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Ex-post evaluation of Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services

FINAL REPORT

Accompanying the document

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

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Contents

1.	INTRODUCTION.....	1
1.1.	Purpose of the evaluation	1
1.2.	Scope of the evaluation	1
2.	BACKGROUND TO THE REGULATIONS.....	1
2.1.	Description of the initiative and objectives.....	1
2.1.1.	Freedom to provide services.....	1
2.1.2.	Community Licence	2
2.1.3.	Authorisation procedure for regular services	2
2.1.4.	Rules applicable to cabotage operations	3
2.1.5.	Enforcement and cooperation between Member States	3
2.1.6.	Other modifications.....	3
2.2.	Baseline	4
2.2.1.	Freedom to provide services.....	5
2.2.2.	Community licences	5
2.2.3.	Authorisation procedure for regular services	6
2.2.4.	Rules applicable to cabotage operations	7
2.2.5.	Enforcement and cooperation between Member States	8
2.2.6.	Modal Split.....	8
2.2.7.	Terminals.....	9
3.	METHODOLOGY.....	9
3.1.	Data sources	9
3.1.1.	Baseline	9
3.1.2.	Fact Finding Studies.....	9
3.1.3.	Open public consultation.....	10
3.1.4.	Infringements and complaints	12
3.1.5.	Information from Member States	12
3.1.6.	Desk research	12
3.2.	Evaluation methodology	12
3.3.	Limitations – robustness of quantitative findings	12
4.	MARKET CONTEXT AND DEVELOPMENT AND STATE OF PLAY	13
4.1.	Market context and development	13
4.2.	State of play.....	14
4.2.1.	Community licences and authorisations for regular services.....	14
4.2.2.	Rules applicable to cabotage operations	15
4.2.3.	Enforcement and cooperation between Member States	16
4.2.4.	Other effects of the Regulation	16
5.	ANSWERS TO THE EVALUATION QUESTIONS	17
5.1.	Relevance	17
5.2.	Effectiveness	23
5.3.	Efficiency	36

5.4. Coherence.....	39
5.5. EU added value	45
6. CONCLUSIONS.....	46
ANNEX 1: PROCEDURAL INFORMATION CONCERNING THE PROCESS TO PREPARE THE EVALUATION OR FITNESS CHECK.....	49
ANNEX 2: STAKEHOLDER CONSULTATION.....	50
ANNEX 3: EVALUATION QUESTIONS.....	61

1. INTRODUCTION

1.1. Purpose of the evaluation

This evaluation focuses on Regulation (EC) No 1073/2009 (the Regulation) laying down common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006¹.

The Regulation establishes the conditions for the international carriage of passengers by coach and bus within the EU by carriers for hire or reward. It was adopted as a part of a legislative package together with Regulation (EC) No 1071/2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC² and Regulation (EC) No 1072/2009 on common rules for access to the international road haulage market³. Together, these three regulations regulate the conditions for accessing the profession and for accessing the markets of transport of goods and people by road. They aimed to achieve this by harmonising rules and simplifying the legal framework in place.

The purpose of the ex-post evaluation is to provide the Commission with an assessment of the implementation of the Regulation and its effects over the period 2009 to 2015. The evaluation assesses to what extent the Regulation has contributed to reaching its objectives to create an internal market, fair competition and modal shifts. It assess whether the provisions foreseen by the Regulation were fit for purpose and still are in view of the changing market situation. The aim is to have a view of the achievements, of the potential issues and of possible improvements/recommendations.

The results of the evaluation may either contribute to improving implementation of the Regulation or be used as an input for possible future policy development, including for an impact assessment study.

1.2. Scope of the evaluation

The evaluation covers the 5 standard evaluation criteria of relevance, effectiveness, efficiency, coherence and EU added value. It covers the time period of 2009 (entry into force of the Regulation) to 2015. It has the same geographical scope as the Regulation, which is the whole of the EU.

The provision in the Regulation amending Regulation (EC) 561/2006 in relation to driving times and rest hours (Article 29) are excluded from the evaluation. That provision was introduced to encourage tourism and promote the use of environmentally friendly means of transport which are not linked to market access and access to the profession.

2. BACKGROUND TO THE REGULATIONS

2.1. Description of the initiative and objectives

The freedom to provide services is a basic principle of the common transport policy and requires that carriers from all EU countries have access to international transport markets

¹ OJ L 300, 14.11.2009, P. 88

² OJ L 300, 14.11.2009, p. 51

³ OJ L 300, 14.11.2009, p. 72

without discrimination on grounds of nationality or place of establishment. The Regulation establishes the conditions for the international carriage of passengers by coach and bus within the EU by carriers for hire or reward.

In the 1990's the internal market for bus and coach services was created by two separate pieces of legislation, namely Council Regulation (EEC) No 684/92 on common rules for the international carriage of passengers by coach and bus⁴ and Council Regulation (EC) No 12/98 laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State⁵. It replaced national legislation (often restricting services) and bilateral agreements between the Member States.

In 2006, the Commission concluded⁶ that the lack of clarity or complexity of the existing provisions rendered enforcement difficult and unnecessary administrative burdens were identified in the following areas:

- The scope of application of the Regulation was unclear as regards passenger transport by Community carriers to and from third countries and transiting Member States.
- A company wanting to enter the market was faced with barriers such as an application for an authorisation when operating a new international line which required the agreement of other Member States affected by the service. The procedure was perceived, especially by the industry, as creating high barriers for new entrants and unnecessary burdens.
- The exchange of information between Member States was rather ineffective. Undertakings which operated on the territory of a Member State other than the Member State of establishment hardly risked any administrative sanctions, as a result of which competition was distorted between these undertakings less inclined to comply with rules and the others.
- The diversity of formats used for Community licences and certified true copies created problems during inspections and often led to a loss of valuable time for operators and enforcement staff.

In addition to the problem of unnecessary administrative burden, the problems of no single market for bus and coach services, discrimination by Member State authorities of non-national providers and the sub-optimal mix of transport modes for the transport of passengers also existed.

The Regulation was proposed to revise and consolidate the existing Regulations on the access to the market of coach and bus services and address the problems listed above.

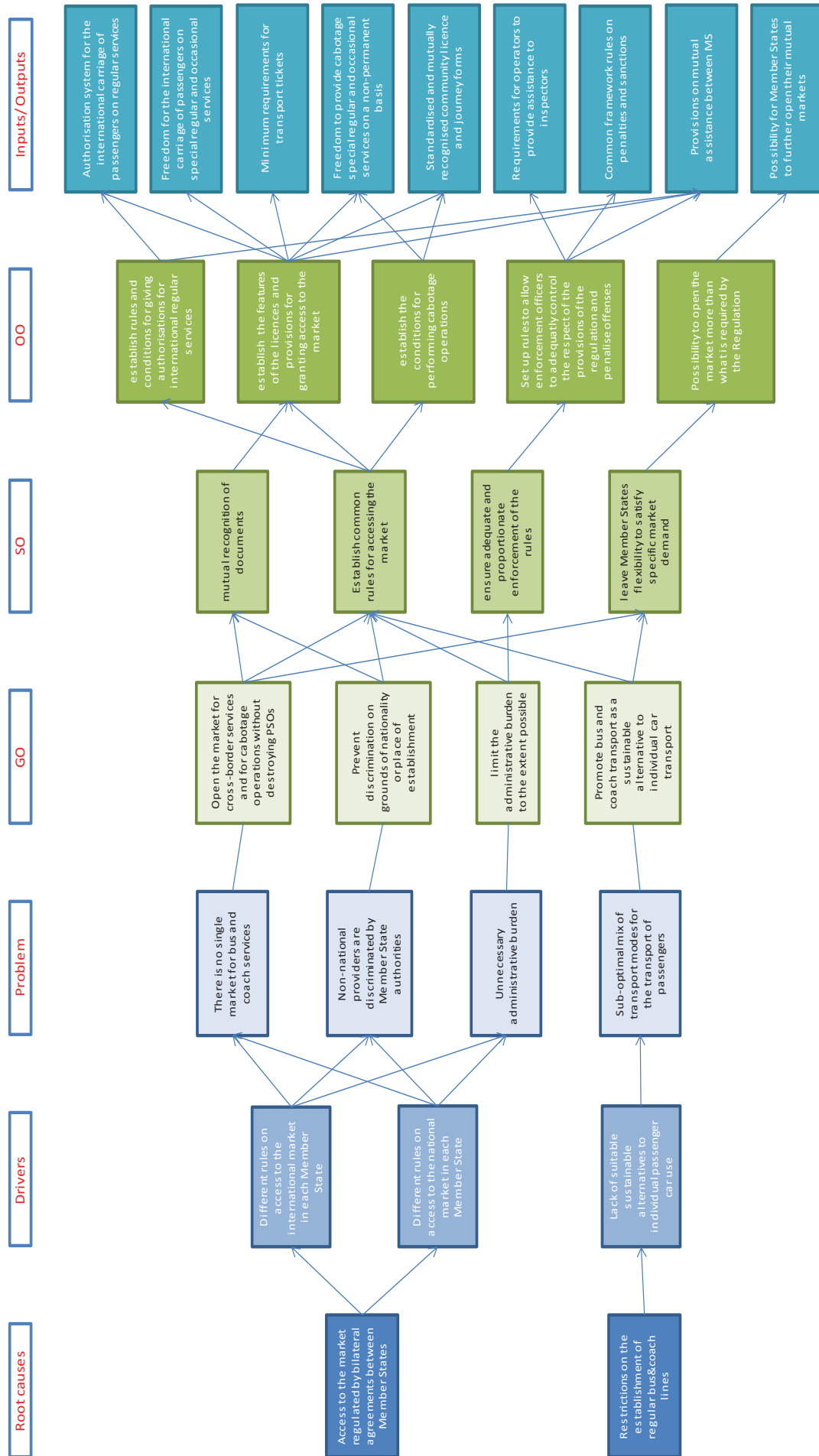
Error! Reference source not found., illustrates the links and causal relationships between the root causes, problem drivers, problems, general objectives, specific objectives, operational objectives and input/output.

⁴ OJ L 74, 20.3.1992, p. 1

⁵ OJ L 4, 8.1.1998, p. 10

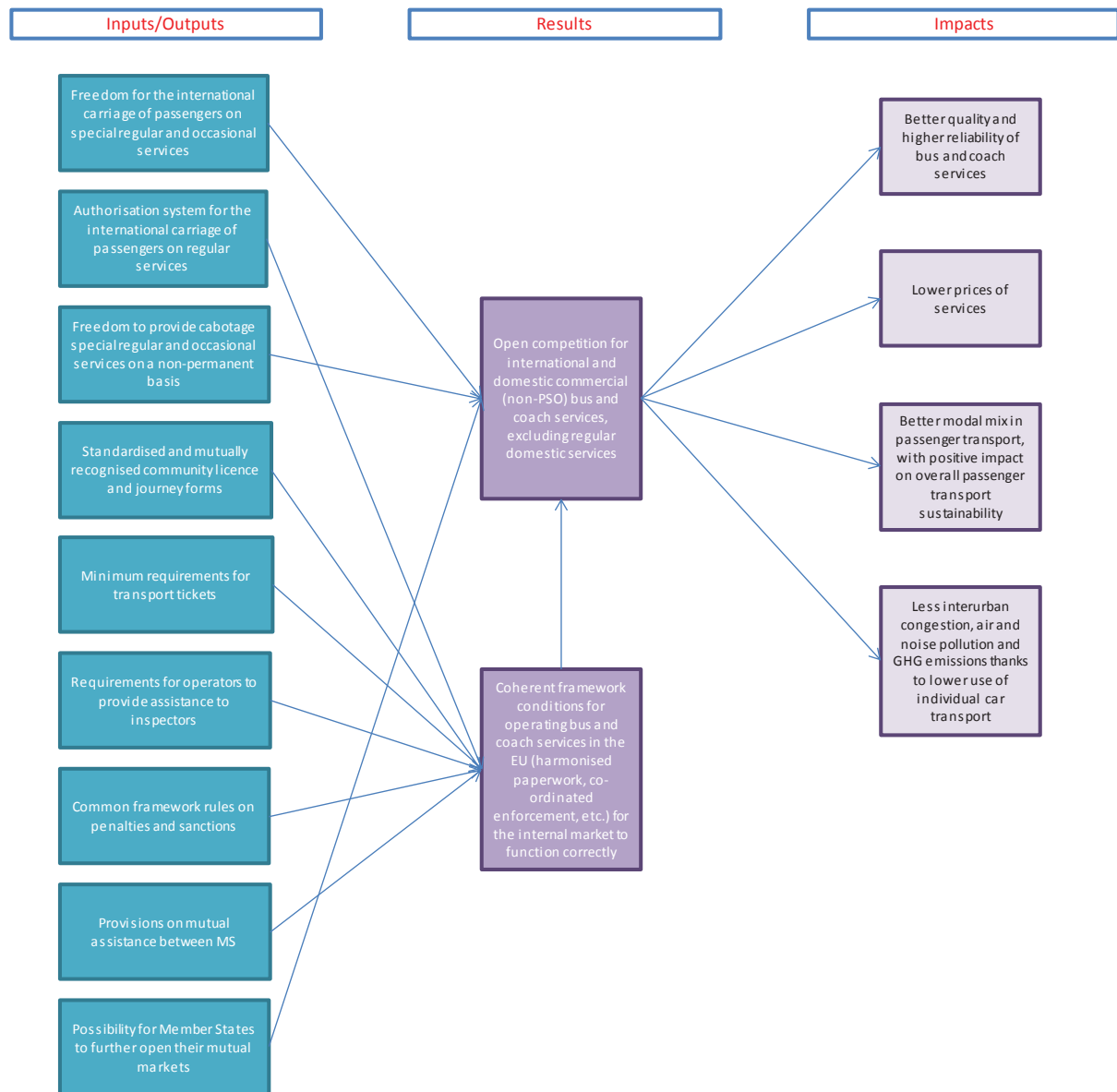
⁶ SEC(2007) 635/3 Commission Staff Working Paper Impact Assessment accompanying the proposal for a Regulation of the European Parliament and of the Council on common rules for access to the market in coach and bus services (recast) COM(2007) 264 final

Figure 1: Relationship between the objectives and the problems the initiative aims to address



The intervention logic of Regulation (EC) No 1073/2009 is provided below.

Figure 2: Intervention Logic



2.1.1. Freedom to provide services

The rules regarding the freedom to provide services remained in substance largely unchanged. The Regulation provides carriers for hire and reward with the freedom to provide 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:

- is authorised in the EU country of establishment to undertake carriage by means of regular services in accordance with the market access conditions in national law;
- fulfils the conditions within the EU rules on admission to the occupation of road passenger transport operator in national and international transport operations; and
- meets the legal requirements relating to EU standards for drivers and vehicles.

2.1.2. Community Licence

The Regulation simplified and standardised the Community licence. It provided more detailed specifications for the format of the Community licence and certified true copies of the Community licence in order to reduce the administrative burden and to reduce problems during inspections that often led to losses of valuable time for operators and enforcement staff.

Community licences were harmonised and international carriage shall be carried out subject to the possession of a Community licence issued by a competent authority in a Member State. The Community licences shall be issued for renewable periods of up to 10 years and is non-transferable. Every two years, Member States must report to the Commission the number of carriers possessing Community licences and the number of certified true copies corresponding to the vehicles in circulation. EU countries may also decide that the Community licence is valid for national transport operations.

2.1.3. Authorisation procedure for regular services

The Regulation introduced a simpler and faster authorisation procedure for regular services. An authorisation is issued in agreement with the competent authorities of all Member States in whose territories passengers are picked up or set down. Applications for authorisation of international regular services are submitted to an authorising authority⁷.

The authorisations are issued in the name of the carrier for a period of up to five years and are non-transferable. However, an authorised carrier, with the consent of the competent authority of the EU country where the point of departure is located, may operate the service through a subcontractor.

The new authorising procedure eliminated the special protection granted by Regulation (EC) No 684/92 to railways and existing regular services. The basic principle of the new authorising procedure is that the authorisation is granted unless there are clearly specified grounds for refusal attributable to the applicant. Only one ground for refusal relating to the relevant market remains, namely that the service applied for would seriously affect the viability of a comparable service operated under a public service obligation on the direct sections concerned. Transit countries, i.e. Member States which are not affected by the service because no passengers are picked up or set down, are not heard anymore, but are informed once the service has been authorised.

As part of the new authorisation procedure Member States were required to establish criteria on a non-discriminatory basis, for determining whether a service applied for would seriously affect the viability of the comparable service. It also enables Member States, with the agreement of the Commission and having given 6 months' notice to the carrier, to suspend or withdraw an authorisation to run a service

If the procedure for reaching an agreement does not enable the authorising authority to decide on an application, the matter may be referred to the Commission. The Commission shall take a decision after having consulted the Member States involved.

The authorisation must specify the type of service, the route, the stops and timetable, and the period of validity, and entitle their holder to operate regular services in the territories of all EU countries over which the routes of the service pass. Except in the case of force majeure, the operator of a regular service must take all measures to guarantee a transport service that fulfils

⁷ The competent authority of the Member State in whose territory the point of departure is situated.

the standards of continuity, regularity and capacity and complies with the conditions laid down by the competent authority.

2.1.4. Rules applicable to cabotage operations

The Regulation defines cabotage operations as either national road passenger services for hire and reward carried out on a temporary basis by a carrier in a host Member State, or the picking up and setting down of passengers within the same Member State, in the course of a regular service.

The rules on the performance of cabotage operations remained in substance largely unchanged. Non-resident carriers are permitted to operate national road passenger services, but the extent of permitted cabotage operations is dependent on the type of service. For regular services the performance of cabotage is permitted provided it is part of a regular international service, excluding urban and suburban services, and subject to the legislation in force in the host Member State.

2.1.5. Enforcement and cooperation between Member States

In order to strengthen and facilitate the exchange of information between national authorities Member States became obliged by the Regulation to exchange information via the national contact points which were set up pursuant to the Regulation (EC) No 1071/2009 on the admission to the occupation of road transport operator. These national contact points are designated administrative bodies or authorities in charge of carrying out the information exchange with their counter parts in the other Member States.

In the event of a serious infringement of EU road transport legislation, the competent authorities of the Member State of establishment of the carrier concerned must take appropriate action, which may include a warning or the imposition of administrative penalties. If a non-resident carrier seriously infringes EU road transport legislation, the EU country in which the infringement is ascertained will send the competent authorities of the carrier's EU country of establishment a description of the infringement, the category, type and seriousness of the infringement, and the penalties imposed. All serious infringements must be recorded in the national electronic register of road transport undertakings.

In addition, the Regulation clarifies the sanctions that the Member State may impose on the carriers established within its territory, namely the withdrawal (temporary or permanent) of certified true copies of the Community licence or of the Community licence.

The Regulation introduces a new procedure to be followed by the Member State which ascertains an infringement committed by a non-resident carrier. The Member State has 6 weeks from the final decision to communicate the information according to a minimum standard format. It may ask the Member State of establishment to impose administrative sanctions and the Member State of establishment of the carrier concerned has 6 weeks from the final decision to inform the other Member State of the follow-up.

2.1.6. Other modifications

The reporting obligations for Member States were increased and combined into one article. Member States were provided with the liberty to conclude bilateral and multilateral agreements on the further liberalisation of the services covered by this Regulation, in particular as regards the authorisation system and the simplification or abolition of control documents, especially in border regions.

For regulatory purposes international coach and bus services in the EU are categorised into different types as illustrated in Table 1 below.

Table 1: Categories of coach services used in the Regulation

Type	Definition	Market and typical examples
Special regular services	Services which provide for the carriage of passengers at specified intervals along specified routes, passengers being picked up and set down at predetermined stopping points, by whomsoever organised, which provide for the carriage of specified categories of passengers to the exclusion of other passengers.	Regular, scheduled service not open to all passengers, such as: <ul style="list-style-type: none"> • School services serving only those attending a school. • Staff services serving only those working at a location.
Regular services	All other services which provide for the carriage of passengers at specified intervals along specified routes, passengers being picked up and set down at predetermined stopping points.	Regular, scheduled service open to all passengers.
Occasional services	All other services, the main characteristic of which is the carriage of groups of passengers constituted on the initiative of the customer or the carrier himself.	Multi-day visit or tour requested by a customer or offered by a carrier. Excursion or day trip requested by a customer or offered by a carrier. Local excursion or day trip offered to those already on a multi-day visit or tour.

