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Comments on the Commission consultation

„Rights of passengers in international bus and coach transport“

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Background

The nexus Institute is an independent research and consultancy organisation closely linked to the Berlin Technical University. It works in several areas, one of them being transport and mobility. Here the focus is on political, behavioural and social aspects related to the design and implementation of policy measures. Citizens' participation in planning, political decisions and the design of products and services is another important area of activity. User involvement and passenger rights brings together both of these, and one of our ongoing projects undertakes a comprehensive review of public transport users' situation in several European countries (<http://www.nexus-berlin.com/Nexus/areas/mobility/busrep.html>).

We therefore represent neither a user nor an industry organisation, but feel that we can provide useful comments to some of the consultation questions based on our research.

Scope of the consultation

“Bus and coach services” covers a fairly wide range of transport services with quite different characteristics. “Bus” and “coach” refer to the type of **vehicle**, but there are other dimensions as well: A distinction is whether a service is provided on a regular basis with a published timetable (available to all, “**scheduled services**”) or for private customers, tourist or other groups (“**occasional service**”). Second, they can be classified by **distance** (“local/regional” or “long distance”), which is often linked to the type of vehicle used. Third, a service may be domestic or international (crossing a border within the EU or between it and other countries).

Although the latter is important in terms of the legal and administrative conditions that apply and the extent to which the EU can regulate, we would recommend any **measures taken to be differentiated according to the other dimensions** instead. These imply significant differences in vehicle, demand and supply characteristics which should not be overlooked.

Questions

1) Given that passengers of other modes of transport enjoy many rights under international or Community regulations which are not offered to bus and coach passengers, do you agree that equal treatment (a “level playing field”) should be ensured between bus and coach operators in different Member States in terms of protection of passengers' rights?

While all modes of transport have distinct characteristics, **passengers should find them all easy to use and be confident while doing so**. Hence although regulations in detail may need to reflect the operational characteristics of each mode, standards of consumer protection should be “level” across all.

We have not specifically targeted coach users in our work on the passengers' situation. However, regarding passenger rights, user organisations generally consider the balance of power between providers and customers to be **skewed to the passengers' disadvantage**.

The fact that there is no legal base to claim compensation in case of delays, cancellations and other serious quality problems can create frustration. Other issues, such as protection in case of injury, loss of luggage, are criticised far less, partly because they are rare events in comparison.

Voluntary compensation schemes are seen as a welcome step, but there is also criticism regarding their conditions, handling procedures and limited publicity (see also questions 14-18). There is also a feeling that the lack of consumer protection **contributes to a lack of attention to customer needs in transport operations**. For example, the cases where bus drivers do not maintain connections shown in the timetable is attributed to poor operational control and discipline which can be explained by the lack of suitable sanctions.

On the planning level, the relation between user groups and operators is often better and can lead to a **productive dialogue** on how services should be developed (see question 42). It is therefore fair to say that the relation between passenger and provider is not only a tense one, however, bad experiences with the service can have an impact far beyond the event itself.

Coaches fulfil different roles on the transport market (cf. question 4). In most cases, coach users are characterised by a **dominance of senior citizens, young people and in general users from lower income groups**. There are a few exceptions in the private hire sector and package tours. The supply side is mixed: Scheduled services are in part provided by large companies or groupings of them (such as Eurolines), but others and the far majority of occasional services are offered by **small and medium-sized private operators**. Intra-modal competition is thus greater than in rail, local public transport and also most airline markets. This has implications on working conditions, but also on the companies' abilities to provide customer protection. These characteristics highlight the need to secure an adequate standard through appropriate legislation.

3) Should only international services be regulated and domestic services be left to each Member State?

See "Scope of consultation" above.

4) Is any legislative action necessary to improve intermodality between coach services and other modes of transport? If so, what action in particular?

Our current study on user interests does not explicitly cover coach services as these play only a small role on the transport market (considering the number of trips, not distances) and "user rights" are also in part covered by legislation on tourism services and package tours. However, in other research we dealt with the coach industry and its products. In answering, a distinction between scheduled and occasional services needs to be made.

