

SPUTNIC Cluster Market Organisation

Second Working Group meeting - Legislation, framework and cooperation

4-5 October 2007, Zagreb, Croatia

Market Organisation – Institutional framework and cooperation

Working Paper for the second WG Meeting in Zagreb, Croatia, 4-5 October 2007

Purpose and content of the working paper

Working Group 3 within SPUTNIC deals with “Market Organisation”. Within this framework four topics have been identified to be dealt with in four separate Workshops: integration and tariff systems, institutional framework and cooperation, innovative financing solutions and monitoring/incentives.

This working paper serves as a discussion basis for the forthcoming second¹ workshop taking place in Zagreb, Croatia. It gives a short overview on the topic including problems, key challenges and important definitions.

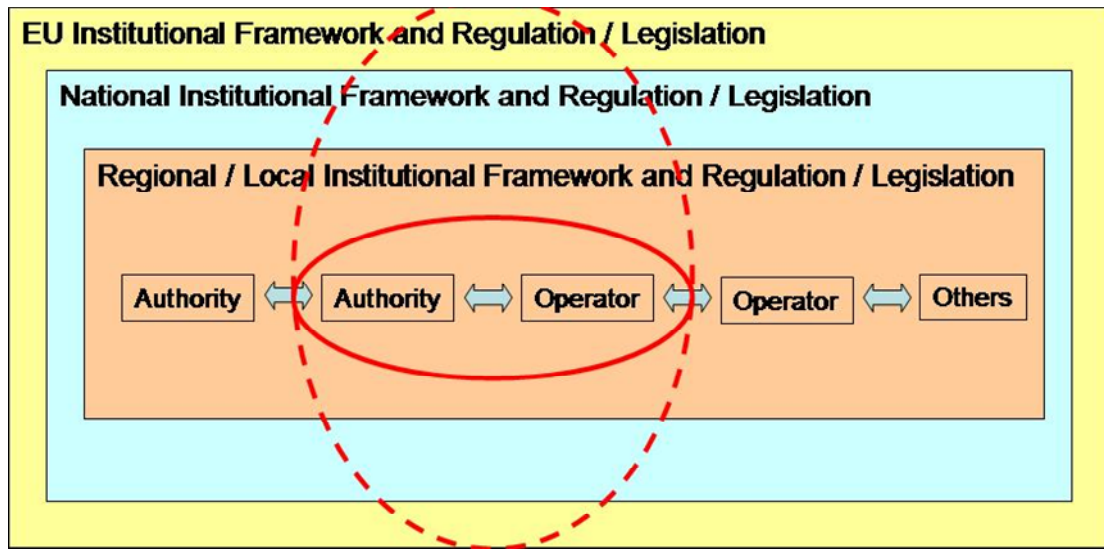
Scope of the workshop

The forthcoming workshop in Zagreb is dedicated to the topic “institutional framework and cooperation”. This includes:

- regulatory framework conditions on EU-level,
- national and regional level,
- institutional set-up and organisation models as well as
- all aspects of cooperation between authorities, intermediate organisations and operators.

It does not cover other aspects of cooperation such as the relationship among authorities themselves or forms of cooperation among operators.

¹ The first workshop took place in spring 2007 in Barcelona and was dedicated to the topic “Integration and tariffs”



Problems and Key challenges

The PT market is undergoing essential changes. In particular in cities and regions undergoing rapid economic development, legal framework conditions and responsibilities of the different actors fundamentally differ from the past. These developments have an important impact and bring the need of both internal changes in PT organisations and a new kind of relations between PT operators and authorities.

In Central and Eastern Europe the withdrawal of the central government from local PT organisation left a financial and organisational vacuum that is now slowly filled by new forms of regional and local organisations. Due to this process of change the division of tasks, responsibilities and risks between the different authorities and operators are often unclear. This leads to a market environment where efficient production of services is quite unlikely. The problem of unclear task assignment and missing leadership goes hand in hand with unstable and unclear regulatory framework conditions that form a difficult environment for entrepreneurial behaviour and hinder development. The lack of clear and binding laws and obligations allows politics to erratically interfere into the market which is – especially before election period - done quite often as PT makes a very popular topic in local politics (e.g. rising fares).

