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FINAL REPORT

Social Conditions in Urban Public Transport Companies in Europe

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Executive Summary

The delivery and quality of urban public transport (UPT) services plays a significant role, both in relation to supporting local and regional economic development, the environment and employment opportunities, as well as in ensuring inclusion and the ability of all individuals to participate fully in family life and wider society. Furthermore, in many European cities and towns UPT operators provide for significant local employment. Regulations regarding the provision and award of such services can therefore potentially impact on all these factors. In light of the restructuring of the sector and the developing competition, and with an increasing number of public service contracts being prepared in UPT to comply with the PSO Regulation changing the status quo, the European social partners in the sector, ETF and UITP, have launched this study to get a picture of the UPT systems in Europe in order to further understand differences in market structure and organising for UPT services, industrial relations and provisions on transfer of staff. The social partners have divergent views on the impact of competitive tendering and change of operator after a tender procedure on employment, the personnel concerned and on working conditions. They agree however, that competition in the UPT market should not negatively affect working conditions.

The study took into account Articles 4(5) and 4(6) and Recitals 16 and 17 of the PSO Regulation 1370/2007 which allow competent authorities to require public service operators to meet certain minimum social standards in relation to the employment of staff to deliver the service or to require a transfer of staff to the new operator within the meaning of Directive 2001/23/EC even if the conditions of the Directive are not fulfilled. It is within the remit of the competent authority whether or not to make use of these possibilities offered by the Regulation; there is no legal requirement to use one or both possibilities.

The key research issues underpinning the country studies were:

- Description of how UPT is organised in the different Member States and how working conditions are determined;
- Description of social conditions in UPT and trends over the last ten years;
- Description of the impact of tendering and/or direct award for public service contracts in UPT on social aspects and the protection of staff; and
- Description of the impact of change of operator in UPT on social aspects and the protection of staff.

The purpose of this project was to gain the necessary information in order to enable a dialogue at European level on how to ensure good quality services and good quality working conditions.

It is important to note for the context of this study that only few updated national reports exist and only few updated information exits at European level (European Commission) on the situation of the implementation of the PSO Regulation[1] and national regulatory frameworks of the UPT sector[2]. This study is based on field work and surveys within twelve European Member States: Austria, Belgium, Bulgaria, Czech Republic, Finland, France, Germany, Ireland, Italy, Netherlands, Sweden and UK (for some aspects survey responses exist in addition from Denmark, Latvia, Lithuania, Estonia, Hungary and Slovenia).

Although in most of the capital cities and bigger cities in the majority of Member States direct award of public service contracts continues to be the prevalent awarding procedure, the use of competitive tendering has become more widespread in the award of UPT services (either for single lines or whole networks) over the past decade. Despite this trend, significant differences remain between and indeed within Member States and mode of transport.

In a number of countries (UK, SE, FR (outside Paris), Finland (mainly Helsinki metropole region), NL, DK and NO) competitive tendering had already been used for UPT services prior to the adoption of the PSO Regulation. Furthermore, some countries have recently introduced reforms (or may continue to restructure) to change competencies or financing structures of the territorial and competent authorities in charge to award and organise UPT services, e.g. as is the case in France (introduction of metropole cities). This continues to introduce different dynamics in the UPT market. While in some cases, national legal frameworks require competitive tendering (SE, FI, UK) the PSO Regulation has been an impetus among other factors (e.g. political and economic motivations) to make use of competitive tendering and/or to reform the way of how UPT services are awarded. Because the PSO Regulation requires the conclusion of public service contract for both types of award, a trend towards more cost-efficiency (in particular after the economic crisis) criteria has been observed in both cases of type of award placing more pressure also on workers and working conditions.

Trends regarding the nature of UPT operators have to be assessed according to the mode of transport. The bus services sector shows an increasing market share of international companies where services are tendered (concerns

[1] The latest Commission study dates back to 2010.

[2] A more recent update was prepared by UITP, 2014, Organisation and major players of short distance public transport, new developments in the European Union, UITP Europe, International Association of Public Transport.

mainly 8 Member States out of 28 Member States) but internal operators are still dominant in capital and big cities. A high share of SMEs is noted among subcontractors or in cases where lines are tendered in smaller lots. In some countries, tram, light rail and metro services are usually run by internal operators, in others the complete urban public transport networks (including tram, light rail and/or metro) are tendered. For newly built track bound lines an increasing use of competitive tendering has been observed and thus an increasing share for international companies for this mode of transport.

Trends with regard to the evolution of employment are difficult to obtain due to a lack of data, only for some countries indications exist. A mixed trend emerged among the countries of study and cannot be linked only to the way UPT services are awarded. It shall be further noted that more than 90% of workers in the sector are permanent (full-time) employees. In some cases, there is a tendency of an increasing use of temporary agency workers in countries with more experience in competitive tendering (e.g. NL and SE). Nevertheless, this type of work contract has also been used in other countries to reduce overtime hours (as a cost efficiency measure) for both ways of award. In relation to employment levels, also the role of subcontracting and outsourcing has been examined. While the use of subcontracting is allowed in all countries studied, impact of subcontracting on employment levels among main operators cannot be clearly judged. It was however highlighted that subcontracting does play a (more or less significant) role as a cost-efficiency measure. In the majority of cases, subcontractors apply different social conditions compared to the main operator. The same holds true for outsourcing, although the process of outsourcing occurred at different times (e.g. outsourcing of cleaning and security services occurred much earlier in most cases for the period of analysis). More recently, outsourcing also plays an increasing role for maintenance services though for various reasons (e.g. cost-efficiency but also due to the fact that rolling stock has become more IT complex and where maintenance can be best carried out among the producer firm).

Social standards set in legislation and – more importantly – in sectoral collective agreements can play a critical role in creating a social level playing field by securing employment conditions for staff in tendering processes. Seven out of the 12 countries studied more in depth have such sectoral agreements (AT, FI, FR, DE (regional level), SE, IT, NL). In two countries (BE and IE) UPT services are predominantly awarded directly and only company level agreements exist. In the remaining 3 countries (UK, CZ, BU) company level collective bargaining prevails. Although wages and working conditions are influenced by various factors, the absence of sector collective agreements in countries where tendering is currently not yet widespread but may increase in the years to come, is of concern. On the other hand, it must also be noted that where sectoral collective agreements are in place, it is possible that the provisions in some company level agreements are up to 35% higher than sectoral agreements. In cases of competitive tendering, reference to sectoral standards alone may therefore not be enough to protect workers' terms and conditions. Without requirements to transfer of staff there is a risk that staff that find re-employment with the new operator see their terms and conditions reduced. Whether the requirement to transfer staff is set out in national law (e.g. France, Netherlands, UK), agreed by social partners (e.g. Finland) or transfer is negotiated by social partners on a case by case basis (e.g. Sweden) depends on the Member States traditions. Transfer of staff is a factor that provides a guarantee for job security and is a factor of attractiveness of the sector. Although social conditions are influenced by various factors, of the examples studied, countries which have a universally binding sector agreement in place and require transfer of staff on the basis of the national legislation offer the most 'reliable' and wide ranging protections for staff. These conclusions, were reached by the consultant on the basis of the cases and countries studied.

Trends studied on the evolution of social conditions in the 12 countries do not indicate specific effects of either type of award (direct award, tendering) not taking into account the question of job insecurity. Nevertheless, it shall be noted that most of the countries with extensive experience in competitive tendering have either universal binding sector collective agreements and/or transfer of staff (at least NL, FR, and FI via collective agreement) in place. Exception in the sample of countries analysed is the UK which uses competitive tendering mainly in London. Compared to the other countries the bus and coach drivers in the UK experienced a less favourable trend of evolution of social conditions with regard to wages or work hours in particular. In England, Wales and Scotland services are provided on a commercial basis which does not involve a competent authority. The companies operate at their most efficient economic levels and wages are often just above the legal minimum wage. On the other hand, in Germany where the majority of contracts are awarded directly social conditions have been adversely impacted by the perceived likelihood that tendering could become a reality in the early 2000s also due to the scarcity of public budgets. Ever since, there has been an emphasis on cost-efficiency and public savings, a trend that has been also observed in Belgium and Ireland which currently make use only of direct award for their UPT services (in IE with exception of the Dublin LUAS network). In the majority of cases analysed, with the trend towards reduced public budgets and the introduction of the possibility for competitive tendering , work intensification (also highlighted by higher rates of absenteeism compared to other sectors) and increased job insecurity among staff has been noted in both cases of award (direct award and competitive tendering).

In CEE countries studied (in the study Czech Republic, Bulgaria and Hungary) the study shows that UPT has to fight against an unattractive image of the sector whereby internal operators do provide for better social conditions compared to private operators. Company level bargaining is the most important means to improve working conditions and trade union representation is mainly strongly present

among internal operators and less present or inexistent among private operators.

An aspect that has been observed in all countries analysed was the fact that workers claim working time intensification. This trend is linked to productivity efficiency measures (e.g. shorter turn-around times, tight driving schedules, shifts can be split in for mornings and evenings for peak and off-peak hours, not counting as working time ways to get from the garage to the position of the vehicle; no proportionate increase of number of staff compared to increase of passengers) but in big cities this can also be linked to road congestion.

Despite the possibilities offered by Articles 4(5) and 4(6) and Recitals 16 and 17 of the PSO Regulation, the use of social conditions in tenders (without the requirement to transfer staff as another way of ensuring social standards) is very limited, the only exception being Germany. The impact of the Regulation remains minimal, with only Germany enshrining respect by virtue of the determination of social conditions, although this is done at the sub-national level legal provisions and these same provisions do therefore not apply to all tender processes. The reference to social conditions in direct awards is more frequent in particular referring to human resource management (e.g. performance and reward, productivity requirements, training standards) or in particular recruitment of workers that are away from the labour market, older workers or young workers.

The other option requiring transfer of staff is rarely explicitly based on the provisions of the PSO Regulation. Only four Member States out of 16 countries analysed (FR, UK, NL and de-facto FI) provide for a transfer of staff on the basis of national legislation or collective agreement.

The current study showed that the reduced availability of public sector budgets to invest in transport infrastructure and services and the political and/or economically driven choice for competition and/or higher cost-efficiency had an adverse impact on working conditions and job security in both awarding regimes, direct award and competitive tendering.

Glossary of Terms

Competent authority denotes any public authority or group of public authorities of a Member State which has the power to intervene in public urban transport in a given geographical area (cities) or body vested with such authority.

Competitive tendering refers to a procedure of award of public service contracts by which a competent authority issues an invitation to tender including the description of specific terms of conditions for the service and the public compensation accordingly to urban transport providers.

Commercial services versus services covered by public service contracts (PSC) – for this study it needs to be taken account of two kinds of urban and suburban transport services can be operated in Europe:

- Services covered by a PSC where the operator fulfils public service obligations (PSO) defined by the PT competent authority and receives a financial compensation and/or exclusive rights
- Commercial services provided by an operator on a commercial basis, with neither financial compensation nor exclusive rights. General rules may apply, like for example maximum tariffs for certain groups of passengers,. Such measures apply without discrimination to all PT operators of the same type in a given geographical area,

This study focusses on the services covered by a PSC.

Direct award means the award of a public service contract to a given internal public service operator (competent authority controls the internal operator).

Inter-urban transport – denotes transport services that are provided between urban areas and that cover distances above 50 km and are often provided by coach or inter-urban rail services. These services are excluded from the urban public transport definition.

Public service contract means one or more legally binding acts confirming the agreement between a competent local authority and a public service operator to entrust to that public service operator the management and operation of public passenger transport subject to public service obligations.

Public service obligation means a requirement defined or determined by a competent authority in order to ensure public passenger transport in the general interest that an operator, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions without reward.

PSO Regulation – the term is used in this publication referring to Regulation 1370/2007

Outsourcing – The divestment of any activity that could be considered as "non-core" to the business and that were previously carried out by direct labour under a common brand of the business.

Regional public transport – denotes for the purposes of this study transport that is provided within an urban catchment area but rather referring to services in city-suburbs or surrounding areas and that are covered by a public service contract. These services fall also within the definition of urban public transport. Competent authorities can commission for such services separately from the "inner-city" transport.

Social conditions is a term used in this study to denote employee rights linked to wages, non-wage terms and conditions of employment, pension entitlements, health and safety standards or training entitlements as specified in collective agreements as well as more broadly denotes the terms and conditions that transfer in case of transfer of staff as specified in the PSO Regulation by Articles 4.5 and 4.6 read in conjunction with Recitals 16 and 17. Service quality criteria can influence on the other hand also working conditions by setting out for example specific qualification levels for staff including requirements for training.

Sector level collective agreement – is a collective bargaining agreement that has been concluded by sector level social partner representatives setting a sector specific level of employment conditions, wages and non-wage terms, pension entitlements, health and safety or training entitlements. For the purposes of this study this includes all agreements whether binding only for signatory parties or extended to the entire sector including all companies.

Sub-contracting – In the meaning of this study, sub-contracting means the movement of any core activity (normally transport operations) to an outside organisation whilst retaining control of the overall and direct business.

Transfer of staff means the requirement for a new operator to offer employment to those workers that accepted to be transferred on the same terms and conditions as were in place with the previous operator.

Transfer of undertakings/transfer of business for the purposes of this study means a transfer of staff as well as other tangible and intangible assets in the case of a change of operator.

Transfer of staff required by Regulation 1370/2007 – means a transfer of staff that is requested in the terms of reference by the competent authority.

Urban public transport for the purposes of this study denotes the transport of passengers' by bus and/or urban rail (metro, light rail or tram) in urban areas that are covered by a public service contract. It excludes public transport services by coach (regular lines over 50 km) and/or conventional rail.

Abbreviations

CEE countries – Central Eastern European countries

UPT – Urban public transport for passengers

ToR – Terms of Reference for competitive tenders

TTGs –Tariftreuegesetze – laws on compliance with collective bargaining agreements

PSO Regulation – Regulation 1370/2007

PSC - public service contracts

PT networks – public transport networks

1 Introduction

1.1 Context for the study

A large majority of European citizens live in an urban environment, with over 60% of individuals living in towns and cities with over 10 000 inhabitants.[3] Urban conurbations are continuously growing and remain an important motor for economic development and job creation. At the same time, urban areas are undergoing important changes. New attractive areas are being developed outside the historic city centres that need to be connected; demographic change requires more tailored transport solutions for elderly or disabled individual; and affordability and environmental sustainability are further watchwords. Smart, efficient, effective and high quality urban public transport mobility contribute to societal and territorial cohesion and employment creation.

Urban public transport is a diverse sector with different transport modes and operators, suppliers, infrastructure, but also the associated public sector with the competent authorities that set the framework for public service obligations, finances and transport planning. The sector is labour intensive and thus in many capital cities urban public transport providers are also among the largest employers. The sector offers a wide spectrum of occupations from drivers to mechanics, managerial and administrative staff, to security agents and customer service officers and increasingly also IT professionals and engineers.

New shared mobility transport solutions have also been introduced to cities such as car sharing and bicycle renting systems managed by the public transport provider. In some cities new or atypical modes of transport are also emerging such as water borne transport or funiculars or teleferics. Public transport solutions are also competing with currently non-regulated providers (e.g. Uber) or private household offers (e.g. car sharing, car pooling, ..) aiming to provide an ever more individualised transport offer, which pose challenges to the traditional operators in the sector.

Although no precise data are available, UITP estimates that about 1.2 million people work directly for UPT operators in the EU[4]. According to this same study, employment in the sector has decreased by around 4% in the EU-27 in the period from 2000 to 2010. More recently, employment numbers have started to increase again, with a rise by 3% between 2011 and 2014.

The new demands for urban public transport require operators to adapt to the market thus relying on new skills and possibly new occupations. Operators need qualified and motivated staff to keep providing high quality services and to satisfy the demands of its users. Attractive work conditions are essential to keep workers and to attract new ones. The findings from this project aim to support the social partners in the sector to understand the current situation with regard to market organisation, employment and social conditions in the urban public transport (UPT) sector in Europe.

1.2 Background of the report

This report forms part of the project of the European Social Partners in the UPT sector, UITP (employers) and the European Transport Workers Federation (ETF – workers side) and was commissioned by EVA Academy (co-ordinating the project on behalf of the social partners). The project aimed to gain an insight into how UPT is organised in the different Member States, including the legal framework underpinning market organisation; gather information on how employment conditions are regulated; and the role collective bargaining agreements (national, sector, regional or company level) in the urban public transport sector. It also sought to chart to what extent social conditions have changed over the past 10 years by exploring national examples of UPT operators. Particular focus was placed on trends in employment levels; the structure of collective bargaining and social dialogue and the influence of legislation and collective bargaining on salaries and working conditions.

Within this context, particular attention was given to examples of change of operator in order to understand whether Regulation 1370/2007 has played a role with regard to requiring bidders to meet certain social conditions and/or the transfer of staff and to analyse the impact for individuals active in the sector and their working conditions.

Due to a lack of comparative information at EU level on social conditions in urban public transport, the study focussed in particular on twelve case study countries (AT, BE, BG, CZ, DE, FI, FR, NL, IE, IT, SE, UK). Additionally some general country level information is provided for DK, LV and LT, as well as some company specific information from HU (Budapest).

The key research issues underpinning the country studies were:

[3] European Commission, DG MOVE.

[4] UITP report Employment Report 1 available at: http://www.uitp.org/observatory-employment-public-transport-report-1

- Description of how UPT is organised in the different Member States and how working conditions are determined;
- Description of social conditions in UPT and trends over the last ten years;
- Assessment of the impact of tendering and/or direct award for public service contracts in UPT on social aspects and the protection of staff; and
- Assessment of the impact of change of operator in UPT on social aspects and the protection of staff.

The social partners in the UPT sector UITP and ETF have divergent views on the impact of competitive tendering and change of operator after a tender procedure on employment, the personnel concerned and on working conditions. They agree however, that competition in the UPT market should not negatively affect working conditions. The purpose of this project is to gain the necessary information in order to enable a dialogue at European level on how to ensure good quality services and good quality working conditions.

1.3 Methodology

The methodology of this study combined:
- desk research;
- an online survey among social partners in the UPT sector and interviews with national social partners in in-depth study countries; and
- company level interviews with management and workers representatives.

The different steps of the research were accompanied by a Steering Committee consisting of EVA Akademie and representatives of UITP and ETF. The Steering Committee approved research tools and assisted with the search of interviewees among social partners and UPT providers in different countries.

Throughout the project 3 workshops (in Sofia, Paris and Frankfurt) were organised to collect further information from members of UITP and ETF on their country specific situations and to discuss challenges facing the sector with regard to the regulatory framework for urban transport, transfer of staff and development of social conditions, impact of type of award and conditions for subcontractors. These workshops provided a forum for the presentation and discussion of the interim results.