Scheduled coach services can be operated either **in competition** with other modes (especially rail, examples UK and Sweden), be **integrated** into a national public transport system (Netherlands) or **regulated** in a way that minimises competition with the railways (Germany). The first and third of these cases seem to dominate overall and have so far limited the integration of coach services into the public transport system. From the users' view, improvements would certainly be beneficial as services would be more widely advertised (if integrated into the general public transport marketing system) and more accessible (through better coordination of timetables and location of stops).

Given the present position of the coach in the transport system, legislation could indeed be useful to promote integration of this kind. For instance, this could provide for a cross-modal information system covering local public transport, rail as well as coach services. This could be based on the principles applied to secure **impartial, comprehensive information** for liberalised rail and air transport services. See also question 49.

Occasional services are largely provided by small and medium-sized private operators and cater for the leisure and tourism market. On the practical level, intermodality seems to be mainly a matter of making these services **accessible by other means of transport**. This may be helped by the design of terminals and their conditions of use, but is **more a planning than a regulatory issue**. It should also be noted that the market structure with many small, competing providers with limited planning and marketing capacities makes larger-scale cooperation difficult.

14) Should passengers receive compensation in the event of denied boarding or cancellation of a journey? If so, what should be the minimum amount of compensation?

Like other services, transport is produced at the moment of consumption. This can be pre-planned, but there is always the possibility that real quality achieved is affected by circumstances within or outside the provider's control - the cause is of little practical relevance for users. As an unsatisfactory service cannot be returned, customers can only be offered a **substitute**, which however is unlikely to have the same characteristics as the original (if the next bus is taken instead of a cancelled one, one arrives later than planned). Therefore **compensation** has to be considered both in addition to the substitute as well as in those cases where no substitute can be offered.

Transport services have greater implications on their users' lives as they **link** their **activities in time and space**. While any activity (including travel by car) may be affected by external influences, **users of public transport have nearly no possibility to do something about it**. They cannot, for instance, turn their car around, get off the motorway or try to recover some of the time lost by reducing breaks. This is particularly true for long-distance journeys where **knowledge about travel alternatives** in an unknown area is usually very limited. In such circumstances, **practical assistance is of prime importance**. Any measures taken must be easily **accessible for the people affected**, hence the operator of the transport service needs to play a major role also in cases (such as package tours) where he has no direct contract with the passenger.

These issues are a matter of customer care, but given the importance, it is the more surprising that legislation on this issue is very limited.

15) Should passengers be provided with appropriate assistance (hotel accommodation, meals and refreshments, telephone calls) if their journey is interrupted?

The measures taken should be **based on the circumstances of the situation**. The examples given are most relevant for long distance trips. Telephone calls are useful in any case where passengers have fixed appointments at the destination. They are particularly valuable abroad and for low-income groups who have difficulties in handling payphones with foreign currency (if existing) or risk high mobile phone charges.

An important aspect not yet addressed are **alternative means to get to the destination with the least delay**. Following the principles of consumer protection in other sectors, the **provider** of the defective product must be informed of the problem and **given the possibility to rectify it**. In case of bus services, the former is easy to achieve through the presence of the driver. Regarding the latter, operators can try to catch up on delays, provide an alternative vehicle, transfer passengers to the next service or **another means of travel** (rail, taxi, other companies' buses). It is likely that the last option will be least preferred by operators because it causes direct costs. However, this must not lead to excessive, avoidable time losses to passengers. Given the industry structure (cf. question 1), this aspect should be addressed by **regulation**.

Further studies could be necessary to identify

a) the extent and structure of service malfunction in the bus industry and the best type of redress/compensation from the passengers' view

b) suitable operational arrangements for providers to assist them in handling disruptions and provide efficient assistance

16) Should passengers receive compensation in the event of delays?

See question 14.

17) If so, what would be the minimum reasonable compensation payment?

For practical reasons, it is useful to define both a **minimum delay** which entitles to compensation and a **minimum amount**. Furthermore, compensation should be **linked to the price paid** as foreseen in the proposed scheme for rail passengers. For passengers on package tours, compensation needs to reflect the extent to which the whole package was affected. Also see question 15.