Also in Western Europe organisation models of PT have been changing over the last decade. Here the development is mainly driven by the political pressure to (more or less) liberalise the market by introducing some form of competition. The development paths chosen by different countries and different cities vary widely and in many countries it is an open debate which organisation model is the key to fulfil both legal and economical requirements. In other words, a form of organisation that is conform to law, provides the necessary quality and amount of PT services at the least possible cost, gives leeway for entrepreneurial behaviour and maximises customer orientation.

Not only on a national or regional level but also on European level the legal framework conditions keep changing. After years of debate the new EU-regulation on PT has finally been passed a second reading, this means that it has not been

formally adopted but this text may be regarded as final for all practical purposes.² The ruling in the so-called Altmark case is also relevant and cited in the Regulation.³

However, it will take some time for all the concerned actors in the different member states to find out what this new regulation will bring to them. How are the national and regional framework conditions going to be adapted to this new European regulation? And what does it mean in practice?

Main challenges for PT with respect to the workshop's topic will be:

- the setting up of sound and stable legal framework conditions
- the setting up of a sound urban/regional organisational model that suits the regions specific needs
- the implementation of Public Service Contracts that clearly define the actors rights and obligations, thereby allocating opportunities and risks for operators and authorities in a fair and motivating way

Main questions to be discussed at the workshop will be:

- How to react on the new EU-regulation at the national, regional and local level?
- Which regional laws make sense under what circumstances?
- Which organisational model is suitable for urban/regional transport under what conditions?
- What are the pros and cons of different organisation models?
- Which are the roles, tasks and responsibilities of authority, organising entity (public transport agency) and operators?
- How to design and set up an organising body?

Regulation on EU-level

Background

The creation of a single open market for all goods and services is a founding principle of the EU and competition has gradually been introduced in the utilities' sector. The main objectives of the EC Transport White Paper 2001 are to guarantee safe, efficient and high-quality passenger transport services through regulated competition and to eliminate disparities between transport undertakings from different Member States which may give rise to substantial distortions of competition. The EC points out that studies and experience from Member States show that regulated competition leads to more attractive and innovative services at lower cost. However, all competent authorities must be able to choose their public service operators freely. The EC, in its first proposal, wanted to promote, if not prescribe, controlled competition or competitive tendering.

A lengthy process

The new Regulation is a result of a very long process, a first proposal was presented by the EC in 2000, a second amended proposal in 2002 and the third re-examined

² <http://register.consilium.europa.eu/pdf/en/07/st03/st03623.en07.pdf>

³ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/c_226/c_22620030920en00010002.pdf

proposal in 2005 has now passed its second reading in the European Parliament in 2007. It is highly unusual to have three versions of a proposal, this shows how extremely controversial the ECs ambitions were. The 2000 proposal resulted in a UITP Position memo (May 2001) where it was clear that some UITP members favoured controlled competition but others were dead against it. UITP later never produced any position paper on the later proposals because its members strongly disagreed. This is just an example of the differing opinions, professional press and research publications have dealt with the Proposal at great length.

The main content points

- The regulation covers all PT on rail and road (local, regional, interregional) where compensation is paid or exclusive rights are granted
- Public Service Contracts are mandatory when compensation is paid and/or an exclusive right is granted
- The max contract length is 10 years for bus and 15 years for rail contracts. 50% longer periods are permitted in specified cases.
- Authorities may provide services themselves (“in-house”) or award contracts directly to a “daughter company”. Such daughters are blocked from taking part in tenders outside their own territory.
- When the authority goes outside it must award contracts on the basis of a competitive tendering. Certain exceptions are granted, rail contracts may always be awarded directly.
- Greater transparency, clear appeal procedures and public reporting is demanded.