A final conference was organised on the 31 May 2016 presented results of the project to a wider audience.

1.4 Study approach

1.4.1 Definitions – urban transport, and social conditions

The following definition is used by the European social partners for UPT for the purposes of this study: public passenger transport services by bus and/or urban rail (metro, light rail or tram) in urban areas and that are covered by a public service contract. Excluded from this study is the passenger transport by coach (regular lines of over 50 km) and/or conventional rail. It has been attempted to further specify this term due to the fact that the PSO Regulation does not specifically set out this distinction. The PSO Regulation also applies to transport services of regular lines over 50 km. This study however is limited to UPT regular services below 50 km and falling within the scope of the PSO Regulation. This concerns only those services for which operators are granted an exclusive right or public service obligation under a public service contract. The study excludes generally services carried out on a 'commercial basis'. The study has however, has looked at one example from the UK (outside London area) where 'commercial services' are most commonly used to be able to understand and to compare such a situation with a country having a 'regulated model of competition' using to a large extend competitive tendering.

UITP and ETF also sought to further specify the definition of quality criteria, social criteria and social standards throughout the study. For the purpose of this study it was agreed to refer to generally social conditions meaning the following in the context of this study:

- employee rights linked to wages, non-wage terms and conditions of employment, pension entitlements, health and safety standards or training entitlements as specified in collective agreements or the terms and conditions that transfer in case of transfer of staff.

Service quality criteria can on the other hand also influence working conditions by setting out for example specific qualification levels for staff including requirements for training. There is a European Standard on quality criteria on "Transportation – Logistics and services – Public passenger transport – Service quality definition, targeting and measurement" (EN 13816). It contains a detailed list of the quality criteria of a public transport service as viewed by the customer. Different legal interpretations and additional legal standards of quality criteria in the Member States exist. As stated, service quality criteria can influence work-

ing conditions but they are mainly important for customers and passengers.

The term "social criteria" has also been under discussion during this study. The term had been confusing for stakeholders interviewed. In some occasions this term refers to a situation where criteria linked to social conditions were used to select offers for a specific tender.

The PSO Regulation under Recital 17 refers to social and service quality criteria to maintain and raise quality standards for public service obligations. On the other hand it is referred to social standards under Recital 16 and Article 4.5 with regard to the option to make use of transfer of staff. However these definitions may not be very concrete and clear for interviewees with regard to what exactly is being referred to, having in mind their own specific country situation and both concepts may be seen as complementary.

In most cases it has been surprising for interviewees that social standards as set by the law shall be set out in tender documents as in the majority of countries it is a pre-condition that operators have to comply with national employment regulations and rules. Thus for the purpose of the study, we have further tried to inquire what pre-conditions needed to be complied with in order to respond to a tender with regard to social conditions and whether there have been concrete references to specific social and service quality criteria that lead to the selection of one offer over the other, or specific criteria linked to terms and conditions of employment required by the competent authority to carry out the service, as well as what may additionally be required by the competent authority after signature of the contract.

Interpreting the PSO Regulation, social standards are those that will be protected in case of transfer of staff – either according to the conditions and rights covered by the Directive 2001/23/EC on transfer of undertakings, or it can be other employee rights that are safeguarded outside of the scope of Directive 2001/23/EC or additional to those covered by the Directive which are specifically set out in tender documents. This is the choice of the competent authority. Thus, in cases where transfer of staff was requested by the competent authority because it would not have been an obligation under national law it can be seen as a mean to provide for social and service quality standards.

Throughout the research for this study we have found that in some countries the issue of how to provide for social and quality standards and what can be legally referred to thereunder has be discussed among the relevant stakeholders. In Austria, for example there are specific Guidelines that further set out these meanings (see further below on social conditions and Austrian country report). Thus, overall one needs to keep in mind that national legal interpretation may vary and can be more explicit. The definition used within this study reflects the wording and meaning of the PSO Regulation.

1.4.2 Desk Research

The first phase of this research consisted of desk research in order to be able to draw a picture of the general overview of the UPT sector including: the national regulatory framework for urban transport, operators present, PSO share of the sector, social partners, type of award procedures used, and to provide background with regard to employment conditions and the use of transfer of staff.

In this first phase primarily comparative and European wide literature was consulted. This review quickly demonstrated that comparative literature describing the framework of the UPT sector in Europe is scarce. Even at national level, literature can be limited describing a number of city networks only, without providing an overview of the entire country. For countries such as France, the UK, the Netherlands, Ireland, Germany and Sweden the information situation is relatively good, partly due to the fact that employer and competent authorities publish sector specific research and information. Due to the early liberalisation of the UK market, studies exist that assess the impact of such liberalisation, including on the employment situation. European-wide literature is often focused on the specific design of UPT contracts, the calculation of PSO compensation and market dynamics from a more economic point of view. However, many of these studies date back more than 5 years and may no longer be reliable in the context of a sector undergoing significant change.

Insights on how the UPT market operates remain limited to few experts and concrete information can only be obtained directly from competent authorities and city network operators.

Thus in order to be able to cover as many countries as possible, it was decided to launch an online survey directed to the members of the European social partners.

1.4.3 Online survey

This online survey was designed in collaboration with the members of the Steering Committee. It ensured that terms were used consistently and that all aspects of the research were covered.

The survey was placed online via the SNAP survey technology and was run between late July and mid-October 2015.

The survey link was distributed by UITP and ETF to their respective members in all EU Member States and EEA countries.

However, despite the long phase during which the survey remained open it has resulted in only 6 complete replies from DK, SI, LV, NO, SE, BG and 3 partial replies from SE, EE and LT, with 5 replies coming from employers and 3 replies from workers' unions, and one from an authority.

The low response rate may be due to the length and complexity of the survey aiming to collect a significant level of detail. Another reason may be that while the survey aimed to collect information valid for the entire country, this may be difficult to achieve due to significant variations in practices within a Member State. Only a few experts dispose of a good insight into the whole sector in their country, and it could be that the survey was not distributed to the right person to answer the variety of questions posed.

Thus it became clear that the most reliable and updated information can only be found for the in-depth countries chosen for this project.

1.4.4 In-depth study countries and company case studies

On the whole, the choice of in-depth study countries was already determined at the outset, with 12 countries mentioned in the Terms of Reference for the study. The list of countries was chosen by the European Social Partners. This choice was based on achieving a balanced geographical representation of countries that use competitive tendering and/or direct award. In addition, special attention was devoted to countries where cases of transfer of staff could be found, which provided for an interesting sector specific situation, and where the possibility to conduct company specific case studies could be ensured due to good contacts existing with companies in these countries.

In order to obtain a comparable coverage of the key study topics for all in-depth countries, interview topic guides were agreed to gather country and company specific background information – one guide was designed for employers and one for workers representatives. A specific topic guide was also developed for cases of transfer of staff.

It was agreed that for each country around 1 to 3 company case studies should be conducted, interviewing management and workers representatives and where appropriate also the competent authority. These company case studies were decided by the client and social partners alone.

The following broad research questions were covered in all country reports/ cases studies:

- the organisation of UPT and the use of different forms of award (direct award only, award on the basis of competitive tender only, a mixed system);
- the regulatory framework for UPT and rules for award (PSO regulation, general public procurement directive);
- organisation of social partners in UPT;
- legislative framework and collective bargaining of social conditions in UPT;
- development of social conditions in the case study companies;
- use of sub-contracting (if applicable) in the specific UPT networks;
- the use of social conditions during the award procedure of contracts (either directly or through tendering); and
- prescription of transfer of staff (if any) under PSO rules or relevant national laws and regulations; or transfer of staff due to rules of resulting from Transfer of Undertakings Directive 2001/23/EC and the actual transfer in case of change of operator.

The purpose of the country and company specific case studies was to provide a more detailed overview of an actual case (or cases) of awarded UPT services and the impact of the type of award procedure on social conditions in UPT companies.

The information for the general overview and background was primarily collated through a desk-based documentary review and then validated through the interviews with social partners using the dedicated topic guide.

The following table provides an overview of the in-depth countries chosen and companies interviewed:

Country	Companies contact details	Interviews completed (☑ for employers and ✓ for workers)	Comments
Austria	Wiener Linien	☑✓	Direct award to an internal operator; use of subcontractors
Belgium	DeLijn - Flanders	☑✓	Direct award to an internal operator; binding requirement to subcontract 50% of bus services
	TEC - Wallonia	☑✓	Direct award to an internal operator; binding requirement to subcontract between 30 and 50% of bus services
	STIB Brussels	✓	Direct award to an internal operator;
Bulgaria	Sofia JSC	☑✓	Internal operator (not clear if a direct award has occurred); use of subcontracting
	Burgas	☑✓	Internal Operator (not clear if a direct award occurred)
Czech Republic	Prague - DPP	☑✓	Direct award to an internal operator / some competitive tendering for single bus lines
	Pilsen - PMPD	☑✓	Direct award to an internal operator
	Arriva	☑	Competitive tendering
France	St. Etienne - Transdev	☑	Competitive tendering
	TCL (Lyon) - Keolis	☑	Competitive tendering,
	La Rochelle - RTCR	☑✓	Direct award to an internal operator
Germany	SSB Stuttgart	☑✓	Direct award to an iInternal operator (direct award did not occur yetaccording to reg 1370/2007 underway)
	Bogestra - Bochum	☑✓	Direct award to an internal operator (direct award did not occur yetaccording to reg 1370/2007 underrway)
Netherlands	Arriva, Competent Authorities of Gelderland and Province of Zuid Holland	☑✓	Competitive tendering not limited to a specific network
Italy	GTT Turin	☑✓	Competitive tendering (award to the incumbent) no change of operator
	TIEMME Siena	☑✓	Competitive tendering (award to the incumbent) no change of operator
UK	Liverpool bus (Arriva)	☑✓	Takeover; not tendered (commercial services)
	TFL	☑	Competitive tendering of bus lines
Finland	Helsinki (interview with the competent authority)		Competitive tendering of bus lines
	Pohjolan liikenne and its subsidiary Pohjolan kaupunkiliikenne	☑✓	Competitive tendering
Ireland	Dublin LUAS (Transdev)	☑✓	Competitive tendering of light rail lines
	Bus Eirean	☑✓	Directive award to an internal operator
Sweden	Nobina (Gothenburg)	☑✓	Competitive tendering
	Keolis (Stockholm)	☑✓	Competitive tenderingAs part of these in-depth country studies a total of about 60 different stakeholders have been interviewed.

As part of these in-depth country studies a total of about 60 different stakeholders have been interviewed.

1.5 Limits of this report

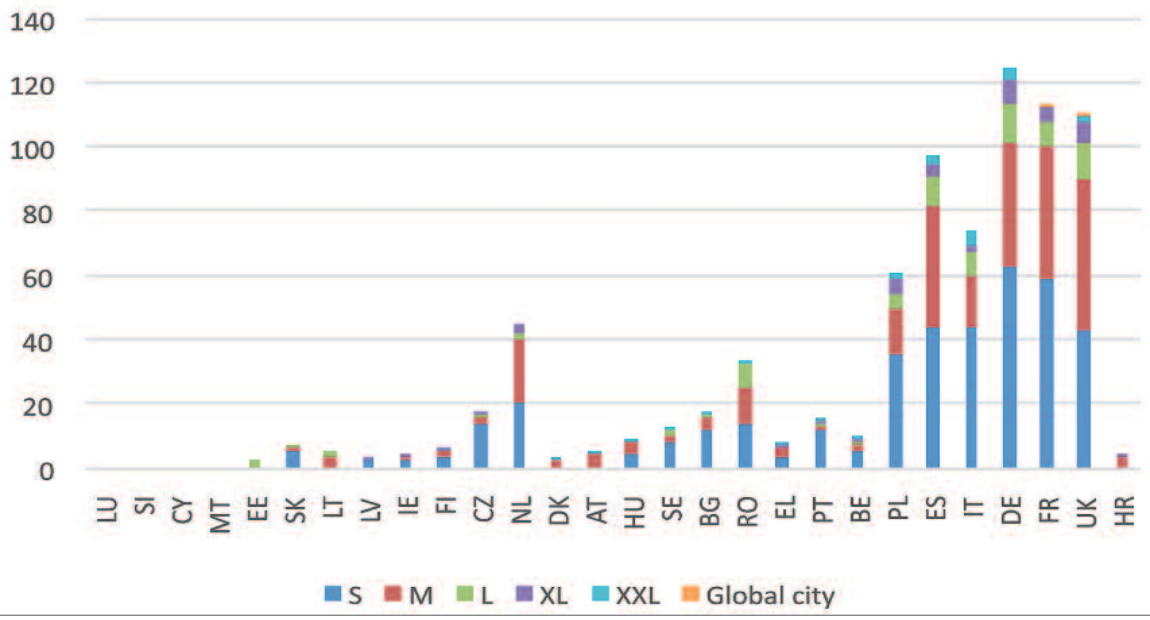
There are a few limitations to this report and research that needs to be highlighted in order to understand the study results.

Limitations of the definitions

The definition of UPT is not without its challenges. For this reason, we have mainly looked at the mobility catchment areas of cities and the different UPT services that are covered by public service contracts.

The following figure provides an overview of the share and distribution of cities within the European Union. Using the Eurostat definition and methodology (based on population size and density), there are 811 cities in the 28 EU Member States with an urban centre population of at least 50,000 inhabitants. The figure can provide an impression of the importance of UPT in these countries in terms of number of passengers and size of operators.

Figure 1.1 Overview share of European cities



Source: European Commision, DG Regio, European cities – the EU-OECD functional urban area definition.
Key to figure: S=between 50,000 and 100,000 inhabitants; M= between 100,000 and 250,000; L=between 250,000 and 500,000; XL=between 500,000 and 1,000,000; XXL=between 1,000,000 and 5,000,000; and Global city=more than 5,000,000

Linked to the challenges of defining "urban areas", it has been problematic for the stakeholders interviewed to make a clear distinction between UPT, as defined by this study, and public transport (by bus and urban rail, mainly tram and/or light rail) more broadly including whole regions.

For example, in Belgium, the regional competent authority provides one contract for the entire region including cities, inter-urban transport or transport in smaller entities than cities, even cross-border transport and school transport without distinguishing between these types of transport. Ireland also has a single authority for all modes of transport and UPT. There is one contract for the Dublin urban area and one contract for the rest of the country. Thus the latter contract also does not distinguish between urban and inter-urban transport. In other countries, competent authorities cover larger agglomerations sometimes also integrating regional transport coming from outside into the city. Transport plans are developed for a region that is larger than the urban area and regional/inter-urban transport (carried out by coach) can also serve stops inside a city. In this way they technically also pick up the same passengers within the city zone. Such plans are made to better serve citizens in larger job catchment areas, there is an overall tendency to create larger geographical responsibilities for the same competent authority though covering not always just city transport. Where it concerns distances below 50 km they fall under the definition for this study. The competent authority however often make different public service contracts for these areas (or these services are subcontracted). These operators may use different terms and conditions for staff compared to the 'city' operator. Within our company case studies these operators were not interviewed.

It has not been always possible to strictly adhere to the proposed UPT definition. Instead, a more pragmatic approach has been adopted for this study, which is based on the best available information and the best ability of the stakeholders to separate UPT from (inter-urban) public transport.

The study sample includes 8 country capital city networks, 7 large cities and 5 smaller and medium sized cities. In 3 cases no specific city could be assigned as the tender transport network concerned regions. Thus the sample is rather balanced with regard to the size of the urban areas involved.

Limits of the company/network sample

This report is in substance based on information gathered through interviews. Given information has, as much as possible, been checked by the study team. However, it should be noted that in some cases no uniform presentation of the facts or estimation was available, in which case information has been attributed to the type of stakeholder supplying the information.

In most cases it was not possible to access contracts in cases of competitive tendering (between the authority and the operator). In Belgium (except for STIB Brussels) and in Ireland directly awarded contracts have been made public. Transparency with regard to award and contracting is indeed lacking. Thus, most of the facts communicated in relation to employment levels and changes cannot be checked. Reliability can be provided by the fact that interviews have been carried out with workers' representatives and employers.

With a limited number of selected case study examples, it is not possible to argue that the experiences drawn from these are necessarily representative of the sector of a specific country. Some examples may be rather seen as best practice examples rather than representing the most common situation. Furthermore, the experience of situations of transfer of staff was limited to six company specific cases and two broader company specific experiences.

Limitations of comparability

While this report provides a comparative overview, it must be recalled that the UPT market is very complex and some information can only be regarded as indicative. Each UPT network has its specificities and market dynamics can vary strongly in particular with regard to the economics of the contract, calculation of PSO compensation, investments, wage levels and industrial relations, ticket prices and revenues, as well as strategic implication of the operator in transport design and mobility plans hence these factors impact differently on the development of social conditions and thus in some cases may not be comparable nor summarise the exact situation of one country.

There are limits to comparison also with regard to the impacts of different forms of award. Countries have very different levels of experience with competitive tenders. This makes it difficult to predict the exact impact of this form in other countries that have less experience with competitive tendering. In addition, factors mentioned above impact on the lessons learned in a country context.

1.6 Structure of the report

This report is structured as follows:

- Section 2 provides an overview of the current situation of the UPT market with regard to regulatory framework, competent authorities, use of type of award, contractual specifications; use of social conditions, use of subcontracting, development of employment levels and operators on the basis of the information gathered from the 12 in-depth countries and replies received from the survey and information from desk research.
- Section 3 provides first of all an overview of employment legislation and setting of sector specific social conditions via collective bargaining and social dialogue. The second part aims to provide an overview from the information received from the national social partners on the development of social conditions.
- Section 4 will discuss some of the issues that the study aimed to address, such as impact of the choice of award on employment conditions; impact of social conditions; practical implications with regard to the change of operator and transfer of staff.
- Annexe include the full 12 in-depth country reports in a separate document.
- A list of bibliographic references

2 Comparative overview: the current situation of urban public transport market organisation in Europe

Key Findings

The European regulatory framework leaves a significant discretion to competent authorities in providing, commissioning and organising services of general economic interest. UPT is recognised as contributing to a broader mission in connecting and providing access to points of economic and social interest, contributing to the green economy and improving the carbon footprint in cities.
Member States have the choice of how to structure competent authorities for UPT service provision and can choose to award services directly to an internal operator or tender services (either single lines or entire networks) to a third party. The PSO Regulation sets out rules on the award and content of public service contracts including rules on compensating public service obligations.
In the UK (except regard to commercial services), DK, NL, FR, IT, SE, FI and PT competitive tendering is the dominant way of awarding contracts; in all other countries direct award is most commonly used; in BE, HE, IE, LU only direct award is currently used. The use of competitive tendering has increased in the past 10 years. One of the reasons for this is the desire to increase efficiency within more limited resources. In some cases the use of direct awards has also been motivated by a similar logic

UPT Operators

In the majority of EU Member States internal operators provide UPT bus services. The use of competitive tendering has become more widespread over the past 10 years and in 8 EU countries (out of the 28 Member States) the presence of International companies is significant in particular for the provision of regular bus services. The UPT bus market is also characterised by a high share of SMEs. The UPT tram, metro and urban light rail market is dominated by internal operators in particular where these modes of transport are integrated historically in a large city network (with notable exception of France). Newly built tram lines for example are more often subject to tendering (e.g. Dublin, Manchester). Only few cases of tendering for metro services exist (e.g. Stockholm, Lisbon, Lyon, Lille, Rouen and Rennes).