2.2. Baseline

During the baseline period of 2009 to 2011 Directive 96/26/EC together with Regulation (EEC) No 684/92 as amended by Regulation (EC) 11/98⁸, and Regulation (EC) No 12/98⁹ formed the major regulatory basis for the internal market for international passenger transport services by road.

In comparison to rail and air transport sectors, there was little European legislation applying to the coach and bus sector. This resulted in significant differences in the regulatory environment within which the coach and bus sector operated in different Member States. A Study of passenger transport by coach in 2009¹⁰ reported that the variation in regulation was particularly significant for national regular services and varied from:

- Liberalisation, as in the UK, with no restrictions on operation of new services and therefore there can be on-road competition between operators.
- A concession system, as in Spain, where operators bid for the right to operate individual routes, but there is no 'on-road' competition.
- Other forms of licensing restrictions, as in Greece.

⁸ OJ L 4, 8.1.1998, p. 1.

⁹ OJ L 4, 8.1.1998, p. 10.

¹⁰ Study on Passenger Transport by Coach in Europe, July 2009 prepared by Steer Davies Gleave for the European Commission

- Prohibition on operations, as in Germany, where regular national coach services are (with some exceptions) not permitted.

In 2009, 2 years before the application of the Regulation, the bus and coach sector accounted for a significant proportion, some 8.8%, of overall surface passenger transport within the EU¹¹. However, these high level statistics for the bus and coach sector at the European level do not accurately describe the types of coach and bus services within the scope of this Regulation. In Europe most available statistics on bus and coach passenger transport are defined or categorised differently by Member States. The statistics often cover all types of bus and coach services (e.g. urban, school buses, hop on hop off tours, etc.) and may include both national and international services. The performance of the sector in terms of vehicle-kilometres and passenger-kilometres are estimated and reported differently, and mutually inconsistent, ways by different Member States.

2.2.1. Freedom to provide services

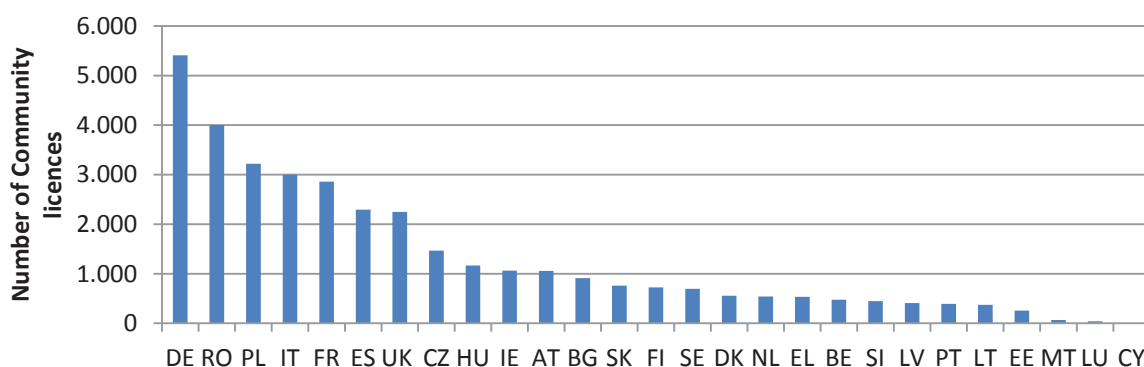
The legal acts enabled carriers to provide international transport services between Member States without discrimination on grounds of nationality or place of establishment, provided that they are authorised in the State of establishment to undertake carriage by coach and bus; meet the conditions laid down in accordance with rules on admission to the occupation of road passenger transport operator; and meet the legal requirements on road safety as far as the standards for drivers and vehicles are concerned.

2.2.2. Community licences

The Community licence facilitates inspections made outside the State of establishment. It acts as proof that the carrier is authorised in the State of establishment to undertake international carriage by coach and bus, and that the undertaking in question meets the conditions of access to the profession of road passenger transport operator.

The number of Community licences can be seen as a measure of the number of operators wishing to operate international services. The number of Community licences for road passenger transport in the EU-27 at the end of the baseline period in 2011 was 34,959 (the Regulation entered into force on 4 December 2011). The distribution of community licences across Member States is illustrated below in Figure 3.

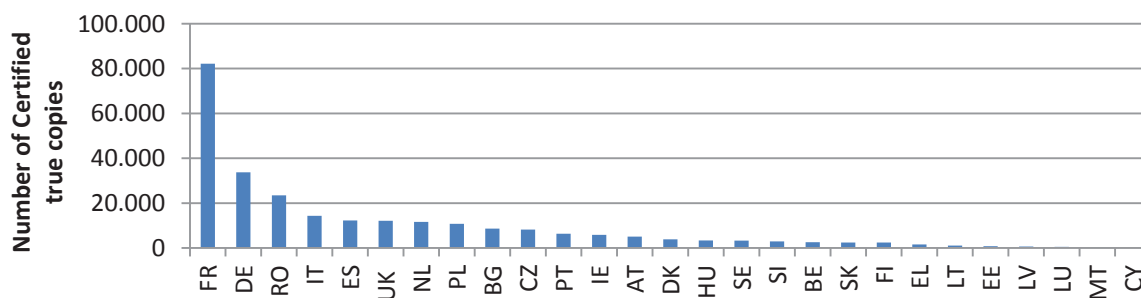
Figure 3: Community licences by Member State 2011



¹¹ EU Transport in Figures: Statistical Pocketbook 2011

A certified true copy of the Community licence is issued for each vehicle used for the international carriage of passengers at the disposal of the holder of a Community licence. The numbers of certified true copies of the Community licence can be seen as a measure of the number of coaches potentially operating international services. The number of certified true copies of Community licences in the EU-27 in 2011 was 260,683. At the same time, the stock of registered buses and coaches in the EU was 817,600¹².

Figure 4: Certified true copies by Member State 2011



There were an estimated 39,185 enterprises operating bus and coach services in both national and international markets (not including urban or suburban services) involved in employing some 518,300 people with a reported turnover of EUR 33,884 million¹³.

The lack of uniformity of certified true copies of Community licences creates problems for carriers during roadside checks especially regarding the authenticity of the control document and this often leads to considerable loss of time for both operators and enforcement authorities.

2.2.3. Authorisation procedure for regular services

The authorisation procedure for international regular passenger services established in Regulation (EEC) No 684/92 provided for authorisations to be issued with the consent of the competent authorities of Member States affected by the service. The authorisation procedure laid down for regular international services constitutes an important exception to the general principle of opening up the transport market. In all passenger or goods transport sectors, whether by road, rail, sea or air, the European Community has endeavoured to develop an increasingly liberalised market, while also maintaining high standards of services and safety¹⁴.

Member States on whose territory passengers are picked up or set down could reject an application for one of six specified grounds¹⁵. These grounds for rejection, and most notably

¹² EU transport in figures (data include buses, coaches, minibuses and sometimes also trolleybuses).

¹³ Estimated using EUROSTAT structural business statistics "*other passenger land transport n.e.c. (not elsewhere categorised)*". It is cautioned that this classification of economic activity is indicative as it includes more forms of land transport than coach.

¹⁴ Communication on the operation and prospects of the Community framework for passenger transport by coach and bus: access to international transport and cabotage markets, safety and rights of passengers Brussels, 29.7.2004 COM(2004) 527 final

¹⁵ The six ground for rejection of an application as per Article 7(4) are:

(1) if the applicant is unable to provide the service that is the subject of the application with equipment directly available to him;

the grounds aimed at protecting incumbents and rail, enabled the competent authorities of Member States to intervene in the market by effectively blocking market entry by a new operator. The authorising process was time-consuming despite the fact that Regulation (EEC) No 684/92 provided for a decision to be taken by the authorising authority within four months. The authorising procedure was cumbersome, especially when transit countries had to be heard, and was perceived, especially by the industry, as creating high barriers for new entrants and unnecessary red tape¹⁶.

2.2.4. Rules applicable to cabotage operations

Coach operators holding a Community licence were permitted to temporarily operate services¹⁷ within other Member States without having to be established in that State. The Regulation did not define “temporarily” and in practice left the definition to each Member State. This resulted in inconsistent interpretations across Member States. Operators reported that the lack of cabotage as part of an international regular service was partly because a number of Member States had in practice banned all cabotage operations. Even if this was not the case, cabotage could only be operated on a temporary basis, so cabotage was impossible to operate as part of international regular services which were usually operated on fixed timetables over long periods¹⁸.

The rules also provided a safeguard measure that in the event of any serious disturbance of the internal market caused by or aggravated by cabotage, the Member State concerned could refer the matter to the Commission for consideration but this has never happened.

The 2009 study reported there were almost no regular cabotage services as most Member States did not allow cabotage operations in order to protect rail operators, to protect domestic

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- (2) if in the past the applicant has not complied with national or international legislation on road transport and in particular the conditions and requirements relating to authorizations for international road passenger services or has committed serious breaches of legislation in regard to road safety, in particular with regard to the rules applicable to vehicles and driving and rest periods for drivers;
 - (3) if, in the case of an application for renewal of authorization, the conditions of authorization have not been complied with.
 - (4) if it is shown that the service in question would directly compromise the existence of regular services already authorized, except in cases in which the regular services in question are carried out only by a single carrier or group of carriers;
 - (5) if it is shown that the said service would seriously affect the viability of a comparable rail service on the direct sections concerned, or
 - (6) if it appears that the operation of services covered by the application is aimed only at the most lucrative of the services existing on the links concerned.

The fact that an operator offers lower prices than are offered by other road or rail transporters or the fact that the link in question is already operated by other road or rail carriers may not in itself constitute justification for rejecting the application.

¹⁶ Commission Staff Working Document Impact Assessment SEC(2007) 636/2

¹⁷ Special regular services, regular services provided they were not urban or suburban services and that the route is part of an international service; and occasional services

¹⁸ Study on Passenger Transport by Coach in Europe, prepared by Steer Davies Gleave for the Commission, July 2009

coach operators or because of concerns about the lack of oversight of international operators. The impact of cabotage on national markets was very small with cabotage operations being carried out mainly in adjacent Member States.

For occasional services one of the main reasons why non-resident carriers occupy a small share is that cabotage had to be on a temporary basis. If the carrier wanted to operate effectively in another market it needs to operate services frequently. To do this it needs to establish itself in the Member State.

For regular services Member States were able to block the operation of cabotage services through their right to refuse authorisation for the operation of international regular services that cross their territory. However, even if Member States did not block the service, cabotage services were limited as they could only be operated on a “temporary” basis whilst international regular services usually operate over long periods.

2.2.5. Enforcement and cooperation between Member States

Regulation 684/92 provided for the mutual assistance by Member States. This included exchange of information on breaches of Community rules applicable to the international carriage of passengers and on penalties imposed on own carriers in respect of breaches committed in the territory of another Member State.

However cooperation between Member States never fully developed and many contributions received during the public consultation¹⁹ exercise pointed out the need for applying correctly the existing rules and having them enforced properly²⁰. The main problem was that infringements committed by operators outside their Member State of establishment were only in isolated cases reported by Member States where the infringement took place as required by Article 16 of Regulation 684/92 and very rarely resulted in a sanction imposed by the Member State of establishment of the carrier. The failure to exchange information and report infringements was prejudicial to road safety and fair competition as operators had fewer incentives to correctly comply with the rules.

2.2.6. Modal Split

In terms of the modal split of total land-based passenger transport, in 2011 car journeys were by far the dominant mode accounting for 73% of all internal EU-28 pkm (passenger kilometres). Between 2000 and 2011, there was a strong shift from buses and railways to cars. The modal share of bus and coach in 2011 was 8.2% of total passenger transport with a 9.2% modal share of passenger transport on land²¹.

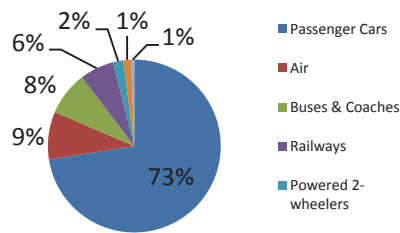
Figure 5: Modal shares of passenger kilometres 2011

¹⁹ Summary of contributions received by the Commission in response to the consultation paper, 16 October 2006

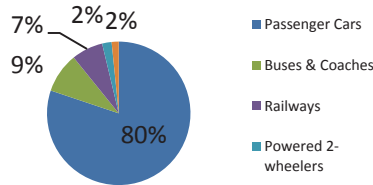
²⁰ Proposal for a Regulation of the European parliament and of the Council on common rules for access to the market for coach and bus services (Recast) 10102/07 Brussels 10 July 2007

²¹ EEA Report No 11/2013 TERM 2013: transport indicators tracking progress towards environmental targets in Europe, European Environment Agency, 2013

Modal split of passenger transport (%) - 2011



Modal split of passenger transport on land (%) - 2011



2.2.7. Terminals

Terminals are used to assemble and disperse passengers as well as acting as a location to change coach and to change mode. Terminals are of greater importance for regular coach services than for special regular services or occasional coach services. Special regular services are generally based around the school or workplace concerned and occasional services are usually specified by the procurer of the service.

The 2009 study reported that regular service operators had indicated that access to terminals was a significant issue for the operation of international regular services to/from other Member States. For example in Poland, where practically all the terminals were owned and managed by the dominant bus operator, there were complaints of discriminatory treatment of operators.

In two specific cases (Germany and Greece) the availability of terminal infrastructure was not a problem due to the overarching legislation preventing access to the market for national regular services.

3. METHODOLOGY

3.1. Data sources

3.1.1. Baseline

The main sources used to define the baseline in this evaluation are the underlying Impact Assessment²² and the Study of Passenger Transport by Coach 2009²³.

3.1.2. Fact Finding Studies

The ex-post evaluation builds on the findings of the "*Comprehensive study on passenger transport by coach in Europe*²⁴" (the study), prepared by Steer Davies Gleave for the

²² SEC(2007)635/3 Impact Assessment accompanying the proposal for a Regulation of the European Parliament and of the Council on common rules concerning the conditions to be complied with to pursue the occupation of road transport operator.

²³ Study on Passenger Transport by Coach in Europe, July 2009 prepared by Steer Davies Gleave for the European Commission

European Commission in 2016. The study provides a thorough review and analysis of the European coach industry, including national long and medium distance regular services, international regular services, special regular services and occasional transport. It establishes a comprehensive and comparative overview of the current situation of the coach industry in the EU through an analysis of trends and possible future developments in respect of key EU priorities: efficient mobility, co-modality, fair competition and social aspects.

It builds on the work and findings of the "*Study on passenger transport by coach in Europe*" prepared by Steer Davies Gleave for the European Commission in 2009. It focuses on the relevant regulatory framework –including both legislative and administrative practices – of all 28 Member States, including key elements on the structure and operation of the sector and the provided services in each of the Member States. It provides information on the coach transport sector, its characteristics, its segmentation, its needs and the challenges it faces in the current economic, legal and social environment.

Ten case studies were carried out as part of the study. The eight Member States (Germany, Greece, Italy, Poland, Romania, Spain, Sweden and UK) previously investigated as part of the 2009 study were included to enable investigation of the key changes in their respective markets during the intervening period. In addition, the markets in France and Lithuania were investigated to ensure the widest possible range of experience.

The case studies demonstrate how alternative market models have influenced the level and quality of service provided as well as the choice available to passengers. The case studies are supplemented by a qualitative assessment of the impact of the regulatory and competitive environment on the development of coach services together with an assessment of how far the level of competition observed in different Member States and on major international routes can be explained by the market models and regulatory framework and anti-competitive behaviour.

The consultation process engaged all the identified stakeholder groups and overall 45% of those approached during the fact finding study replied. The approach to stakeholder engagement in the study involved telephone interviews using questionnaires covering all 28 Member States in order to understand the issues, identify the relevant stakeholders, identify experts, collect data and find sources of information. This was followed by the detailed case studies, which built on the information obtained in the previous stage through face-to-face interviews with a number of stakeholders in each of the selected countries in order to obtain more specific and detailed information.

3.1.3. Open public consultation

This ex-post evaluation is performed back-to-back with an impact assessment and is covered by a single common open public consultation²⁵. The open public consultation was carried out by the Commission between the 14 December 2016 and 15 March 2017. The open public consultation was open to everyone and it comprised of two questionnaires, one for the general public published in all 24 official EU languages and a more specialised one for key stakeholders available in English.

The open public consultation provided the general public and stakeholders with the opportunity to express their views on all elements relevant to the functioning of the internal

²⁴ Comprehensive Study on Passenger Transport by Coach in Europe 2016 prepared by Steer Davies Gleave for the European Commission

²⁵ https://ec.europa.eu/transport/modes/road/consultations/1073-2009-review-2016_en

market in road passenger transport and asked for feedback on the initial problems identified during the ex-post evaluation and the main elements of the impact assessment, i.e. the problem definition including respective drivers and root causes, the objectives of the initiatives, the issue of subsidiarity and the EU dimension to the problem, the policy options and their likely impacts. A total of 18 complete or partial responses were received for the general questionnaire, mostly from citizens/consumers and companies, as shown in Table 2 below.

Table 2: Classification of stakeholders responding to the questionnaire - general

Stakeholder category	Number of responses	Percentage of responses
A company	7	39%
A non-governmental authority (e.g. NGO)	2	11%
A road passenger transport worker (e.g. driver)	0	0%
A citizen/consumer	8	44%
An academic	0	0%
Other	1	6%
Total	18	100%

A total of 153 complete or partial responses were received for the specialised questionnaire, mostly from companies engaged in the transport chain and non-governmental authorities. A breakdown of respondents is provided in the Table 3 below.

Table 3: Classification of stakeholders responding to the questionnaire - specialised

Stakeholder category	Number of responses	Percentage of responses
Company engaged in transport chain	68	44%
EU Governmental authority	3	2%
A non-governmental authority (e.g. NGO)	28	18%
Regulatory authority (e.g. national transport regulator, national competition authority)	7	5%
Enforcement authority	3	2%
A road passenger transport worker (e.g. driver)	17	11%
A citizen/consumer	1	1%
An academic	1	1%
Other	25	16%
Total	153	100%

The outcome of the open public consultation carried out by DG MOVE is the main source of qualitative data and complements the statistical data gathered in the fact finding study.

3.1.4. Infringements and complaints

A review of infringements and complaints regarding the Regulation was conducted. The aim of the review was to collect information on the problems with the application, interpretation and enforcement of the Regulation and to identify why these difficulties may have arisen. The information was used to assess the effectiveness and impact of the Regulation whilst answering the evaluation questions.

3.1.5. Information from Member States

The reports submitted by Member States in accordance with Article 28 of the Regulation provide information on the number of authorisations for regular services issued as the total number of authorisations at the end of the reporting period. The reports also provide information on the number of carriers holding a Community licence and the number of certified true copies corresponding to the number of vehicles in circulation on that date.

3.1.6. Desk research

The information gathered within the framework of the study and the open public consultation was complemented by additional desk research. Primarily, the information gathered by desk research was used to verify the evidence from the other data sources, ensuring the robustness of findings and an unbiased approach. This data collection process was also carried out to better understand the underlying problems and to respond to any information gaps whilst addressing the evaluation questions.

3.2. Evaluation methodology

The data collected was used to respond to the evaluation questions. All the analytical findings constitute the basis for the assessment on how the Regulation has scored on the five defined evaluation criteria of relevance, effectiveness, efficiency, coherence and EU added value.

The evaluation process was assisted by a Steering Group composed of the representatives of DG CLIMA, DG EMPL, DG ENV and DG GROW as well as the Legal Service and the Secretariat General. DG COMP was also consulted.