Implementation

At the time of writing (August 2007) the new Regulation has not been published in the Official Journal. (It was later adopted 18 September 2007 and will be published during the autumn 2007). However, existing contracts may live on for long periods, sometimes up to 30 years. The implementation and actual effects on the PT sector will be discussed at the WG meeting.

Regulation on national and regional level

The regulatory framework determines the way in which transport services are designed, planned and produced. The definition of transparent rules for the allocation of responsibilities and sharing of risks between different agents of the system is thus an indispensable tool for the management of public transport.

PT in Europe finds itself amidst a period of change. Legislation plays a key role in all transition processes. In the past two main approaches could be observed in Western and Southern Europe. In the bottom-up approach PT operators could develop their services relatively free and legal and institutional framework conditions were adapted to these developments. In the top-down approach legal and institutional reforms were initiated and the operators had to adapt to the new framework conditions. Examples of this top-down approach can be found in Portugal, Italy and Austria. In these countries new laws have been introduced. But changes are either very slow or

almost nonexistent as practice is not always in line with the new regulation.⁴ In a context of change it is essential to distinguish between law and practice where relevant; in some cases it will be easier to change practices than to change the law.

In Central and Eastern European Countries a quite common problem is that adequate legislation is apparently lacking at all.

Regulation on PT usually covers organisation (responsibilities), steering (planning) and financing of PT on the different administrative levels (national, regional, local). Obviously the competencies of the different levels should be in line with their responsibilities stated by the law. For instance, if the national authority has the right to impose concessionary fares, it should also be the national authority's responsibility to finance it. It is however possible, that the national authority delegates its formal rights to the regional authority, although the funds (or at least part of it) are still provided by the national government (e.g. regional PT in Switzerland). However, in this case incentives might be a problem.

The LEDA project screened legislation in all EU states, 5 CEE countries, Norway and Switzerland. In all countries, national legislation sets the overall framework for public transport service provision. Supplementary regional law is enacted in some states. In countries where deregulation of public transport is advanced (notably the UK), the governing legislation is less strict and rigid, prescribing merely minimum standards and setting strategic rules.

In other countries with quite strong regulations, like Switzerland, the laws (on different levels) regulate quite a number of issues such as:

- The responsibility of public authorities to provide (and finance!) PT (as general public service)
- The division of power and responsibilities between different levels of authorities for different levels of PT (modes, national, regional or local transport etc.)
- The process of awarding concessions and the resulting obligations of concessionaires
- The minimum amount of PT that has to be provided (e.g. „regional PT between villages with more than 100 inhabitants is provided at least 4 times a day when there are at least 32 persons per day transported“)
- The administrative process of contracting PT services including the compensation model for non-cost-covering services
- Compensation rules for fare reductions imposed by the authority
- The conditions for tendering
- The accounting principles for operators benefiting from public contributions
- Financing rules for infrastructure, equipment and operation
- The coordination of interregional, regional and local transport including promoting measures for tariff unions (and up to a possible enforcement of operators to participate in tariff unions)
- The annual process of national timetable coordination (for interregional and regional PT)
- Financial contributions to PT supporting measures (e.g. bus lanes)

Local authorities are usually responsible for planning, funding and control of public transport in their area. They are however bound by national or regional law. An exception is Belgium where regional governments are in charge of public transport.

⁴ MARETOPE, D2

Another exception is Ireland where no legislation is in place to give local authorities duties and powers in this matter.