Employment

No comparative national data on employment in the UPT market are available. It is mainly employers' organisations that collect such data. No clear overview can be presented but indications and trends are available. The sector is characterised by a high share of drivers representing thus the most important profession in the sector. The number of employees in the sector has increased in SE and FR; it remained stable in FI, NL, UK, BE; but decreased in DE, IT, IE; for AT and BG no trends of employment could be provided. No clear correlation between type of contract award and employment development could be found. It does play a role but the reasons are multi-faceted to explain employment developments.

Other facts

- National regulatory frameworks for UPT do not provide for further specification with regard to the use of social conditions in tendering processes.
- Contracts in UPT are concluded for a period of 5 years and up to 15 years the longest in particular for integrated services encompassing bus and urban rail (10 to 15 years typical for track bound services). In case of major investments up to maximum 22.5 years.
- The use of subcontractors and the outsourcing of service has been an increasing trend in the sector over the past 10 years. In the majority of cases subcontracting is allowed in a range from 15 to 30% of the service being delivered. The exception to this is Belgium where contracts determine that internal operators shall subcontract at least 30% and up to 50% of services (Wallonia and Flanders Region only).

Transfer of staff in case of change of operator

Different situations can be found in which transfer of staff takes place. There are 4 situations where there is legally a transfer of staff:

- Transfer of staff is required by national legislation (e.g. transport laws) this is the case in NL.

- The situation of change of operator after competitive tendering is always considered as transfer of undertaking under national rules implementing Directive 2001/23/EC due to national specific rules (this is a national specific implementation extending the scope of the EU Directive on Transfer of Undertakings which does generally not qualify a change of operator as a transfer of business at least in the case if no assets (such as rolling stock) have to be transferred). This is the case for example in the UK and in France;
- Tender documents require a transfer of materials and assets. As a result, a transfer of operator is considered to qualify as a transfer of undertakings as foreseen by national rules implementing the EU Directive 2001/23/EC regarding staff transfer in case of transfer of undertakings. A case was found in Hungary
- Competent authorities make use of Article 4(5) – either explicitly or implicitly – to require a transfer of staff in the case of a change of operator (no transfer of assets). This situation was found in Germany and in Stockholm.

There are also two other situations where staff transfers to the new operator but it is not cannot be legally qualified as 'transfer of staff':

- Transfer of staff is required by collective agreement as is the case in Finland. Workers are transferred to a pool under the auspices of the public employment service and the new operator has a limitation for recruitment – it can only recruit from that specific pool. In practice, all workers are taken over to the new operator.
- Transfer of staff is optional and even if not mandated by the competent authority it can be negotiated between operators – this has been the case in Sweden for example.

Use of social conditions in contract award

- There are very few cases where social conditions have played a role in selecting an operator; the most important criteria are price, technical requirements regarding rolling stock and quality of service provision (punctuality, rolling stock, cleanliness, customer service, training of drivers);
- Competent authorities consider that labour law and sector level collective agreements (where universally binding) already provide for appropriate social standards and thus do not specifically mention these in award procedures due to the fact that operators are legally bound to respect these. In AT and FI examples were found where clear pre-bid tender checks were carried out by the competent authority to check compliance with labour and social law;
- In some cases reference may be made in tender documents to training requirements, qualification of staff, language capabilities and general proof of good standards and capacity of human resource management (including staffing, retention and conflict management) e.g. in France and Austria, sometimes also specific technical requirements for rolling stock in order to provide for health and safety of drivers can be required (e.g. ergonomic seats in the Netherlands). It has also been mentioned that criteria such as engagement of apprentices or older workers may be requested. However, these cases seem to be the exception;
- In direct awards more frequent reference to social conditions exist e.g. human resource management (e.g. performance and productivity requirements), engagement of apprentices, older or female workers, training requirements, examples were found in Belgium (Wallonia and Flanders) or France.

2.1 European Regulatory framework

Regulation 1370/2007 (also known as the PSO Regulation) on public passenger transport services by rail and by road and repealing Council Regulations (EEC) 1191/69 and 1107/70 was adopted on 23 October 2007 and came into force in December 2009. This Regulation formed part of the objectives in the Commission's White Paper of 12 September 2001 entitled „European transport policy for 2010: time to decide" to guarantee for a safe, efficient and high quality passenger transport services through regulated competition, guaranteeing also transparency and performance of public passenger services.

The Treaty on the Functioning of the European Union recognises under Article 14 the role of services of general economic interest as promoting social and territorial cohesion and thus shall operate within the principles and conditions which enable them to fulfil their mission. The same principle is recognised by the European Charter of Fundamental Rights under Article 36 guaranteeing also the access to these services for citizens. In relation to this fundamental recognition of the value of services of general economic interest Protocol 26 of the Treaty of the Functioning of the European Union further sets out the common values of the EU and Member States. The Protocol leaves national (regional and local) competent authorities a wide discretion in providing, commissioning and organising such services. The Protocol also recognises the diversity in the provision of such services due to differences in users' needs resulting from different geographical, social or cultural situations. Finally, a high level of quality, safety, affordability, equal treatment and accessibility shall be ensured in the provision of services of economic general interest. The latter values, as well as allowing for social and territorial differences, thus underline that services of general economic interest have a broader more fundamental mission in society. Services of general economic interest cannot be seen as a potential economic market alone but the key mission needs be

taken into account at the same time, also from the side of the State ensuring financing of these services that may not always be profitable.

The PSO Regulation needs to be seen also within this context. It aims to leave wide discretion to competent transport authorities in providing, organising and commissioning essential urban public transport services. Though directly applicable in the Member States' national context, the PSO Regulation sets out rather principles and even choices that require further implementation at national level, for instance Member States can determine freely the nature of the competent awarding authorities – whether they be national, regional or local; nor imposes what the content of public service obligation may be and what type of criteria for the award (selection) may be used.

The PSO Regulation lays down three main sets of rules. First, it makes public service contracts compulsory and defines their minimum content. Second, it defines their award procedures, and third the Regulation establishes specific state aid rules applicable to the public transport sector.

2.1.1 Content of public service contracts including the social protection provisions

The PSO Regulation imposes the conclusion of a public service contract, every time a competent authority decides to grant exclusive rights and/or compensation in return for the discharge of a public service obligations. The previous Regulation dating back from 1969 mostly prescribed rules regarding the compensation of public service obligations. It did not impose the conclusion of a public service contract for urban, suburban or regional public transport services. The 1969 Regulation did not state how public service contracts should be awarded and, in particular, if they should be put out to competitive tendering or if they could be directly awarded. Until the 1980s, UPT was almost exclusively provided through public companies. Significant changes to the provision of UPT services have been introduced in recent decades. Reforms were first introduced in the UK, with the deregulation of the bus services market (in England) in 1986 (although London had already introduced a bus reform that introduced competitive tendering route-by-route in 1984). The UKs approach was a commercial, market-based approach while other countries introduced a regulated competition model, based on public service obligations defined by competent authorities (e.g. France, Sweden and Finland for certain cities in the early 1990s).

Article 4 of this Regulation lays down the mandatory content of public service contracts. This includes the definition of public service obligations and the transparent establishment of the parameters of compensation for PSOs, as well as the nature and extent of any exclusive right granted. This also includes the fact that public service contracts should have a limited duration: contracts concerning the provision of bus and coach services are in principle limited to 10 years while rail and other track based modes are in principle limited to 15 years. Public service contracts must also determine the allocation of revenue from the sale of tickets and costs connected to the provision of services.

As far as transfer of staff is concerned, Article 4, paragraph 5, leaves it open to the competent authority to decide whether to require the chosen operator to grant staff previously taken on to provide the services the rights to which they would have been entitled to if there had been a transfer within the meaning of Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees rights in the event of transfer of undertakings, business or parts of undertakings or businesses and hence to require the transfer of staff from the previous operator even if the conditions of Directive 2001/23 are not fulfilled. In this case the competent tendering authority shall list in the tender documents and the public service contract the staff concerned and give transparent details of their contractual rights and conditions. The competent authority can also require standards other than those covered by Directive 2001/23/EC by taking into account social standards established by national laws, regulations or administrative provisions, collective agreements or agreements concluded between social partners.

Regulation 1370/2007

Recital 16

Where the conclusion of a public service contract may entail a change of public service operator, it should be possible for the competent authorities to ask the chosen public service operator to apply the provisions of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfer of undertakings, businesses or parts of undertakings or businesses [5]. This Directive does not preclude Member States from safeguarding transfer conditions of employees' rights other than those covered by Directive 2001/23/EC and thereby, if appropriate, taking into account social standards established by national laws, regulations or administrative provisions or collective agreements or agreements concluded between social partners.

Recital 17
In keeping with the principle of subsidiarity, competent authorities are free to establish social and qualitative criteria in order to maintain and raise quality standards for public service obligations, for instance with regard to minimal working conditions, passenger rights, the needs of persons with reduced mobility, environmental protection, the security of passengers and employees as well as collective agreement obligations and other rules and agreements concerning workplaces and social protection at the place where the service is provided. In order to ensure transparent and comparable terms of competition between operators and to avert the risk of social dumping, competent authorities should be free to impose specific social and service quality standards.

Article 4(5)
Without prejudice to national and Community law, including collective agreements between social partners, competent authorities may require the selected public service operator to grant staff previously taken on to provide services the rights to which they would have been entitled if there had been a transfer within the meaning of Directive 2001/23/EC. Where competent authorities require public service operators to comply with certain social standards, tender documents and public service contracts shall list the staff concerned and give transparent details of their contractual rights and the conditions under which employees are deemed to be linked to the services.

Article 4(6)
Where competent authorities, in accordance with national law, require public service operators to comply with certain quality standards, these standards shall be included in the tender documents and in the public service contracts.

Furthermore, paragraph 6 provides the competent authority with the choice whether to require service operators to comply with certain quality standards (here recital 17 of the PSO regulation mentions social criteria such as minimal working conditions and social protection or obligations arising from collective agreements). Paragraph 7 of Article 4 indicates that the contract should provide information on the extent to which the awarded operator may subcontract specific services while still providing the major part of these services.

2.1.2 Rules on the award procedures

Article 5 of the PSO Regulation defines the conditions applicable to the award of public service contracts. Public service contracts for transport services by bus or tram are awarded following the rules of the PSO regulation. However public service contracts as defined in Directives 2014/24/EU and 2014/25/EU for public passenger transport by bus or tram shall be awarded in accordance with the procedures provided for in these directives (with the exception of service concessions).

Competent authorities have the following options:

- Under certain strict conditions, they can decide to provide the services themselves or to award it directly to an internal operator.

- Otherwise, every time competent authorities decide to have recourse to a third party, they shall award the contract on the basis of competitive tendering unless one of the three following situations applies and allows direct award:
  - De minimis thresholds: the average annual value of the contract is estimated at less than EUR 1. Million or the contract concerns the annual provision of less than 300.000 kilometres of public passenger transport services (specific thresholds apply to small and medium sized enterprise).
  - Emergency measures must be taken in the event of a disruption of services or immediate risk of such situation (maximum 2 years).
  - Unless prohibited by national law, direct award is also possible for rail services (except for other track based modes such as metro or tram),

Member States need to comply with the rules on the award procedures as set out under Article 5 of the PSO Regulation by 3 December 2019. Contracts that have been awarded before the PSO Regulation came into force may continue until they expire (if awarded on the basis of a fair competitive procedure no longer than 30 years, and if awarded otherwise no longer than 15 years).

2.1.3 Rules on public service compensations

The PSO Regulation states that compensations allocated for the provision of public service obligations shall be calculated in a way that prevents overcompensation. In the case of directly awarded contracts this means that the amount of compensation shall be calculated following the calculation method provided by the Annex to the Regulation:

- "The compensation may not exceed an amount corresponding to the net financial effect equivalent to the total of the effects, positive or negative, of compliance with the public service obligation on the costs and revenue of the public service opera tor".

Public service compensation paid in accordance with the Regulation shall be deemed compatible with the common market and therefore exempt from the prior notification to the European Commission requirements.
In countries like the UK where large parts of the bus passenger transport is operated on a commercial basis (England, Wales and Scotland only) and in Germany parts of the regional bus market these services are outside of the scope of this survey as they are not covered by Article 4 of Regulation 1370/2007.

Net financial effect = costs incurred in relation to the PSOs - positive effects generated within the network operated under the PSOs - receipts from tariff or any other revenue thereby generated + a reasonable profit.

2.1.4 Publication of public service obligations

The PSO Regulation indicates under its Article 7 that competent authorities need to publish an annual report on public service obligations, as well as details on financing and quality of the public transport network to be monitored. The obligation of public service contracts and publication of performance and public service obligations should ensure more transparency in the sector.

2.2 Overview of UPT operators

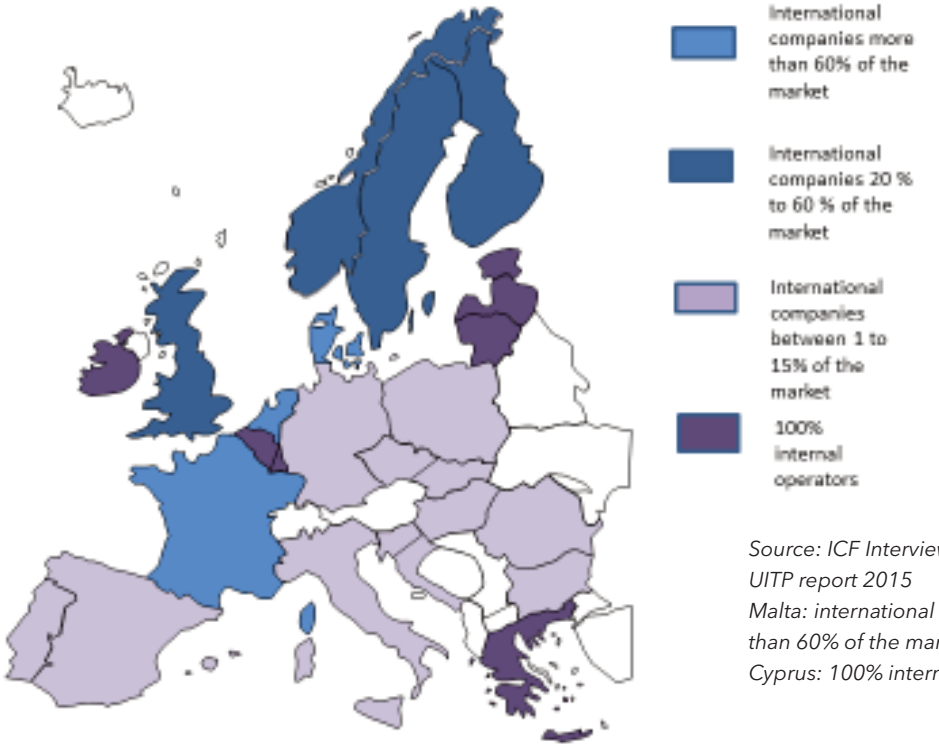
In various countries, urban public transport is characterised by a high number of internal operators particularly in large cities where internal operators operate whole integrated PT networks, including bus, tram, light rail and metro,

Outside of large and medium sized cities, the public transport sector is characterised in some countries by small and medium sized bus companies. These companies may be family run businesses or belong to large international corporations. They operate as sub-contractors for internal or other private companies in urban public transport or on their own either providing commercial services or by participating in competitive tenders in particular in transport that connects urban conurbations to the city centre or inter-urban transport.

In a number of countries sub-contracting may be foreseen by the competent authorities (e.g. Belgium, Austria, Czech Republic or Germany) due to the fact that this has an historic background and to continue to develop employment among small and medium sized operators present in more rural areas. Small and medium sized operators are considered by some to be more flexible to adapt to changes in numbers of passengers and or adapt to specific irregular transport services (e.g. call buses or school transportation).

Nevertheless, the use of competitive tendering has become more widespread over the past 10 years allowing a number of international companies in the urban public transport sector operating across Europe and beyond to develop. This is the case for a number of French companies, such as Keolis, Transdev and RATP Dev. Keolis and Transdev which are present in about 5 to 6 European countries (outside of France) and worldwide. Other important European operators are Arriva DB, Nobina and Abellio (subsidiary of the Dutch rail company NS). Arriva DB has significantly increased its presence in a number of European countries. In 2013, Arriva DB has taken over Veolia's (now Transdev) Eastern European bus operations and is thus present in a majority of European countries. The following map aims to visualise the presence of international operators in the bus market. This map is based on the estimations from interviewees asked throughout this study or survey results or desk research. It should be considered to be indicative.

Figure 2.1 Overview presence international operators in the bus market



Source: ICF Interviews/survey and UITP report 2015
Malta: international companies more than 60% of the market
Cyprus: 100% internal operators

In accordance with Regulation 1370/2007, internal operators receiving a direct award are not allowed to participate in competitive tendering procedures outside their network (Article 5 (b)). Yet, exceptions are possible during the transition period and in case the competent authority intends to put into tender, a contract previously awarded directly (Article 5 (c)). It is a strategic decision from the side of the competent authority to organise a competitive tendering process and put its internal operator into competition.

France, UK, the Netherlands, Italy, Sweden and Germany (now with Arriva) have international operators grown first in their proper market. In many cases, these operators belong to the group of a national railway company as for example Abellio and Qbuzz (NS), Netinera (FS), Keolis (SNCF) or Arriva (DB), Pohjolan liikenne (FI part of VR). Transdev is owned by a public investment bank, Caisse des dépots, and Veolia Environnement. Other international operators are UK based Stagecoach, National Express, Go-Ahead and/or First group which are now entering the market in continental Europe. Non-European operators are also increasingly present in the European UPT market (for example MTR-Hong-Kong, Tower Transit – Australia, ConfortDelGro – Singapore, East Japan Railways, Egged-Israel).

While in Austria and Germany municipal companies play the most important role, local medium-sized operators have gained in market share due to subcontracting in urban public transport and tenders in inter-urban transport.

International companies however only a have a significant share in 7 Member States namely those that have introduced also to a large extend competitive tendering as main form of award. In the majority of Member States they only play a limited role on the UPT market.

