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## IRU position on the EU mobility package – Technical analysis and recommendations on the revision of the EU rules on access to the bus and coach market

Technical analysis and IRU recommendations to European legislators on the European Commission proposal to modify the EU rules on access to the bus and coach market (Regulation (EC) No 1073/2009).

### I. INTRODUCTION

IRU welcomes the European Commission (EC) proposal to modify the EU rules on access to the bus and coach market as it shows that the EC is finally recognising the importance and potential of bus and coach transport and its environmental and social benefits<sup>1</sup>.

IRU shares the general objectives presented by the EC to justify its proposal, namely the promotion of inter-urban mobility and the increase of sustainable modes of transport. IRU also shares the specific objectives of the proposal to remove obstacles to the growth of inter-urban bus and coach transport and to address issues such as access to terminals and excessive administrative burden. Overall, the bus and coach sector considers this initiative an excellent opportunity to boost bus and coach transport in the EU.

However, IRU considers that the provisions on regular national services should primarily impact Member States with limited competition. National market organisation models that already guarantee a satisfactory level of competition and service quality to passengers should not be disproportionately impacted by the EC proposal. IRU considers that the EC proposal should be amended to guarantee fair competition in all national markets for occasional and regular services.

### II. REGULAR NATIONAL SERVICES: FAIR COMPETITION

IRU proposes that national establishment in the host Member State should be a mandatory condition to be authorised to offer regular national services covered by the Regulation.

#### Amendments:

Article 3 paragraph 1: *Any carrier for hire and reward referred to in Article 1 shall be permitted in accordance with this Regulation to carry out **international** regular services, including special regular services and occasional services by coach and bus, without discrimination on grounds of nationality or place of establishment if he [...]*

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<sup>1</sup> Expected impact of the proposal according to the EC: EUR 1,560 million in administrative savings for businesses and administrations; 85,000 new jobs; EUR 2.8 billion in accident cost savings; 62 billion pkm increase in connectivity for disadvantaged social groups; EUR 183 million in CO<sub>2</sub> emission savings; and EUR 590 million savings in air pollution.

Article 3 paragraph 1a (new): **Any carrier for hire and reward referred to in Article 1 shall be permitted in accordance with this Regulation to carry out national regular services if he has an establishment in the Member State of operation, in accordance with the provisions of Article 5 of Regulation (EC) No 1071/2009.**

This proposal would guarantee fair competition and that all operators comply with the laws, regulations, and administrative provisions in force in the host Member State, including conditions governing the transport contract, weights and dimensions, driving times and rest periods, fiscal obligations, as well as environmental, social, and accessibility requirements.

### III. REGULAR NATIONAL SERVICES: LIBERALISED NATIONAL MARKETS

IRU proposes to adapt the provisions of Article 25 of Regulation (EC) No 1073/2009 to guarantee that Member States may keep existing levels of liberalisation that go beyond the standards established in the EC proposal or may adopt national legislation that liberalises further the services covered by this Regulation. Chapter III of the Regulation would not apply in these Member States.

#### Amendment:

Article 25 paragraph 1a (new): **Member States may exempt national regular services from the provisions of Chapter III of this Regulation if the national legislation provides for the further liberalisation of these services.**

### IV. REGULAR NATIONAL AND INTERNATIONAL SERVICES: INTERPLAY WITH THE PSO LEGISLATION

IRU takes note of the establishment of a 100km distance threshold to determine whether or not to consider the potential impact of regular services on the economic equilibrium of public service contracts (PSCs) before taking a decision on an application. However, IRU proposes to clarify this distance threshold and to specify that it depends on whether operators sell tickets for distances that are either over or under 100km and not on the total distance of the service nor on the distance between stops.

#### Amendments:

Article 8 paragraph 1: *Authorisations shall be issued in agreement with the competent authorities of all the Member States in whose territories **carriers sell tickets for distances of less than 100 kilometres.***

Article 8b paragraph 2: *Authorisations for national regular services shall be granted unless refusal can be justified on one or more of the grounds listed in points (a) to (c) of Article 8c(2) and, **if carriers sell tickets for distances of less than 100 kilometres, Article 8c(2)(d).***

Article 8d paragraph 1: *Member States may limit the right of access to the international and national market for regular services if **within** the proposed regular service **carriers sell tickets for distances of less than 100 kilometres** and if the service would compromise the economic equilibrium of a public service contract.*

IRU also proposes to explicitly guarantee that Member States may reduce the distance threshold.