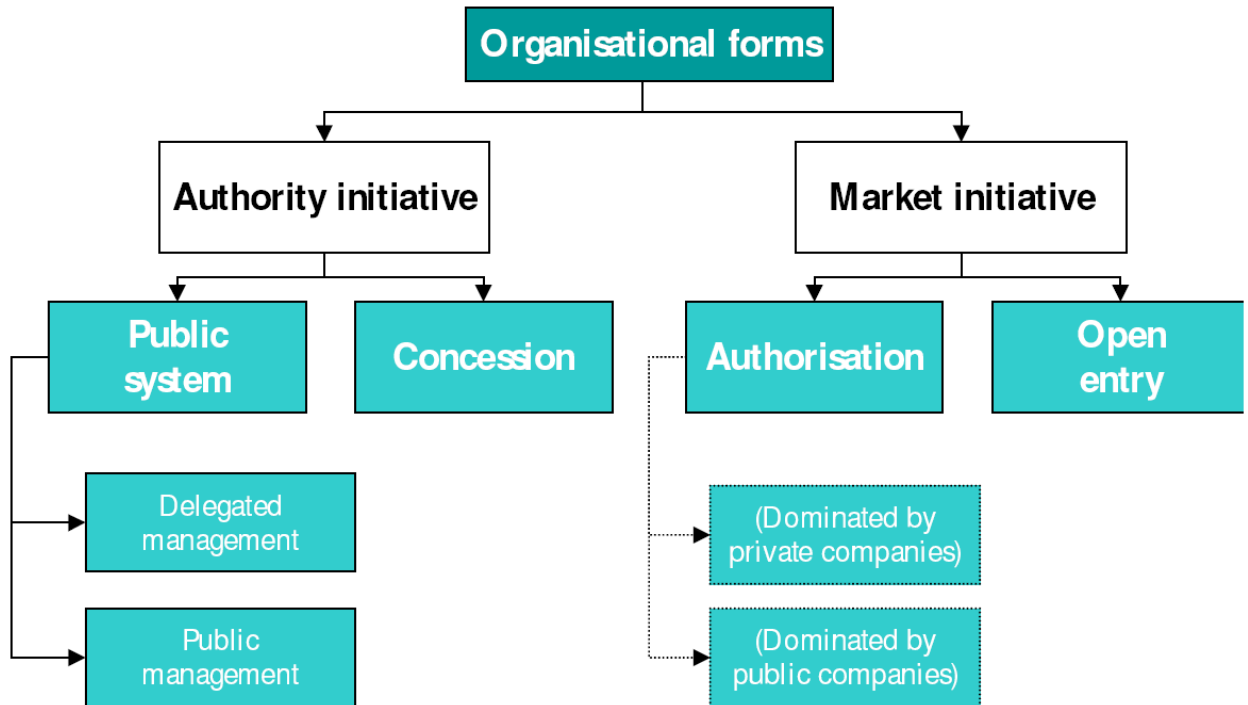
Across Europe, the right to operate urban PT in larger cities has traditionally been a municipal function. Local authorities' influence over public rail transport is significantly lower than over road transport. In many countries there is a striking lack of regionally co-ordinated public transport which is partly due to the absence of a regional level authority with adequate financing capability.

Legislation should at least provide mobility authorities with the competencies, resources and tools to steer the mobility system within the defined political objectives.

Organisation models

There are a great many possible organisational forms for urban public transport. The figure below presents a global classification of organisational forms as can be encountered in Europe according to MARETOPE. The first distinction presented in the diagram is the dichotomy between "authority initiative" and "market initiative" which relates closely to the legal framework. In authority initiated regimes, those authorities which have received the responsibility for PT have the legal monopoly of initiative by law. This means that autonomous market entry is legally impossible and that all PT production is the result of a conscious one-sided authority initiative to produce or request the production of services. Most PT markets in Europe function according to this principle. In market initiated regimes, the supply of transport services is based upon the principle of autonomous market entry resulting from a market process with more or less regulatory checks at the entrance. Examples of this system can be found in local PT in Great Britain and to some extent in Germany (although there is limited freedom and little or no new market access). It should be noted that all regimes presented in the figure below can make use of competitive tendering.