In this regard it is also worth mentioning that many large companies have created daughter companies which often apply different collective agreements. This has been mentioned in the case of Germany. In France, ad-hoc companies are been set up to operate the entire network. They are daughter companies of international groups, such as Keolis Lyon or Transdev St Etienne.In Germany, DB has acquired a number of smaller operators which often operate under specific (regional) collective agreements applicable to the private sector or without collective agreement and whose staff therefore does not benefit from the job security or terms and conditions offered by the DB company collective agreement. Transdev, Arriva DB and Keolis established a European Works Council according to EU law making worker participation Europe wide possible.

For the tram services market it shall be noted that Keolis and Transdev are the most important international players in cases where tendering occurs. However, a large majority of urban rail services (metro, light rail and tram) are run by internal operators and publicly owned companies (such as RATP in Paris) in all EU Member States.

Furthermore it can be observed that over the past 10 years some international companies have been built out of a number of medium sized or privatised internal operators/ publicly owned companies, through the merger of two in-

ternational operators or the acquisition of smaller operators by large public companies. One of the challenges in a competitive market is to avoid at a national level that the market share of operators becomes dominant thus limiting competition and margin for negotiation of the competent authority. It has been noted in the literature[5] that in order to achieve an advantage from competitive tendering it may not be sufficient to depend on two offers. It shall be mentioned in this regard that in Finland the law specifies that no operator shall have more than 35% of the market.

Overall, the trend indicated by interviewees and survey results is that the number (or role) of internal operators has declined over the past 10 years and continues to decline in almost all countries in particular for bus services at least in those where competitive tendering occurs. Also in countries where internal operators are still dominant the possibility for the authority to make use of competitive tendering creates a certain pressure on these operators who need to justify their business model and have to renegotiate on employment conditions. Thus workers expressed a concern with regard to the future of internal operators. However, the analysis above demonstrates that the operative entity and its employees do not necessarily disappear but are continued as a private company with different leadership. The impact of this change will be discussed in the next chapter.

2.3 Employment in the sector

Employment data for the UPT sector alone is difficult to obtain. National statistics mostly cover all types of passenger transport including by rail, coach (long-distance) and inter-urban transport. Thus data is mainly gathered by professional and employers' organisation in the sector via questionnaires and information coming from their member organisations. It is also sometimes not clear to what extent these data cover only the operators of the network or as well staff of subcontracted companies. Data needs to be considered to be indicative. Trends have been indicated by the social partners for the country level and were further informed by company specific information.

In Sweden and France an overall increase of staff has been noted concerning in particular the number of drivers. While in Finland and the Netherlands overall employment has remained stable it was noted that the number of drivers has slightly increased. In the UK and Belgium the number of employees has remained stable overall, with variations over the past years.

In Germany, Czech Republic, Italy and Ireland the number of employees in the urban public transport has slightly declined. This has in particular affected administrative staff.

In Austria it was estimated that currently about 25,000 workers work in the UPT sector. However no development trends can be provided due to the lack of consistent sector specific data. For Bulgaria there is no overall employment data available and no trends for employment development can be indicated.

The share of drivers of employment in the sector ranges from between 60% to 85% of total employment in the sector. The share of drivers seems to increase in particular where competitive tendering is used more widely in the sector. This has been observed in particular in the Netherlands and Sweden. Because of the nature of the services provided, operational staff tend to be maintained, whereas cost efficiency savings are implemented among managerial and administrative staff – here developments in technology – for instance in relation to ticket sales – have also played a role.

Another effect of competitive tendering can be an increasing average age among employees in the sector due more limited recruitment activity of young people because of or quasi absence of staff turnover (France), recruitment freezes that have occurred at a certain period and which still impact on the current age pyramid in the sector (e.g. Germany), or transfer of staff obligation limits recruitment investments (e.g. Netherlands), or a decline of attractiveness of the sector or profession. The increasing average age among employees is however not only found in countries with a longer experience of competitive tendering. Also internal operators and in particular the two Central Eastern European countries analysed (Czech Republic and Bulgaria) experience a decline of attractiveness in particular of the driving profession in the UPT sector. Recruitment activity competes with the road haulage sector in CEE countries where pay was cited to be more attractive.

On the other hand, even in countries (cases) where transfer of staff is obligatory, interviewees in France, Finland and the Netherlands stated that the fact that competitive tendering occurs increases pressure on staff during the period of the transfer, because even though terms and conditions may not change and employment is de facto secure, changes can occur in the nature of management style and expectations on staff linked to new contractual obligations.

It is not clear to what extent employment figures and trends take into account the fact that in some countries maintenance (technical) or cleaning services have been increasingly outsourced.

Employment levels in the sector are closely linked to the number of passengers and the development of urban zones, such as policies aiming to increase the modal share of urban public transport. In the recent years, the eco-

[5] See for example Annual Report of the French Cours des Comptes 2015, Les transports publics urbains de voyageurs : un nouvel équilibre à rechercher, available at : https://www.ccomptes.fr/Publications/Publications/Rapport-public-annuel-2015 ;

nomic crisis had in some countries (e.g. Ireland) an important impact on the number of passengers, due to increasing unemployment rates. Fewer people had to use transport to go to their workplace. On the other hand, a tendency could be observed in for example Germany and Austria that despite growing passenger numbers the number of staff did not necessarily increase proportionally. On the one side, this has been explained by efficiency gains but has also been experienced as work intensification for staff.

The sector is largely male dominated and the share of female workers represents between 8 to 18% among operators studied in the course of this project.

Overall it was remarked that a large majority of employees work on permanent and full-time employment contracts. In the Netherlands and Sweden the share of temporary workers has increased over recent years. Part-time work is rather limited as well as overtime, in almost all countries. Nevertheless, while the share of part-time work is higher in the Member States economies (all sectors) compared to the share of part-time in urban public transport, compared to the levels of part-time ten years ago in the UPT sector there has been an increase of part-time work. This may however be related to an increase of female workers in the sector and the political will to provide for opportunities of part-time work to improve work life balance.

The sector has in particular changed over time with regard to work organisation and working hours. One of the changes that affected workers of the sector was the introduction of the European Working Time Directive limiting working time to 48 hours on average over a 4 month reference period. This has been mentioned as relevant in Austria and Bulgaria. In Bulgaria average working hours seemed to be higher before and in Austria it is rather the rigidity of working hours, organisation of rest breaks and compensatory rest that affected working time organisation.

In addition, due to increasing efficiency demands in operation (notwithstanding the type of award or type of operator), the turnaround time (at terminals) and start and rounding up time of shifts was shortened. Shifts have been adapted to peak and off-peak hours (workers may start in the morning, go home and continue in the early afternoon).

In some cases intensification of working time has been noted in particular in larger cities where traffic congestion affects bus drivers and reduces their effective rest time between turnarounds. Thus, recently the sector has seen in some cases an increase in absences and increase of level of fatigue notwithstanding the type of award process. It has been these specific kind of working conditions that have made the sector over time also less attractive and in some countries recruitment of drivers (e.g. Finland, Sweden, the Netherlands, and Germany (for some regions)) can be challenging. The fact that tendering occurs implying a change of employer was considered by interviewees in particular among workers as being an additional factor contributing to the unattractiveness of the drivers profession.

2.4 Overview of the national regulatory framework

The following sections provides a comparative overview of the situation in Member States regarding the national regulatory framework, the nature of competent authorities, the use of type of award and contractual specificities, the use of subcontracting, reference to social conditions and obligation to transfer staff in case of change of operator.

2.4.1 National regulatory framework

Regulation 1370/2007 is directly applicable in Member States. This section seeks to gather further national legislation that determines the regulatory framework of provision of UPT services. The information may not be entirely complete but references the most important laws.

The following table lists the most important laws in the 12 Member States that have been collected throughout this study:

Table 2.1 Overview national regulatory framework - laws organising urban public transport

Country	Reference legal framework organising urban public transport
AT	Federal law on tendering (Bundesvergabegesetz); Law on licences for operators of bus services (Kraftfahrlinien Gesetz); General law on the organisation of local public transport (ÖPNRV law)
BE	Wallonia: Decree of 21 December 1989 as modified on 1st March 2012 regulating the operation of urban public transport in Wallonia, Article 31bis regulates that the Groupe TEC is the sole internal operator in Wallonia. Flanders: Decree 31 July 1990 creation of the Flemish transport operator De Liijn – regulating the overall planning and operation of public urban transport; Decree 20 April 2001 creation of the Flemish Mobility Council; Decree 11 March 2009 on mobility policy Brussels Capital Region: 2 November 1990. – Decree on the organisation of urban public transport in the Brussels Capital Region
BG	Road Transport Act; Road Traffic Act; Decree № 2 of 15 March 2002 on the conditions and procedures for approval of transport schemes and the provision of public passenger buses
CZ	Act No. 111/1994 Coll., on road transport, as amended, concerning bus transport (as a subset of public transport systems), Act No. 266/1994 Coll., on rail-borne transport, as amended, concerning (among others) the operation of trolley buses, trams and funicular railways; Act no. 194/2010 Coll., on public passenger transport services; by Act No. 137/2006 Coll. on Government Procurement; Act no. 526/1990 Coll. on fares prizing
DE	'Law on Passenger Transport' (Personenbeförderungsgesetz); 'Law on Regionalisation' (Regionalisierungsgesetz); regional laws on local public passenger transport (Regionale Gesetze für den ÖPNV); Law against the restraint of trade - Gesetz gegen Wettbewerbsbeschränkungen); regional laws on respective for collective agreements (Tariftreuegesetze);
FI	The act on public contracts in special sectors" (Finnish Statute Series No 349/2007 Laki vesi- ja energiahuollon, liikenteen ja postipalvelujen alalla toimivien yksiköiden hankinnoista), for the water, energy, transport and postal services sectors; Act on Public Contracts (348/2007 Laki julkisista hankinnoista); Public Transport Act (869/2009) regulating the development of public transport in order to provide everyday transportation services for all citizens all over the country and provide urban city transport in such a high service level, that usage of it increases. Also Act on the Professional Qualifications of Truck and Bus Drivers (273/2007), degree on Professional Qualifications of Truck and Bus Drivers (640/2007) and Act on usage of alcohol in school and day-care transport (1110/2010) regulate provision of urban public transport.
FR	Loi LOTI (1982); Concessions ordonnance : Ordonnance n° 2016-65 du 29 janvier 2016 relative aux contrats de concession; Concessions décret : Décret n° 2016-86 du 1er février 2016 relatif aux contrats de concession; NOTRe : LOI n° 2015-991 du 7 août 2015 portant nouvelle organisation territoriale de la République; Maptam : LOI n° 2014-58 du 27 janvier 2014 de modernisation de l'action publique territoriale et d'affirmation des métropoles
IE	Dublin Transport Regulation Act from 2008; Transport Regulation Act from 2009 regulates licences for operating commercial services/ transport services
IT	The Legislative Decree (Decreto Legislativo hereafter D.Lgs) 422/1997; Bassanini Law' (Law no. 59/97);
NL	Law on public transport (Wet Personenvervoer)
SE	Public Transport Act (2010:1065 Lag om kollektivtrafik SFS)
UK	Transport Act 1968; Transport Act 1985; Greater London Authority Act 1999; Transport Act 2000; 2008 Local Transport ActSource: ICF country reports

Source: ICF country reports

These laws set out the general framework for UPT such as competencies for authorities, determine conditions for the award of public service contracts, set criteria for the participation in tender processes and provide for a financial framework.

One of the important questions for this research was to establish to what extent national laws organising the UPT market refer to the setting of social conditions in a process of contract award, whether a contract is awarded directly or on a competitive basis.

The research in the 12 in-depth study countries showed that this is only the case in Germany where specific legislation (only in some federal states) – laws on compliance with collective agreements (Tariftreuegesetze, TTGs) aim to safeguard social standards due to the diverse context of industrial relations in Germany and the reality of competitive tendering (competition over price). (for more information see box on page 60). In the absence of a universally binding sector collective agreement, these laws intend to set a level playing field for social aspects among all bidders in public tendering procedures in a specific Land, in particular regarding wage standards and are thus intended to prevent the risk of social and wage dumping as specified in Recital 17 of the PSO Regulation.

In other countries such as Austria, Netherlands, Sweden, France or Finland, such type of laws may not be needed

due to the fact that universally binding sector collective agreements exist.

While the use of social aspects in tendering for German UPT services pre-dates the entry into force of Regulation 1307/2007 for some Federal States (and the inclusion of its key provisions into the Law on Passenger Transport), Articles 4(5) and 4(6) and Recitals 16 and 17 of the regulation are now quoted in tender processes with reference when using social conditions to select an offer.

This is also the case in the Netherlands, where recently more references appeared to the Regulation for cases of social conditions due to the fact that transport acts did not specify further on the selection of an offer when relying on social and service quality criteria.

In Austria, Guidelines have been published by the Federal Transport Ministry with reference to the PSO Regulation, on the use of social conditions in the case of tendering to guide competent authorities on possible options. As reported by one competent authority social conditions are well considered when setting out tender specifications.

Requirements for transfer of staff, which competent authorities are free to stipulate (or not, in case legislation provides for transfer of staff) arose only with reference to the Regulation and relevant articles mentioned above in Germany and Sweden (to a limited extend), both countries where transfer of staff would not occur in case of change of operator after a tendering procedure. It must however be mentioned that this occurs only in rare cases.

In conclusion, none of the national regulatory frameworks researched provide for further explicit implementation with regard to social standards. In some cases social conditions mentioned under national rules refer to qualified staff and respect of social security and labour law. In fact, it turns out that in most countries this is however implicitly covered.

2.4.2 Competent authorities

The local competent authorities awarding contracts to urban transport operators are usually municipalities (cities) or a specific entity for a defined urban area (taking into account more than one municipality or city) or agencies/associations responsible for a specific territorial area. In case that there is no local competent authority a national competent authority can award contracts for a determined territorial area. The number of authorities depends on the size of the country and its administrative structure. For example, France has a total of 36,000 municipalities. However not each of them is one local competent authority. In France there has been a growing tendency over the past 20 years for municipalities to join to form one transport authority. These agglomerations have been extending geographically (incorporating more municipalities) over the recent past, taking into account primarily financial considerations but also general urbanisation developments. This is also a tendency that was observed in Italy. Ireland is the exception among the countries researched as there is just one single national competent authority awarding all contracts for bus and track bound services for urban public transport. Belgium was the only country researched where a regional transport authority exists – the Transport Ministry of each of its three federal entities Flanders, Wallonia and Brussels Capital Region. Larger urban areas or capital cities have a separate transport executive agency or body, e.g. London, Sofia or Prague. In Austria, Germany and Finland at regional level an additional competent authority (transport association) exists that is responsible to develop an urban mobility plan according to which public transport will be organised and commissioned. These transport associations can be in charge of integrated travel information and ticketing systems and setting tariffs for the region, as well as financing infrastructure and can also award services for inter-urban/inter-regional transport. These authorities also evaluate and monitor efficiency of urban public transport provision. Italy has set up an independent Transport Authority which also fulfils a more strategic role for monitoring efficiency in the organisation of UPT services since 2014 (Autorita' di Regolazione dei Trasporti, ART, for further information see country report).

The following table provides an indicative overview of the number of authorities per country.

Table 2.2 Overview number of authorities per country

Country	Structure and number of competent authorities
AT	Municipality, 8 transport associations (Verkehrsverbund)
BE	3 regional competent authorities (federal states ministries of transport) – Flanders, Wallonia and Brussels Capital Region
BG	Municipality – approx. 50, cities – 5 cities with more than 100.000 in habitants;
CZ	Municipalities (urban areas); regional authorities
DE	About 400 municipal competent authorities for bus services (not competent on their own behalf); 68 for track based services; transport associations (Verkehrs/Tarifverbund), additional authorities granting licences according to the Law of Passenger Transport in federal states
DK	Municipalitieqs and regional transport authorities (6 in total)
FI	Three types of competent authorities for urban public transport:Municipalities – there are 10 municipalitiesthe metropolitan area – Helsinki and neighbouring citiesELY-centres (Governmental Centres for Economic Development, Transport and the Environment) as regional authorities that can contract for inter-urban transport – there are 15 of such centres.
FR	Municipalities which are generally organised in groups of agglomerations or urban zones; in total about 36,000 municipalities; Paris region apart; Metropoles in charge of mobility competences since 2014.
LV	municipalities and cities – 9 cities in total
IE	National Transport Authority competence for all urban transport
IT	Regions, Provinces, Municipalities and Agency specifically dealing with transport issues on behalf of local authorities
NL	12 Provinces; 3 city authorities – Amsterdam, The Hague – Rotterdam, Utrecht
SE	21 regional transport authorities
SI	Municipalities and Ministry of Infrastructure
ES	Regulation for UPT Autonomous Communities, award done by municipalities
UK	Regional differences: London – one single competent authority for all modes of transport – Greater London Authority;England (outside London) – Passenger Transport Executives (grouping several counties together –executive body of authorities); unitary authorities, district and county councils Combined; Local Transport Authorities (non – metropolitan areas)Wales – four regional transport consortiaScotland – county councils regrouped in Regional Transport Partnerships – each country council remains an authority; Passenger Transport ExecutivesNorthern Ireland – Department for Regional Development – single authority for the territory

Source: ICF country reports; desk research

The competent authority is responsible for the mobility policy, including all UPT transport services which are provided within a specific territory and is tasked to ensure effectiveness in meeting the passengers needs and cost efficiency so that income through fares and public compensation is used in the best possible ways. It also sets minimum quality standards for public transport services, level for fares and fees, passenger rights and claims for compensation, establish criteria for bidding and competitive tendering, as well as making choices for investments and development of infrastructure, and sometimes managing infrastructure maintenance and buying rolling stock.