The Steering Group steered and monitored the progress of the exercise, ensuring the necessary quality, impartiality and usefulness of the evaluation. Being composed of members from different functions and having the necessary mix of knowledge and experience, the Steering Group brought together a range of different perspectives and provided the necessary input, in particular where the evaluation touched different policy areas.

3.3. Limitations – robustness of quantitative findings

The evaluation was limited in the delivery of robust quantitative findings due to the lack of available and comparable statistical data on the coach and bus sector in different Member States, and the difficulty to disentangle the impact of the economic and financial crisis and the impact of national measures.

The scope, quality and availability of data vary widely across Member States. There are inconsistencies across Member States in the definition of services (regular, international regular, special regular and occasional) and the distinction between bus (usually urban) and

coach services (usually interurban). Vehicle-kilometres and passenger-kilometres are reported in different and mutually inconsistent ways by different Member States. The statistics available at the European and Member State levels frequently refer to all bus and coach services together. While some statistics are available at an aggregate level (and usually conflate both bus and coach operations) there are few statistics available for sub-sections of the market, e.g. medium or long distance coach services.

The quality and availability of data and statistics pertaining to aspects of the Regulation is often limited. Although the information required to be reported under Article 28(1) & (2) of the Regulation is clear, the start and finish dates of the reporting period are not provided and no deadline for the submission of the report is mentioned. This has resulted in inconsistent reporting periods being used and reported by Member States. Even if good and reliable data were available on the number of passengers and the amount of passenger-kilometres concerning cabotage operations, there are few statistics available for sub-sections of the market (e.g. medium or long distance coach services) to put the cabotage data into context.

In general, individual Member States use a variety of different methods to collect data and operate under different assumptions. The data is often not comparable or it may not reflect the real situation as it is based on permissions (Community licences and authorisations for regular services) granted rather than either services operated in the present or the extent to which the services are used.

To address this limitation the available data was examined to determine the extent to which it could be used. It was reviewed for inconsistent or implausible values and educated estimates were made where deemed possible. In the course of the fact finding study the consultants were requested to disaggregate the heterogeneous Member State data, which includes all bus and coach service, to the extent possible and to use extrapolation where appropriate.

Between 2008 and 2012 the impact of the economic and financial crisis was evident in passenger transport demand and traffic volumes during this period dropped significantly in many countries. The impact of the crisis on the coach and bus market masks the full effects of the Regulation. For this reason, the evaluation compares percentage share and growth rates of different modes rather than absolute values.

The international market for coach and bus services is strongly affected by the national markets. Liberalisation of national markets for bus and coach services may have a greater impact on the number of international services than pan-European legislation alone. It is not possible to eliminate the effect of national markets on the international market. For this reason it was decided to ask stakeholders during the study to provide a qualitative assessment of the effects of the Regulation on the international market for bus and coach services.

4. MARKET CONTEXT AND DEVELOPMENT AND STATE OF PLAY

4.1. Market context and development

The international market for coach and bus services, although small compared to national markets, plays an important role. Indeed it provides collective transport which, as a sustainable alternative to private cars, can contribute to reducing emissions from transport and to improving accessibility to isolated and low population density regions. Occasional service have been liberalised while regular services are still subject to an authorisation procedure prompted by concerns over safety and protection of passengers' rights.

The data available does not allow an accurate estimate of the overall market size. Nevertheless, the study estimated that international coach passenger numbers grew by 40-

60% and international coach passenger-kilometres grew by between 0-40%, between 2009 and 2014. These estimates suggest that the average international coach trip is getting shorter.

The study indicates that there has been consistent growth in the market since 2010. The data available does not allow an accurate estimate of the overall market size, but it can be estimated to be several tens of millions of passengers per year travelling, on average several hundred kilometres each. This stronger growth in international markets relative to the overall market suggests that operators have responded to opportunities provided by international liberalisation.

In 2013, 2 years after the application of the Regulation, the bus and coach sector was 8.1% of passenger transport and 9.2% of surface passenger transport within the EU²⁶. Although the sectors share of the surface passenger transport market has grown by 0.4% since 2009 these high level statistics do not accurately describe the types of coach and bus services within the scope of this Regulation and due to the limitations described in section 4.3. it is not possible to use them to determine the size and trends of the international market for coach and bus services.

The number of enterprises operating bus and coach services in both national and international markets (not including urban or suburban services) grew by 11% since 2011 to 43,352 in 2013. Over the same period turnover grew by 4.0% EUR 35,234 million and employment decreased by 4.0% to 497,800 employees²⁷. In the study employment levels are estimated at 570,000 in 2008 decreasing to 550,000 in 2014 with a margin of error of $\pm 10\%$.

Although the time periods are different it is notable that both sources of employment information show decreasing employment levels and the trends remained stable for the periods with no visible change after the 4 December 2011 when the Regulation became applicable. This decline in employment may conceal a mixture of growing volumes and increasing productivity.

4.2. State of play

The Regulation lays down the rules for the authorisation of regular services. The Regulation also contains rules on cabotage operations, enforcement and penalties for infringements of its provisions, as well as rules covering administrative cooperation between Member States. The Regulation has applied since the 4 December 2011 and the state of implementation of these provisions is analysed below.

4.2.1. Community licences and authorisations for regular services

The Regulation introduces a more harmonised and standardised Community licence and certified true copy of Community licence in order to address the problems regarding the authenticity of these documents.

²⁶ EU Transport in Figures: Statistical Pocketbook 2015 (Eurostat, 2015)

²⁷ Estimated using EUROSTAT structural business statistics "*other passenger land transport n.e.c. (not elsewhere categorised)*". It is cautioned that this classification of economic activity is indicative as it includes more forms of land transport than coach.

At the end of 2014 there were a total of 35,659 carriers possessing Community licences in the EU-28 and 294,425 certified true copies in circulation²⁸. There were a total of 2,412 valid authorisations in the EU at the end of 2014.

Member States typically issue Community licences for periods of 5 years or 10 years. The total number of Community licences in the EU was on a slow upward trend between 2010 and 2014 with the amount of licences increasing by 3%. Over the same period the total number of certified true copies of Community licences increased by 15%.

Overall, no relevant problems were raised by stakeholders in relation to the Community licences. No issues have been identified with respect to the harmonised control documents, the implementation of which was meant to make it easier (and therefore quicker) to check licenses of non-resident carriers. However, with no comprehensive data on the number of cross-border services, or on the origin and destination of passengers using them, the study found that it is not possible to estimate the likely value of travel time savings.

The trend in the numbers of Community licences and certified true copies between 2010 and 2014 indicates that most of the growth has come from expansion and/or consolidation of operators, rather than an increase in the number of operators and that the sector has remained relatively stable in the face of recession and an indication of the responsiveness and flexibility of commercially focused operators across the EU.

The evidence suggests consistent growth in the international market since 2010 and against a backdrop of recession and slow recovery this indicates that international market liberalisation has supported the development of competitive and responsive international coach services.

The study found evidence of market entry and competition following the introduction of the Regulation (e.g. Flixbus rapid expansion into multiple markets along international corridors), although this is largely anecdotal and insufficient to demonstrate a causal relationship.

Reports from Member States, submitted in accordance with Article 28(2) of the Regulation, indicate significant growth in the number of authorisations issued and the number of valid authorisations. In 2013 Member States reported issuing 493 authorisations with 1331 valid at the end of the year. In 2014 the number of authorisations issued increased to 904 with 2412 authorisations valid at year end.

No relevant problems were raised by stakeholders in relation to the authorisation procedure for regular services. The study found that a number of stakeholders referred to delays with the application process but none provided evidence of a negative impact of these delays e.g. to either coaches or staff being kept idle and wholly unproductive.

4.2.2. Rules applicable to cabotage operations

The Regulation defines cabotage operations as either national road passenger services for hire and reward carried out on a temporary basis by a carrier in a host Member State, or the picking up and setting down of passengers within the same Member State, in the course of a regular international service.

There have been very few (24) cabotage operations reported on regular international services in 2014²⁹. There has only been one report of cabotage during a special regular service and only a few reports of cabotage during occasional services.

²⁸ A number of countries phased out national licences and (gradually) replaced them with Community licences.

No relevant problems were raised by stakeholders in relation to the rules applicable to cabotage operations. However, the report did indicate that national regulatory frameworks may impact on the approval of cabotage operations. For example, in 2013³⁰ the French competition authority (Autorité de la concurrence) argued that the system for authorising cabotage in France was inefficient and lacked transparency and, given that the French state is also the main shareholder of SNCF, proposed an independent regulator for the coach sector.

4.2.3. Enforcement and cooperation between Member States

Consistent information on the enforcement effort by Member States of compliance with the relevant provisions of the Regulation was very difficult to gather, only 15 Member States answered to the requests for this information within the study. Reporting required under the Regulation does not require Member States to provide information on enforcement operations or to collect and submit statistics on controls or penalties.

The provisions on mutual assistance of the Regulation require Member States to grant reciprocal assistance in the application and monitoring of the Regulation, and to exchange information via the national contact points.

No evidence was found to indicate that the enhanced legal provisions obliging Member States to act when requested to do so by another Member State when a carrier to whom it delivered a Community licence commits an infringement in another country is being applied in any Member State.

4.2.4. Other effects of the Regulation

Some stakeholders voiced concerns over the potential for operators to use vehicles that carry less than nine persons, including the driver, in order to avoid the application of the Regulation and the other legal acts concerning road passenger transport. However there is very little data to support or refute claims of the use of smaller vehicles.

The study indicates that a critical factor to the provision of new international services can be more general national liberalisation in one or more of the Member states involved. Once national markets reach a "critical mass", the barriers to operating international services are relatively small and it appears that national liberalisation has generated considerable new activity within the European coach sector. Coach operators and representative associations have called for further market opening in long distance collective land transport in EU Member States.³¹

Member States have adopted a number of approaches to how national markets, where they exist, are regulated, categorised and monitored. In different Member States, coach and bus service may variously be liberalised, a national responsibility, or a regional responsibility with varying degrees of liberalisation in different regions or urban areas. There is a general trend toward liberalisation of national markets across the EU. Member States that have recently lifted restrictions on access to the market for national regular services have witnessed

²⁹ Reported by Member States to the Commission in accordance with Article 28.2 of Regulation (EC) No 1073/2009

³⁰ Autorité de la concurrence, avis n° 14-A-05 du 27 février 2014 relatif au fonctionnement concurrentiel du marché du transport interrégional régulier par autocar

³¹ Proposal for a 2015-2025 Action Programme on doubling the use of collective land transport in the EU, European Citizens Mobility Forum 2015

significant growth in the demand for interurban bus and coach services. In Germany, since liberalisation on 1st January 2013, the demand for interurban bus and coach services has continued to expand. The number of passengers almost doubled in 2014 to 16 million, i.e. 12 million (+80%) national and 4 million (+160%) international. In Italy, after approximately one year of full liberalisation, services had grown by 38%. More recently, in February 2016, France has reported that in the first six months of its liberalisation of interurban services 1,300 direct jobs were created and about 1,500,000 passengers were transported throughout France.

The regulatory frameworks for national coach services vary widely between Member States. The regulatory frameworks also vary within Member States that have a regional, provincial or county level of government where there is often a subdivision of responsibility between national and other authorities. The frameworks can vary between regions, within regions between municipalities, and within municipalities between coach terminals or even between bus stops.

Emerging evidence from Germany³² and France³³ suggests that the demand for coach and bus services, especially regular services, has led to growth in passenger numbers both from new users and through mode shift. This has resulted in increased price competition and product differentiation. However, it has also revealed a shortage of terminal capacity in certain Member States such as Germany where stakeholders have reported that the rapid growth of services since liberalisation has exposed a shortage of capacity at existing terminals. Limited capacity was also revealed in Sweden and the UK where main terminals were found to be congested which limits the scope for new entry.

Finally, the study revealed a barrier to entry based on the issue of access to terminals. Discriminatory access to terminals is reported by the study in Austria, Czech Republic, France, Croatia and the UK. In some cases an operator may be denied access to a terminal owned or controlled by an operator of coach or rail services with which it may compete. This distorts the market for regular services as the denial of access to terminals interferes with service patterns and prevents coach and bus services from functioning effectively and from functioning with other modes of collective passenger transport as sustainable alternatives to private car use.

5. ANSWERS TO THE EVALUATION QUESTIONS

5.1. Relevance

Question 1: To what extent is the opening of the market for the international carriage of passengers and for cabotage operations as introduced by Regulation (EC) No 1073/2009 necessary and sufficient to address the pre-existing problems of fragmented internal market, discrimination, unnecessary administrative burden, and sub-optimal mix of passenger transport modes?

The assessment of relevance analyses the objectives of the Regulation and how well they still match current needs and problems. It also identifies if there is any mismatch in the relationship between the problems and the objectives of the intervention. This relationship is illustrated in Figure 1.

³² See https://www.destatis.de/DE/PresseService/Presse/Pressemitteilungen/2015/02/PD15_043_461.html

³³ See <http://www.lesechos.fr/industrie-services/tourisme-transport/021732923777-six-mois-apres-la-loi-macron-15-million-de-voyages-par-autocar-1203693.php>

In the EU separate national markets still exist for bus and coach services and the type of services which have been liberalised and the extent of liberalisation vary widely between Member States. Cabotage³⁴ is a special category of national operations and is explicitly provided for in TFEU Article 91(1)(b) as one of the elements to be laid down in order to implement a common transport policy. The objective is to create a liberalised road transport market by removing all restrictions that are based on the nationality of carriers or the fact that they are established in a different Member State to the one in which they are providing the service. Cabotage operations are defined in Article 2(7)³⁵ and the conditions for performing cabotage operations for each form of service are prescribed in Chapter V of the Regulation. The targeting of Chapter V of the Regulation on Cabotage means that the provisions are focused on the issue of cabotage and thus can be considered appropriate in that sense. The provision of passenger cabotage operations on international regular services is authorised as long as it is performed as part of an international service and does not meet the needs of an urban centre or conurbation, and the transport needs between it and the surrounding areas are not authorised cabotage operations.

The Regulation provides Member States the flexibility to satisfy specific market demand. It permits bilateral and multilateral agreements on the further liberalisation of and in particular as regards the authorisation system and the simplification or abolition of control documents, especially in border regions. There is one example, from 2003, of Member States using this possibility to further open the market. Denmark, Finland, Norway and Sweden signed an agreement abolishing the requirement for the journey form when performing occasional service in the Nordic countries. Stakeholders from these Member States have reported that the abolition of the journey form has reduced the administrative burden without causing any additional problems.

Discrimination of non-national providers

By abolishing most of the grounds for refusal relating to the relevant market (with the exception that the service would seriously affect the viability of a comparable public service obligation) and replacing them with grounds for refusal attributable to the applicant, the Regulation tried to address the problem of discrimination for the international carriage of passengers.

The risk of indirect discrimination was addressed through the standardisation and harmonisation of control documents. This aimed to make enforcement quicker when dealing with non-national coaches by simplifying the work of enforcement bodies. It removed doubt about the validity or authenticity of documents which leads to efficiency gains for operators and enforcement bodies.

The establishment of the conditions for performing cabotage operations enabled non-resident carriers to operate national road passenger services. However, as described in section 4.2.2., the cabotage penetration rate, which means the share of cabotage transport in total national transport of a country, has remained significantly low and does not appear to have increased as expected due to the implementation of the Regulation.

³⁴ The provision of services by non-resident carriers within another Member State is normally known as "cabotage".

³⁵ 'cabotage operations' means either: national road passenger services for hire and reward carried out on a temporary basis by a carrier in a host Member State, or the picking up and setting down of passengers within the same Member State, in the course of a regular international service, in compliance with the provisions of this Regulation, provided that it is not the principal purpose of the service;

Member States often still require establishment in their markets, even after liberalisation, and incumbent operators still benefit from direct restrictions on access to national markets for regular services.

Taken together, the problem of discrimination on grounds of nationality or place of establishment remains relevant but the objective has not fully addressed the problem.

Unnecessary Administrative Burden

The opening of the market has reduced the administrative burden associated with the authorisation procedure. The Regulation has made the authorisation regime more transparent and effectively reduced the regulatory costs for operators and authorising authorities. The study estimates that the standardised authorisation procedure may have reduced the operators' workload of completing applications to authorising authorities by the equivalent of between three and twenty-one full time equivalent members of staff. Furthermore, the Regulation simplified and standardised the Community licence as described in section 4.2.1 in order to reduce regulatory costs and delays, especially at road side checks. The disruption to coach operators and their passengers from inspections should be less, with potential for both journey time and reliability improvements. Due to the lack of comprehensive data on the number of international services it is not possible to estimate the likely value of travel savings.

However, there is evidence that administrative costs incurred by operators can be material and that administrative processes can delay entry. The requirements for authorisation of international services vary significantly by Member State and operators would welcome simpler and more efficient mechanisms for authorising new services. It is clear that there remains a need to address the problem of unnecessary administrative burden.

Sub-optimal mix of Transport Modes

The performance of coach and bus services has remained unsatisfactory. The objective of promoting bus and coach transport as a sustainable alternative to individual car transport was developed to encourage a modal shift from passenger car to coach services and therefore address the problem of sub-optimal mix of transport modes. Although there are some indications of a growth in the use of bus and coach services for international journeys the inter-urban coach and bus sector as a whole has failed to grow at a rate comparable to that of other transport modes the mix has not significantly changed.

Encouraging a modal shift from car to coach is a challenging objective and appears to have been over ambitious. From a passenger's perspective, travel by car is more flexible and convenient (since travel times are not constrained by a published schedule) and typically faster (since a car driver can select the quickest route and does not need to make intermediate stops) so changing modes would require a considerable behavioural change. Furthermore, the results of a Eurobarometer survey³⁶ confirms that persuading citizens who never use coach services to consider doing so is a considerable challenge. One fifth (20%) of those who never travel by coach actually say that no change to any aspect of coach travel would make them more likely to use coach services.

The objective taken in addressing the problem of sub-optimal mix of transport modes appears not to sufficiently address the needs of citizens. Whilst it is important to acknowledge that there is a sub-optimal mix of transport modes it is suggested that the main problem is that citizens with little or no access to cars or other transport modes, those that live in disadvantaged regions and those with reduced mobility all suffer from poor connectivity. A

³⁶ Special Eurobarometer 457 Report Coach Services March 2017

revised objective should be matched to the needs of these citizens who are deprived of connectivity. This should result in new services supplementing existing bus and rail networks and offering an attractive combination of alternative modes. It is suggested that a revised objective would be more relevant to address the needs of citizens without cars or who have little or no access to other transport modes so that they have an attractive combination of alternative modes of transport and therefore improving their access to employment, education and leisure opportunities across the EU.

Additional problems

During the course of the evaluation an additional problem was identified that is not being addressed by the Regulation. As described in section 4.2.4, carriers are being discriminated by terminal operators and do not have equal access to terminal infrastructure. The study indicates that Stakeholders in a number of Member States have complained of potential, or actual, abuse of dominance to limit access to terminals. In the public consultation 59% (90 of 153) of respondents agreed that this is a problem, with 39% (59 of 153) considering it a major problem. The lack of access to existing terminal infrastructure results in market distortions as they distorts service patterns (of the 39 companies that responded 31 consider it has a negative impact on the number of international and can increase costs for operators and passengers and 30 consider it has a negative impact on national services) and 74% (23 of 31) of companies consider that this results in administrative costs for carriers. Another impact of this problem is insufficient integration of coaches with other transport modes.

Conclusion

Based on the 2011 White Paper as well as the above analysis, it can be concluded that fragmented internal market for coach and bus services remains a problem today. Whilst there is no evidence of any significant differences in the rules on access to the international market, the persistence of separate national markets impede integration and undermine efficiency by imposing high administrative burdens on coach and bus services. Hence, the objective of opening the market for the international carriage of passengers and for cabotage is still relevant to the problems identified.

The different rules on access to national markets in Member States, the requirement for establishment in the Member State and the low number of cabotage operations indicates that the objective to open the market remains relevant to address the problem of non-national providers being discriminated by Member States. The opening of the market remains a relevant objective to reduce the administrative burden that results from what was considered a cumbersome authorisation regime.