[from MARETOPE Handbook, page 23]



According to MARETOPE, authorities can play several roles in both regimes:

- licensing authority: granting access to the profession (in all regimes)
- authorising authority: granting access to the market (in market initiative regimes)
- concessioning authority (in authority initiative regimes)
- regulatory authority: setting the rules of the game (in all regimes)
- enterprising authority: bearing the entrepreneurial risk of PT production either by owning a PT company or by outsourcing the production of services she has designed (in all regimes)
- Subsidising authority (in all regimes)

It is essential to distinguish these various roles in order to describe the functioning of the organisational frameworks. It is also important to note whether these roles are or are not fulfilled by distinct authorities and to note their mutual relations.

Apart from the right of initiative there are some more criteria for assessing the ways in which the urban public transport market is organised.⁵

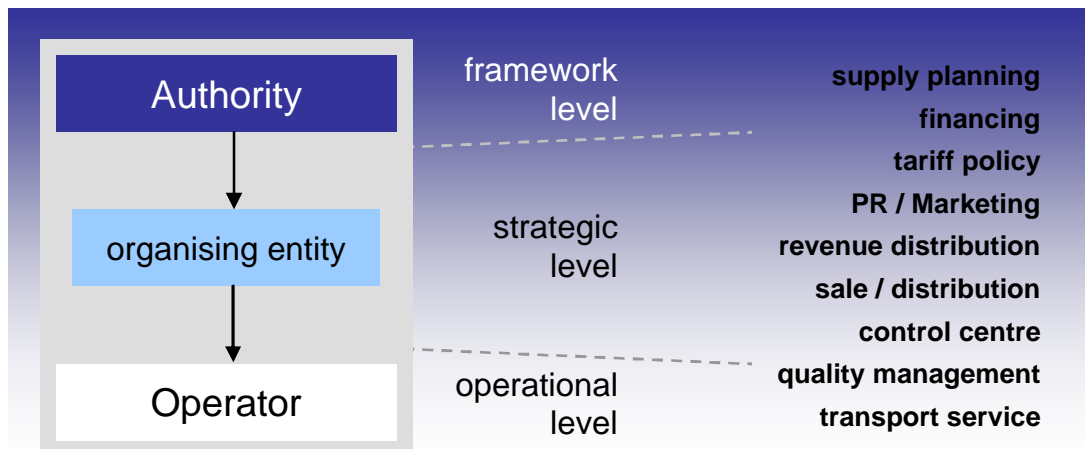
- Ownership: who owns the operating resources?
- Is the system to be operated by the municipality (direct management), a public or private operator with a concession to provide the services (delegated management, directly awarded or by competition for the market) or by competing companies (competition in the market)?

⁵ CERTU, 1997: ISOTOPE. Autorités et exploitants, le progrès en commun

- Is the service provided by a single company acting as a monopoly, by several companies to which use of a line or sub-network has been delegated or by several companies in competition?
- What freedom does the operator have to define the services and to adapt it to the needs of users?
- When a private operator is responsible for providing the services, how is liability divided between authorities and operator?

Organisation of a transport system is complex and it is crucial to clearly define the division of decision-making powers between various levels. There are three levels of decision-making whose borders are not always sharp:

- At the framework level the characteristics of the transport system are set, that is the area served, intermodality issues, capacity etc.
- At the strategic level the actual services are planned and defined, that is network, timetables, fares
- At the operational level the decisions for providing the services in the most efficient way have to be taken



[adapted from: traffiQ, 2006]

In many cases decisions on one topic, such as fares or routes, will not be attributed totally to one actor. As far as fares are concerned, it is possible to observe that a political council wants to retain the decision power on maximum average fare increases, sometimes even on fare levels, that the fare structure is determined by a co-ordinating body charged with PT planning and that the actual fare level is determined by the operators within the limits set by the other actors.

In different organisational models decisions at the three different levels can be taken by only one or by different actors:⁶

- a. In many countries, traditionally the form of direct management where all tasks are carried out by the authorities themselves prevailed.
Examples: City of St.Gallen (CH), no examples in Germany and Sweden
A subtype of this form is the model where all functions (from framework to operational level) are carried out by a single transport company who is owned by the municipality. The municipality as owner of the company can thus influence the company's general strategy.