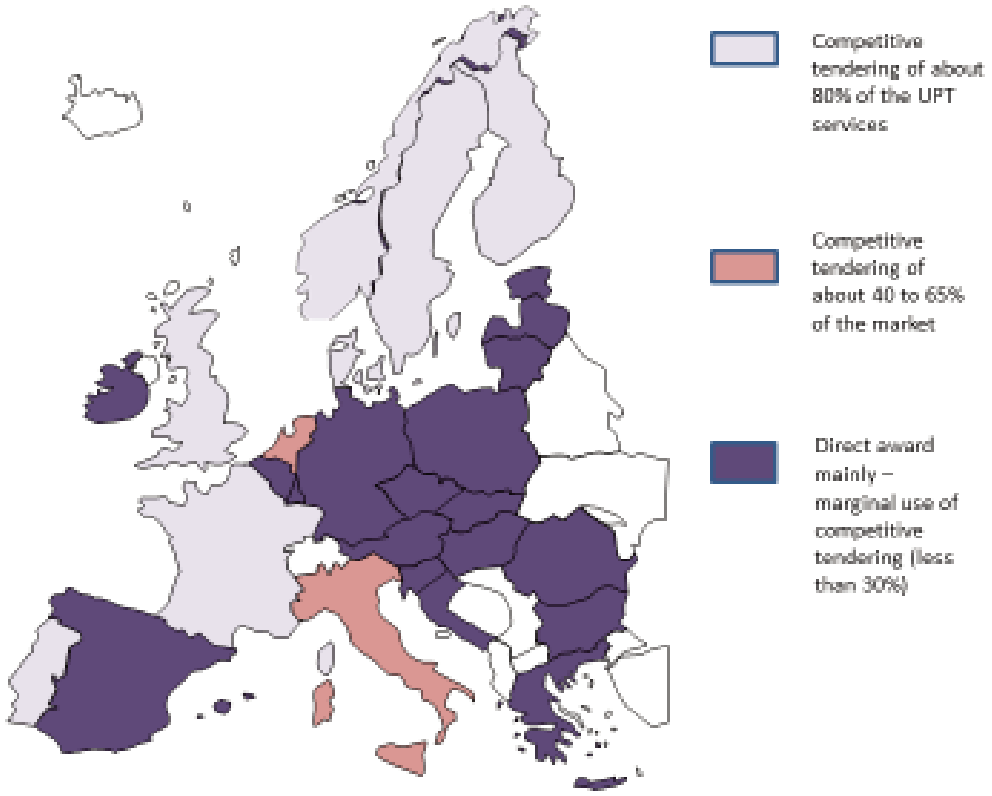
It has been noted during this research that while it is municipal or regional authorities which award contracts for the operation of UPT and also contribute most importantly to finances, the state level also has a role to play in setting the financial framework for infrastructure and exploitation of urban transport e.g. Austria, Germany, France, and Ireland. The national or regional political level can also have an influence over mobility policy, larger investments (e.g. construction of trams or metro lines) as well as the type of award to be used e.g. Belgium (the regions), Czech Republic, Italy (regional government).

2.5 Overview use of type of award

The following section provides an overview of the type of award used per mode of transport by competent authorities. It also aims to provide insights on types of contracts, provision of rolling stock and maintenance.

The following figure gives an indicative overview of type of award used per country for bus lines in the UPT sector. This map was drawn up on the basis of desk research and was confirmed for the 12 countries covered in-depth. For all other countries it should be seen as indicative.

Figure 2.2 Overview usage of type of award bus lines urban transport (based on contract value)



Source: ICF country studies, UITP report 2015, web search

Note: Portugal recent development – Lisbon and Porto networks have been tendered in 2015 but in early 2016 the current government in place cancelled the concessions awarded to Spanish/Mexican companies. For France the situation applies only if the Paris region is not taken into account.

Malta: Competitive tendering of about 80% of UPT services

Cyprus: Direct award mainly

In Belgium, Greece, Ireland and Luxemburg, all urban public transport services by bus are directly awarded to an internal operator. In all other countries, both types of award (tendering and/or direct award) are used. In the UK (England (outside London), Scotland and Wales) direct award is very rare and possible only in very specific cases, in Sweden and Finland, direct award is also regulated to be used for 'exceptions' and only few municipal companies exist currently. In Austria and Bulgaria, regional and UPT services in small to medium-sized cities will be more and more tendered due to the fact that the number of municipal companies has declined or do not exist any longer. In practice, in more than 10 Member States, the use of competitive tendering is rather marginal and is mainly used in small to medium sized urban areas (though to some extent may not even be considered as UPT according to the study definition).

In the UK, Sweden, France (outside Paris), Finland (only Helsinki metropolitan area), the Netherlands, Denmark and Norway the use of competitive tendering has already been implemented prior to the adoption of Regulation 1370/2007. The use of competitive tendering has in particular increased over the past 10 years in the Netherlands and Finland and today covers more than 80% of the bus lines. In Germany, most cities award contracts directly to

an internal operator. There are some examples of competitive tendering for mainly regional bus services and to a somewhat limited extend for small-sized city networks. In Italy the use of competitive tendering has been increasing in the recent years but has not reached such high levels as in France or the Netherlands. In some countries contracting with the internal operator according to Regulation 1370/2007 is not yet common and the internal operator provides transport services rather on the basis of regulation or legacy provisions. For example in Germany, only few direct awards according to Regulation 1370/2007 are finalised. Most of them are scheduled to take place from 2017 onwards. For Bulgaria it is not always clear whether internal operators actually have been awarded a contract according to Regulation 1370/2007. An exceptional situation can be found in the UK where the majority of urban bus services in England (outside London) Wales and Scotland is provided on a commercial basis (no exclusive rights but application of general rules on financial compensation for maximum tariffs for certain categories of passengers) with exceptionally tendered bus routes that are socially desirable. Commercial bus services (are also very common in Germany in regional transport and smaller cities (indeed the legislation includes provisions on the primacy of commercial viable UPT services which is a German context specific situation – so-called "Eigenwirtschaftliche Verkehre"). On the other hand, bus services in London are tendered while bus services in Northern Ireland are operated by an internal operator (also here not clear to what extend a contract was awarded directly as foreseen under rules of Regulation 1370/2007).

There is a tendency that urban public transport networks (road and rail) in capital cities or in very large urban areas are awarded directly to an internal operator. There are exceptions like for example London or Helsinki where transport services using urban rail are provided in house or by an internal operator, and bus lines are tendered out. In Stockholm, all UTP services are tendered to different operators (including metro).

In the countries that use both competitive tendering and direct award, authorities may change from direct award to tendering or vice-versa. This has been observed for example in France, Germany, Netherlands (only big cities such as Amsterdam, Rotterdam, The Hague and Utrecht) and Bulgaria.

The exact reasons for such choices are not entirely clear. Interviews with workers, authorities and companies highlighted that in many ways the choice was politically motivated in particular competitive tendering was seen as mean to increase quality and cost-efficiency of the transport services, and make financial savings. In the case of France it has been mentioned in interviews that one of the reasons to opt for direct award was politically motivated namely to retain financial benefits at local level and to be able to re-invest them. The GART (French association of organising authorities), UTP (Organisation of enterprise in urban public transport and rail services), EPL (National Federation of local public companies) and FNTV (National Federation of Voyagers), have commissioned a study on the reasons for choosing the type of award. The results were published in January 2015[6] and provides the following reasoning why competent authorities change to direct award after an experience of competitive tendering:

- not enough competition (only 2 bids received);
- offers were too costly from a financial perspective,
- high judicial costs (e.g. in cases of administrative errors in competitive procedures, case law),
- belief that the authority will have higher flexibility in management; bad relationships between the authority and the previous operator, preferring thus direct award.

Taking into account the last argument and also the few a tendering experiences gathered in this study that have turned out to be difficult to manage for various reasons (early tendering experiences in the Netherlands and Germany)[7] indicate that it can be useful to deepen research to understand competent authority choices for the type of award as it seems that reasons to go for the one or the other option seem quite similar as the French study reveals.

Where tram and light rail services have a long history in a city they are very often awarded as part of a network together with the bus services. For example in Germany and Austria the urban bus networks including light rail are directly awarded to an internal operator, while in France (outside Paris) and in the Netherlands the organising authorities often award the whole network (bus and light rail) through a tendering procedure.

It was not possible to obtain a comprehensive overview of the situation beyond the countries that have been studied in-depth. In cases where tram services were newly built such as the LUAS network in Dublin, competitive tendering has been used (in contrast to bus services which are directly awarded to an internal operator). In France (e.g. St. Etienne) and the Netherlands (e.g. Utrecht), where tram services form part of the network, they are tendered (and have been awarded to private companies). Also in the UK, tram services (present only in 8 cities) are competitively tendered. In Sweden, parts of tram networks have also been tendered (2 cases).

For metro services, in the majority of cases an internal operator delivers the service. However, in two in-depth study countries, France (Lyon, Lille, Rennes, Rouen) and Sweden (Stockholm) metro services are tendered.

[6] Olivier Domenach: gestion directe ou déléguée, les déterminants du choix, see p. 160 http://_65430983298_1_1421100000.mobilicites.elteg.net/media/rapport-final-v-14-od-17-07-2015.pdf

[7] For Netherlands see country report, for Germany see box on page 64)

2.6 Overview contractual specificities

The following table provides an overview of the contract length in urban public transport services and whether the provision of rolling stock, maintenance and infrastructure maintenance is part of the contract.

Table 2.3 Overview length of contract and contractual specificities

		Contractual specificities		
Country	Length of contract	Rolling stock	Maintenance	Infrastructure maintenance
AT	Between 8 and 15 years	✓	✓	
BE	5 years	✓	✓	
BG	10 years bus and light rail	✓	✓	✓
CZ	Between 8 to 10 years	n.a.	n.a.	n.a.
DE	10 years for bus services; 15 years for light rail and metro, mixed services up to 22,5 years	✓	✓	✓
FI	5 to 7 years (with an option to prolong 3 years)	✓	✓	
FR	For outside Paris: 5 up to 10 years (if including track bound services)		✓	
IE	5 years	✓	✓	
IT	8 to 10 years		✓	✓
NL	6 to 10 years for bus services, for track bound services between 10 to 15 years	✓	✓	
SE	8 years (option to prolong 3 years)	✓	✓	
UK	London only: 5 years (option to prolong 2 years) for bus services			

The shortest award period is 5 years and the longest is 15 years in particular for integrated services encompassing bus and urban rail (10 to 15 years typical for track bound services). When major investments are foreseen and having regard to the conditions of asset depreciation, the duration of the public service contract can be extended by 50% up to 22.5 years. From the information obtained it can be observed that not all countries systematically make use of the allowed maximum contract periods.

It has been mentioned in interviews that the shorter the contracts - in particular for contracts established after competitive tendering - the greater the performance pressure and authorities evaluate financial means for operation and set quality criteria more often. A study looking at the case of France also mentions that operators consider it to be more difficult to "really manage" a network and to develop a relationship of trust with the authority in short contracts.[8] Shorter contracts also lead to greater pressure and insecurity for staff, in particular in those countries where no compulsory protection measures exist (e.g. transfer of staff).

Most contracts covering bus services (with the exception of France, Belgium and Ireland, where organising authorities are to a great extent owners of rolling stock – both busses and light rail) also include the provision of vehicles and maintenance depending on local or regional specificities. The quality and technical specificities of busses plays an important role in contract award. Also maintenance and provision of bus depots (in particular in countries with a high share of competitive tendering) has a strategic importance. In some cases, operators lease the vehicles or rent bus depots or outsource maintenance. Asset maintenance is capital intensive. Environmental friendly rolling stock (rolling stock with lower emissions or e.g. electric buses) has become an important aspect for competent authorities. One of the differences between competitive tendering and direct award can be the provi-

[8] Olivier Domenach: gestion directe ou déléguée, les déterminants du choix, see p. 47 -http://_65430983298_1_1421100000.mobilicites.elteg.net/media/rapport-final-v-14-od-17-07-2015.pdf

sion of rolling stock and maintenance in those countries where the provision of rolling stock is part of the contract. International private operators have access to lower prices for replacement pieces or maintenance services due to economies of scale, thus the use of competitive tendering can be seen as strategic in this regard. For example, in the case of St. Etienne, the competent authority provides an extra budget to the operator Transdev to buy specific renewal pieces[9]. The French Association of internal operators AGIR Transport[10] has created in 2011 a service of procurement for maintenance material and vehicles to be able to service its members better and have access to better prices as typically internal operators used operate in "isolation".

Infrastructure management tends to be part of the contract mainly in contracts for track bound services. The public compensation accounts for the provision of services, as well as renewal of rolling stock or infrastructure.

2.7 Overview of the use of social conditions in the award process

This section aims to present the results from interviews and research from the in-depth study countries on the use of social conditions in the award process. Social conditions can be used also when selecting tendering offers and require all bidding companies to meet certain minimum standards specified by law, collective bargaining agreements or by service specific obligations in relation to wages and non-wage terms and conditions of employment, pension, health and safety at the workplace or training requirements but also service requirements. Social conditions can also form part of a directly awarded contract. They serve the purpose of maintaining and improving the quality of service delivery and avoid social dumping.

The question that was also being analysed was to what extent social conditions play a role in selecting an offer, what kind of social conditions play a role and how often and in what way social conditions have been expressly highlighted in tendering or direct award processes. This analysis excludes the aspect of transfer of staff as this aspect will be analysed separately below (section 4).

When considering the use of social conditions, it is also important to bear in mind the context of national legislation and collective bargaining. While national legislation has to be adhered to by all bidders, the extent to which social standards are set in legislation (and the level of these standards) differs. Similarly, the coverage of collective agreements, and the level at which standards in collective agreements are set also has an important role to play in the context of tendering and possible changes of operator. In countries where collective agreements are set at the sectoral level and are binding for the whole sector, the stipulation of social conditions is arguably of more limited relevance if such standards are set at a relatively high level. Where no such sectoral collective agreements exist; where they only bind signatory parties (and coverage by social partner is relatively low) and where there is a significant gap between standards set in sectoral collective agreements and in company level agreements, the use of social conditions in tendering would arguably play a more significant role.

In some countries, there are universally binding sectoral collective agreements in place (e.g. NL, AT, FR, FI) or quasi-binding for all due to the fact that almost all operators signed it (e.g. IT, SE). In other countries sectoral collective agreements are not binding for all companies or they do not exist and thus company level collective bargaining is of greater importance. The latter situation can create an unequal starting position at the point of bidding for a contract in competitive tendering procedures. In such a case two possibilities exist – either the national legislation specifies that in competitive tendering sector representative collective bargaining agreements (or representative company collective bargaining agreements) have to be taken as a reference to provide an offer by all bidders or the competent authority relies on the PSO Regulation Article 4.5 and 4.6 (in conjunction with Recitals 16 and 17) to reference a specific set of social standards for the tender. The first option is used in Germany, where regional legislation on respect for collective agreements (TTG laws) requires bidders to comply with the most representative sector collective agreement. Competent authorities can stipulate additional social conditions in conformity with the PSO Regulation. In countries such as BG, CZ, and the UK (for those areas where competitive tendering occurs) it is on the basis of the PSO Regulation that a competent authority can set out social conditions.

The results of the research with regard to the use of social conditions in award processes (in particular tendering procedures) can be summarised as follows:

- There are very few cases where social conditions have played a role as one of the selection criteria; the most important criteria are price, technical requirements regarding rolling stock and quality of service provision (punctuality, rolling stock, cleanliness, customer service, training of drivers);
- In countries with universally binding sector level collective agreements competent authorities consider that labour law and sector level collective agreements (already provide for appropriate social standards and thus do not specifically mention these in award procedures or request more favourable terms and conditions as set out in sector collective agreements. This rationale could be called into question as in some cases there can be an

[9] Please further see the annual report p.23 for 2014/2015 - http://www.reseau-stas.fr/ftp/document/RAPPORT%20OK%20A5%202014%20WEB_2.pdf

[10] Please further see this web-link: http://www.agir-transport.org/achats/

important gap between company level employment conditions and sector agreed conditions. In Austria, for example, it became clear that on the basis of national legislation the competent authority has to carry out a number of checks of bids such as: staff cost offer (is the price offered in conformity with collective agreement) and experience of bus drivers; check on payments of social security contributions and checks on the correct employment of foreign workers; whether also other countries have to systematically control offers in this way cannot be further specified within this study;

- If at all used typical social conditions refer to: training requirements, qualification of staff, language capabilities and general proof of good standards and capacity of human resource management (including staffing, retention and conflict management) e.g. in France and Austria, sometimes also specific technical requirements for rolling stock in order to provide for health and safety of drivers can be required (e.g. ergonomic seats in the Netherlands). It has also been mentioned that criteria such as engagement of apprentices or older workers may be requested. However, these cases seem to be the exception for competitive tendering;
- Reference to social conditions (as mentioned above) and human resource management (e.g. performance and productivity requirements) can also be found in contracts awarded directly to an internal operator, here examples were found in Belgium (Wallonia and Flanders) or France.
- Within the sample analysed, there was no specific example where social standards were used for the selection of one bid over another but that social standards where equally imposed on all bidders to the same level.

One of the questions that was part of the research was to understand to what extent social conditions are also applicable for subcontractors (if requested or allowed by tender documents). From the country analysis it appears that only in countries where universally applicable sector specific agreements apply to all operators, the same minimum working conditions are applicable. This was mentioned for the case of Austria, Finland and France, as well as in the Netherlands and Sweden where a majority of subcontractors are covered by the same sector agreement. In the other countries (CZ, BG, DE, IT, UK) subcontractors are either covered by different sectoral agreements or have a company specific agreement or no agreement because it concerns very small companies. In addition, subcontractors need to respect all legal obligations. From these countries, no specific example was found where subcontractors are required by the tender specifications to follow the same working conditions as the main operator. Main operators can however set specific social conditions for their subcontractors. From the majority of cases analysed it appears that the selection of the subcontractor is generally based on price but compliance with national legislation can be checked by the main operator. In a case where social conditions are set by the competent authority, such as particular requirements for staff training, this may be an obligation that the main operator also has to ensure for their subcontractors. For example, in the direct award process studied in Belgium, the contract stipulates that the internal operator has to ensure that subcontractors provide their staff equal working conditions as core workers.

2.8 Use of subcontracting and outsourcing

The PSO Regulation provides under Article 4.7 that the competent authority can indicate in tender documents and public service contracts whether, and to what extent subcontracting can be considered by bidders/operators. The Article further specifies that the bidder has to provide a major part of the public service themselves, thus limiting the amount of possible subcontracting[11] The public service contract will further specify the conditions applicable to subcontractors. The previous section shows that subcontractors do not always follow the same rules with regard to social standards on minimum working conditions. Thus one question of this research was also to understand first of all to what extent subcontracting is used and how it has evolved, why it is used and whether staff among subcontractors are afforded the same wages and terms and conditions as core staff.

The use of subcontracting is an option that a number of competent authorities provide for in tender documents. This may be related to historic cooperation with small and medium sized private transport companies established in the region of the network. In the majority of cases subcontracting is allowed in a range from 15 to 30%. The exception to this is Belgium where contracts determine that internal operators shall subcontract at least 30% and up to 50% of services (Wallonia and Flanders Region only).The rule is that subcontracting has to be agreed with the competent authority either prior or during the execution of the contract. Subcontracting of regular lines is strategically used thus mainly in Belgium but also by bus operators in the Netherlands (up to 15% of services), Austria (up to 30% of services), Germany (up to 40% of services in some regions) and also Italy where authorities determine the use of subcontracting between 15 to 30%. In all other countries subcontracting is considered to be marginal and not strategically used but rather to overcome capacity issues.