The objective taken in addressing the problem of sub-optimal mix of transport modes appears not to sufficiently address the needs of citizens. It may be more relevant to enhance the accessibility of coach and bus services to address the needs of citizens without cars or who have little or no access to other transport modes. The provision of attractive alternatives would alter the mix of transport modes and as coaches and buses are the lowest emitter of CO₂ it would continue to fit with the European Strategy for Low-Emission Mobility³⁷.

In summary, the original operational objectives of the Regulation are still relevant to meet the problems of a fragmented internal market, discrimination and unnecessary burden. However objective addressing the sub-optimal mix of transport modes is not sufficiently addressing the needs of citizens and should be revised. The regulation works alongside other legislation as

³⁷ A European Strategy for Low-Emission Mobility {SWD(2016) 244 final} Brussels, 20.7.2016, COM(2016) 501 final

part of an integrated approach (see section 5.4) and their objectives support the EU goals. Unequal access to terminals was identified as a problem that is not addressed by the original objectives.

Question 2: Are the objectives of Regulation (EC) No 1073/2009 still relevant considering the evolution of the market, the present transport policy priorities and the successive enlargements of the EU?

Transport Policy Priorities

The ultimate aim of the EU transport policy remains the creation of a single European transport area, to help the EU stay competitive by optimising the performance of the entire transport sector for the benefit of all. Progress towards opening up the market for road passenger transport services has been slow. The Impact Assessment accompanying the 2011 White Paper on Transport³⁸ found that the level of integration of the EU transport market remains low in comparison to other parts of the economy and that a genuine EU-wide internal market exists only in air transport, while other transport modes, including road, suffer from different degrees of fragmentation along national borders. It also found that cross-border transport and competition in national markets is hindered by protectionist regulations or attitudes, often defending the interest of incumbents and restricting foreign operators and new market entrants access to national markets.

As described in the study, the absence of applicable common EU rules for national regular services has enabled the emergence of different national models and has caused a patchwork of regulatory frameworks and the persistence of a fragmented market. The objective of opening the market and preventing discrimination therefore remains relevant and fits with the deeper and fairer internal market priorities of the Juncker Commission.

The 2011 White Paper describes the Commission's vision for a competitive and sustainable transport system and the need for the consolidation of large volumes of passengers over long distances is publicised. This implies greater use of buses and coaches, rail and air transport for passengers i.e. collective transport.

Although curbing mobility is not an option there are other policy priorities that must also be considered, e.g. the greenhouse gas emissions of transport are to be reduced by 60% by 2050 compared with 1990 levels and the number of road fatalities is to be halved by 2020 compared with 2010, with a vision of close to zero road fatalities by 2050.

The case for greater use of collective transport is reinforced by: the European Energy Union's aim of a sustainable, low-carbon and climate friendly economy that is designed to last³⁹; the COP 21 Agreement's aim to peak global emissions as soon as possible and achieve a balance between man-made emissions by sources and removals by sinks of greenhouse gases in the second half of this century; and with the European Strategy for Low-Emission Mobility.

The 2011 White Paper and the European Strategy for Low-Emission Mobility aim at an efficient core network for multimodal intercity travel and transport. To develop the core network there is a requirement for greater integration of the modal networks. For the

³⁸ SEC(2011) 358 final, Impact assessment, Accompanying document to the White Paper Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system, 28.3.2011

³⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A policy framework for climate and energy in the period from 2020 to 2030, /* COM/2014/015 final */

integration of bus and coach services into the network these services must have equal and non-discriminatory access to terminals. As mentioned in Section 6.1., the original objectives of the Regulation do not address this problem of discriminatory access to terminals and the lack of integration of coach and bus services into the multi-modal networks may be a constraint on the development of the coach and bus market as well as other forms of collective transport.

EU enlargement

Croatia became the 28th Member State on 1 July 2013. This has been the only enlargement of the EU since the entry into force of the Regulation and although its accession led to the growth on the internal market and the introduction of an additional national regulatory framework it has had no discernible impact on the relevance of the objectives of the Regulation.

Market developments

As mentioned in section 4.2.4, there has been a general trend toward liberalisation of national markets for regular services across the EU. This has resulted in significant growth in demand for national and international interurban coach and bus services e.g. Germany⁴⁰, France⁴¹, and Italy⁴². However, the study found that the types of service and the extent of liberalisation have continued to vary widely between Member States making it difficult for carriers to exploit the full potential of operating in an Internal Market. The public consultation indicates that stakeholders consider the patchwork has a significant negative impact on administrative costs for carriers, compliance costs for carriers and the number of national regular services.

These market developments have resulted in new operators facing barriers to entry. It is difficult to determine the effect of these barriers because their scale and impact vary significantly between markets but the study found clear evidence that the development of services is being unduly constrained in some markets (AT, CZ, DE, ES, FR, HR, IT, SE, SK & UK).

The evidence indicates that number and diversity of regulatory frameworks across the EU deters coach operators from providing international services. This is confirmed by the public consultation in which all stakeholder groups agreed that the patchwork has a negative impact on the number of international regular services. The majority of all stakeholders in the public consultation also agreed that the patchwork has a negative impact on administrative and compliance costs.

The study found that access terminals can be a barrier to entry. The majority of terminals provide a range of services and onward connectivity making them particularly attractive and important for operators of long-distance coach services. It also found evidence that in some Member States operators suffered from discriminatory access, abuse of dominance, or constrained capacity when accessing terminals. These restrictions distort service patterns and can increase costs. The problems are accentuated in newly liberalised countries (e.g. Germany and France) as a result in the increased demand for coach and bus services. The lack of access

⁴⁰ Fernbusmarkt wächst weiter: 25 Prozent mehr Linien seit Beginn des Jahres. IGES Institut Berlin 9 November 2015 www.iges.com

⁴¹ Communiqué de presse N° 1073 www.economie.gouv.fr Paris, le 15 décembre 2015

⁴² The liberalisation of Italian long distance bus market. First results, opportunities and threats. Beria P., Laurino A., Bertolin A., Grimaldi R. (2015)

to terminals restricts the use of multimodal connection platforms and may impede the development of an efficient core network for intercity travel. This problem prevents the development of multimodal passenger transport chains and may be constraining the coach and bus sector from providing services that would capture modal share from passenger car.

One stakeholder in the public consultation commented that it is unclear how to classify commercially viable on-demand services managed through an App or through digital platforms and that innovative services are not able to fit with the present regulatory framework.

Conclusion

In summary, the original objectives remain relevant as the internal market remains fragmented and there remains a sub-optimal mix of passenger modes but this problem needs to be redefined. Although the intervention does not aim at integrating national markets for regular services, the national markets are recognised as a critical factor in the provision of international services and the evolution of the market, in terms of different and divergent rules on access to national markets in Member States, is a problem that was not previously apparent or considered when the intervention was designed.

The objectives were not aimed at the problem of discrimination in access to terminals. This introduces administrative and compliance costs for operators and hampers the possibility to develop an efficient core network for multimodal intercity travel. In the Member States where the networks of regular services are restricted citizens may be denied access to affordable services and forced to either curb their mobility or use less efficient (combination of) modes, e.g. passenger cars. This is likely to be negatively impacting on the mobility of EU citizens. The evolution of the market has made visible the transport needs of citizens as is evident from the significant growth in demand witnessed in the recently liberalised Member States but it is not clear how new and innovative services, such as on-demand services managed through an App or digital platform can fit within the present framework.

5.2. Effectiveness

Question 3: To what extent has the Regulation led to the establishment of a true internal market for bus and coach services?

The establishment of an internal market for coach and bus services involves the removal of barriers to market access and any other technical and administrative barriers that generate bottlenecks. This also often requires the streamlining of national differences which can cause distortions of competition. The assessment of effectiveness analyses how successful the intervention has been in achieving or progressing towards the objective of a true internal market for coach and bus services.

Progress towards an Internal Market

Progress towards removing all restrictions on access to the internal market for road passenger transport services has remained slower than other modes of passenger transport and also slower than road haulage. The following markets remained closed for bus and coach services:

- national regular services which are not performed as part of a regular international service;
- urban services;
- suburban services.

Since the Regulation became applicable in 2011, the reports, submitted in accordance with Article 28(1), from Member States indicate a relatively slow upward trend in the number of carriers holding a Community licence for road passenger transport, from 34,959 in 2011 to 35,077⁴³ in 2014. Romania is the Member State that reported the largest increase to the number of Community licences held between 2010 and 2014 (700 licences) which reflects the trend in coach demand which increased by 16% over this period. It is also notable that during this period Romania also opened its national market for coach and bus services based on the principles of non-discriminatory and free competition.

The increase in the numbers of certified true copies of Community licence held in the EU-28 of 11.4% between 2011 and 2014 suggest that growth has come from expansion and/or consolidation of operators, rather than an increase in the number of operators. However, as a number of Member States phased out national licences and replaced them with Community licences, and as the licences are in practice permissions granted rather than services operated, caution should be exercised whilst drawing conclusions from these statistics.

The study found evidence of substantial annual growth (2009-2014) in international passenger numbers in a certain Member States, notably Czech Republic, Estonia and Poland. The available data on international coach passenger-kilometres echo the trends in number of passengers with growth in Poland and Estonia being similarly strong.

This evidence taken together indicates that the market for international coach and bus services has expanded between 2009 and 2014 with market entry and competition following the introduction of the Regulation. However, it has proved difficult to find evidence that directly links increase in activity to the introduction of the Regulation and some of the evidence is largely anecdotal and insufficient to demonstrate a causal relationship as described in section 4.2.1.

The available data indicates that opening the market has had little impact on the cabotage penetration rate whether for regular, special regular or occasional services. However, as described in section 4.2.2., this low number may be due to the manner in which cabotage operations are monitored. On the other hand, during the study operators reported that there is an administrative barrier associated with regular services cabotage operations as the operator is often required to prove that a cabotage operation is not the principle purpose of the service.

There is conclusive evidence that the liberalisation of national markets in combination with the liberalisation of international services created a favourable environment for the expansion of coach services at national and international level. The opening of national markets for regular services in countries such as Italy, Germany and France that followed the liberalisation of international services triggered the expansion of some transport operators and enhanced the provision of new international services. It appears that once a national market for regular service is established, operators may choose to exploit their national position through offering services to neighbouring countries.

The study indicates that for example following the liberalisation of the German coach market in 2013, start-up FlixBus expanded rapidly within the German market, most notably through merging with competing start-up MeinFernbus. In addition to operating international routes to Denmark, Sweden and Belgium from Germany, the company has begun a programme of internationalisation through entry into other national markets. Since July 2015, FlixBus has

⁴³ This excludes the statistics from Croatia as they were not part of the EU in 2011. Inclusion of the Croatian statistics increases the 2014 total to 35,659.

entered the Italian, French and Dutch markets and expanded its international route network to serve these countries. Of particular note is its introduction of international services which do not have an origin, destination or intermediate stop within Germany. The Regulation is likely to have enabled FlixBus's rapid expansion into multiple national markets along international corridors.

Barriers to the internal market

The evidence presented in the study suggests that some barriers to the internal market still exist. Operators have reported that the administrative barriers to operating international regular services remain high and the authorisation procedure causes a bottleneck as there is a lack of clarity and diverging interpretations concerning the authorising procedure and some Member States unnecessarily delay authorisations by the maximum period permitted. They also reported that the administrative barriers for cabotage operations remain high with unnecessary burdens on these types of services due to Member States requesting operators to provide further information which they deem relevant in support of the application for authorisation. There is some evidence in the study indicating that this burden is often linked to national requirements and these national burdens may mask the scale of benefits delivered by the Regulation.

Whilst the evidence indicates that international coach services have expanded since the entry into force of the Regulation with stronger growth in international markets relative to the overall market and an increase in cross-border competition there are a number of reasons (e.g. accession of Croatia, national liberalisation, operator expansion and consolidation and the effects of European Regulation) that make it difficult to apportion the growth between these various factors.

The evidence presented in the study suggests that the patchwork of national regulatory frameworks presents an administrative barrier to the operation of international services and the range of access arrangements deters national coach operators from providing international services. The flexibility for Member States to organise the conditions for national transport services has resulted in separate national markets which is contrary to the establishment of a true internal market. This patchwork disproportionately affects SMEs which have limited resources with which to develop EU-wide business strategies. SME's may act in partnerships, groups or alliances if it enables them to offer a more effective network.

Member States may organise the conditions under which these transport services can be provided in their jurisdiction and this has resulted in the patchwork of regulatory frameworks. As operators require establishment in a Member State in order to provide international services these patchworks create differences between Member States and divergent implementation of the provisions of the Regulation. This results in an administrative barrier that negatively impacts on the extent to which the regulation has opened. In the public consultation companies reported that the requirement to be established has significant negative impacts in terms of administrative costs (81%; 29 of 36) and compliance costs (53%; 18 of 34) but the extent of the impact is unclear.

Most Member States require operators of national regular services to be locally established creating an administrative and technical barrier. Although the Regulation provides the possibility for Member States to decide that the Community licence is also valid for national services and removes this administrative barrier there is no evidence that Member States have availed of this provision.

The study maintains that international coach operators may face barriers at national, regional and local levels through lack of suitable facilities or either compulsory use of, lack of capacity at, or difficulties in obtaining access to, suitable terminals.

Conclusion

Without doubt, the elimination of the special protection provided to incumbent road passenger transport operators and railways in Regulation 684/92 has opened the international market to cross-border competition and progressed towards the establishment of a true internal market for bus and coach services. The available data broadly indicates that market opening has resulted in growth in the number of operators, numbers of passengers and the number of services; however it is difficult to determine the exact growth that can be attributed to the Regulation in isolation. The authorisation procedure became more transparent and it now favours operators as there are fewer possibilities for refusal of applications for services.

The patchwork of national regulatory frameworks undermines competition and hinders the development international services and of a true internal market and also introduces administrative costs but the extent of the impact is unclear. The requirement for local establishment acts as an administrative and technical barrier. Market opening has had little impact on cabotage operations and the market penetration for all types of bus and coach services appears to have remained persistently low although with the caveat that the data is not considered very robust. Member States have not availed of the opportunity for further liberalisation provided for in the Regulation.

Although the Regulation has resulted in further progression towards, it has not lead to a true internal market for bus and coach services and the study provides clear evidence that the development of services is being constrained in some markets, including the international market, by barriers. The persistence of these barriers is contrary to the establishment of a true internal market.

Question 4: To what extent has the intervention enhanced fair competition including non-discriminatory access to all the markets covered by the provisions of the Regulation?

The Regulation aimed at enhancing fair competition including the prevention of discrimination.

Promotion of fair competition

The Regulation aims at promoting fair competition which implies an open market and a level-playing field in order to provide carriers with equal conditions for operating. This requires that carriers from all Member States be guaranteed access to international transport markets without discrimination on grounds of nationality or place of establishment. Fair competition is a key principle to achieve the benefits of liberalisation such as the provision of choice and value for money for consumers whilst supporting quality, productivity, efficiency and innovation in the road passenger transport sector.

Access to markets

There is some evidence of negative impacts of the intervention on competition. In the context of the ex-post evaluation there have been a number of complaints included in submissions from operator representative bodies and operators about persistent anti-competitive practices. One large European operator representative body maintains that the patchwork of national regulatory systems across the EU enables operators in protected markets to remain insulated from competitive forces introducing the risk that they use profits to develop business on markets which are open to competition, (e.g. international regular services), and this also introduces the risk of dumping. Furthermore, there is no reciprocity of opening of markets

across Member States which causes imbalances between Member States and continued fragmentation of the internal market.

For instance, carriers may remain protected against competition on their historic market and can use the profit to develop business on markets which are open to competition leading to unfair competition between carriers. In similar fashion, a carrier operating in a host Member State is permitted to pick up and set down passengers in that Member State in the course of a regular international service provided that this is not the principal purpose of the service. In contrast, a carrier established in that same Member State may be refused permission to operate a line on the same route. Accordingly, national carriers do not have a level playing field with carriers from another Member State.

Operator representative bodies and some operators also claim that national carriers do not have a level playing field with carriers established in other Member States whilst both are operating international regular services. National carriers may be prohibited from picking up and setting down passengers on a line in their country of establishment (even if this part of the service is part of an international regular service) whilst a carrier from another Member State may be authorised to operate this service. The Regulation prescribes the conditions to pick up and set down passengers within a Member State but Article 15(c), on cabotage, explicitly gives this right to operators not established in the host Member State. Carriers operating within their Member State of establishment cannot invoke this provision to provide such services. Whilst this is not incompatible with EU law operators have reported that these circumstances create an unlevel playing field.

On the other hand a large pan-European operator reported that the regulation has caused important positive outcomes and that the enhanced fair competition and has resulted in lowered prices, improved quality, increased standards and delivered a better overall product to the market. Furthermore it believes that it has fostered employment and economic growth. The study also identified limited evidence that market liberalisation placed competitive pressure on the evolution and dynamics of coach fares.

Access to Terminals

The study indicates that carriers may be denied access to terminals in certain Member States (e.g. Austria, Czech Republic, France, Croatia, & the United Kingdom). The public consultation indicates that discrimination in access to terminals is a problem with 59% (90 of 153) stakeholders agreeing including the majority of all stakeholder groups. Terminals are vital links in the mobility chain and essential infrastructure required to consolidate large volumes of passengers for transfers over medium to long distances. The refusal of terminal operators to provide access to coach operators limits capacity in the market, denies competitors access to the market and distorts service patterns. While coaches are discriminated from accessing terminals they cannot integrate effectively into the door-to-door mobility chain. Notably, denying coach and buses access to multi-modal terminals significantly reduces the possibility to create an efficient core network for multimodal intercity travel and the potential for optimising the performance of all resource-efficient collective modes of transport. Examples of discriminatory access to terminals include France where the only suitable terminal space in many towns and cities is the railway station operated by SNCF, which may refuse access to potential competitors. A further example is Croatia where many terminals are operator owned and they may deny access to potential competitors.

The study also suggests that terminals can be a barrier to entry where no discrimination or abuse exists but capacity is constrained. This is the case in Stockholm (Cityterminalen), London (Victoria Coach Station) as they suffer from congestion. It is also the case in Germany where there has been widespread lack of terminal capacity since liberalisation.

Complaints about unfair competition and discriminatory practices

The Commission has not received complaints about unfair competition or discriminatory practices for regular services or occasional services since the implementation of the Regulation. However the Commission received one complaint about discriminatory practice on a special regular service. The complaint focused on the interpretation of the temporary character of the provision of these services. However this had previously been clarified by the Commission "*The expression 'on a temporary basis', contained in Article 2(7) of Regulation (EC) No 1073/2009 is not relevant for the authorised cabotage operations mentioned under (a) and (c). In practice, it concerns only occasional services mentioned under (b) to be performed 'on a temporary basis', which is necessarily the case, given the nature of the latter services. In this limited part of the market (occasional services), the legislator decided to leave to the Member state the definition of what they consider to be 'services carried out on a temporary basis'*"⁴⁴.

Prior to the implementation of the Regulation the Commission had to act as arbitrator in the authorising procedure for regular services on several occasions⁴⁵. Since its implementation there has been no referral of an application to the Commission by an authorising authority. The absence of referrals implies a positive impact of the intervention and there appears to be an increase in the authorising authority ability to make a decision on applications due to the improved clarity and the abolishment of some of the grounds for refusal.

Conclusion

In summary, the available evidence indicates that the Regulation is partially effective and that it has had a mixed impact on enhancing fair competition. The market remains fragmented causing imbalances between Member States and unfair competition between operators. Also, there is evidence that operators are denied access to and are discriminated from accessing terminals causing problems in areas such as service patterns, interchanging to other coach and bus services, transfers to other collective modes of transport, and accessibility for persons with reduced mobility.

Question 5: Has market opening of bus and coach services contributed to a shift from other passenger transport modes (individual car transport, rail transport and aviation) and hence led to an increase in the use of bus and coach services? In case a shift took place, is it in line with overarching EU transport policy goals?