⁶ Council of Europe, 1998: Management and funding of urban public transport

Examples: Cities of Neuchatel and Chur (CH), Uppsala (SE), Dresden (GER), Budapest (HU) (?)

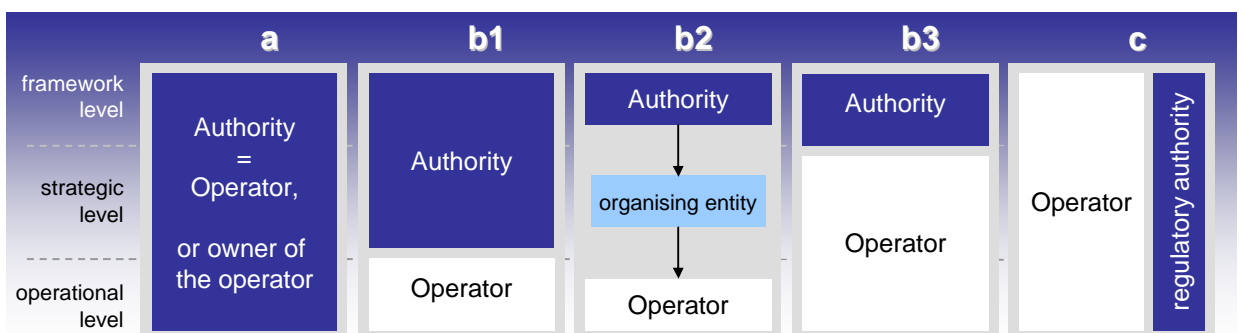
- b. However, in the last decade, there has been a strong trend to separate the different levels, especially in national and regional PT: the organising authority defines the framework (and sometimes also decides at the strategic level) while an operator is responsible for the production of the service. In other words, the authority buys the services from a service provider. The organising authority can be a municipality, an association of municipalities, a regional body, a traffic union etc. The obligations of the two parties are defined in a Public Service Contract (PSC). The operator is usually granted an exclusive right (concession) for operating his services. The service concession makes it possible to protect the public interest – the operator's obligations are laid down in the contract – while ensuring that services are provided at the lowest cost by possibly introducing market mechanisms.

Within type b there is a variety of subtypes according to how the strategic tasks are divided between the different actors (see b1-b3 in the figure below). Where public transport is organised in an integrated approach, an additional integrating organising entity is established who takes over the strategic tasks. This integrating entity can be part of or governed by the authority which is usually the case with traffic unions. On the other hand it can also be a union of cooperating (private or public) operators.

Borders between these subtypes are blurred and there exist very individual solutions. In Zurich for example, the traffic union Zürcher Verkehrsverbund (a public body) is basically responsible for the strategic level. However, as the traffic union cannot handle all tasks with its own limited staff, some of its strategic tasks are outsourced to distinct operators who take over the task on behalf of all operators involved (lead-house concept).

Examples: Zurich (CH), France (except Paris region), Dresden region and Frankfurt a.M. and Rhein-Main region (GER), most Swedish cities including Stockholm and Malmö (b1), Göteborg (b2) and Blekinge region (b3, but abandoned after five years)

- c. Finally, in a completely deregulated situation, the market alone determines the type of service provided. Private operators determine both general aims (framework level) and strategic decisions and also provide the services. The authority only acts a regulatory body ensuring that there is effective competition. This organisation model is mainly used in Britain (except for London). In Sweden it applies to long distance bus traffic which is fully open to competition with little regulation, but not for urban/regional PT. No examples in Germany.



(adapted from: traffiQ, 2006)

A curiosity in Europe seems to be that PT in many capitals is organised in a different manner compared to other areas in a country (London, Paris, Dublin, Brussels, Athens). The special regime is usually justified by the complexity of the network including rail services.⁷

23.8.2007/MSR/cp/de/LA/BH

⁷ MARETOPE, D2