[11] In case of direct award, subcontracting is regulated by Art 5.2(e), the internal operators have to perform the major part of the public services themselves

In most countries employment conditions among subcontractors are not on a par with those of the main operators due to different company level agreements. Otherwise, in the following countries subcontractors fall under the sector level agreement (the same as for main operators): Finland, Austria, France, the Netherlands (unless it concerns taxi services, or touring coach companies) and Sweden (if signed the sector bargaining agreement). Only in Italy, Germany, Netherlands and Austria it has been considered that the use of subcontracting has increased over the past 10 years.

In addition to subcontracting, the role of outsourcing has also been analysed in the sector. While in the past internal operators provided many services themselves, the question was whether with the introduction of the use of competitive tendering all services continue to be carried out by the main transport operator or whether certain aspects of services were outsourced to other companies. One of the effects of this transformation of the UPT market is in particular that these workers were previously covered by company level/ UPT sector specific collective agreements but after outsourcing would fall under other sector specific bargaining agreements and working conditions may have not been maintained. Thus the research aimed to understand to what extent companies outsourced services, and which services in particular.

With regard to outsourcing it has been observed that outsourcing mainly occurs for maintenance (technical), security and vehicle cleaning services. This is a trend that concerns all in-depth countries and internal and private operators alike though not to the same extent. Internal operators still tend to operate a significant part of maintenance services or vehicle cleaning services in-house. Security services are the most common outsourced service. Outsourcing of maintenance (technical) can be a strategic choice in cases of competitive tendering, this has been mentioned in Finland, Sweden and Netherlands.

It is not possible to assess to what extent working conditions of outsourced staff are different. In Ireland and Germany, for instance, it was mentioned in interviews that collective agreements for staff in vehicle cleaning tend to be less favourable than those applied to staff in urban public transport.

2.9 Overview transfer of staff in case of change of operator

This section aims to compare situations between countries with regard to what happens to staff in case of a change of operator after competitive tendering.

There are five basic situations in which a transfer of staff currently takes place within the context of a change of operator in urban public transport. Three situations can be legally qualified as 'transfer of staff' while two situations are de facto situations of transfer of staff:

- Transfer of staff is required by national legislation (e.g. transport laws) – this is the case in the Netherlands.
- By national law specific implementation of Directive 2001/23/EC the situation of change of operator after competitive tendering is always considered as transfer of undertaking This is a national specific implementation extending the scope of the EU Directive on Transfer of Undertakings which does generally not qualify a change of operator after competitive tendering as a transfer of business. This is the case for example in the UK and in France;
- Tender documents require a transfer of rolling stock and assets. As a result, a change of operator is considered to qualify as a transfer of undertakings as foreseen by national rules implementing the EU Directive 2001/23/EC regarding staff transfer in case of transfer of undertakings. As a consequence staff is transferred to the new operator.

Two de-facto situations of transfer of staff:

- Competent authorities can make use of Article 4(5) of the PSO Regulation – either explicitly or implicitly – to require a transfer of staff in the case of a change of operator (no transfer of assets). This situation was found in cases in Germany and in Stockholm
- Transfer of staff is not mandated by the competent authority but can be in practice negotiated between transferor, transferee and relevant trade unions on a case by case basis or can be 'regulated' within a sector collective agreement. Situations of case by case basis negotiations were found in Sweden (outside Stockholm). In Finland, there is a sector collective agreement in place that foresees that in case of change of operator a specific 'transfer unit' is created under the auspices of the public employment service and from which the new operator is limited to recruit staff. At this stage, most of the workers were in practice thus transferred to the new operator or chose to leave the sector and find work elsewhere.

The following table provides an overview of results from in-depth countries:

Table 2.4 Overview transfer of staff change of operator

Country	Rules on transfer of staff
DE	No transfer of staff in case of change of operator according to national legislation for urban PT; not considered as transfer of business (though depend on whether assets are transferred); competent authority can make use of Reg. 1370/2007; this has already occurred for directly affected staff. For conventional rail passenger transport, national legislation has recently introduced compulsory transfer of staff. Regional legislation in Rhineland Pfalz also foresees compulsory transfer of staff for urban PT.[12]
DK	Transfer of staff in case of change of operator can occur if considered as a transfer of undertaking under national law (transfer of assets), this was considered to be often the case; all staff linked to the service will be transferred and have to be listed in tendering documents;
FI	Transfer of staff in case of change of operator does not occur as not considered as a transfer of undertaking under national law (; competent authority could make use of Reg. 1370/2007; transfer of staff however occurs in all cases of change of operator due to a social partner agreement binding for all operators, transfer of directly affected staff
FR	Transfer of staff in case of change of operator is considered as a transfer of business according to national legislation – Labour Code Article L1224-1 of the Labour Code applies if the tendered service is carried by a single autonomous entity; staff transferred will be mentioned in the tender documents by the authority
HU	No transfer of staff in case of change of operator; not considered as transfer of business (though may depend in case of transfer of assets) under national law; competent authority could make use of Reg. 1370/2007;
IE	No transfer of staff in case of change of operator; not considered as transfer of business (though may depend in case of transfer of assets) under national law; competent authority could make use of Reg. 1370/2007; for tram services rolling stock is not owned by the operator thus transfer of staff would occur (no example in practice though).
IT	Situation not clear; a change of operator may be considered as transfer of business – requiring transfer of staff according to national legislation; competent authority could make use of Reg. 1370/2007; Guidelines on how to proceed transfer of staff; no practice example so far
LV	Only direct award, not clear what may happen in case of tendering
NL	Transport Law from 2000 obliges transfer of staff in case of change of operator; concerns mainly staff directly affected and a percentage of indirectly affected staff.
SI	No transfer of staff in case of change of operator as not considered as transfer of business (though may depend in case of transfer of assets)under national law; competent authority could make use of Reg. 1370/2007
SE	No transfer of staff in case of change of operator as not considered as transfer of business (though may depend in case of transfer of assets) under national law; competent authority could make use of Reg. 1370/2007 ; this has already occurred but use of requirement of transfer of staff is discussed
UK	A change of operator is considered a transfer of business under national legislation 2006 Transfer of Undertakings and service provision change; it obliges transfer of affected staff (identified with the service).

In four out of 16 countries where information was gathered, France, Finland, the Netherlands and the UK, transfer of staff occurs on the basis of national law or sector collective agreement in case of change of operator after tendering. In seven countries, Austria, Denmark, Czech Republic, Hungary, Slovenia, Sweden and Bulgaria typically no transfer of staff would occur due to the fact that in most cases the change of operator cannot be seen as a transfer of business under national legislation implementing the EU Directive 2001/23/EC on transfer of undertakings (though it may happen depending on the precise content of the award process – in particular if assets are transferred, this is the case for Denmark where this occurs more often) and no other national rules exist for such a situation. In the case of Italy the situation is not clear. Examples where competent authorities have made reference to Regulation 1370/2007 are rare (e.g. Germany, potentially also Sweden and Italy). Taking into account that up to this moment only very few examples exist from countries where competitive tendering occurs and where transfer of staff is not mandatory it was explained in interviews that the use of this possibility can be considered to be legally complex and technically difficult, potentially making public authorities reluctant to use it. In Germany, a number of regional authorities are providing guidance to assist in such processes. New legislation only covering the rail sector has recently introduced a 'should' regulation with regard to the requirement for transfer of staff. The option to make this binding for all urban public transport services (albeit originally proposed) was not adopted at the federal level, but is being put forward in draft legislation in at least one region.

In Belgium and Latvia the situation remains unclear due to the fact that only direct award is currently used. This is also the case for bus services in Ireland. This may change in the future and employees have preferred to negotiate with government that transfer of staff would be voluntary not obligatory. This leaves employees a choice as to whether they wish to transfer or not taking into account that tender-

[12] Further information can be also found in this article : Rohrmann, Pfaff (2016) Beschäftigtenübergang im SPNV im EU Vergleich, in Der Nahverkehr 1-2 2016

ing would be still marginal if current Irish projects would be implemented (intentions to tender 10% of Dublin bus services). It seems that in countries where a change of operator would not necessarily be considered as a transfer of business thus not automatically triggering a transfer of staff, the Regulation has provided legal clarity and certainty. In France and the UK, a change of operator is considered a transfer of undertaking (transfer of service) in all cases and thus transfer of staff occurs due to national rules.

In the Netherlands, transfer of staff is obligatory due to a provision in the national law regulating the award of concessions in urban public transport.

While in Finland, a change of operator would not be considered a transfer of undertaking requiring transfer of staff, there is however a sector level agreement universally binding requiring the transfer of staff in case of change of operator after tendering.

2.10 Conclusions and summary of findings – evolution of the UPT market in the past 10 years

From the insights gained on the overall characteristics of the UPT market it seems that Regulation 1370/2007, as well increasing restrictions on public finances have been in some countries a motor for the use of competitive tendering while in others the choice predates the Regulation (e.g. France, Germany, the Netherlands, and Sweden). The use of competitive tendering has particularly increased over the past 10 years in the Netherlands (due to legislation in 2000) and Finland (national legislation allowing for competitive tendering in force before PSO Regulation; use of tendering a recent strategic choice) ending up with more than 80% of the bus lines competitively tendered. Also in Germany and Italy the use of competitive tendering has been increasing in the recent past. There is an overall trend towards the increasing use of competitive tendering which seems to be driven by the lack of public finances but also by an ideological assumption that competitive tendering would increase quality and lower overall costs. On the other hand the use of competitive tendering in UPT is not yet widespread as in the majority of Member States direct award prevails. In some cases, in France and Germany it was also observed that competent authorities can also opt for going back to internal award after having made use of competitive tendering, as it is possible to opt for tendering. This is not possible in countries where national legislation imposes tendering.

National regulatory frameworks for urban public transport do not provide for further specification with regard to the use of social conditions as a selection criteria in tendering processes and there are no further definition at national level that clarify on what kind of social conditions could be considered with regard to quality. This may leave legal uncertainty in the application of art. 4(5) and 4(6) of the PSO Regulation.

Some countries, like Austria, have set out guidelines explaining how social conditions can be used and what kind of criteria can be applied when selecting an offer.

Clearly, in all countries respect for labour law, equal treatment and health and safety provisions are a criteria that needs to be fulfilled in order to be able to reply to a tender (as well as requirements on having met social insurance and tax liabilities). In some countries such as Austria or Finland where sector level collective agreements are binding for all operators, implementation and respect for such agreements needs to be demonstrated or ensured. Few examples have been mentioned where authorities set social conditions with regard to the performance requirements such as training, drivers having knowledge of the national language and knowledge of the region, or the definition of the number of staff required to deliver are service are set. There are also rarely other requirements such as the need to recruit from particular target groups or to apply other human resource management principles. Reference to human resource management and socio-political aims such as recruitment among target groups and apprentices has been found more often in contracts awarded directly. Public service contracts of internal operators can set out more specifically what kind of social conditions may continue or where changes should occur. There are examples of private and internal operators that clearly need to demonstrate a good functioning social dialogue.
Taking into account the share of subcontractors and the possibility to outsource services of services, the use of social conditions setting out that subcontractors' staff shall have similar working conditions as core contractors' staff is something that is not used (in countries where no binding sector agreement covers subcontractors). Only in Belgium an example was found, where the authority prescribes levels of subcontracting (up to 50%) for the internal operator but also provides that working conditions of staff of subcontractors shall be equal and this must be monitored (Region of Flanders and Wallonia).

The shortest award period is 5 years and up to 15 years the longest in particular for integrated services encompassing bus and urban rail (10 to 15 years typical for track bound services). When major investments are foreseen and having regard to the conditions of asset depreciation, the duration of the public service contract can be extended by 50% up to 22.5 years. In general, the provision of rolling stock and technical maintenance forms part of bus service contracts with the some exceptions such as France. Contracts for tram or light rail service can include provision of rolling stock (rather untypical) but include maintenance of rolling stock and sometimes infrastructure.

The legal grounds requiring transfer of staff are diverse in the countries researched:

- In four out of 16 countries where information was gathered, France, Finland, the Netherlands and the UK, transfer of staff occurs on the basis of national law or sector collective agreement in case of change of operator after tendering. In France and the UK a change of operator is considered a transfer of undertakings by national law; in the Netherlands the transfer of staff is obligatory on the basis of the national transport law and in Finland transfer of staff occurs due to a national collective agreement requiring a de facto transfer of staff – limiting recruitment for the new operator to a pool of workers of the old operator;
- In seven countries, Austria, Denmark, Czech Republic, Hungary, Slovenia, Sweden and Bulgaria typically no transfer of staff would occur due to the fact that in most cases the change of operator cannot be seen as a transfer of business under national legislation implementing the EU Directive 2001/23/EC on transfer of undertakings (though it may happen depending on the precise content of the award process – in particular if assets are transferred, this is the case for Denmark where this occurs more often) and no other national rules exist for such a situation. In the case of Italy the situation is not clear though guidance from the National Ministry exists for transfer of staff. Examples where competent authorities have made reference to Regulation 1370/2007 are rare (possibly only in Germany, Sweden).
- In Belgium, Ireland (for bus services) and Latvia the situation remains unclear due to the fact that only direct award is currently used.

Despite the difficult recent economic situation the number of workers has remained either stable or has increased. In three Member States the number of staff has declined slightly (Germany, Italy and Ireland). With some exceptions, this has mainly affected managerial and administrative, as well as other non-operational staff. Workers are employed on full-time permanent employment contracts in the vast majority of cases. The share of temporary agency workers has been mentioned only in the Netherlands and Sweden to be higher (out of the 12 countries researched in-depth). Overtime has decreased and occurs to a lesser extent. Competitive tendering may have impacted on the decrease of the overall amount of administrative staff and technical staff, though developments of electronic ticketing and automation of ticketing requiring less service staff need to be taken also into account. The share of drivers has increased over time among operators but this can also be due to the development of an increase of passengers or extension of lines. Competitive tendering may influence the increase of average age among employees in the sector due to the fact that companies applied recruitment freezes that occurred for a certain period and which still impact on the current pyramid of ages in the sector (e.g. Germany), or transfer of staff obligations decreased investments in recruitment (e.g. Netherlands), or less recruitment of young staff was possible because of absence, or quasi absence of staff turnover (e.g. France) or due to reasons of unattractiveness of the sector for young people and finally important changes with regard to levels of remuneration like in Germany or Austria (no further use of the civil servant type contract). Also internal operators and in particular the two Central Eastern European countries analysed (Czech Republic and Bulgaria) experience a decline of attractiveness in particular of the driving profession in the UPT sector. Recruitment activity competes with the road haulage sector in CEE countries where pay was cited to be more attractive.

The most important changes in working conditions were changes to working time (referring to rest breaks) and work organisation (organisation of shifts, e.g. adaptation to peak and off-peak times splitting shifts to mornings and evenings) rather than type of employment contract used.

The analysis of the type of operator (international, local private or internal) shows that the market share of international companies has increased in particular where competitive tendering is used. The effect of the increasing presence of international companies on employment or market dynamic in the sector is not clear. Attention must be paid to increasing number of mergers of bigger players to ensure that market share is not concentrated within the hands of one or two operators. Nevertheless, a high number of internal operators, local small and medium private operators exist shaping the sector as much as the big international ones.

3 Comparative overview: Setting of social conditions in urban public transport – evolution and current situation

Key Findings

- In AT, FR, FI, , DK, IT, NL and SE sector level collective bargaining takes place at national level which is further enhanced by company specific bargaining. In most of these countries, sectoral agreements apply to all operators either because all are in membership of signatory social partner organisation or because they are made universally binding.
  In Germany regional sectoral agreements only bind signatory organisations and different agreements exist for public and private operators (mainly relevant of the bus market). Company level agreements can significantly exceed (by around 20-30%) standards set in sectoral collective agreements. In Belgium, each internal operator of the three regions has its own collective bargaining agreement.

- In BG, CZ, HU, IE, LV, LT and UK company collective bargaining prevails and no sector level agreements are concluded

- Only in countries with universally binding sectoral collective agreements, new operators entering the market would also have to abide by these standards

- Sectoral collective agreements generally govern wages and wage components. Depending on the specific country, most of them also cover working hours or health and safety requirements and even training; national legal provisions, in accordance with EU legislation, set the minimum framework for working hours, minimum rights for annual leave, health and safety or training (mostly at entry level or continuous learning) as well as for pension rights; company specific agreements are also important with regard to wages, wage components and other benefits, but also health and safety, specific working arrangements, training and in particular company specific arrangements for health and pension benefits.

Development of social conditions in the past 10 years (2004-2014)

- The development of wages (gross, monthly) has proved to be a difficult aspect to evaluate due to a lack of data, especially where no sector specific agreements exist. Trends are based on sector collective agreements where existing or common understanding of sector social partners. Trends indicate that in the majority of the in-depth countries of study wages have remained stable (meaning increases in accordance or slightly above cost of living indexes and inflation); only in Finland, Netherlands and Ireland social partners agreed that wages increased importantly above cost of living indexes and inflation); wage components in general keep pace with wage developments;

- Weekly working hours have remained the same in most of the in-depth countries studied, only France and UK reported a slight decrease in working time for drivers; Germany has reported a slight increase in working time. One issue that was reported by workers in most countries was an intensification of work due to efficiency measures (e.g. shorter turnaround times at terminal stations, tight schedules, changes in accounting of time to the place of work, traffic congestion in some cities; split of shifts according to peak and off-peak transport hours);

- Training policies and provision have improved as reported by Austria, Belgium and Italy. However, it is difficult to estimate overall trends in this regard as training policies are company specific. Directive 2003/59/EC provides for minimum rules on the initial qualification and periodic training for bus drivers and has been implemented by all Member States in their national legislation.

- Pension rights have been strongly influenced by national political developments. It has been reported that pension benefits have remained stable over the past ten years in most of the countries studied.

3.1 Framework of setting social conditions

This section aims to provide an overview on the setting of social conditions in the UPT sector. This includes information on the relevant social partner organisations and detailing at which level (e.g. legislation or collective agreements) key conditions are set (wages, wage components, annual leave, non-wage benefits, working hours, health and safety, pension rights). Finally, it charts trends in social conditions in the UPT sector between 2004-2014. This information has been gathered on the basis of the survey carried out among social partners and complementary national information where available.

3.1.1 Overview social partners and social dialogue

The following table presents an overview of the main social partner organisation in the UPT sector in the in-depth countries, and information from the online survey where available.