The Regulation aimed at promoting bus and coach transport as a sustainable alternative to individual car use. The ideal situation, as incorporated in overarching EU transport policy, is for bus and coach services to operate in competition with individual car and complementary to other forms of collective transport modes such as rail and airlines.

General trends in passenger transport

As indicated in Section 3.3 and in the study, the limitations in high level statistics mean it is not possible to determine the size and trends of the international market for coach and bus services.

Between 2009 and 2014 individual car transport decreased by 2.1%. The decrease mainly affected EU-15 countries, with a total decrease of 3.1%, whereas car transport in the EU-13

⁴⁴ Reply to Parliamentary question E-011304/2013 on 22 November 2013.

⁴⁵ OJ L 33, 6.2.1999; OJ L 222, 7.8.1992; OJ L 272, 21.9.1989; Commission Decision of 11 November 2010 on a dispute between Germany and Romania on the authorisation of regular international services (not published in the OJ).

grew by 4.6%. Notably there are considerable differences between countries during this period. The demand for individual car transport increased significantly in some countries e.g. Poland 16.6% and Bulgaria 10.9%. This strong growth could be due to the much lower levels of car ownership and use compared to the EU-15 at the start of this period. On the other hand, it decreased significantly in others e.g. Italy 16.8%, Czech Republic 10.6% and Spain 9.7% which may be a result of the economic downturn.

Analysis of the other relevant forms of passenger transport reveals increases in demand. Rail passenger transport volumes grew by 5.1%. Whilst growth was significant in the EU-15 at 6.7% the EU-13 recorded a similarly significant decrease in demand of 7.4%.

Air passenger transport volumes increased by 11%. However, it should be noted that traffic volumes in 2009 had fallen to record lows with a decrease of 6.9%.

Modal Shares in passenger transportation

The role and competitive traits of coach or bus services have not been studied as intensively as other modes of transport⁴⁶. The study found that the provision of coach services, and their relative success, generally depends on the characteristics of competing modes including car, rail and air. The factors considered by passengers when deciding on which mode to choose are usually distance, travel time, frequency, price and purpose of journey. Competition between modes is particularly relevant for distances between 300 km and 700 km, as it seems to be the only segment for which coach and bus services compete with car, trains (conventional and high speed) and planes⁴⁷. A review of some recently published reports indicates that coach and bus services may compete more with passenger car than other modes of transport for intercity transport.

For example, the French authorities, in their review of the interurban bus market 6 months after liberalisation of the national market for coach and bus services, found that the interurban bus services were competing more with car and carpooling than with rail⁴⁸. In Italy a recent study found that long distance coach and rail transport are basically complementary, and coach services often fill the qualitative and quantitative gaps of the rail⁴⁹. Finally, in Germany the intercity coach market grew by 25% in 2015 compared to 2014, with a significant proportion of demand transferring from less sustainable modes including the private car. There are major differences between data with regard to which means of transport were used by coach customers before the coach market was liberalised. In 2013 the Federal Office estimated that 10-15% had previously travelled by rail but some surveys put this as high as 30% from long distance rail. It is estimated that 38% of passengers previously used car. It should also be noted that since rail had almost no competition prior to the liberalisation of the

⁴⁶ EEA Report No 7/2014, Focusing on environmental pressures from long-distance transport, TERM 2014: transport indicators tracking progress towards environmental targets in Europe

⁴⁷ Kågeson, P., 2009, *Environmental Aspects of Inter-City Passenger Transport*, Discussion Paper 2009-28, OECD/ITF, Paris.

⁴⁸ Autocars interurbains : un bilan après 6 mois d'ouverture, La note d'analyse, France Stratégie, Février 2016

⁴⁹ Long distance coach transport in Italy: state of the art and perspectives. Paolo Beria and Ra aele Grimaldi and Antonio Laurino, Politecnico di Milano, February 2013

coach market, it seems obvious that a large proportion travellers would have previously used rails as well as private transport⁵⁰.

In terms of modal share the high level trends have remained generally stable between 2009 and 2013. The decrease in individual car transport has been very modest from 73.5% to 72.3%. This has been to the benefit of rail, which increased by 0.4 percentage points %, to 6.6% and air which increased by 0.9 percentage points to 9%. Between 2009 and 2013 buses and coaches lost 0.1 percentage points of market share and in 2013 it had an 8.1% share. This is not a new trend as it has been continuing to lose market share at a very slow rate since 1992 when its share was 9.4%. However, the study found broad indications of an increase in international passenger numbers across Europe, although this headline trend hides significant variation by Member State. As such, the study estimated that international coach passenger numbers grew by 40-60% and that international coach passenger-kilometres grew by between 0-40%, between 2009 and 2014.

Conclusion

EU policy aims at greater numbers of travellers being carried jointly to their destination by the most efficient and low emissions (combination of) modes of transport and passengers making greater use of bus and coach as part of the core network for multimodal intercity travel. Although the numbers of passengers using international regular services has increased there is no data available that indicates any significant shift from passenger car to buses and coaches, during the reference period but any shift could be masked by the difference in relative volumes of passengers between the two modes. The potential for coach and bus to shift passengers from car is apparent from observing the recent evolution of the Italian, French and German markets where there is data available that shows growth in the coach sector has resulted in a significant number of passengers shift from cars.

Question 6: To what extent has the Regulation had an impact on the quality, reliability and price of the services?

Quality and reliability of services

Attractive frequencies, safety, comfort, easy access, reliability of services, and intermodal integration are the main characteristics of service quality. The availability of information over travelling time and routing alternatives is equally relevant to ensure seamless door-to-door mobility, for passengers. These are the expected outcomes of increased competition as a result of opening the market for the international carriage of passengers and for cabotage operations as introduced by the Regulation.

The study provides evidence of growth in the international market and increases in the frequency and number of services for regular international services since the implementation of the Regulation as described in section 4.1. However, it is difficult to draw firm conclusions on the basis of the limited data available and there is little evidence to suggest that this growth is caused by the implementation of the Regulation.

The study indicates that the standardisation of documents across all 28 Member States is likely to have reduced the disruption to coach operators and their passengers from inspection with potential for both journey time and reliability improvements. However, with no comprehensive data on the number of cross-border services, or on the origin and destination

⁵⁰ Marktbeobachtung Güterverkehr, Marktanalyse des Fernbuslinienverkehrs 2014, Bundesamt für Güterverkehr Dezember 2014

of passengers using them, it is not possible to estimate the likely value of travel time savings or reliability improvements.

In terms of safety, the number of people killed in these accidents in the EU fell from 964 in 2009 to 736 in 2013, a fall of almost 24%. This trend of decreasing the number of fatalities extends back to 2004 when 1,437 people were killed. For comparison, over the same period fatal car accidents reduced from 24,334 in 2004 to 11,838 in 2013. The portion of fatalities in accidents involving buses and coaches has remained relatively consistent at about 3%⁵¹.

Bus and coaches remains one of the safest modes of transport. Comparisons of fatality risks for travelling passengers (occupants) across the different modes of land transport reveals that a rate of 0.16 fatalities per billion passenger kilometres (2009-2014) which is only slightly behind rail 0.14 and is considerably lower than car (2.28) or powered two-wheeler (37.5)⁵². Coach and bus therefore remains one of the safest modes of transport. The fatality risk of a bus and coach passenger is comparable to the risk of a railway passenger (see Table 4).

Table 4: Fatality risk of passengers using different modes of transport (EU-27 in 2008-2012)⁵³

Transport mode used by user	Fatalities per billion passenger kilometres (2009-2013)
Airline passenger	0.01
Railway passenger	0.14
Bus/Coach passenger	0.16
Car occupant	2.28
Powered two-wheelers	37.50

Over the past 15 years, successive EU road safety action plans have been implemented by the European Commission and Member States, with support from the EU institutions. The EU interventions which are likely to be influencing current road safety outcomes the most are legislative initiatives adopted before 2011 in motor vehicle design and safety equipment: electronic stability control systems in cars and trucks; advanced and anti-lock braking systems in motorcycles; daytime running lights in powered two-wheelers, cars and trucks and pedestrian protection⁵⁴. Although the evidence indicates that there have been significant improvements in safety it is impossible to establish a link between the Regulation and these improvements due to the wide variety of factors and actions that influence road safety.

Comfort level is another characteristic of service quality and is one of the top criteria affecting customer satisfaction. Stakeholders reported that the comfort level on coaches continues to improve but this cannot be directly attributable to the Regulation. In addition to providing air conditioning and WC facilities, they report that customers are often provided with reclining seats, free Wi-Fi, touch screen multi-media devices, power supplies. The average age of a

⁵¹ Traffic Safety Basic Facts 2015, Heavy Goods Vehicles and Buses

⁵² EU transport in figures (Statistical Pocketbook)

⁵³ EU transport in figures Statistical Pocketbook 2015

⁵⁴ Road safety study for the interim evaluation of Policy Orientations on Road Safety 2011-2020

coach provides an indirect indication of the quality of the services provided in terms of comfort levels as well as safety and environmental performance. There is very little data available regarding average fleet age or fleet quality. However, the available vehicle registration data suggests that the demand for coach vehicles has been remarkably stable through time, despite the 2008 economic downturn.

Terminals have an important role in the quality of services as the facilities in terminals are linked with comfort, easy access and intermodal integration of bus and coach services. The range of facilities and onward connectivity which the majority of coach terminals provide makes them particularly attractive (and important) for operators of long distance coach services where catchment areas for access and egress may be large, and where the propensity for passengers to interchange between services is greater.

The provision of terminals across Member States remains variable. While some Member States (CY, EL, HU, RO) appear to consider it to be an integral part of the responsibilities of competent authorities, others (BE & FR), have no systematic provision of terminals. The attitude toward the protection of customers from the weather appears to depend on local expectations. The study reports that the location of terminals varies. Many of them are located in city centres but this is not always the case for a variety of reasons such as the population density of historic city centres or active decisions by authorities to place the terminal on an urban periphery. Terminals are generally well connected to local bus services. Connection to rail and metro is more variable. With the exception of Germany, as a result of recent rapid growth of services, many terminals appear to have adequate capacity for current services, particularly if they were built at times when car ownership was lower.

There is no evidence that the location, accessibility or range of services of terminals has been impacted by the Regulation. However, there is evidence that the recent liberalisation of some national markets has impacted significantly on the availability of terminal services. For example the conditions and siting of terminal infrastructure is viewed as a major obstacle to the development of the market in Germany where stakeholders have reported that the rapid growth of services since deregulation has exposed both a shortage of terminals and a shortage of capacity at existing terminals⁵⁵.

Price of services

Evidence presented in the study suggests that average coach fares vary widely between routes in different Member States. In the EU15, there is often a wide range between highest and lowest coach fares and coach is normally cheaper than rail. In the EU13 coach is more expensive than rail. Most international coach services are cheaper, on a fare per kilometre basis, than the equivalent rail service. This may be because rail often offers faster journeys and can therefore act as a market 'price-maker'. However, in two corridors between Romania and Hungary, and Bulgaria and Greece, coach fares are between two and three times the equivalent rail fare, despite average speeds being similar between modes. In this case it is likely that there are additional factors such as service frequency and quality which permit coach operators to charge a much higher fare.

Where one mode offers more frequent and faster services, the other may have the characteristics of an "inferior good" and have to accept lower fares. Nonetheless, coach operating costs are often less than those of rail, and coach fares can be less than EUR 0.05 per kilometre. At long distances, where air services are available, coach services can attract passengers by not charging for heavy baggage, and may be viable when rail services are not.

⁵⁵ Bundesamt für Güterverkehr, Marktbeobachtung Güterverkehr - Bericht Herbst 2014 www.bag.bund.de

Conclusion

The available evidence indicates that the quality of service has improved in terms of frequency, availability, safety and comfort levels but there is little evidence that this growth is caused by the Regulation. The Regulation has had no impact on the level-of-service in terms of terminal standards and facilities. Finally, market liberalisation has placed some competitive pressure on the evolution and dynamics of fares but it has not been possible to determine the extent of the impact of the Regulation due to the lack of time series data on fares or yields. Using a sample of international coach services originating in different Member States the study finds that at long distance, air may be the main mode, but coach operators can offer fares as low as EUR 0.05 per kilometre. Most international services are cheaper than the equivalent rail service. However, where one mode offers more frequent and faster services, the other may have the characteristics of an 'inferior good' and have to accept lower fares.

Question 7: To what extent has the Regulation brought unwanted or unexpected effects?

As mentioned in section 2.1, the Regulation is to a large extent a recast of two pre-existing pieces of legislation in order to make the rules clearer and simpler. It is therefore not surprising that stakeholders have not reported that they have suffered from any unwanted negative experiences.

However, the stakeholders have indicated, in the fact finding study, the public consultation and through complaints to the Commission, that the Regulation has had some unexpected effects as a result of the design and/or implementation of the regulation which mainly stem from unclear definitions and certain provisions.

Effects caused by unclear definitions

The definition of 'international carriage', as prescribed in Article 2 of the Regulation, does not include closed-door tours. Closed-door tours are a specific type of occasional service where a previously assembled group of passengers are returned to the location from which they departed. However, if this tour visits other Member States before returning to its Member State of departure the Regulation does not define this as international carriage. It is noted that this type of service was included in the EU legislation that preceded the Regulation and was exempted from authorisation. The international character of this type of service is demonstrated by crossing the border into a different Member State.

This ambiguity results in different interpretations of whether this type of closed-door tour is within the scope of the Regulation which leads to legal uncertainty for operators and enforcement authorities. Member States have raised this issue through the SOLVIT and operator associations have also confirmed that varying interpretations causes difficulties for their members, especially during inspections.

There is also an unclear definition of 'regular services', as regards the requirement to have at least one stopping point along the route of the journey. Some countries require at least one intermediate stopping point while others do not. For example, the United Kingdom considered that to be classified as a regular service the service must have at least one stopping point along the route of the journey.

Effects caused by unclear provisions

It is unclear if the certificate for own-account operations, issued in accordance with Article 5(5) is intended only for the holders of a Community licence. The requirement to have a Community licence places a considerable regulatory burden on own-account carriers. This provision is interpreted differently by Member States and has been the subject of many enquiries to the Commission. On the one hand, Article 4(1) states that the international

carriage of passengers by coach and bus shall be carried out subject to a Community licence. This does not distinguish between carriers operating for hire and reward or by own account operators. On the other hand, Article 5(5) does not state that the certificate can only be issued to own-account operators in possession of a Community licence. Article 2(2) permits own-account carriers to carry out transport services if authorised in the Member State of establishment. It does not require own-account operators to possess a Community licence in order to carry out transport services. In Article 3(b) there is a requirement for a carrier carrying out transport services for hire or reward to satisfy the conditions laid down in accordance with Community rules on admission to the occupation of road passenger transport operator in national and international transport operations. In Article 3(2), which regulates own-account operators, there is no such requirement. The model of the Community licence provided in Annex II states “*the holder of this licence is authorised to carry out international carriage by road for hire or reward...*” which indicates the Community licence is not required for own-account operations. In Regulation (EC) No 361/2014, Article 9(2) requires that undertakings requesting certificate to provide the issuing authority with evidence or an assurance that the conditions laid down in Article 2(5) of the Regulation. Neither of these articles requires the undertaking to be in possession of a Community licence. And finally, Annex V of Regulation (EC) No 361/2014 provides the model for the certificate issued for own-account transport operations by coach and bus between Member States on the basis of the Regulation. There is no reference to Community licence in this Certificate.

Although few stakeholders (14%; 21 of 153) reported that the market access rules for own-account operators are unclear one commented that these types of undertaking is not a passenger transport operator and so should not require a Community licence whilst another reported that it needs to be specified in a more accurate way suggesting there is a case for clarification

The permissibility of the cabotage operations for the different types of services listed in Article 15 is unclear. Article 15 states that “*Cabotage operations shall be authorised...*”. The evidence indicates that the operators are unclear if this means that these cabotage operations require authorisation in accordance with Article 8 or if these cabotage operations are already authorised. This provision is interpreted differently in some Member States (e.g. between the Slovak Republic and neighbouring Member States) and the IRU confirmed during consultation that there is still a general lack of clarity and diverging interpretations concerning cabotage in the framework of international lines. The majority of national authorities in each stakeholder category agreed that the cabotage rules are unclear.

The lack of clarity in these two provisions results in hassle costs for road passenger transport operators and competent authorities as a result of operators seeking clarification from competent authorities prior to engaging in these types of operations.

Conclusion

Stakeholders have indicated that some unclear definitions and provisions have resulted in unexpected effects which results in specific problems for operators and enforcement officers but they have not reported any unwanted effects of the Regulation. Although the majority of stakeholders do not appear unduly concerned about the lack of clarity the fact that some have reported difficulties and have requested clarification of certain provisions suggests there is a case for modification of certain definitions and terms.

Question 8: To what extent has the Regulation had an effect on employment (employment level, geographical shift, etc.), on working conditions (level of wages, working time, etc.) and on worker's mobility in the road passenger transport sector?

The analysis of effectiveness defines whether and to what extent the intervention has had an impact on employment, working conditions and on worker's mobility in the road passenger transport sector.

Framework of social rules

One of the general aims of the EU legislation that governs the road transport sector is to provide protection of employees. This is addressed in part by the framework of social rules which aims: to ensure that adequate social protection is provided by road transport undertakings; to guarantee fair competition between undertakings; and to improve road safety by averting road fatigue.

The protection of employees includes Regulations⁵⁶ on the harmonisation of certain social legislation relating to road transport and tachograph rules, the Directive⁵⁷ laying down minimum requirements with regard to the organisation of the working time and the Directive⁵⁸ laying down the minimum level of enforcement required to ensure compliance with the rules, the Posting of Workers Directive and the Rome I Regulation.

The Study only entails estimates of volume of employment and working conditions, in particular wages are not analysed. The only exception is for France with the conclusion that the wages decreased by 3.3% in real terms. For other Member States no impact on working conditions was reported.

Volume of employment

The study estimates that the volume of employment in national and international coach industry was slightly higher in 2008 (0.57 million) than 2014 (0.55 million), with a margin of error of $\pm 10\%$. There was no visible change to the volumes of employment after the 4 December 2011 when the Regulation became applicable. It appears that the overall employment in the coach industry was in slow decline, at least until 2013, the year in which the large German market was liberalised. This decline may conceal a mixture of growing volumes and increasing productivity. It is also consistent with the view that the sector has remained relatively stable in the face of recession and an indication of the responsiveness and flexibility of commercially focused operators across the EU.

Working conditions & workers mobility

The study did not provide a real insight on the impact of the Regulation on working conditions or workers mobility. For most Member States, no data could be gathered. The issue of working conditions and workers mobility is to be seen against the background of the whole liberalisation process in the sector and not only of its last step (the 2009 Recast

⁵⁶ Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85. Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport – Tachograph. Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport

⁵⁷ Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities

⁵⁸ Directive 2006/22/EC on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC

Regulation). No conclusive evidence was gathered at this stage but experience from the road freight transport sector will need to be considered if any further steps are to be taken.

Conclusion

The available evidence indicates that the Regulation has not had any discernible effect on the volume of employment. No conclusion could be drawn regarding the evolution of the working conditions of drivers.

5.3. Efficiency

Question 9: To what extent are regulatory costs for national administrations (licensing and authorisation, inspections, penalty system, mutual assistance) and for transport operators proportionate and necessary in relation to the outputs and results achieved?

In order to assess the efficiency of the Regulation it is necessary to analyse whether its effects were achieved with a reasonable use of resources and whether the same results could have been achieved with less resources.

Implementation of legislation usually results in some regulatory costs for authorities and/or operators. These costs can be classified into direct costs and enforcement costs. The direct costs are direct compliance costs and hassle costs. The direct compliance costs consist of charges, administrative burdens and compliance costs. Hassle costs take account of waiting time, annoyance and corruption. Enforcement costs consist of enforcement, monitoring, and adjudication⁵⁹.

