

Position Paper

Brussels, 15 May 2018

Review of regulation 1073/2009 (coaches), with regulation 1071/2009 (market access)

1. Introduction and summary

Road transport and railways both complement each other and compete with each other in the single European transport area. Road-specific regulations indirectly affect the competitiveness of rail in general¹, and specifically the economic viability of rail public-service contracts. Multimodal options offer seamless journeys for passengers and drive improvements and innovations through competition. However, intermodal competition must be fair. A level regulatory and economic playing field between modes will ensure that businesses can deliver for customers, in particular where they are delivering public service contracts. So rail is a stakeholder in discussions about coach and bus market liberalisation, as proposed by the European Commission for a revised regulation 1073/2009. In this paper, CER is making comments in relation to that proposal.

On 8 November 2017, the Commission [proposed](#) to liberalise the EU's *national* coach and bus markets (reference COM(2017) 647 final). The Commission considers that a critical mass of domestic-market demand is necessary to develop the intra-EU *cross-border* markets, its stated ultimate objective.

CER believes that there must be a level playing field between rail and coaches/buses. EU-driven liberalisation of national coach and bus markets, also for short journeys, needs to take this into account if it aims at making transport in the EU more inclusive and sustainable. Moreover, it can be questioned whether this is an EU competency or one for member states, which enjoy better knowledge of national and local specificities. Inconsistency of the Commission proposal with the subsidiarity principle has been highlighted by the Regulatory Scrutiny Board.² At the same time, it is important to improve customer experience in multi-modal journeys.

If the proposal goes ahead, CER would like to see 1) a clearer definition of "distance", 2) a removal of the burden on regulators and operators to conduct (or help in conducting) economic-equilibrium tests (EET) to justify refusal of market access for short distances, 3) equivalent treatment for certain exclusive rights compared to public-service contracts (PSCs) and 4) keeping the current definition of, and provisions on, cabotage.

2. Key amendments to regulation 1073/2009 to ensure intermodal fairness and improved multimodal services for passengers

If it is appropriate to revise regulation 1073/2009 in the direction proposed by the Commission – despite subsidiarity concerns – then the proposal should be improved in the following ways.

1) More clarity in the drafting is desirable for the notion of journey distances. Thus, in art. 2 define "distance" as distance as the crow flies *between two stops*.

¹ The impact is illustrated by the 4.8% decrease of rail demand (in pkm, compared to the 2030 baseline) from the Commission proposal for a revised regulation 1073/2009 (see impact assessment, PDF pages 51 and 64).

² A lack of "a convincing, evidence-based argument why national markets for buses and coaches and access to public terminal facilities should be regulated at the EU level" was stated for version 1 (see impact assessment p. 80). On the revised draft proposal, the Regulatory Scrutiny Board still commented that "the revised report does not provide clear evidence that EU regulation improves national inter-urban bus services" (IA p. 89).

Justification: Make it clear beyond doubt that distance thresholds apply to two stops, and not to the whole journey of a bus or train. The qualification "as the crow flies" could then be skipped in following articles, simplifying the text.

2) Member states should be free to allow or refuse market access for short trips within the domestic market. Specifically, member states should have the option to reject a new bus operator's application without an economic-equilibrium test (EET)

- i) for journey distances up to 50 km and
- ii) for journeys for which rail provides an alternative with up to 1h travel time

That would not prevent the authorising authority from discretionarily accepting an application, e.g. in case of insufficient public transport or of insignificant impact of a proposed new service on existing public transport.³ **A member state could still decide generally to open (or leave open) its coach and bus markets more widely.**

Justification: This would limit EET-related admin costs for operators under existing public-service contracts (PSCs), but also for regulators. Many PSCs are for journeys below 50 km and rail journeys up to an hour. A single new coach/bus service could affect many PSCs. The number of EETs to conduct would lead to an undue burden on operators and regulators. Short-distance services seem hardly critical to develop the cross-border market, so subsidiarity suggests leaving them to national regulation.

When would market access be possible?			
Distance:	0-50 km	51-99 km	100 km or more
Commission prop.	yes, subject to EET	yes, subject to EET	yes, always
CER proposal	no up to 50 km and up to 1h by rail – but MS may decide to still grant access	yes, subject to EET and to no rail up to 1h – but MS may decide to grant access in any case	yes, always

3) Where an exclusive right to operate a regular service was tendered competitively in a fair and transparent procedure, it should be treated like a PSC, i.e. it should be possible for the member state to refuse access to the operator of another service if it would compromise the economic equilibrium of the existing regular service.

Justification: With this technical amendment ensuring that exclusive rights and PSCs are treated in the same manner, prevent cherry-picking from existing service bundles and prevent parallel transport services that do not significantly improve transport supply.

4) Cabotage: CER rejects the Commission proposal for art. 15 on cabotage to delete the requirement for regular services to be performed as part of a regular international service. Instead, the current definition of cabotage in art. 2.7 and the current rule for regular services in art. 15.c should be kept. Moreover, art. 17, on control documents for cabotage operations, should not be deleted, as proposed by the Commission, but amended to allow certified electronic journey forms rather than just certified "books".

Justification: Railways already offer good working conditions, which CER would like to see replicated across transport modes for fair competition. To achieve this, CER proposes to keep the requirement for regular cabotage services to be performed as part of a regular international service, as deleting it would allow circumventing tax and social security

³ This model, incl. criteria i) and ii), has been successfully applied in Germany for some years now.

payments in the country of operation, distorting competition. Keeping art. 17 is necessary so that enforcement authorities can still distinguish between regular services (subject to authorisation) and occasional services (else).

For the European Parliament, rejecting this Commission proposal on cabotage would be in line with point 26 of its [resolution](#) of 18 May 2017 on road transport, where it rejected proposals for any further liberalisation of cabotage.

3. Improving regulation 1071/2009: help prevent letter-box companies

Related to regulation 1073/2009 is regulation 1071/2009, which is on the occupation of road transport operator and access to the international road haulage market. The Commission proposal for a revised regulation 1071/2009 is likewise being reviewed by the European Parliament and the Council.

In the Parliament's TRAN committee, proposals have been tabled to amend the Commission proposal, including amendments that would help prevent letter-box companies. Of those, CER supports amendment proposals 192, 201, 202, 210, 213 and 214; see "Amendments tabled in committee", PE618.056, available [here](#) (overview with link) and [here](#) (direct link).

Justification: All those amendments would help ensure an establishment is real rather than just a letter-box, thus helping prevent distorted competition related to coach (or truck) drivers from low-wage member states sent to work mainly on cabotage in high-wage member states.

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About CER

The Community of European Railway and Infrastructure Companies (CER) brings together more than 70 railway undertakings, their national associations as well as infrastructure managers and vehicle leasing companies. The membership is made up of long-established bodies, new entrants and both private and public enterprises, representing 73% of the rail network length, 77% of the rail freight business and about 93% of rail passenger operations in EU, EFTA and EU accession countries. CER represents the interests of its members towards EU policymakers and transport stakeholders, advocating rail as the backbone of a competitive and sustainable transport system in Europe. For more information, visit www.cer.be or follow us on Twitter [@CER_railways](https://twitter.com/CER_railways).

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