Table 3.1 Overview social partners in urban public transport

Country	Representation of workers	Representation of employers
AT	Trade union for municipal workers; Trade union for postal services (Postbus drivers employed under specific status),Trade union VIDA, representing workers in the railways and bus sector	Austrian Economic Chambers
BE	The FGTB with its sectoral branch CGSP/ACOD which represents all type of workers in all three companies (most representative union); CSC-ACV with its sectoral branch CCSP; and CGSLB- ACLVB are the three representative unions in the public sector transport. ; FGTB- and its sectoral branch UBT (ABVV/BTB) represents workers from subcontractors in all regions	Union belge des transports en commun urbain et régionaux –UBTCUR (composed of De Lijn, STIB and Groupe TEC)
BG	- Federation of Transport Trade Unions in Bulgaria (FTTUB) - Federation of Transport Workers Podkrepa	NSBS; AEBTRI, BICA, municipal companies directly
CZ	OSD - Odborový svaz dopravy (Transport Workers' Union)DOSIA (Odborový svaz pracovníků dopravy, silničního hospodářství a autoopravárenství Čech a Moravy)	
DE	Ver.di, EVG,	VKA (Verband Kommunaler Arbeitgeber);AgVMove, AGVDE and AVN (existing in every federal state)
DK	3F, for light rail/ metro -Dansk Jernbaneforbund	AKT/ DI; for light rail/metro Jernbanernes Arbejdsgiverforening / DI
FI	Transport Workers Union AKT, The Trade Union for the Public and Welfare Sectors JHL; outsourced cleaning staff are usually members of The Contact Service Union United PAM and the outsourced staff in garages members of The Finnish Metalworkers' Union.	Employers' Federation of Road Transport (ALT); The Local Government Employers (KT)
FR	Confédération générale du travail (CGT) ; Confédération française démocratique du travail (CFDT) ; Confédération générale du travail-Force ouvrière (CGT-FO) ; Union nationale des syndicats autonomes (UNSA) , Confédération française des travailleurs chrétiens (CFTC)	UTP
HU	Bus Transport Trade Union Confederation (AKKSZ) ; KKSz; KSZOSZ; KDSzSz; Road Transport Union (NZEC)	KKVSZ (Association of Road Transport companies) ; MKFE (genral); FUVOSZ (general)
IE	SIPTU (Services, Industrial, Professional and Technical Union); TESSA (Transport Salaried Staff's Association), a company specific union NBRU (National Bus and Railways Union)	No employers' organisation for the sector – general representation Irish Business and Employers' Confederation IBEC – each company management for company level
IT	FILT-CGIL, FIT-CISL, UIL Trasporti, FAISA CISAL, UGL FNA;	ASSTRA and ANAV.

Country	Representation of workers	Representation of employers
LV	Latvian Trade Union of Public Service and Transport workers, LAKRS	No employers' organisation for the sector
NL	FNV Bondgenoten, CNV Vakmensen, VVMC and ABVAK-ABO FNV	Vereniging Werkgevers Openbaar Vervoer'
SI	Union of drivers and traffic workers of LPP, Independent union of LPP	
SE	Swedish Municipal Workers' Union (Kommunal); Vision, Unionen and Saco.- for municipal owned operators	Swedish Bus and Coach Federation (Sveriges Bussföretagare) and the Swedish Organisation for Local (Municpal and County Council) Enterprises (Kommunala Företagens Samorganisation, KFS); Swedish Organisation for Local (Municpal and County Council) Enterprises
UK	Unite the Union (passenger transport); ASLEF (rail segment of urban and suburban passenger land transport); National Union of Rail, Maritime and Transport Workers (RMT); Transport Salaried Staffs' Association (TSSA) (Urban and suburban passenger land transport); and GMB (general union).	Many urban public transport operators are represented through the Confederation of Passenger Transport (CPT) though does not have a status of employers' organisation – mainly management of companies directly

Source: ICF country studies and online survey

From the information collected it is not possible to assess the representativeness of social partners of the sector. The study aimed to gather where possible all names of social partner organisations present in the UPT market to provide an overview. The structure and organisation of workers and employers is dependent on the UPT specific market organisation and the form of collective bargaining that prevails. The following table clusters the predominance of form of social dialogue:

Level(s) of bargaining	Countries
Company level prevails (often with regional or service specific variations)	Belgium, Bulgaria, Czech Republic, Hungary, Ireland, Latvia, Lithuania, UK
Sectoral level bargaining enhanced by specific company level agreements (often at regional/specific service level)	Austria, France, Finland, Denmark, Germany, Italy, Netherlands, Norway, Sweden

In countries where company collective bargaining is most important, employers' organisation for the sector are absent. In Bulgaria and the Czech Republic sector level agreements exist but these provide broad or set general standards only. These agreements set the framework for company level agreements.

In countries where sector level agreements are universally binding such as France, Finland, Austria, the Netherlands and Italy, national social dialogue is of importance and provides a platform for private and public companies, SMEs and international companies to discuss challenges of the UPT market. This is also the case in countries with a high coverage of the sector collective agreements, like in Sweden.

It is possible for different sector level agreements to be in place for bus and tram/light rail/metro in the same region or country and different agreements can also exist for public and private operators (e.g. Germany).

3.1.2 Setting of employment conditions

The following table 3.2. (page 43) provides an overview of how employment conditions are set and the level of importance of national legislation, sector level collective agreements or company level bargaining for setting social standards.

In the following countries binding sector level agreements exist: Austria, Finland, France, Sweden, Italy and the Netherlands. In some countries these agreements are declared by national legislation to be universally binding (e.g. Finland, France, and Netherlands). In Austria, they apply to all operators by virtue of compulsory membership in the employers' organisation (WKÖ). In some countries, the collective agreements are only applicable to signatory partners, but de facto they cover the entire sector because most operators are members (e.g. Sweden and Italy).

In Germany, sector level agreements are regional and (particularly in the bus sector) different agreements apply for public and private operators. As outlined above, in 14 regions a TTG law leads to the selection of regionally 'representative' collective agreement obliging bidders to implement the most representative sectoral agreement to ensure a social level playing field as a pre-requisite criterion (it is important to note that in many cases this is the collective agreement pertaining to the private sector which offers lower standards that sectoral agreements for the public sector).

In some countries, sector level agreements also bind subcontractors (see section 2.8).

Where sectoral collective agreements are binding for all operators, they are also applicable to new market entrants and are thus considered to set a sector level standard for wage and non-wage terms and employment conditions (though not always covering all aspects as set out in law). Even in countries where sector agreements exist binding for all (or the majority) of the sector, company level collective agreements are negotiated and can improve significantly on the provisions set out in sectoral collective agreements (in some cases by around 20-30%). In a situation where company level terms and conditions vary strongly among competitors (e.g. in countries where collective bargaining exists only at company level or in countries where company level agreements significantly enhance sector level standards, see table p. 38), and based on the observations made in the countries analysed, obligatory transfer of staff or social conditions set out in the tender documents can contribute to bridge the gap between company standards

On the other hand, as it has been observed in the case of the Netherlands and Finland, sector level agreements going beyond a "sector minimum" can lead to the fact that company practice or company agreements do not significantly improve conditions at company level compared to the sector standard. In particular where competition exists, this leads to a "harmonisation" of social standards in the sector and thus decreases competition over terms and conditions.

Overall it was estimated that in Germany in the bus sector around 75% of workers (and 40% of companies) are bound by sectoral collective agreements. In the tram and metro sector this share is much higher, between 75-99%. In Italy, where the national agreement is only binding for signatory parties, it was also estimated between 70-99% of enterprises and workers in the whole sector are covered by this collective agreement.

In Belgium social dialogue takes place in sectoral social dialogue committees (commission paritaire) which gathers employers and the different trade unions in one committee. These committees are established for all sectors. The committees have the role to set sector specific agreements and to prevent and manage social conflicts/strikes. They also advise the government and carry out any other mission that has been asked to them. For the UPT sector though the sector level committee exists de facto but each internal operator of the three regions has its own sub-committee. In these sub-committees company specific issues and questions are negotiated resulting in a text – a collective agreement that binds the company and its workers. Thus it is not a standard for the sector.. Sub-contractor companies fall under a different sectorial social dialogue committee (road transport) having sub-committees – one of them is the subcommittee for subcontractors of UPT but then address all companies active in Wallonia and Flanders (no subcontractors in the Brussels Capital Region) equally. In the case that one of the Regions' competent authorities in Belgium would want to launch a competitive tender the structure of these sector dialogue committees will have to change. It is thus not clear how social partners would re-organise.

Furthermore, in the Czech Republic and in Bulgaria sector level agreements exist but they set only a general framework for company level bargaining.

Thus, in Bulgaria, the Czech Republic, Ireland and the UK the most important level of setting social conditions is the company level. In cases where company collective agreements prevail, new market entrants can set different standards compared to existing ones though to what extent may depend still on the labour market situation.

3.1.2.1 Overview setting of employment conditions – specific social conditions Wages

In all in-depth study countries with the exception of Austria, Finland, Sweden and Italy there is a national legal minimum wage. The sector level agreements in Austria, Germany (regional),) Finland (regional), France, the Netherlands, Italy and Sweden (regional) set a sector specific minimum wage. The sectoral agreements in Bulgaria and Czech Republic also set a sector specific minimum wage which is used for wage negotiations at company level.

In France the sector level agreement obliges companies to negotiate wages every year.

In Belgium, the internal operators' company specific wages in each Region set the wage standard (see above explanation on social dialogue). The public service contract of Flanders and Wallonia internal operators require equal working conditions for subcontractors (no subcontractors in Brussels).

Company level agreements are still more favourable in terms of wages than universally binding sector level agreements (or binding majority of operators). In cases, where several sector level agreements co-exist or where employers are not bound by the sector level agreement e.g. in Germany than company level agreements or wages may still be below sector standards.

It shall also be noted that not in all cases one can speak of company collective agreements but about "company agreements" (negotiated between employer and works council or company representative trade union) which are typically more often renegotiated and cover wages and bonuses, this is the case for example in Germany, Austria and France (linked to sector specific agreement).

Wage components

Wage components are for example overtime pay, week end work, night hours, on-call hours, shift work (in general) as well as bonuses (productivity bonuses).

Sector and company collective agreements but also individual employment contracts play an important role to set wage components. Sector level agreements in Austria, Germany, Finland, France, Netherlands, Italy and Sweden set sector specific levels for wage components. In all other countries company specific or individual specific levels apply to further improve sector standards, whereby for Finland it shall be noted that typically no company collective agreements exists thus more weight may be given to individual contracts.

Annual leave

General employment laws play an important role in setting minimum leave requirements for all operators. In Germany (regional), France, Netherlands, Italy and Sweden there are sector specific regulations on annual leave entitlements which improve on the legal minimum. In all other countries company level practice or specific company level collective agreements determine additional entitlements to annual leave.

Non-wage benefits

Non-wage benefits are for example payment of lunch vouchers, payment of additional healthcare protection, possibility to use the network for free or negotiated lower amounts for annual tickets for the city PT network, as well as access to commercial promotions (product reductions) or access to credit. Generally, these types of benefits are not part of sector collective agreements but are often a result of company practice or company agreements or individual specific benefits.

In Belgium, these non-wage benefits are negotiated in the sector specific committee for public transport and negotiated for each of the public operators, de facto these benefits are similar. However, in this case non-wage benefits are not applicable to subcontracting companies – these can decide themselves what kinds of benefits are set at company level. Typically, also in Belgium negotiation over non-wage benefits are not systematically agreed at sectoral level.

Working hours

The national legal framework for working hours plays in general the most important role. There is an overall European minimum framework for working time set out under the Working Time Directive 2003/88/EC. However, Directive 2003/88/EC provides the possibility under Article 17.3. (viii) for Member States to derogate from Articles 3 (daily rest), 4 (breaks), 5 (weekly rest), 8 (length of night work) and Article 16 (reference period) for the sector urban public transport. This means that Member states may implement different rules and can choose to leave the regulation of these aspects to sector specific agreements.

Austria, Germany (regional), France, Finland and the Netherlands set sector specific working hours and rules in sector collective agreements that could relate to work organisation, for example by setting out a reference period, fixing weekly maximum working time, maximum driving time and rest breaks.

Nevertheless, while legal rules play an important role, the company practice with regard to working time and specific agreements for rest breaks and work organisation play as well an important role in the daily/weekly working of staff, including, the organisation of shifts, rest breaks, getting from and to the bus or tram part-time work. The way shifts are organised and at which hours impacts for operational staff more than the actual overall length of working hours.

The driving routine can become quickly intense and impacts importantly on the drivers well-being.

Training

The European Directive 2003/59/ EC sets out minimum standards for periodic training for bus drivers (35h in 5 years).). These rules have been implemented by national laws and must be respected by all operators. All training that goes beyond legal requirements depends on the companies practice and sometimes also collective agreements.

In Finland and the Netherlands sector collective agreements contain some specific requirements also with regard to training. Also in France the sector collective agreement includes provisions on training. In general, as set out by the law every company needs to devote a specific contribution for the financing of continuous professional training.

Health and safety

Health and safety is most importantly provided by legal standards under national legislation and applicable to all operators. Only in Austria the sectoral collective agreements provides for additional rights and requirements in this area. Still, it is important how at company level implementation of such rules is carried out and what types of policies are used. Health and safety requirements set out under the law are also not the same in all Member States and can vary, in particular for new types of risks such as stress and other psychosocial risks.

One important health and safety risk factor in the sector that has been mentioned in many occasions in interviews was fatigue. Risk assessments for health and safety have to be carried out in all European Member States, and some also have specific legislation on psychosocial risks covering the risk of fatigue like in France. However, there is no sector specific reference with regard to what is fatigue and when can it occur and what decreases the risk of fatigue (e.g. setting rules of drivers well-being or standards on shifts). Thus it leaves each operator to deal with this issue at company level which could also lead to different outcomes in terms of work organisation.

Other health and safety risks for drivers identified in a European wide study[13] was the fact that drivers need to bring high psychic requirements (high concentration) and often do not have an influence over work organisation and work schedules; stressful urban traffic situations; high level of responsibility for passengers; risk of aggression or accident; physical unfavourable posture; climate related strains (heat; cold; wet) and noise, vibrations and pollution.

Pension rights

The national legal framework set for pension's rights plays the most important role. However the role of occupational pensions and so-called third pillar pensions has considerably increased over the past years.

France and Sweden set out specific standards for the occupational pension scheme under the sector collective agreement. Third-pillar pension rights are set in general at company level. Thus in a case of a change of operator this may be one of the critical questions how continuity of these pension rights can be ensured in particular if the new operator did not provide for such a scheme before.

[13] Syndex (2014), Better understanding of "Arduous Occupations" within the European pensions debate, a study carried out on behalf of the European Trade Union Confederations, ETUC, ETF, Uni Europa, EFFAT, EPSU, EFBWW and IndustriAll.

Table 3.2 Overview setting of employment conditions in the urban transport sector

Social standards	AT	BG	BE	CZ	DE	FI	FR	NL	IE	IT	SE	UK
Wages												
General (legal minimum wage)	✓	✓	✓	✓	✓		✓	✓	✓			✓
Sector specific	✓		(✓)		✓	✓	✓	✓		✓	✓	
Company level agreement most relevant	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓
Wage components												
Sector specific	✓		(✓)		✓	✓	✓	✓		✓	✓	
Company level agreement most relevant	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓
Annual leave												
General legislation	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sector specific			(✓)		✓	✓	✓	✓		✓	✓	
Other benefits												
General legislation		✓										
Sector specific							✓	✓				
Company level agreement most relevant	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Working hours												
General legislation	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sector specific	✓		(✓)		✓	✓	✓	✓				
Training												
General legislation (for bus drivers on training)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sector specific	✓		(✓)		✓	✓	✓	✓				
Health and safety												
General legislation (all H&S legislation in place applicable to sector)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sector specific	✓		(✓)									
Pension rights												
General legislation	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sector specific			✓								✓	

Table Explanations: With regard to wage benefits, wage components and other benefits – clearly company level agreements prevail in the context of overall employment conditions setting; for all other aspects company practice is of course of high importance but sector specific agreements or national legislation does set the most important framework.
() means that this is de facto a sector standard due specific national rules for collective bargaining.

3.1.3 Conclusions regarding overview of processes of setting social conditions in the UPT sector

Sector level collective agreements when binding to all operators set sector specific minimum wages and other specific standards such as work organisation, health and safety requirements specific to professions in the sector, annual leave, enhanced sick pay and other non-wage benefits. They exist in several countries, like France, Belgium, the Netherlands, Sweden, Finland and Italy.

Such agreements set a social level playing field between competitors, nevertheless, it must be reiterated that company level collective agreements, company agreements and company practices are often more favourable.

Sector level agreements going beyond a "sector minimum" can lead to the fact that company practice or company agreements do not significantly improve conditions at company level compared to the sector standard. In particular where competition exists, this leads to a "harmonisation" of social standards in the sector and thus decreases competition over social aspects.

3.2 Development of social conditions in urban public transport

The following section aims to present developments in social conditions at sector level in the past 10 years (2004 - 2014). These developments have been collected and discussed with national social partner representatives and are mainly based on the outcome of interviews rather than sector specific official data (though in some countries this was provided). These developments should be seen as trends. The following results do not go into detail with regard to reasons for such developments. It must however be noted that restructuring in the urban public transport operators and/or the introduction of competition may have occurred prior the period of analysis, leading to important changes in collective agreements (e.g. Germany, France, UK, the Netherlands, Sweden – further details can be found in country specific reports).

3.2.1 Wages, wage components and other benefits

The following table 3.3. presents the results with regard to trends in wage developments at sector level over the past 10 years. The distinction is made whether wages have increased above levels of inflation and cost of living or whether wages remained stable (wages have increased in accordance with inflation, national minimum wage and cost of living indexes). For Austria, Bulgaria, and Sweden no trend can be indicated due to the fact that either data on wage developments is lacking or because social partners did not agree on the trend development with regard to wages.

For Austria it must be mentioned that this situation exist because there are different types of workers in the sector. Until 1995 civil servant type agents were hired for the sector which are employed under very different social conditions compared to all workers hired subsequently.

In Finland, the Netherlands and Ireland, the social partners agreed that wages have developed positively above increases of cost of living and inflation. In Belgium, Italy and UK trends seem to indicate that wages have remained stable or increased only slightly above levels of inflation and cost of living.

In Germany, it was observed that wage trends have been negatively affected prior to the period covered by the study, both as a result of greater stringency of public finances as well as preparations for tendering. This has led to a situation whereby there are significant differences in pay between individuals employed prior to and following changes in collective agreements exist. Since then efforts have been made by trade unions to improve wages and terms and conditions, but this has proved challenging within a climate of greater emphasis on public sector efficiency savings. From the employers perspective wage developments have been positive in Germany after that restructuring period increasing well above levels of cost of living and inflation.

With regard to wage components it was observed that these in general keep pace with salary increases.

For Italy, social partners agreed that additional remuneration has well increased (compared to gross wages). It seems that types of wage components have not changed significantly over the past in the sector. In some cases interest bonuses or productivity bonuses have been newly introduced.