Regulatory costs for national administrations

None of the stakeholders in the study referred to any change in the level of enforcement costs as a result of the application of the Regulation. However, benefits may have been realised through the standardisation of documents. The study indicates that for national authorities the time taken to undertake roadside inspections of foreign coaches has reduced as a result of the standardisation of documents but it is not possible to estimate the reduction in time. This provides enforcement officers with more time to undertake other potentially more productive activities. As there is no comprehensive data on the number of cross-border services, or on the origin and destinations of passengers using them, it is not possible to estimate the likely enforcement cost saving of this benefit.

Article 28 of the Regulation introduced reporting requirements⁶⁰ for Member States. However, the evidence in the study suggests that this provision is of limited value in monitoring the market. A number of barriers to effective market monitoring were identified including freedom to simplify or abolish control documents, a highly fragmented market, wide range of services, and inconsistent reporting definitions. In addition to these barriers other problems with the reporting requirements of Article 28 are provided in section 4.3. The reporting procedures do not provided the Commission with comparable, reliable, synchronised, regular and comprehensive statistical data on the scale and development of the

⁵⁹ Assessing the costs and benefits of Regulation Study for the European Commission Secretariat General,

10 December 2013, Brussels

⁶⁰ MS's communicate to the Commission the number of authorisations of regular services issued and valid including the number of cabotage operations, information on cabotage in the form of special regular services and occasional services every 2 years and the number of Community licences and certified true copies every year.

carriage of passengers by road in order to carry out the tasks entrusted to it in the context of the common transport policy. The Commission, the Member States or the public still do not have access to robust market information, disaggregated sufficiently to distinguish activity in the many international and national bus and coach markets. This reporting procedure is considered inefficient and ineffective as the reporting procedures have not resulted in any regulatory benefits.

The study suggests that the processing of applications for authorisations would rarely have required more than one full-time employee per Member State. The evidence indicates that the greatest element of workload associated with an application for authorisation may relate to the work by competent authorities, which may be national, regional or local, in assessing the application against the possible grounds for refusal in Article 8, and in particular the “detailed analysis” which is now required before an application can be refused. Competent authorities which do not wish to authorise international services may still carry out the detailed analyses listed in Article 8. The study found that there is no reason to assume that their workload will have been reduced as a direct result of the Regulation, but note that it is largely self-imposed. The evidence suggests that any benefits for the national authorities are likely to have been small and that any additional direct or indirect costs for national authorities would also be very small.

Regulatory costs for transport operators

Similar to the findings for national authorities it would be logical that benefits should have been realised for transport operators through the standardisation of documents across all 28 Member States. The disruption to coach operators and their passengers from inspection should be less, with potential for both journey time and reliability improvements but due to lack of data it is not possible to quantify the likely value of travel savings.

The simplification of the authorising procedure appears to have had more benefits for carriers than national authorities and it seems that the benefits anticipated in the Impact Assessment for the Regulations have not been completely achieved. It was assumed that the simplified procedure would deliver an authorisation three months earlier and that in those three months an operator would gain EUR 25,000 in additional revenue⁶¹. However, the study found that while stakeholders referred to delays with the application process, none of them made any reference to either vehicles or staff being kept idle or wholly unproductive as a result of the delays. It was also noted that operators familiar with the authorisation procedure may simply submit applications further in advance. The analysis in the study suggests that a delay of three months in the authorisation procedure would delay the redeployment of resources to more commercially attractive routes and there would be an associated opportunity cost. Based on the same assumptions⁶² used in the Impact Assessment the study estimates that the delay would reduce revenue by EUR 10,800 per application⁶³.

The authorising procedure eliminated the special protection previously provided to incumbent operators and railways and therefore enabled transport operators to provide services where

⁶¹ Table 6.12 of “Impact assessment of legislative proposals on the admission to the occupation and access to the market of road transport, Final Report”, ECORYS Nederland BV and NTUA, April 2007.

⁶² Coach is operating 20 days a month, 300 km a day with average load of 20 passengers

⁶³ If administrative procedures delay the redeployment of resources to more commercially attractive routes there will be an associated opportunity cost. The estimated reduction in revenue of EUR10,800 per application is based on serving an international route generate returns of EUR0.10 per passenger-kilometre compared to EUR0.07 per passenger-kilometre with a delay of three months in the authorisation procedure.

previously they would have been prohibited. These market efficiency benefits for operators have been realised without any reported associated regulatory costs.

However, when stakeholders were asked for feedback in the public consultation about the impacts of the problems identified, they reported that for each problem the greatest negative impact is administrative costs for carriers.

Table 5: Stakeholders responses about the impacts of problems on administrative burden

Problem	Responses from stakeholders on impact on administrative costs for carriers
Restriction in access to national markets	80% (67 of 84) of stakeholders indicate this problem has a negative impact with 45% (38 of 84) considering the impact significantly negative. Only 4% (3 of 84) consider it has a positive impact.
Requirement for local establishment	79% (60 of 76) of stakeholders indicate this problem has a negative impact with 67% (52 of 76) considering the impact significantly negative. Just 8% (6 of 76) consider it has a positive impact.
Patchwork of approaches to liberalising national markets	83% (65 of 78) of stakeholders indicate this problem has a negative impact with 37% (28 of 78) considering the impact significantly negative. Just 8% (6 of 78) consider it has a positive impact.
Discrimination on access to terminals	59% (44 of 75) of stakeholders indicate this problem has a negative impact with 32% (24 of 75) considering the impact significantly negative. Just 1% (1 of 75) considers it has a positive impact.

Evidence from stakeholders, and in particular the IRU, suggest that journey forms for occasional services no longer serve any purpose in the current market and their use should be discontinued. 70% (103 of 148) of respondents to the public consultation view the journey form as “very useless” or “rather useless” with only 16% (24 of 148) finding it “rather useful” or “very useful”. In 2003 the Nordic countries abolished the journey form for operators performing occasional services in those countries with no reported negative consequences.

The study suggests that national liberalisation in some Member States can be expected to have reduced the administrative burden for international regular services in some cases. However, the problems listed in Table 5 may also be expected to increase the administrative burden for operators. Furthermore, the study finds that the range of access arrangements deters coach operators from providing international services and seeking access to more than one national market for regular services. This disproportionately affects SMEs which have limited resources with which to develop EU-wide business strategies.

Conclusion

Allowing for the lack of quantitative data, the qualitative data indicates that on balance the changes introduced by the Regulation appear to have been efficient delivering in benefits with minor regulatory costs. The standardisation of documents has been beneficial to all stakeholders. The modification of the authorising procedure has improved market efficiency and, although it is estimated that it has not brought about all the benefits expected in the Impact Assessment, it is assumed to have reduced costs and enabled the provision of a wider range of services. However, the reporting provision in Article 28 is considered inefficient as it

has not resulted in any regulatory benefits. Finally, the patchwork of national regulatory frameworks, requirement for local establishment, restrictions in access to national markets and discrimination in access to terminals all increase regulatory costs for operators and can deter them from providing international regular services and national regular services in more than one Member State.

5.4. Coherence

Question 10: Are the provisions of the regulation, including in particular the definition of cabotage operations, consistent with those of Regulation (EC) No 1071/2009 which governs access to the occupation of road transport operator and (EC) No 1072/2009 which regulates access to the market of international freight market?

This concerns the question of how well or not different actions work together. It examines how well the Regulation interacts with Regulation 1071/2009 and Regulation 1072/2009.

Road Package 2009

As mentioned in Section 2.1 these two regulations were adopted along with the Regulation as a part of a legislative package in 2009 to regulate the conditions for accessing the profession and for accessing the markets of transport of goods and people by road. Together the Regulations were developed at solving problems in seven main areas⁶⁴:

- (1) Difficulties to monitor properly companies without stable and effective establishment.
- (2) Non-comparable certificate of professional capacity and financial capacity requirements for being admitted to the occupation.
- (3) Unclear link between the holder of the certificate of professional capacity ("*transport manager*") and the undertaking using his/her certificate to obtain the licence giving access to the market.
- (4) Unclear definition and control of temporary cabotage.
- (5) Burdensome procedure for authorising international regular passenger services.
- (6) Heterogeneity of a number of control documents.
- (7) Uneven level of monitoring of compliance.

As well as the simplification and clarification of the legal provisions, and making them more enforceable, the operational objectives of the legislative package were:

- Contribute to a level playing field and reduce distortion of competition.
- Raise the level of professional qualifications of road transport managers.
- Reduce the administrative burden.
- Enhance compliance with safety, social and technical rules.
- Contain the environmental impact of road, notably empty returns of vehicles.

As part of a legislative package the interaction of the Regulations is direct in that they share common objectives. The impact on the objectives of the Regulations is coherent as they all intend to improve the current rules on access to the market and to the profession with the overall goal of making sure that the rules better contribute to achieve the EU road transport policy. This is in line with the White paper which states that "*the elimination of remaining restrictions on cabotage should be pursued*".

⁶⁴ SEC(2007) 635/2 Commission Staff Working Paper Impact Assessment

Coherence with Regulation 1071/2009

Regulation (EC) No 1071/2009 sets out rules for companies wanting to enter and be active in the road haulage and passenger transport business. The exercise of road passenger transport operator requires an authorisation to pursue the occupation delivered following Regulation 1071/2009 and a Community licence delivered following the Regulation. The main interactions between Regulation 1071/2009 and the Regulation relate to the requirement of good repute, the consequence of infringements and uniform monitoring to ensure fair competition and road passenger transport that is fully compliant with the rules.

In order to satisfy the requirement of good repute in Regulation (EC) No 1071/2009 the carrier must, amongst others, not in one or more Member States been convicted of incurred a penalty for a serious infringement of Community rules. National authorities are responsible for monitoring undertakings and ensuring they meet the requirements for engagement in the occupation and if necessary to take suitable measures against carriers who are repeatedly negligent or act in bad faith. Both Regulations provide an obligation for mutual assistance and the exchange of information through a shared contact point. The Regulation provides an obligation on host Member States to inform a carrier's Member State of establishment about any serious infringement of Community road transport legislation attributable to a non-resident carrier. Additionally, Member States are required to enter into their national electronic register of road transport undertakings all serious infringements which have led to the imposition of a penalty. No contradictions were identified between the texts with regards to monitoring and exchange of information between Member States and the measures to allow for the effective sanctioning of serious infringements and the objectives of the Regulations are considered coherent.

Coherence with Regulation 1072/2009

Regulation (EC) 1072/2009 lays down common rules applicable to access to the market in the international carriage of goods by road within the EU. International road transport operations have been fully liberalised within the European Union. However, national road transport within an EU country by hauliers not resident in that country, known as cabotage, is still subject to restrictions. During the targeted consultation conducted as part of the evaluation stakeholders generally shared the view that two separate sets of rules are required for freight transport and passenger transport as they do not have sufficient commonalities to be combined into one legal text.

The scope of the regulations is similar in that they encompass international transport services and the application of the regulation to national transport services for hire and reward operated on a temporary basis by a non-resident carrier. The objectives of the Regulations are coherent in that they pursued to lay down common rules on access to the international market and for performing cabotage operations. However some inconsistencies were found between the Regulations.

Regulation 1072/2009 enables the Commission to adapt the period of validity of the Community licence as a result of technical progress, in particular the national electronic registers of road transport undertakings as provided for in Article 16 of Regulation 1071/2009. This is inconsistent with the Regulation as it does not contain the same provision even though Article 16 of Regulation 1071/2009 applies to both Regulation 1072/2009 and the Regulation.

Although both regulations share the common operational objective of establishing common rules for performing cabotage operations, the definitions and legal frameworks of cabotage

operations are different. The differences can be explained and justified by the particularities of each sector.

Conclusion

The regulations are generally coherent with some minor inconsistencies. The main inconsistencies are with Regulation 1072/2009 in that it prescribes when a Community licence must be issued by a Member State and it enables the Commission to adapt the period of validity of the Community Licence as a result of technical progress. The other identified differences appear to stem from the particularities of each sector.

Question 11: Is the objective of promoting bus and coach transport as a sustainable alternative to individual car transport coherent with the EU's modal shift policy (as notably expressed in the 2011 White Paper on Transport), and more generally, with overarching EU strategies (policy on combating climate change, providing for a deeper and fairer internal market, Energy Union, etc.)?

This concerns the question of the Regulation's complementarity and consistency with other EU policies with similar objectives. It examines how well the Regulation interacts with other EU interventions and strategies.

Coherence with EU Transport Policy on mobility patterns

The general aim of EU transport policy is to reduce the adverse effects connected to mobility which above all means the promotion of co-modality i.e. optimally combining various modes of transport within the same transport chain. The continuing importance of pursuing a single European transport area and removing competitive distortions is reiterated in the White Paper.

The Impact Assessment accompanying the 2011 White Paper carried out the assessment of current problems and needs of the EU transport sector. It found that the level of integration of the EU transport market remains low in comparison to other parts of the economy and that a genuine EU-wide internal market exists only in air transport, while other transport modes suffer from different degrees of fragmentation along national borders; this concerns in first place rail and inland waterways, but road and short sea shipping are also affected. It also found that cross-border transport and competition in national markets is hindered by protectionist regulations or attitudes, often defending the interest of incumbents and restricting access to national markets by foreign operators and new market entrants.

The White Paper sets out the Commission's vision for a competitive and sustainable transport system, acknowledges that curbing mobility is not an option and that new transport patterns must emerge, according to which larger volumes of freight and greater numbers of travellers are carried jointly to their destination by the most efficient (combination of) modes. It recognises that an efficient core network for multimodal intercity travel and transport requires greater use of buses and coaches and that better modal choice will result from greater integration of modal networks which should increasingly be linked and transformed into multimodal connection platforms for passengers. It calls for a higher share of travel by collective transport, combined with minimum service obligations, which will allow the density and frequency of service to increase, thereby generating a virtuous circle for public transport modes.

The objective of promoting bus and coach transport in the Regulation as a sustainable alternative to individual car transport is coherent with the 2011 White Paper in that they both aim to make greater use of bus and coach as part of the core network for multimodal intercity travel.

Coherence with EU initiatives on climate change

Several EU initiatives, but primarily Europe 2020 Strategy -Europe's growth strategy, its flagship initiative for resource efficiency, the Energy Union Package 2015, A European Strategy for Low-Emission Mobility and the 2011 Transport White Paper, consider adaptation to climate change by aiming for smart, sustainable and inclusive growth. Together these initiatives provide a long-term plan for how the European Union will make the transition to a sustainable, low-carbon, and climate-friendly economy that is designed to last.

Although these strategies have not been designed specifically for the road passenger transport sector they are related as regards to the promotion of bus and coach as a sustainable alternative to individual car use. Common rules for air quality, vehicle emission standards and fuel quality are other important elements to enable the implementation of these strategies.

According to the Commission's Roadmap for moving to a competitive low carbon economy in 2050 and the White Paper, transport as a whole has to reduce its CO₂ emissions by 2050 of about 60% vs their 1990 level. As more resource-efficient vehicles and cleaner fuels are unlikely to achieve on their own the necessary cuts in emissions the White Paper promotes the consolidation of large volumes of passengers for intercity travel which implies greater use of buses and coaches, rail and air transport. It states that better modal choices will result from greater integration of the modal networks: airports, ports, railway, metro and bus stations, should increasingly be linked and transformed into multimodal connection platforms for passengers. The Commission Staff Working Document accompanying the White Paper calls for more sustainable and efficient interurban travel also requires a systematic choice in favour of the most efficient mode among the public and private transport means. Despite progress in all modes, their relative position in terms of energy efficiency is unlikely to change, owing to their intrinsic characteristics, so in order to achieve further energy savings and emission reductions in interurban passenger transport, coaches and railways will need to take a greater share in traffic, partly substituting cars and planes.

The average CO₂ emissions of bus and coach per passenger transported are best in class for long distance transport and as such these services can play a significant role in decarbonisation of transport. The Regulation is coherent with these strategies as the aim of sustainability is shared and the shift of passengers from passenger car to bus and is complementary to the aims of emission reduction, low-carbon, and a climate-friendly economy.

Coherence with fairer internal market

The continuing importance of pursuing a single European transport area and removing competitive distortions is reiterated in the White Paper. By aiming to open the market for cross-border services and for cabotage operations, and preventing discrimination on grounds of nationality or place of establishment the Regulation is clearly coherent with the development of the single European transport area.

With regard to the Regulation and market access, completion of the single market remains a highly relevant goal. The Report of the Commission on A Single Market for Growth and Jobs 2013 states that to achieve a true internal market for transport services, more needs to be done at Member State level, as divergent national priorities and the fragmentation of the transport market continue to negatively affect the quality of transport services in Europe. The report called on Member States to review any remaining national restrictions to access to national road passenger markets with a view to ensuring their full compatibility with existing EU legislation.

Significant differences in the regulatory arrangements applying to national regular services which are not performed as part of a regular international service have been found across Member States. These national developments, which are not supported by harmonised EU legislation, create a patchwork and are not consistent with the objective of a single European transport area and might be counterproductive to an internal market for bus and coach services.

Coherence with Road Safety Policy

The White Paper sets a road safety goal of achieving close to zero fatalities in road transport by 2050 and to halve road casualties by 2020.

As described in section 6.6., the evolution of safety for both coach and car and taxi is similar in terms of showing a general downward trend in fatalities, but the major difference is the actual number of deaths. Coach and bus account for 1% of the distribution of road fatalities whilst car and taxi account for 45%.

The impact of the Regulation on road safety is unclear due to the wide variety of factors and actions that influence road safety including education and training, enforcement, safer infrastructure, safer vehicles, protection of vulnerable people and improvements in emergency services. However, it is apparent that the introduction of Regulation (EC) No 1073/2009 has not had a negative impact on the trend of a reduction in bus and coach fatalities.

Although there is no direct link between the objectives of the road safety and the Regulation undoubtedly there are indirect links. The Regulation can play a supporting role in creating the right framework conditions to ensure compliance with the safety legislation and hence be considered coherent in this respect.

Conclusion

The objective of promoting coach and bus transport as a sustainable alternative to individual car transport is coherent with EU policy. However the absence of explicit targets for coaches and buses may hamper the development of coach and bus services even when they offer a better solution than rail or provide complementary services. The absence of specific objectives is not coherent with the policy to promote greater integration of the modal networks and this indirectly promotes the use of passenger car as coach and bus services are not integrated into the door-to-door mobility chain.

The Regulation is coherent with the EU initiatives on climate change as the aim of sustainability is shared and the aim of shifting passengers from car to bus is complementary to the aims of emission reduction, low-carbon, and a climate friendly economy. It is also coherent with the Road Safety Policy.

The persistence of a patchwork of national regulations is not coherent with the objective of a single European transport area and might be counterproductive to an internal market for bus and coach services.

Question 12: To what extent are enforcement rules of the Regulation compatible with similar rules in other pieces of legislation applied to the same operators? In practice, to what extent are enforcement rules streamlined?

As well as the interaction with Regulation 1071/2009, the Regulation interacts with the enforcement rules of several and different legal instruments at EU level. The analysis for this question considers the coherence between the specific enforcement rules.

Coherence with Regulations 1071/2009

At the level of policy objectives and the respective provisions, the two Regulations are clearly coherent with goals of EU transport policy such as a higher degree of convergence and enforcement of social and safety rules, since their objectives are to contribute to increased compliance with EU road transport social and safety legislation. The similarities and inconsistencies between the Regulations are reported in section 6.10.

Enforcement is streamlined through the obligation on Member States to assist one another and exchange relevant information via national contact points. Both regulations allow for the sanctioning of serious infringements of Community road transport legislation and stakeholders have reported that the harmonisation of control documents which made it easier and quicker to check the licences of non-resident hauliers.

Coherence with social provisions

The EU legislative framework on the social aspects of the road transport sector includes Regulation No 561/2006 on driving time and rest periods and Directive 2002/15/EC on the organisation of the working time of mobile workers⁶⁵. To ensure the good enforcement of these rules, these provisions are completed by rules on minimum levels of checks (Directive 2006/22/EC⁶⁶) and detailed legal and technical provisions on the recording equipment to be used in road transport (Regulation (EEC) No 3821/85⁶⁷). These provisions act together with Regulations 1071/2009, 1072/2009 and the Regulation with the aim of completing the internal market in road transport while ensuring fair conditions of competition and adequate working conditions.