18) What are possible reasons/factors for exempting coach operators from the obligation to reimburse passengers in the event of delays? Would it be satisfactory if a coach operator were to announce possible delays at the beginning of the journey?

The whole complex of assistance and compensation for service malfunctions needs to be dealt with in the context of the **operator's control** over the circumstances, the passengers' demands for **fair treatment** and the practical issues of the concrete **situation** (cf. question 14/15). There are a few extreme cases of **force majeure** where the idea to limit or exclude the operator's liability is, according to our studies, accepted also by passengers. These include natural disasters, terrorist attacks and extreme weather conditions. For others, in particular traffic-related delays and less extreme weather, opinions are more mixed. The fact that **the cause of a problem is not always evident** complicates the situation. Users with little information about the situation may consider the reasons given by the operator as an excuse to avoid responsibility. Such experiences can undermine the credibility and reliability of the service.

Transparency about these aspects of service quality is poorly developed, due both to the regulatory framework and the capacities and coverage of **authorities** controlling this sector. To devise suitable procedures and arrangements would be a useful topic of further **research**. This also has implications for the way conflicts can be resolved (see also questions 36-38, 43-46).

36) Should a complaint-handling mechanism be regulated at EU level?

A **minimum standard and common user interface** in complaint handling is certainly desirable, especially due to the relatively high importance of long distance/international trips in the coach sector. Standards could therefore be modelled on the solution found for the **air industry** rather than local services. However, given the wide variety of spatial and administrative conditions, this framework should leave room to develop tailored solutions.

37) Should a one-stop shop be set up for handling complaints about international services?

This would imply the definition of an **"appeals body" for each country** (see also question 44/45). Arrangements should be made between them to ensure that passengers can contact the suitable body in their home country who then handle the complaint, seek additional information from other countries or forward it to another office as necessary.

38) What should be the maximum time limit for handling a complaint? Is four weeks a reasonable limit?

Four weeks seems reasonable. However, our work with user organisations indicates that to get **a well-written response demonstrating that the company has understood the customer's concerns is at least as important** as to adhere to a general time limit. Some even hold the view that to feel understood and respected by the company is more important than the issue of financial compensation.

41) What role could consumer bodies play in handling individual complaints?

For consumer organisations, complaints are an important **source of information** which they can use to develop their activities and focus their resources. We are aware of some organisations who also collect individual complaints with the aim to **mediate** between the complainant and the provider. From the provider's view, however, their role is sometimes not seen as neutral, but as an advocate for the customer. Hence willingness to accept such claims can be less than in case of a separate mediation office.

However, this requires a relatively **high work load** per case as normally each one has to be handled individually. User organisations who depend on membership fees, donations and voluntary work find this difficult to handle and have in most cases we found reduced this service, for example by offering it to their members only. See also question 42.

42) Should there be mandatory consultations between consumer organisations and coach operators? If so, what issues should they cover?

We have interviewed a number of representatives from transport operators and user associations on this issue. They both **appreciated the role of consultations** provided they take place in a constructive atmosphere. Such a dialogue is **important to secure the users' "voice"** in an industry where "exit" (the possibility to choose another operator) is not possible or practical. This is usually the case in local/regional public transport, less so for occasional services.

These consultations should give the opportunity to comment both on **projects and planned changes to the service** before they are implemented (as later changes are not always feasible and cause extra cost and confusion to users) as well as on the **quality of service** currently in operation. Hence all issues listed in the question appear reasonable.

Important conditions for their success are: to **consult in time**, allow customer representatives to **freely express their views** on all relevant issues and **give detailed feedback** and explanations. So far, such consultations mostly have no statutory base and hence depend on their willingness to work with the customers or their organisations. To make them mandatory would help to guarantee the latter a possibility to get information from the provider and express their views. However, what happens with these statements still depends on the operator. To make even the less interested comply with the idea of consultations, **further standards** (such as obligation to comment within a fixed time) need to be considered.

One should also remember that it is not guaranteed that user organisations genuinely **represent the views of the public** at large. In most cases they are relatively small and cannot always get a comprehensive picture of service quality in a larger area. In addition, there is a tendency to adopt an "expert's perspective" over time. To compensate for this, they should be open for the general public and have **regular contacts with normal passengers**.