#### Amendment:

Recital 8: *[...] A distance threshold should be introduced to ensure that commercial regular service operations do not compromise the economic equilibrium of existing public service contracts. **Member States may decide on the introduction of a shorter distance threshold [...]***

While preserving the general purpose of the Regulation, it is necessary to ensure the continued existence of national market organisation models based on PSCs with an

existing satisfactory level of competition. IRU therefore proposes that Member States may decide not to apply Chapter III of the Regulation on territories covered by services of general economic interest duly justified by reasons of territorial equilibrium and social cohesion, on the condition that these PSCs are awarded following a competitive tendering procedure, open for participation to all.

**Amendment:**

Article 25 paragraph 1b (new): ***Member States may exempt national regular services from the provisions of Chapter III of this Regulation on territories covered by services of general economic interest, on the conditions that:***

- \* ***the exemption is duly justified by reasons of territorial equilibrium and social cohesion and,***
- \* ***public service contracts are awarded following a competitive tendering procedure, in accordance with the provisions of Regulation (EC) No 1370/2007.***

IRU also proposes to modulate the protection granted to all PSCs based on the procedure chosen by the awarding authorities in order to reflect the financial risk borne by the various private and public transport operators. IRU proposes to distinguish two types of services covered by PSCs, as follows:

- \* Regular bus services covered by PSCs and national licenses awarded following a competitive tendering procedure and “small value” contracts awarded on the basis of Article 5 paragraph 4 of Regulation (EC) No 1370/2007: authorisation of the regular service could be refused on the basis of an objective analysis that it would compromise the economic equilibrium of PSCs on the sections of the route directly concerned.
- \* Regular bus and railway services covered by PSCs directly awarded to internal operators and contracts directly awarded on the basis of Article 5 paragraph 6 of Regulation (EC) No 1370/2007: authorisation of the regular service could be refused on the basis of an objective analysis that it would compromise the economic equilibrium of the entire network covered by one or several PSCs.

**Amendment:**

Article 8c paragraph 2(d): *a regulatory body establishes on the basis of an objective economic analysis that the service would compromise the economic equilibrium of:*

- \* ***Public service contracts or national licenses covering bus services awarded following a competitive tendering procedure and contracts awarded on the basis of Article 5 paragraph 4 of Regulation (EC) No 1370/2007, on the sections of the route directly concerned.***
- \* ***Public service contracts covering bus and/or railway services directly awarded to internal operators and contracts directly awarded on the basis of Article 5 paragraph 6 of Regulation (EC) No 1370/2007, on the entire network covered by one or several contracts.***

## **V. ACCESS TO TERMINALS**

IRU supports the intention of the EC to regulate access to passenger terminals and proposes to modify the definition of “terminal” by deleting the reference to a minimum area of 600m<sup>2</sup>.

**Amendment:**

Article 2 point 9 (new): ‘terminal’ means any facility ~~with a minimum area of 600m<sup>2</sup>,~~ which provides a parking place that is used by coaches and buses for the setting down or picking up of passengers;

## VI. OCCASIONAL SERVICES

IRU is concerned with the EC proposal to delete the notion of “local excursions” taking place in the framework of “international closed-door coach tours”.

International closed-door coach tours are a very specific market segment which corresponds to fair and traditionally accepted travel practices. They typically start and end in the same Member State, with the coach company and a pre-constituted group of tourists residing in this very Member State. Even though operations include overnight stays and several stops within host Member States, they are legally considered as one single international transport service. Stops within the host Member States are currently legally defined as “local excursions” (Article 13 of Regulation (EC) No 1073/2009) as part of the international transport service, and not cabotage operations. The incoming and/or outgoing international transfer of the pre-constituted group to the host Member State can take place via other modes of transport, under the same contract, without changing the legal nature of the transport operation<sup>2</sup>.

The notion of “local excursions” remains crucial to distinguish this very specific market segment from pure cabotage operations not connected with an incoming and/or outgoing international operation.

IRU recommends to reintroduce the notion of “local excursions”, taking into account the situation of “international closed-door coach tours” and “fly-and-drive multimodal travel models” in the Regulation as a way to guarantee that, contrary to pure cabotage operations not connected with an incoming and/or outgoing international operation, Member States may not have the possibility to subject them to the posting of workers rules.

### **Amendments:**

Article 13: ***Within the framework of an international occasional service, a carrier may carry out occasional services (local excursions) in a Member State other than that in which it is established.***

***Such services shall be intended for non-resident passengers previously carried by the same carrier on one of the international services mentioned in the first paragraph and shall be carried out with the same vehicle or another vehicle from the same carrier or group of carriers.***

***The incoming and/or outgoing international services may be carried out with another mode of transport, provided that that the carrier carrying out the local excursions is established in the Member State of residence of the group constituted on the initiative of the customer or of the carrier himself.***

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<sup>2</sup> Fly-and-drive multi-modal travel models: involves a pre-constituted group of travellers from country A being transported by a non-road mode to country B. On arrival in country B, a coach operator from country A will pick them up and carry them on local excursions within country B for the length of their stay.