The main interaction between Regulation 561/2006, Directive 2002/15/EC and the Regulation relates to serious infringements of Community road transport legislation, in particular with regard to driving and rest periods for drivers, and to the sanctioning of these infringements by the Member State of establishment.

There are no contradictions between the objectives of Regulation 561/2006, Directive 2002/15/EC and the Regulation. Desk research revealed a consistency concern between the liability for infringements Regulation 561/2009 and the Regulation. Regulation 561/2006 provides for the principal of co-liability whilst there is no co-liability provision in the Regulation. In Regulation 561/2006 the liability of transport undertakings does not exclude proceedings against natural persons who are perpetrators, or instigators of, or accessories to infringements of Regulation 561/2006. This extension of liability encompasses, amongst others, principal contractors, sub-contractors and tour operators. There is no similar provision in the Regulation and the liability for infringements of the Regulation does not extend beyond the transport undertaking. There are no reports of this inconsistency being problematic.

The objective of Directive 2006/22/EC is to lay down clear, common rules on minimum conditions for checking the correct and uniform implementation of social legislation applicable to road transport. The objectives pursued by Directive 2006/22/EC are coherent with the objectives of the Regulation.

The basis for the tachograph⁶⁸ was provided for in Council Regulation (EEC) 3821/85 on recording equipment in road transport. The main interaction between the tachograph rules and the Regulation is the possibility to use tachographs for enforcement of certain provisions of

⁶⁵ OJ L 80, 23.3.2002, p. 35

⁶⁶ OJ L 102, 11.4.2006, p. 35

⁶⁷ OJ L 370, 31.12.1985, p. 8

⁶⁸ The tachograph is a device that records the driving time, breaks, rest periods as well as periods of other work undertaken by a driver.

the Regulation e.g. cabotage or the provision of parallel or temporary services. However this additional capability stems from the use of the digital tachograph which is only mandatory for new vehicles registered after 1 May 2006. It is likely that analogue tachograph will continue to exist for a considerable time but this should not hinder the possibility to use the tachograph to assist with the enforcement of the Regulation.

Coherence with posted workers directive

Directive 96/71/EC concerning the posting of workers in the framework of the provision of services⁶⁹ applies to undertakings established in a Member State which, in the framework of the transnational provision of services, post workers, to the territory of a Member State. Directive 2014/67/EU aims to ensure the correct application of, and to monitor compliance with, the substantive Union rules on free movement of workers and to ensure that Member States take the appropriate measures to protect Union workers and members of their family exercising their right to free movement against both discrimination on grounds of nationality and any unjustified restriction or obstacle to the exercise of that right. The freedom to provide services includes the right of a service provider established in a Member State to temporarily post its workers to another Member State in order to provide a service. This is obviously relevant in the field of the international carriage of passengers by coach or bus.

Whereas the Posting of Workers Directive 96/71/EC in principle applies to cabotage operations⁷⁰, in practice it is not being enforced. There is an inherent difficulty in checking whether drivers performing cabotage are granted the minimum conditions of the workers in the country where they perform cabotage and for the part of their trip where they are performing such cabotage. Therefore, although legally there does not seem to be any inconsistency between the Regulation and the Posting of Workers Directive, there are practical difficulties in enforcing the latter directive in relation to cabotage operations.

Conclusion

The enforcement rules of the Regulation are compatible with similar rules in other pieces of legislation applied to the same operators. There are no major inconsistencies between the Regulations and other legislation with which it interacts. However, liability for infringements raises a consistency concern as the extension of the liability of transport undertakings established by Regulation (EC) No 561/2006 and with Directive 96/71/EC is not provided for in the Regulation.

5.5. EU added value

Question 13: To what extent has the Regulation permitted achievements which could not be reached at Member State level through the bilateral agreements previously in place?

This question considers the added value of an action at the EU level compared to other actions that could be taken by Member States. It also considers if the subsidiarity principle has been taken into account and whether the same results could not have been obtained by regulation at national level.

The objective of the Common Transport Policy is to remove obstacles at the borders between Member States so as to facilitate the free movement of persons and goods. To this end, its

⁶⁹ OJ L 18, 21.1.1997, p. 1

⁷⁰ Recital 11 of Regulation 1071/2009

prime objectives are to complete the internal market for transport, ensure sustainable development and promote a better territorial cohesion. This is enshrined in Article 90 TFEU, according to which the fundamental objectives of the common transport policy are those of the Treaties themselves.

The scope of the Regulation includes the international carriage of passengers by coach and bus within the territory of the EU as well as the conditions under which non-resident carriers may operate national transport services within a Member State. As noted in the 1992 White Paper, added value is highest for EU legislation in areas which relate to cross-border transport and hence where the existence of different regulatory environments of Member States would create barriers and/or additional costs for economic operators. National legislation or bilateral agreements cannot ensure common rules at EU level due to their limited geographical scope. Moreover, the intervention sought to enhance the existing exchange of information between Member States which could not be made by individual Member States and could only be made in a fragmented way by Member States using bilateral agreements.

The objectives of the intervention went beyond clarification and simplification of the preceding Regulations. The intervention aimed at further opening the internal market with the inclusion of a general objective of opening the market for cross-border services and for cabotage operations without jeopardising PSO's. Meeting these objectives and further opening of the Internal Market for coach and bus services would have been unlikely to happen on the basis of regulation at the national level.

For a policy intervention in the internal market, and more importantly for international transport, it is appropriate to have uniform implementation across all Member States and to ensure the homogeneous application of the rules and provide for fair competition. Under these conditions regulations are the most commonly used instrument as they provide clarity and they do not need to be mediated into national law by means of implementing measures. Besides, a common issue with soft law instruments is that whilst they would interpret or complete Regulations, they are not formally binding and the Commission cannot sanction Member States that do not adhere to them. This being the case it would not be appropriate for the Commission to adopt so called 'soft' or more flexible instruments.

Conclusion

It can be concluded that a regulation was the correct instrument to implement the policy and that it is more relevant, effective and efficient than national legislation on access to the international market for bus and coach services and on the functioning of the internal market.

In general, the Regulation is considered to have led to positive effects compared to the situation prior to when it entered into force. This provides support to the conclusions that an EU approach in the form of a regulation is the most suitable way to ensure access to the market for bus and coach services.

6. CONCLUSIONS

The analysis of relevance shows that the problems of discrimination on grounds of nationality or place of establishment and unnecessary administrative burdens remain relevant and are not adequately addressed by the existing objectives. There is a mismatch in the relationship between the problem of sub-optimal mix of transport modes and the objective of promoting bus and coach as a sustainable alternative to individual car transport and they both appear not sufficiently defined. It is suggested that the main problem is the lack of attractive mix of alternative transport modes for citizens. This is particularly problematic for those with little or

no access to cars or other transport modes, those that live in disadvantaged regions and those with reduced mobility.

The objectives were not aimed at the problem of discrimination in access to terminals. Yet, terminals serve a vital role acting as a hub in a network enabling passengers to change coach or acting as a multimodal hub enabling passengers to transfer to another collective mode of transport. The evaluation found evidence of discriminatory access to terminals (e.g. Austria and France) which distorts service patterns and limits the possibility of operators to adapt services to passenger demand. The accessibility to terminals as well as the extent to which the terminals are linked to other modes of transport is particularly important for international regular services.

The changes brought about by the Regulation have contributed to progression towards the establishment of a true internal market. However, the persistence of national markets with separate national procedures and requirements impedes integration and undermines the efficiency of coach and bus services and suggests that a lack of integration of the internal market for coach and bus services will remain a problem into the future.

The intervention did not aim at integrating national markets for regular services but national markets are recognised as a critical factor in the provision of international services. The evolution of the market, in terms of different and divergent rules on access to national markets in Member States, is a problem that was not previously apparent or considered when the intervention was designed. This patchwork of regulatory systems in the EU makes it difficult for carriers to exploit the full potential of operating in an Internal Market and contributes to the inability of coach and bus services to capture significant modal share from passenger car.

The evidence broadly indicates that market opening has resulted in growth in the number of operators, numbers of passengers and the number of services however it is difficult to determine the exact growth that can be attributed to the Regulation in isolation. The Regulation has had little impact on cabotage operations with the market penetration of all types of services remaining persistently low. The development of services is being constrained in some markets, including the international market, by barriers which are contrary to the establishment of a true internal market. These barriers include the patchwork of national regulatory frameworks and the requirement for local establishment.

There has been a mixed impact on enhancing fair competition. The fragmented internal market causes imbalances between Member States and an unlevel playing field. Undertakings attempting to enter the market in some cases encounter discrimination in obtaining access to the terminals which are often owned and operated by the incumbent bus or rail undertakings. On the other hand the market liberalisation attributable to the Regulation, as documented by the study, has had positive impacts such as placing competitive pressure on the evolution and dynamics of coach fares.

The level-of-service has improved in terms of frequency, availability, safety and comfort levels but there is little evidence that this growth can be attributed to the Regulation.

As regards efficiency, the benefits achieved from the modification of the authorising procedure has improved market efficiency and, although it is estimated that it has not brought about all the benefits expected in the Impact Assessment (i.e. the operator would gain EUR 25,000 in additional revenue), it assumed to have reduced costs by EUR 10,800 per application. The new procedure has also enabled the provision of a wider range of services. It is expected that, and confirmed by most stakeholders, the standardisation of control documents has resulted in cost savings by shortening the time required for roadside

inspections but there is no comprehensive data available to quantify the savings. However, the patchwork of national regulatory frameworks, requirement for local establishment, restrictions in access to national markets and discrimination in access to terminals all increase regulatory costs for operators and can deter them from providing international regular services and national regular services in more than one Member State.

Journey forms are reported to no longer serve any purpose and have been abandoned in Nordic countries with no negative impacts. The reporting provisions are inefficient as they have not resulted in any regulatory benefit. And finally the patchwork of national regulatory frameworks naturally increases the administrative burden for operators in having to comply with different national procedures and requirements.

As regards coherence, the Regulation is generally coherent with other road transport legislation, EU Modal shift policy and overarching EU strategies. However the absence of explicit performance targets may hamper the development of coach and bus services even when they offer a better solution than rail or provide complementary services. This is not coherent with the policy to promote greater integration of the modal networks and indirectly promotes the use of passenger car and other less sustainable modes of transport.

The Regulation is coherent with the EU initiatives on climate change and is complementary to the aims of emission reduction, low-carbon, and a climate friendly economy. It is also coherent with the Road Safety Policy. With regards to the coherence of enforcement rules there are no major inconsistencies but from a practical viewpoint, the Regulation has little coherence with the co-liability principle established by Regulation (EC) No 561/2006 and with Directive 96/71/EC as the enforceability of these provisions is highly questionable.

In general, the adoption of the Regulation has led to positive effects compared to the situation prior to when it entered into force. The analysis indicates that it is more relevant, effective and efficient than national legislation on access to the international market for bus and coach services and on the functioning of the internal market. This provides support to the conclusions that an EU approach in the form of a Regulation is the most suitable way to ensure access to the market for bus and coach services.

The Commission does not have at its disposal comparable, reliable, synchronised, regular and comprehensive statistical data on the scale and development of the carriage of passengers by road by means of vehicles registered in the EU, and on the degree of utilisation of vehicles carrying out this transport. This makes it difficult for the Commission to carry out the tasks entrusted to it in the context of the common transport policy.

ANNEX 1: PROCEDURAL INFORMATION CONCERNING THE PROCESS TO PREPARE THE EVALUATION OR FITNESS CHECK.

1. Identification of the lead DG; Agenda planning/Work Programme references

- DG MOVE is the lead Directorate General for the evaluation of Regulation (EC) No 1073/2009.
- The evaluation was validated in the Agenda Planning by Commissioner Bulc on 27 July 2015 under reference N° 2016/MOVE/011.

2. Organisation and timing

- The evaluation of Regulation (EC) No 1073/2009 was launched on 23 March 2015 with the first meeting of the Steering Group in the premises of DG MOVE. Representatives from Secretariat General, Legal Service, Directorate-General for Mobility and Transport (MOVE), Directorate-General for Environment (ENV), Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (GROW) and Directorate-General for Climate Action (DG CLIMA) were appointed to the Inter-Services Steering Group.
- The second meeting of the Steering Group for the evaluation of Regulation (EC) No 1073/2009 was held on 1 July 2015 in the premises of DG MOVE.
- The evaluation roadmap, including the evaluation questions, was published in Agenda planning on 8 September 2015⁷¹.
- The Comprehensive Study on Passenger Transport by Coach in Europe was approved on the 29 April 2016;
- Intermediate Report for the evaluation of Regulation (EC) No 1073/2009 was sent to the Steering Group on 22 June 2016;
- The Final Report for Regulation (EC) No 1073/2009 was sent to the Steering Group on 12 April 2017. The Final Report was approved by the Steering Group on 2017.
- The Final Report was sent to the Regulatory Scrutiny Board on 21 June 2017.

3. Evidence used

- The evaluation relies mostly on the "Comprehensive Study on Passenger Transport by Coach in Europe" conducted by an external consultant⁷².
- Evidence was also gathered from the reporting requirements of Member States under Article 28 of Regulation (EC) No 1073/2009 and from the implementation of the Regulations, e.g. infringement and pre-infringement procedures, and also from direct consultations of Member States and stakeholders.

⁷¹ http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_move_011_evaluation_passenger_coach_bus_transport_en.pdf

⁷² Comprehensive Study on Passenger Transport by Coach in Europe, completed by Steer Davies Gleave for the European Commission, April 2016.

ANNEX 2: STAKEHOLDER CONSULTATION

Introduction

This stakeholder consultation synopsis report provides a summary of the outcomes of the stakeholder consultation activities which were carried out as part of the review of the legislation on access to the international market for coach and bus services. It provides a basic analysis of the responses of stakeholder groups involved in the consultation process and a summary of the main issues which they raised. Five separate consultation activities were undertaken, namely:

- an open public consultation organised by the Commission services which was launched on 14/12/2016 and lasted until 15/03/2017 (13 weeks);
- a targeted stakeholder consultation organised by Steer Davies Gleave which was launched on 27 January 2017 and remained open until 24 March 2017 (9 weeks);
- 18 interviews with a number of stakeholders, including industry representatives, trade unions, national authorities and operators, which took place during the period 9 March 2017 to 19 April 2017;
- a Special Eurobarometer organised by the Commission, based on interviews with 27,901 respondents at their homes across 28 Member States between 18 March 2017 and 27 March 2017; and
- stakeholder seminars and discussions at several different events.

The objectives of the consultation activities were to:

- provide the public and stakeholders with an opportunity to express their views on all elements relevant for the functioning of the internal market in road passenger transport, as well as to express their positions on the possible/desirable changes to the regulatory framework; and
- gather specialised input (data and factual information, expert views) on specific aspects of the legislation (e.g. national markets for regular services, terminals, etc.) from the enforcement community and from the industry, in order to prepare the impact assessment and the legislative proposal.

Consultation activities

Open public consultation (OPC)

The objectives of the OPC were to help verify the problems faced by the sector, as identified in the ex-post evaluation, validate the objectives of the possible policy interventions and obtain the opinion of stakeholders on the appropriateness and expected impacts of the interventions. It was comprised of two questionnaires, one for the general public and a more specialised one for key stakeholders, which were made available online through the Commission's EU Survey facility, 'Your Voice in Europe'. The survey was open to all categories of respondents (individual citizens, representatives of business including individual firms or associations, public authorities and civil society organisations).

The general questionnaire was concerned with establishing how frequently respondents used coach services, their view on the importance of such services and their motivation for using them. A total of 18 responses were received: eight from consumers/citizens, seven from companies, two from non-governmental authorities and one other as shown in the table below.

Table A.2-1: Classification of stakeholders responding to the general questionnaire

Stakeholder category	Number of responses	% of responses
A citizen/consumer	8	44%
A non-governmental authority (e.g. NGO)	2	11%
A company	7	39%
Other	1	6%
Total	18	100%

Notes: "Other" is based on the respondents' choice.

Respondents resided, or were based, in nine different Member States (Austria, Finland, Germany, Hungary, Lithuania, Slovenia, Spain, Sweden and the United Kingdom). The most responses were from Austria, Germany and Hungary, each accounting for three responses (17% of the total).

Six (33%) of the responses were from EU-13 Member States and 12 (67%) were from EU-15 Member States.

The specialised questionnaire was concerned with determining stakeholders' views on the performance of the market and the possible impacts of potential changes to Regulation 1073/2009. There were a total of 153 complete or partial responses, including 68 companies involved in the transport chain, 28 non-governmental authorities and 17 road passenger transport workers, as shown in the table below.

Table A.2-2: Classification of stakeholders responding to the specialised questionnaire

Stakeholder category	Number of responses	% of responses
A citizen/consumer	1	1%
A road passenger transport worker (e.g. driver)	17	11%
Company engaged in transport chain	68	44%
EU Governmental authority	3	2%
Enforcement authority	3	2%
Regulatory authority (e.g. national transport regulator, national competition authority)	7	5%
A non-governmental authority (e.g. NGO)	28	18%
An academic	1	1%
Other	25	16%
Total	153	100%

Notes: "Other" is based on the respondents' choice.

Respondents resided in, or were based in, 16 different Member States (Austria, Belgium, Czech Republic, Estonia, France, Finland, Germany, Hungary, Ireland, Italy, the Netherlands, Portugal, Romania, Spain, Sweden and the United Kingdom). Four respondents were from other European non-EU countries. 90 responses (59%) were from Germany.

Five (3%) of the responses were from EU-13 Member States and 144 (94%) were from EU-15 Member States.

Targeted stakeholder consultation

The targeted stakeholder consultation involved sending a detailed questionnaire to key stakeholders identified during the inception stage of the study. Four different questionnaires were produced, each tailored to the type of stakeholder.

A total of 31 responses were received, and a breakdown by stakeholder group is shown in the table below.

Table A.2-3: Targeted questionnaire responses

Type	Questionnaires sent	Responses received	Percentage of questionnaires sent
Ministry / Regulator	53	20	38%
Pan-European organisation	14	2	14%
Operator	91	3	3%
Operator association	27	6	22%

Table A.2-4: Responses to questionnaire

Member State	Number of responses	Percentage
EU13	10	32%
EU15	19	61%
Pan-European	2	6%

Interviews were conducted with the aim of gathering more detailed insights into stakeholder's experiences as well as their views on the different measures under consideration. They also provided an opportunity to request quantitative data required for the impact assessment. In each case, we submitted specific questions in advance and/or sought clarification on information provided through the questionnaires. Interviews were held either face-to-face or by phone.

Table A.2-5: Summary of interview programme

Type of stakeholder	Number of interviews completed	Member States covered
Ministry / Regulator	6	UK, EL, IT, IE, NL, FR
Pan-European organisation	4	
Operator	4	UK, FR, ES
Operator association	4	DE, UK, IE, SE

Eurobarometer

A Eurobarometer public opinion survey is to be conducted amongst European citizens in the 28 Member States of the EU. The objective of this survey was to gather the opinion of the European citizens on a series of issues related to satisfaction with current coach services in their country and reasons for using/ not using such services.

Targeted stakeholder consultation

The consultant responsible for the support study consulted stakeholders through questionnaires. The questionnaires were targeted at each relevant stakeholder group and were adjusted to the needs of each particular group.

The survey investigated:

- how many Europeans use coach services and how regularly they do so;
- the extent of both domestic and international coach travel;
- the purposes for which coach services are used;
- how users rate coach services in general, and how they rate specific aspects of the service including feelings of safety, punctuality and reliability, fares, comfort and integrated ticketing;
- perceptions of service quality among non-users;
- the reasons why citizens choose to travel by coach; and
- what improvements in existing services, if any, would make them more likely to use coach services.

Conclusions and limitations

The objectives of the consultation activities have been largely achieved. All relevant stakeholder groups within all EU Member States have been consulted, and most provided their views to the policy measures under consideration.