An open question is how to design a useful way of consultation for the **coach sector** in particular. On the one hand, providers are more fragmented than in local transport and rail, on the other hand are coaches infrequently used in most cases (long distance, leisure trips and special occasions). Hence both users and providers are fairly scattered and have less

frequent contact than in local transport. This creates practical and topicality problems for any consultation procedure. This deserves further study and is perhaps best addressed by an approach that addresses not only the coach sector.

43) What are the existing practices concerning voluntary complaint-handling schemes in Member States? Are there any instances of joint bodies set up by bus and coach operators and customers/users organisations?

Transport user organisations are usually accessible to members of the public wishing to comment on any problem with the services they are interested in. However, they do not normally involve themselves in the resolution of individual complaints due to the high workload involved (cf. question 42). The information collected in this way is rather used as an input for their other activities which may lead to a solution in the mid- or long term.

Many countries have some kind of **mediation service** for extrajudicial dispute settlement, and in some cases also for public transport. However, these **rarely cover coach services**, and some have a geographically or modally limited area of responsibility. In **Germany**, two bodies can be named here:

a) Schlichtungsstelle Mobilität, an independent mediation office set up in December 2004 which also caters for coach services (but not package tours). According to their first-year results, the number of coach-related cases is insignificant.

b) Ombudsstelle Nahverkehr Bayern, a mediation service set up jointly by the Bavarian associations of public and private transport operators. Here, too, very few complaints on private services have so far been received. The service has an advisory board where VCD (Verkehrsclub Deutschland) and the rail user organisation are represented. However, case handling is done by the office staff.

44) Should extrajudicial dispute settlement procedures based on Commission recommendations 98/257/EC and 2001/310/EC suffice?

The recommendations given provide a **useful set of standards** for extrajudicial dispute resolution bodies. Not all of them currently meet them, hence this would be the first area where improvement is required.

Apart from that, **extrajudicial bodies should be seen as complementary rather than a substitute for legal improvements** of consumer protection. Their ease of access and low cost are in any case clear advantages. Experience from the UK, where passengers probably enjoy the greatest level of legal protection, show that despite of this many problems are still best handled by extrajudicial bodies.

45) What would be the most appropriate type of extrajudicial dispute resolution scheme to handle complaints in this area?

Given the market share and position of coach services, dedicated bodies dealing with coach issues only are likely not to achieve continuous use of their resources. Responsibility for coaches should therefore be **integrated into other bodies with suitable competences** (public transport and tourism). If a separate body is preferred, mediators should be employed on a part-time basis and **paid by time** spent on their work. This model has been introduced in the Swiss mediation office for public transport.

46) What experience have you had concerning self-regulation of user/customer care rights at national level?

The development of self-regulation is relatively new in German public transport and not all areas have been covered yet. Existing schemes sometimes seem to suffer from **poor public awareness and publicity**, but it is perhaps too early to judge on these developments. However, to our knowledge **none of the “travel guarantee” schemes** introduced mainly for local/regional transport over the last years as a voluntary measure **have been withdrawn**. We are currently working on a more detailed assessment.

Regarding dispute settlement, the bodies set up in Germany so far work without a statutory guarantee and have to rely on the **operators’ willingness to cooperate**. This is a **potential weakness** and has been a problem for some airlines.

49) What is your opinion on inclusion of coach services in integrated ticketing systems?

See also question 4 above. Regarding **scheduled services**, the so far more competitive than integrated position of coach services is likely to limit operators’ interest in through ticketing. In addition, more detailed studies should look at the **cost of integration** and put them into context of the few (compared to other modes) number of coach journeys. From the users’ view, integrated ticketing is certainly positive if prices do not increase as a result.

However, the coach industry’s **sales channels** are often **less developed** than those of rail or air transport providers. Hence even normal coach tickets without any intermodal element are less easily available. To change this would **already represent a significant improvement** even without the integration of other modes.

The same applies in principle to **occasional services** who are often marketed locally and are difficult to book through the main CRS systems. The reasons for this lie in the providers’ business model as well as the commercial conditions of accessing these systems.