a service do apply to coach and bus transport companies carrying out cabotage operations.
- 3.5 Each year Member States must inform the Commission of the number of carriers holding a Community licence as of 31 December of the previous year and of the number of certified true copies corresponding to the vehicles in circulation on that date. On 31 December 2016, there were a total of 34 390 Community road passenger transport licences and 300 155 bus and coach licences, of which approximately 46 000 were used mainly for long-distance passenger transport.
- 4. New measures proposed by the Commission**
- 4.1 The scope of application has been extended considerably and applies to all regular (international and national) coach and bus transport operations across the whole of the EU, operated as regular services by non-resident carriers.
- 4.2 The current regulation, which defines "cabotage operations" as "national road passenger services for hire and reward carried out on a temporary basis by a carrier in a host Member State", has been amended by deleting "temporary". As a result of this, cabotage services are considered to be regular services.
- 4.3 From now on, regular cabotage operations are subject to holding a Community licence. Temporary cabotage transport operations are only permitted if they are covered by a contract concluded between the organiser and the carrier, and if they are occasional services.
- 4.4 With regard to regular services, the new regulation distinguishes between international and national passenger transport services over distances of less than 100 kilometres as the crow flies and such services carrying passengers over distances of 100 kilometres or more as the crow flies.
- 4.5 For regular international transport services carrying passengers and some regular national services over distances of 100 kilometres or more as the crow flies, market access has been fully liberalised.
- 4.6 For regular international and national transport services (including urban and suburban services) over distances of less than 100 kilometres as the crow flies, access to the market may be refused if the service offered would compromise the economic equilibrium of a public service contract. The aforementioned distance of less than 100 km may be increased to 120 kilometres if the regular service to be introduced will serve a point of departure and a destination that are already served by more than one public service contract.

- 4.7 Express services – i.e. services that carry passengers at specified intervals along specified routes without intermediate stopping points – are henceforth considered to be "regular services", on a par with transport services that pick up and set down passengers at predetermined stopping points.
- 4.8 An independent monitoring body for coach and bus passenger transport has been set up and will be responsible for:
- carrying out economic analyses of whether a proposed new service would compromise the economic equilibrium of a public service contract. The conclusions of the regulatory body will be binding on the authorising authorities in the area of access rights to the international and national market, and its decisions will be subject to judicial review;
 - collecting and providing information on access to terminals;
 - deciding on appeals against decisions of terminal operators.
- 4.9 Technical adjustments regarding Community licences, authorisations to access the market and other certificates shall be made by Commission delegated act.
- 4.10 Carriers have a right to access the parking spaces for use by coaches and buses (terminals) in accordance with equal, transparent and non-discriminatory conditions.

5. General comments

- 5.1 Extending the scope of this regulation to cover all regular services for hire or reward run by a non-resident carrier means that the latter may operate regular national services under the same conditions as resident carriers and that when it is continuous and permanent, a cabotage operation is considered to be a regular service. In light of this, the regulation under consideration applies to all regular international and national coach and bus transport service operations.
- 5.2 For international and national transport services over distances of 100 kilometres or more as the crow flies, the market is thus fully liberalised and potential public service contracts can no longer be taken into consideration in order to refuse access to the market.
- 5.3 Access to the market for regular international and national coach and bus transport services over a distance of less than 100 km or 120 km as the crow flies may be refused if the economic equilibrium of a public service contract would be disturbed and if the independent supervisory body responsible for carrying out the relevant economic analysis agrees.
- 5.4 In a change from the current regulation, the Commission's new proposal no longer explicitly excludes urban and suburban coach and bus transport services, which will therefore be subject to the new rules.
- 5.5 Moreover, the authorities responsible for granting market access may not reject an application solely on the grounds that the carrier offers lower prices than those offered by other road carriers, even though it has been established that private sector carriers, which are not bound by public service obligations, offer prices (e.g. EUR 1 for a long-distance journey) that clearly fall under the heading of dumping. The general, unrestricted wording of this provision could be seen as *carte blanche* for unfair competition.

- 5.6 The proposal for a regulation does not take account of the substantial differences between Member States in how they organise their coach and bus transport services and in pricing, particularly of urban and suburban services, which are often provided free of charge or at reduced rates for all or for specific categories of travellers, in response to social and environmental needs and constraints which require specific and different rules. However, there are also Member States that have a more deregulated access to public transport markets.
- 5.7 The EESC questions if the proposal for a regulation complies with Article 5(3) of the Treaty on European Union (TEU) on the subsidiarity principle, and finds the arguments set out in the justification statement (as provided for in Article 5 of Protocol 2 on the application of the principles of subsidiarity and proportionality) not totally convincing. However, as the long-haul national bus and coach services above 100 km are already deregulated in some Member States the strive for free market access for bus services as such could not be put in question.
- 5.8 However, passenger transport is also a service of general economic interest (SGEI), as provided for by the Treaty and, as such, is subject to Article 106(2) of the TFEU, which states that *"undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them."*
- 5.9 This article refers to the primacy of good performance, which does not depend on an approach based on economic equilibrium.
- 5.10 The common values applicable to the activities of SGEIs, which are covered in Protocol 26 on services of general interest (SGIs; in reference to Article 14 TFEU) are, *inter alia*: the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest, a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.
- 5.11 Economic equilibrium is therefore not one of the values that SGEIs must adhere to. It could in some cases also be difficult to reconcile economic equilibrium with a service that must be affordable for all. The market can, only offer a price determined on the basis of costs and thus cannot guarantee access for all to a service at an affordable price. However, it should also be noted that some Member States do have a fully or partly deregulated market, with reasonably good results. The proposal would in such cases risk being a step backwards.
- 5.12 The supervisory body established by the regulation under consideration would only be able to assess whether or not the conditions of Article 106(2) of the TFEU and the conditions of Protocol 26 have been met, a power (finding a clear error) which up to now has fallen exclusively under the remit of the Commission, subject to an appeal to the European Court of Justice.

- 5.13 In contrast with the Commission's new proposal, Article 8(4)(d) of the current Regulation 1073/2009 (which the Commission proposes to delete) is in line with the Treaty, maintaining that: *"a Member State decides on the basis of a detailed analysis that the service concerned would seriously affect the viability of a comparable service covered by one or more public service contracts conforming to Community law on the direct sections concerned"*.
- 5.14 The EESC therefore believes that there is no need to amend the aforementioned provision established by Article 8, but instead that, in line with the subsidiarity principle, the Member States should retain the wide discretion accorded to them by the Treaty to organise their services of general interest in accordance with their needs, with the exception of clear errors found by the Commission.
- 5.15 The EESC stresses that establishing new coach and bus routes may entail a risk of adversely affecting public services using more sustainable modes of transport – particularly rail services. There can therefore be no question of abandoning railway services along the same section for purely economic reasons.
- 5.16 The EESC notes, with this in mind, that the purpose of legislation on the Single European Railway Area is to create a European railway area that is able to compete, sustainably, with other modes of transport.
- 5.17 However, it is clear that competition between rail and road remains largely unfair, due to the fact that rail charges, to be paid by rail operators, and operating costs are around three times higher than costs incurred by coach service operators. Up to now, there has been no significant follow-up to the Commission's announcement of *"measures to internalise the external costs of transport in a coordinated and balanced manner across modes so that the charges reflect the level of the external cost imposed on society at large"*.
- 5.18 The EESC therefore urges the Commission to link market liberalisation of road transport to a more clear usage of the polluter pays principle in all modes of transport.

Brussels, 19 April 2018

Luca JAHIER

The president of the European Economic and Social Committee