It was difficult to engage stakeholders due to the level of consultation activity in 2017 in support of the study and that undertaken in 2016 as part of the evaluation. The feedback from most stakeholders we contacted was that they had already responded to the OPC and/or targeted stakeholder questionnaire and were too busy to engage further. Consulting via various methods on the same subject in a short period meant that there was only a limited response in some areas.

Although we requested that stakeholders send us any available data on the coach market, relatively little was received. This reflected the following:

- many Member States do not collect statistics for the coach market and are only concerned with the authorisations granted; and
- the operators we spoke to would not share data for reasons of confidentiality or because of their company policy.

Results of consultation activities

Stakeholder input on problems with current legislation

Stakeholders provided significant input that helped to validate and elaborate the definition of the problem and identify potential changes to the current legislation. Input relating to the problem definition came primarily from the OPC and the targeted stakeholder questionnaires, and to a lesser extent from the interviews and Eurobarometer.

The sections below summarise the inputs provided and their implications for the following aspects of the problem:

- restricted access to the market for domestic regular services;
- the requirement for establishment in Member State;
- different national approaches to liberalisation; discrimination in access to bus and coach terminals;
- and the role of coach services in improving connectivity and economic development.

Access to the market for domestic regular services is restricted

The Open Public Consultation Specialised (OPCS) stakeholders agreed that restrictions on access to the national market for regular coach and bus services constitute a problem. 50 of the 153 (33%) respondents agreed that it is a major problem and 42 (27%) agreed that it is a minor problem. 30 of the 45 (67%) of companies engaged in the transport chain (“Companies”) indicated that the restrictions have a negative impact on the ability of undertakings to expand into new markets, and none expressed the view that they had a positive impact. A majority of stakeholders stated that establishing a common EU framework for access to national markets for regular services would reduce the cost of compliance with legislation relative to the costs under the present rules. However, such a framework was also considered to have a possible negative effect on incumbent coach operators by 22 of the 68 (32%) Companies, two of the three (67%) EU Governmental Authorities, 19 of the 28 (68%) NGOs and seven of the 17 (41%) Workers.

In an interview, National Express stated there was no discrimination in providing access to the UK market. They cited an example of a new entrant from the US gaining access and operating a service within six months of announcing its intention. However, two operators responding to the targeted stakeholder questionnaire noted that they had been refused access to the domestic market, given partial permission to operate or asked to modify their schedule because it was in competition with an existing public service.

The requirement for establishment in Member State

A majority of stakeholders responding to the OPCS stated that the specific requirement for local establishment is a concern, with 83 of 153 (54%) identifying it as either a minor or major problem. 39 of the 68 (57%) Companies who responded stated that it was a major or minor problem. However, two of three responses from EU Governmental Authorities, 14 of 28 (50%) from NGOs and four of seven (57%) from Regulatory Authorities indicated that the requirement was not a problem. The biggest perceived negative impact of this requirement among Companies was the associated administrative costs for carriers – 29 of the 36 (81%) identified these costs as a negative impact.

Moreover, a majority of stakeholders considered that assisting entry into national markets by carriers resident in other Member States would be beneficial. 38 of the 68 (56%) Companies and 11 of the 17 (65%) road passenger transport workers (“Workers”) stated that this would make a positive contribution to the market. At the same time, a majority of NGOs, 15 of the

28 (54%), and Regulatory Authorities, three of the seven (43%), stated that there would be no impact on the market.

Different national approaches to liberalisation

43 of the 68 Companies (63%) and 14 of the 17 Workers (59%) responded that the 'patchwork' approach to liberalisation across the EU was a problem. However, two of the three EU Governmental Authorities (67%), 16 of the 28 NGOs (57%), four of the seven Regulatory Authorities (57%) and two of the three Enforcement Authorities (67%) did not consider the differences between the levels of liberalisation in different Member States to be a concern. Again, the effect on the administrative costs for carriers was considered to be the greatest negative impact, with 32 of the 38 (84%) Companies, seven of the nine (78%) NGOs, two of the three (67%) Regulatory Authorities, six of the eight (75%) Workers and an Enforcement Authority respondent indicating that there would be a significant negative impact or negative impact.

This view was reinforced during interviews with operators. For example, National Express highlighted that consistency on market access rule is needed as some countries' national rules have precedent over European rules, making it difficult to enter new markets. However, the European Trade Worker's Federation (ETF) said that they disagreed with liberalisation as there are no consistent rules governing driver working conditions across the EU. They cited the freight industry as an example of how problems can arise in a mature liberalised market. This opinion was supported by other Pan-European organisations, including the European Disability Forum (EDF), which stated in interview that it would prefer a more regulated market, as in the rail sector.

Discrimination in access to bus and coach terminals

A majority of stakeholder groups responding to the OPCS stated that discrimination against new entrants in providing access to terminals was a problem. 39 of the 68 Companies (57%), two of the three EU Governmental Authorities (67%), 15 of the 28 NGOs (54%), four of the seven Regulatory Authorities (57%) and 10 of the 17 Workers (59%) indicated that discrimination was either a major or a minor problem. 26 of the 32 (81%) Companies stated that the resulting administrative costs for carriers constituted a negative impact. No stakeholder group considered that discriminatory access to terminals had a positive impact. Two of the three (67%) Enforcement Authorities that responded did not consider discrimination to be a problem however.

When asked about complaints from operators in regards to terminal access, the French Regulator gave an example of an ongoing dispute by a coach operator. The operator could not gain access to the coach terminal at Beauvais airport due to the non-publication of the terminal access rules. The case was dismissed after the rules were subsequently published, but it was decided at the end of December 2016 to open an infringement procedure to investigate possible breaches by the operator of its legal obligations. In the Regulator's opinion, the rules were not objective, transparent and non-discriminatory in nature. The investigation is ongoing.

The view that terminal access is discriminatory was supported by Megabus who told us that they had been denied access to the terminal in Birmingham which is privately owned by National Express, a rival operator, and have had difficulty obtaining departure slots at the public terminal in Leeds which is managed by National Express.

The role of coach services in improving connectivity and economic development

Six of the eight Consumers (75%) and six of the seven Companies (86%) participating in the Open Public Consultation General (OPCG) gave a positive response when asked if coach services were viewed as important for the economic development of the respondent's region and jobs. A frequent comment in the free text section was that better connections and coordination between different modes of transport would encourage greater use of coach services. In general, respondents did not consider that the use of coach services was discouraged by excessive fares, with four of the seven (57%) Companies, 100% of NGOs and five of the eight (63%) consumers viewing fares positively.

However, these results must be qualified to some degree by the results of the Eurobarometer survey. Across the EU, some 35% of those surveyed made some use of coach services to travel within their own country, with 25% using them to travel to destinations in other countries. The majority of journeys are made for leisure purposes, although some passengers use coach services to connect with airports and rail stations as well as to make work-related trips. The primary reasons for travelling by coach are the availability of low fares, even among countries with more liberal market access rules, although lack of access to a car was also frequently cited a reason for choosing coach services.

Nevertheless, the Eurobarometer results also provide some evidence that fares continue to be a barrier to coach travel. Among non-users, the most frequent responses to the question 'what would make you more likely to travel by coach?' were lack of access to a car (37% of non-user responses) and lower prices (26% of non-user responses). The corresponding responses among economically disadvantaged non-users (facing difficulties paying bills most of the time) were similar (35% and 32% respectively). Moreover, among users of coach services in the same disadvantaged group, low prices accounted for 32% of responses to the question 'why did you decide to travel by coach on the most recent trips?' This suggests that lower income passengers are aware of the price competitiveness of coach travel but would make more trips if fares were even lower.

Stakeholder input on policy measures considered

Stakeholders provided input on the level of support and expected impacts of the policy measures under consideration. An analysis of the views expressed is presented below.

Extend the scope of the legislation to include all regular services (both international and national services)

The majority of respondents to the OPCS supported establishing a common framework in the EU for access to the national for markets for regular services. 44 of the 68 (65%) Companies, four of the seven (57%) Regulatory Authorities, all three (100%) Enforcement Authorities and 11 of the 17 (65%) Workers gave the opinion that the measure would improve the performance of the coach market. Two of the three (67%) EU Governmental Authorities and 15 of the 28 (54%) NGOs responding stated that this proposed measure would not contribute to the performance of the coach market.

The respondents to the targeted questionnaire expressed mixed opinions on the proposed extension of scope. Most Ministries/Regulators that offered an opinion (six out of eight) did not support the extension or considered that it should be limited and only applicable in certain circumstances. The reasons given ranged from concerns about unfavourable impacts on coach

sector employees to the potential adverse impact on services operated as public service obligations. However, two of three operators, the two Pan-European organisations, and two of three operator associations offering an opinion were supportive. A number of these respondents cited the success of liberalisation in Germany and France, a reduction in bureaucracy caused by national regulations and prevention of unfair competition as reasons to extend the scope.

Abolish the authorisation procedure so that any undertaking established in a Member State would be free to operate new regular international and national services on any route whether it is already operated by one or more transport undertaking

15 of the 20 Ministries/Regulators (75%) that responded to the targeted stakeholder questionnaire supported keeping the authorisation procedure. In their opinion it was a useful tool to monitor the market and ensure safety standards were met. Only one Ministry/Regulator supported abolition of the authorisation procedure, stating that the current process was an unnecessary administrative burden. Four of the six operators who responded (67%) also supported keeping the authorisation procedure but highlighted that they would like to see the timescale reduced. There was mixed support among operator associations, with two arguing for abolition to increase transparency and two stating that it should be kept but standardised.

When interviewed, the Italian Regulator was in favour of keeping the authorisation procedure and establishing a framework that could be used to evaluate the economic and financial capabilities of applicants. The main reason authorisations are refused in Italy is because the applicant does not meet the minimal financial requirements to guarantee the service. This view was supported by National Express, who noted that the authorisation procedure was robust albeit time consuming. They suggested that the length of the process could be reduced from three to two months.

Set common requirements for the protection of public service contracts so as to ensure that Member States are permitted to take action to protect public services contracts from competition

36 of the 68 Companies (53%) and eight of the 17 Workers (47%) responding to the OPCS stated that removing the protection of public service contracts from competition would contribute to improving the performance of the market. The biggest negative impact was perceived to be the effect on incumbent coach operators.

The Italian Regulator suggested in an interview that removing the national limitation for PSOs would be beneficial. If a service in Italy crosses two regions it is regulated at the national level, and otherwise subject to regional regulation. Introducing a kilometre-based definition for the purposes of determining regional jurisdiction would simplify the process.

The response to the targeted stakeholder questionnaire was more divided. Six out of 20 Ministries/Regulators (30%) supported a set of common requirements on the grounds that this would help to create a more level playing field, while five (25%) did not support the proposed measure.

Require that carriers from all Member States be guaranteed access to national regular services markets without discrimination on grounds of nationality or place of establishment

The responses to an OPCS question concerning abolition of restrictions on access to national markets for regular services were mixed. 42 of the 68 Companies (62%), four of the seven Regulatory Authorities (57%) and 10 of the 17 Workers (59%) stated that abolition would contribute to improving performance of the market. However, two of the three EU Governmental Authorities (67%), 17 of the 28 NGOs (61%) and two of the three Enforcement Authorities (67%) did not consider that the proposal would be beneficial.

9 of the 20 Ministries/Regulators (45%) that responded to the targeted stakeholder questionnaire did not support this proposal. They considered that the measure could lead to discriminatory conditions or have a negative impact on employment. The other respondents within this category either did not express an opinion or did not recognise the underlying concern. The only support for the measure came from the operator associations - 3 of the 6 respondents in this category (50%) considered that it would benefit customers and lead to a better quality of service.

Devise a definition of a coach terminal so that it can be differentiated from stopping points and on-street bus stops

The respondents to the targeted stakeholder questionnaire broadly supported this proposal. Two of the three operator associations (67%) that responded to the question believed it would be useful to have one transparent definition. Of the Ministries/Regulators that responded, 8 (40%) supported having a common definition while 5 (25%) did not see any merit in a definition and considered that it should be left to Member States.

When interviewed, the EDF highlighted their preference for terminals in defined locations to guarantee better access for disabled people. EDF added that this was particularly important for people with autism as it allowed them to plan their trips in advance.

Establishing minimum common requirements to ensure that coach terminals provide access to operators of regular services on fair and non-discriminatory terms

A majority of respondents to the OPCS considered that facilitating a level playing field in access to terminals would help to improve the performance of the market. 46 of the 68 Companies (68%), 15 of the 28 NGOs (54%), five of the seven Regulatory Authorities (71%) and 11 of the 17 Workers (65%) responded positively to this proposal, although two of the three (67%) Enforcement Authorities that responded considered that it would have a negative impact. 41 of the 68 Companies (60%) and 10 of the 17 Workers (59%) stated that the effect on service quality would be beneficial.

Moreover, the majority of Ministries/Regulators that responded to the targeted stakeholder questionnaire supported establishing common requirements to ensure that access to coach terminals is fair and non-discriminatory. Seven of those responding (35%) supported the proposal, although two considered that it should be left to best practice and four stated that there are sufficient measures already. All three Pan-European organisations and all three operator organisations that responded supported the proposed measure. Two operators indicated that establishing requirements was an essential measure.

In an interview, the operator association Confederation of Passenger Transport (CPT) stated that terminal access was a major concern. They suggested that there should be an EU-wide regulation requiring Member States to adopt appropriate measures to enhance and manage

terminal capacity. CPT also indicated that the coach terminal at Heathrow in the UK was an example of good practice in the definition and transparency of schedules and tariffs.

Abolish the requirement for occasional services to require a journey form

There was a positive response to the OPCS on whether journey forms are useful. Three EU Governmental Authorities (100%), six of the seven Regulatory Authorities (86%) and two Enforcement Authorities (67%) supported this view. However, 49 of the 65 Companies (75%), 21 of the 27 NGOs (78%) and 15 of the 17 Workers (88%) considered that journey forms served no useful purpose.

Only one Ministry/Regulator responding to the targeted stakeholder questionnaire supported abolition of the requirement for a journey form. 13 of the 14 Ministries/Regulators (93%) that responded to the question wanted to keep the requirement as they regard it is a useful means of monitoring and regulating coach services. One operator, one Pan-European organisation and one operator association stated that journey forms should be retained. However, three of the operator associations that responded (75%) and one Pan-European organisation stated that journey forms should be abolished in the interests of reducing bureaucracy.

Clarify the definition of ‘international carriage’ to ensure that closed-door tours that visit other Member States are not excluded from the scope of the Regulations

The respondents to the targeted stakeholder questionnaire did not offer specific support on the clarification of the definition of ‘international carriage’, although only one Ministry and one operator explicitly stated that the meaning is currently clear and well-understood.

Similarly a majority of stakeholders responding to the OPCS considered that the definition was sufficiently clear. 40 of the 66 Companies (61%), two of the three EU Governmental Authorities (67%), 20 of the 26 NGOs (77%), six of the seven Regulatory Authorities (88%), 13 of the 16 Workers (81%) and all three Enforcement Authorities participating stated that further clarity was not needed.

Clarify the definition of “regular services” to ensure that there is no requirement to have stopping points along the route but if there is stopping points they must be known in advance

The respondents to the targeted stakeholder questionnaire did not offer any specific support for clarifying the definition of ‘regular services’, although only one Ministry and one operator explicitly stated that the meaning is currently clear and well-understood. One Ministry mentioned that it would support a clear definition of ‘special regular services’.

A majority of all stakeholder groups responding to the OPCS also stated the definition was sufficiently clear. 35 of the 65 Companies (54%), two of the three EU Governmental Authorities (67%), 20 of the 27 NGOs (74%), four of the seven Regulatory Authorities (57%), nine of the 16 Workers (56%) and all three Enforcement Authorities participating stated that clarity was not required.

Clarify that there is no requirement for an own-account operator to possess a community licence to be issued a certificate for own-account operations

Similarly, respondents to the targeted stakeholder questionnaire did not offer specific support for clarifying that there is no requirement for an own-account operator to possess a community licence if it is to be issued a certificate for own-account operations. Among the

stakeholder groups responding to the OPCS, only two of the three EU Governmental Authorities (67%) indicated that the current provision is not sufficiently clear.

Clarify the meaning of “Cabotage operations shall be authorised...” in Article 15 to mean that cabotage operations are authorised rather than need to be authorised

10 of the 20 Ministries/Regulators (50%) that responded to the targeted stakeholder questionnaire specifically mentioned that they would support clarification of the meaning of this provision. This view was supported by the two Pan-European organisations that responded, and an operator noted that it was particularly important as interpretations vary by country. Moreover, only four Ministries/Regulators (20%) considered the meaning to be sufficient already.

The need for greater clarity was generally supported by the results of the OPCS. Two of the three EU Governmental Authorities (67%), four of the seven Regulatory Authorities (57%) and two of the three Enforcement Authorities (67%) indicated that the current cabotage rules are sufficiently clear. However, 26 of the 67 Companies (39%), 20 of the 27 NGOs (74%) and seven of the 15 Workers (47%) saw no value in further clarification. The biggest negative impact of not having clarification was perceived to be the enforcement costs for Member States.

Use of consultation results

The open public consultation was mostly used as a test of the validity of the Commission's understanding of the problems at stake and of the most adequate policy measures considered. The results confirmed the Commission's initial views and approach to the ex-post analysis and to the Impact Assessment.

The OPC and the targeted stakeholder questionnaires, and to a lesser extent from the interviews and Eurobarometer provided the information for the problem definition. It was not possible to get much more quantitative (data, statistics) information from the stakeholders during the consultation process. However, it was a rich source of qualitative (opinions, views and suggestions) information which helped close the Commission's knowledge gap.

ANNEX 3: EVALUATION QUESTIONS

Relevance

1. To what extent is the opening of the market for the international carriage of passengers and for cabotage operations as introduced by Regulation (EC) No 1073/2009 necessary and sufficient to address the pre-existing problems of fragmented internal market, discrimination, unnecessary administrative burden, and sub-optimal mix of passenger transport modes?
2. Are the objectives of Regulation (EC) No 1073/2009 still relevant considering the evolution of the market, the present transport policy priorities, and the successive enlargements of the EU?

Effectiveness

3. To what extent has the Regulation led to the establishment of a true internal market for bus and coach services?
4. To what extent has the intervention enhanced fair competition including non-discriminatory access to all the markets covered by the provisions of the Regulation?
5. Has market opening of bus and coach services contributed to a shift from other passenger transport modes (individual car transport, rail transport and aviation) and hence led to an increase in the use of bus and coach services? In case a shift took place, is it in line with overarching EU transport policy goals?
6. To what extent has the Regulation had an impact on the quality, reliability, and price of the services?
7. To what extent has the Regulation brought unwanted or unexpected effects? To what extent has the Regulation had an effect on employment (employment level, geographical shift, etc.), on working conditions (level of wages, working time, etc.), and on worker's mobility in the road passenger transport sector?
8. To what extent has the Regulation had an effect on employment (employment level, geographical shift, etc.) on working conditions (level of wages, working time, etc.) and on worker's mobility in the road passenger transport sector?

Efficiency

9. To what extent are administrative costs and enforcement costs for authorities (licensing and authorisation, inspections, penalty system, mutual assistance), and compliance and administrative costs for transport operators proportionate and necessary in relation to the outputs and results achieved?

Coherence

10. Are the provisions of the regulation, including in particular the definition of cabotage operations, consistent with those of Regulation (EC) No 1071/2009 which governs access to the occupation of road transport operator, and (EC) No 1072/2009 which regulates access to the market of international freight market?
11. Is the objective of promoting bus and coach transport as a sustainable alternative to individual car transport coherent with the EU's modal shift policy (as notably expressed in the 2011 White Paper on Transport), and more generally, with overarching EU strategies (policy on combatting climate change, providing for a deeper and fairer internal market, Energy Union, etc.)?
12. To what extent are enforcement rules of the Regulation compatible with similar rules in other pieces of legislation applied to the same operators? In practice, to what extent are enforcement rules streamlined?

EU added value

13. To what extent has the Regulation permitted achievements which could not be reached at Member State level through the bilateral agreements previously in place?