With regard to other types of benefits no sector specific observations can be made as they depend highly on the operator's economic situation and the country context.

From the company case studies it can however be said that all companies that have been interviewed had some form

of additional benefits in place. There is a tendency to compensate low wage increases with additional benefits such as lunch vouchers or health benefits or family solutions (child care, child benefits). A benefit that is natural in this sector and given by most operators is the provision of a reduced monthly ticket (or even gratuity) for the use of the city transport network (sometime including family members).

Table 3.3 Overview development of wages

	AT	BG	BE	CZ	DE	FI	FR	NL	IE	IT	SE	UK
Gross wages increased over the past 10 years significantly above the level of inflation and cost of living indexes						✓		✓	✓			
Gross wages remained stable over the past 10 years (increased to keep pace with inflation and cost of living indexes or just slightly higher)			✓				✓			✓		✓
Not clear (no answer for the entire sector possible, or no agreement)	✓	✓			✓						✓	

Source: based on survey results and interviews carried out by ICF

3.2.2 Working Time and annual leave

The following table 3.4. indicates developments concerning contractual weekly working time for operational staff (drivers) in UPT. The table summarises the outcomes from interviews with social partners. It was not always possible to distinguish between legal or collectively agreed working time. Overall, in most countries the established legal limits of working time play an important role in the sector as well as company level specific agreements. Thus we compare weekly working time in general.

It was not possible to provide a sector trend for Austria.

In Germany, in 2008, UPT companies in 6 federal states increased working time by around 0.5 hours per week

In the UK and France weekly working hours have decreased for drivers. While in the UK the average weekly working hours are still higher compared to industrial sectors, in France working hours are lower than in other transport sectors and the overall economy.

In all other countries there is a trend that contractual weekly working time has stayed the same or has slightly decreased (in particular for maximum amounts of working time). Nevertheless, not regarding the overall working time it has been mentioned by workers in all countries that working time has intensified or at least work organisation has changed in particular the arrangements concerning rest breaks during the day and the arrangements of shifts and the calculation of working time with regard to travel time to and from the depots or preparation of bus and ending a shift, time of absences.

Furthermore, working time may be accounted for differently due to the fact that reference periods have changed and shift schedules have changed. There is an overall trend that working hours have adapted for efficiency purposes to make the use of the vehicles as much as possible profitable. This had the impact that turn-around times became tighter. Higher quality requests by the competent authority imply greater attention to schedule times and delays (often with linked penalty clauses). This has created more time pressure for drivers. If exposed to high time pressures over a longer period it may lead to fatigue among driver. This has been expressed in several interviews by workers representatives in company case studies and has also been mentioned in a European wide study that surveyed bus drivers[14].

It shall be noted that most of the company case studies have indicated that overtime is occurring rarely (Austria, Belgium, Finland, Netherlands, Ireland, Italy and Sweden). In Germany, trade unions and employee representatives reported overtime to be relatively common, particularly in companies and occupations where the rate of sick leave is relatively high. In all case studies full-time permanent employment was the case of more than 80% of employees in the companies interviewed.

[14] Syndex (2014), Better understanding of "Arduous Occupations" within the European pensions debate, a study carried out on behalf of the European Trade Union Confederations, ETUC, ETF, Uni Europa, EFFAT, EPSU, EFBWW and IndustriAll.

Table 3.4 Overview development working time

	AT	BG	BE	CZ	DE	FI	FR	NL	IE	IT	SE	UK
Weekly working hours **have stayed the same** in the last 10 years		✓	✓			✓		✓	✓	✓	✓	
Weekly working hours have **increased** in the last 10 years					✓							
Weekly working hours have **decreased** in the last 10 years							✓					✓
Not clear (no answer for the entire sector possible, or no agreement)	✓											

Source: based on interviews carried out by ICF

With regard to annual leave no comparative information could be drawn up for the sector with regard to the development of annual leave days. From the company case studies it is clear that companies provide more annual leave than prescribed by minimum standards in the law. It is not clear however whether they have stayed the same, increased or decreased.

3.2.3 Training

Table 3.5 provides an overview of whether training policies have been continuously improving over the past 10 years.

There is an overall trend that the training offer has improved in Austria, Belgium and Italy.

As indicated above Directive 2003/59/EC provides for minimum rules on the initial qualification and periodic training for bus drivers and has been implemented by all Member States in their national legislation. Providing for this training is a condition in order to be able to bid for a tender. Drivers have to dispose of the necessary drivers licence and have to be qualified.

Training provided beyond these regulatory requirements is based on company practice and on company policies for career development or sometimes also requirements by the competent authority in particular for customer service or trainings how to handle aggressive clients. It has been observed that in particular the operators of bigger networks and internal operators employing a high number of staff dispose of in-house training centres. In many cases workers contribute in developing company level training policies within company level social dialogue.

In the course of national legislative developments more emphasis on life-long training has occurred and incentives have been introduced.

Throughout the course of this study the quality of trainings provided has not been rated.

Table 3.5 Overview development of training opportunities

	AT	BG	BE	CZ	DE	FI	FR	NL	IE	IT	SE	UK
Training provision has been continuously improved in the past 10 years	✓		✓				✓			✓		
Not clear (no answer for the entire sector possible, or no agreement)					✓	✓						✓

Source: based on interviews carried out by ICF

3.2.4 Pensions

Table 3.6 provides an overview over sector specific pension developments. This has to be seen against the context that in recent years the retirement age has been raised for all sectors and pension benefits are reduced for younger generations.

In Austria, Belgium, Finland, Ireland and Sweden it was indicated that pension benefits have stayed the same. Only for France the trend indicates an increase in pension benefits. This aspect was not possible to assess for Bulgaria, Germany, the Netherlands and the UK. For Italy it was indicated that pension benefits have decreased but were partly compensated through additional pension schemes.

Table 3.6 Overview pensions developments

	AT	BG	BE	CZ	DE	FI	FR	NL	IE	IT	SE	UK
Pension benefits have stayed the same in recent years	✓		✓			✓			✓		✓	
Pension benefits have increased in recent years							✓					
Not clear (no answer for the entire sector possible, or no agreement)				✓	✓			✓				✓

Source: based on interviews carried out by ICF

3.2.5 Other policies

In the UPT sector, female workers only make up between 8 or up to 18% of the workforce (in the companies studied). In some companies there has been an increasing effort made to attract more women, however their share of total employment has only increased marginally. One of the reasons for the low attractiveness of the sector for female workers are the working shifts that are rather incompatible with family life. Reforms in work organisation would have to be made to increase female workers in the sector, a conclusion and recommendation made in the European social partner project of UITP and ETF within the WISE project.[15]

In France companies are also required to develop strategies to address demographic change and workforce ageing. The ageing of the workforce has been discussed in company cases in Belgium, Germany, Finland, the Netherlands and Sweden. Some companies have introduced the possibility for partial retirement. Initiatives to support workers' health were reported in Austria, Germany and the Netherlands.

Finally, in networks in bigger cities (but not solely) security policies have been developed to protect drivers from aggressive passengers or car drivers. These policies have often been developed upon the request of workers. It has also been requested by the joint recommendations of the European social partners UITP and ETF since 2003.[16]

3.3 Conclusions on findings development on social conditions

At a first glance, no direct link of the development of social conditions and type of award was discernible. Nevertheless, countries such as Finland and the Netherlands with longer experience of competitive tendering have seen wage increases that have been more favourable compared to countries such as Belgium or Italy for example. However, it should be noted that the countries using competitive tendering have both, binding sector collective agreements and binding provisions on transfer of staff (Netherlands, France, Finland via collective agreement provisions). On the other hand, it shall also be noted that in the majority of company cases analysed not depending on the type of award, work intensification and job insecurity has increased affecting adversely sector attractiveness.

[15] See related joint recommendation: http://www.uitp.org/sites/default/files/documents/Strengthening%20women%20employment%20in%20urban%20public%20transport.pdf

[16] The recommendations can be found under the following link: http://www.etf-europe.org/files/extranet/-75/13584/Recommendations%20on%20Insecurity%20in%20Urban%20Public%20Transport%20EN.pdf

It should also be noted that restructuring in the sector took place in some countries prior to the time of analysis, impacting on wage developments. Also the impact of restrictions on public finances may have played a more considerable role in some countries on wage developments.

On the other hand, workers in countries relying more on competitive tenders saw their daily routines and working time organisation change more to increase efficiency of the services by shortening turnaround times on terminals, decreasing breaks, pro-longing driving times and taking off start and end time preparations from shifts of effective working time. Nevertheless, these trends have also been remarked in company studies with internal operators. In Germany, for instance, it was considered that preparations in response to the threat of tendering since the early 2000s contributed to such developments on work organisation. At the same time, greater emphasis on efficiency and public sector savings in all countries have also played an important role in this regard.

The trend indicates that for overall weekly working hours, standards did not change as such in most countries. Overtime has been in most cases restricted also for financial considerations. In some cases it was mentioned in interviews that cost for overtime was decreased by the use of temporary agency workers.

The UK seems somewhat apart. The fact that commercial provision of services does not include any competent authorities to require specific standards or provide for compensation, companies operate at their most efficient economic levels. The sector is characterised by long working hours and low wages (just slightly above the minimum wage). The fact that no sector level agreement exists creates very diverse and company (plant level) specific social conditions.

While a sector assessment in the Central and Eastern European (CEE) countries is difficult due to a lack of data, it can be observed that among internal operators in particular in the capital cities, employment conditions seem to be better compared to operators in the rest of the country.

While wages have strongly increased in CEE countries this has been said to be an effect mainly due to inflation and rise of cost of living standards. It can therefore be estimated that wage levels have remained rather stable. The fact that there is a sector level agreement though not binding provides still a sector level minimum standard influencing directly company specific negotiations.

On the other hand, trends show that training do not go much beyond legal requirements, with some exceptions (e.g France). This trend may have recently changed slightly as competent authorities demand more quality performance criteria in contracts with private but also internal operators. This leads to improved training offers in particular for customer relations and service quality[17].

There has been a tendency in many companies over the years to develop work-life balance policies in line with the requests and requirements of staff.

[17] Please further see the joint statement on this matter from UITP and ETF on the Directive 2003/59/EC on initial qualification of bus drivers - http://www.uitp.org/sites/default/files/ETF-UITP%20Joint%20declaration%20training%20urban%20bus%20drivers%20-%202014.pdf

4 Use of social conditions and transfer of staff in the UPT market

The following section discusses the findings from country studies in view of the studies' aims: namely what is the impact of choice of award and the use of social conditions on employment conditions and the use of – and challenges with implementing transfer of staff in cases of change of operator.

4.1 Impact of choice of award and the use of social conditions

At the outset, it is useful to recall the selection and classification of countries for this study with regard to the key contracting regimes used:

- France (outside of Paris area), Finland, Netherlands, Sweden and the UK (for London bus services) are countries which use competitive tendering for bus services (and to a greater extent also tram and metro services) in relation to more than 80% of awarded contracts ;
- Austria, Belgium, Germany, Ireland, Bulgaria and Czech Republic are countries where all or the majority of bus services (as well as tram and metro services) are provided by internal operators; It should be noted that in Germany an increasing number of bus services are also tendered competitively – particularly in smaller towns and cities;
- Mixed systems exist in Italy where services are tendered for bus services to a considerable extent however also internal operators continue to operate an important number of networks or the UK where in London competitive tendering for bus lines co-exists with direct award for the London tube and in Northern Ireland for all transport modes, and with a majority of lines provided on a commercial basis in England, Wales and Scotland.

There are four sub- questions that guide the analysis of the impact of choice of award on social conditions and employment.

- What are the factors that influence the choice of award?
- What are the consequences of the type of award chosen?
- To what extent does contract design play a role?
- To what extent do social conditions play a role and to what extent do regulatory or collective bargaining frameworks cushion any potentially detrimental effects of tendering on employment and/or social conditions?

4.1.1 Factors influencing the choice of award

Overall, an observation that has been made in all countries is that the introduction of competitive tendering seems to be a political choice that is – often but not only - influenced by economic factors.

In most cases, countries aim to increase efficiency through the introduction of competitive tendering in particular in a context where public resources are scarce.

Within this study context it was not possible to understand fully the economic aspects of UPT services and contracts and whether the aim pursued with the introduction of competition is achieved. It was however possible to understand the overall framework.

In many countries, competent authorities are entities that have a political affiliation but are legally separate structures – the city council, major, an elected body. Strategic transport decisions are taken at a political level (influenced sometimes by political ideologies). In large cities it is mostly the case that there is an executive body that commissions transport services, manages the transport network and implements and monitors the contracts on the behalf of the strategic – political level.

The following examples relate to three countries where improvements in effectiveness and efficiency where expected through the use of competitive tendering (or sometimes in anticipation of competitive tendering): the case of Dublin Bus, Budapest and the Belgian region of Flanders. However, in two of these cases (Ireland and Belgium) award processes are still in the planning stage and political discussions are ongoing reflecting, to some degree, the unease among workers' unions of the impact of the greater use of tendering on employment and employment conditions.

Political influence on choice of award

Dublin Area

New contracts have been awarded directly to Dublin Bus and Bus Eireann in end of 2014. In the last contract with Dublin Bus and Bus Éireann, the Authority had foreseen that 10% of the network will be out for competitive tender starting from 2016 onwards for a 5 year contract up to 2021. There were in total three separate lots – one for the Dublin Metropolitan Area, Kildare Dublin commuter area, and Waterford city routes. Shortlists of applicants were due to be issued in November 2015. Reasons for this change in approach are economic pressures in the aftermath of the financial and economic crisis that affected Ireland severely and the perceived steer by the European Commission towards competitive tendering and the requirements for the calculation of the PSO compensation. It was also mentioned that the choice for competitive tendering seems to be rather part of a political ideology and is in particular driven under right wing/liberal oriented politics. Because of increased pressure from workers unions concerned about employment security in the case of a change of operator, the tender has been placed on hold.

Budapest Area

Since 2010 Budapest has established an executive agency for urban public transport called the BKK (Budapesti Közlekedési Központ (Centre for Budapest Transport)). The internal operator of Budapest is called BKV and operated the entire network of the agglomeration of Budapest until 2012 – including bus, tram, trolleybus and metro services. A new contract was awarded by BKK to BKV with the obligation that around 66% of bus services operating in the commuter area of Budapest could be competitively tendered. The new contract runs for 8 years up to 2020. This decision was taken without public consultation with the major interest groups and was intended to make savings to improve cost efficiency and quality. Parts of the tenders were launched and awarded in 2013. In this year, BKV transferred its business in the commuter area around Budapest to the winning bus operators Volanbusz and Arriva. Due to the fact that the provision of rolling stock was part of the contract process; the contract has been awarded in line with the national rules on transfer of business. Staff transferred to Volánbusz at a time while the collective agreement at BKV was cancelled. In this case, therefore, the new operator was not required to apply any employment conditions specific to a collective agreement to staff. A list of transferred staff was published with the competitive tendering procedure. The transfer itself was a negotiated procedure between BKV and Volánbusz without the involvement of BKK (transport organiser).

Belgian Region Flanders

Since around 2002 there is a debate in Flanders with regard to the future of contract awards. In the sphere of UPT. Around this time competent authorities introduced possibilities – or, for the case of Flanders - an obligation to subcontract around 50% of its lines (on the basis of competitive tendering). This process has been characterised as a process to prepare for more competition. It may be possible that after 2020 changes will be introduced to make use of a choice of award (currently only internal award is possible). At this stage there is however no certainty about this aspect. The continuous political discussion in Flanders creates uncertainty among workers in the sector. Trade unions are against any changes and claim that a public service shall remain a task for a sole internal operator.

In the Netherlands there is an obligation to tender for urban transport services in the twelve provinces since 2000, except in Amsterdam, Rotterdam/the Hague area and Utrecht (the three largest cities), which can exercise a choice over which award process to use. Utrecht chose to tender its network competitively and since 2015 (and until 2023) a contract has been concluded with a private operator. The reasons for this choice however could not be explored in-depth. In Sweden there is also an obligation to tender for urban public transport services. Furthermore, since 2012, a reform of the Swedish transport law allows operators to freely establish commercial services in urban public transport.

Where it is used (or preparations are under way) it is argued that competitive tendering is used to increase the quality of services, achieve better efficiency in the use of the fares and public compensation provided; increase environmental standards, renew rolling stock, and enable small and medium sized companies to participate in the market in particular where tendering occurs on a route-by-route basis or where a certain amount of lines have to be subcontracted. Allowing for competitive tendering will create movement in the transport market and operators may need to restructure, new foreign suppliers may enter the market and thus it is considered that new opportunities may arise for competent authorities to enhance service delivery. The fact that such decisions are often politically /ideologically motivated is demonstrated by the fact that similar reasons around efficiency are also provided in cases where services have been re-municipalised. Another motivation in this case was the desire to keep any benefits obtained in the local area and to re-invest this in municipal services. [18].

[18] See also the study that GART (French association of organising authorities), UTP (Organisation of enterprise in urban public transport and rail services), EPL (National Federation of local public companies) and FNTV (National Federation of Voyagers), have commissioned to understand the reasons for choosing different types of award – as set out under Section 2.5. Olivier Domenach: gestion directe ou déléguée, les déterminants du choix, http://_65430983298_1_1421100000.mobilicites.elteg.net/media/rapport-final-v-14-od-17-07-2015.pdf

4.1.2 Consequences of the choice of award process

One of the trends which can be observed from the company case studies in most countries is that contracts include a high number of quality criteria e.g. punctuality, high customer satisfaction, specific criteria for rolling stock to increase accessibility for all citizens. Social standards can also be closely linked to ensure service quality criteria e.g. customer service can be improved by training requirements; security for passengers can be enhanced by health and safety policies and security policies. Authorities measure those criteria over time and introduce incentives for good quality and penalties in case the criteria are not met. Such conditions are provided both in cases of tendering and of direct award.

In Finland and Sweden, where significant competitive tendering occurs, positive effects have been found in studies on quality and efficiency in urban transport following tendering. In both countries a sector collective agreement exists that is applied to all companies in the sector (in Finland universally binding collective agreements and in Sweden quasi 100% coverage). These agreements are setting, amongst others wage standards for the sector at high level and company agreements play a minor role. The situation for France is different. While a sector level agreement sets out sector specific social standards binding the entire sector however companies typically pay much higher wages compared to the sector specific minimum level. In cases of competition this may advantage the operator with the agreement setting out lower terms and conditions. Nevertheless, this effect is mitigated in France due to the obligatory transfer of staff. This limits the effects of competition over wages. This situation differs with Germany (regional), where the sector level agreement rather sets out low sector specific minimum standards. In these countries, there is an important gap between sector and company level terms and conditions. In addition, the transfer of staff is obligatory in UPT in Finland (at least staff directly affected and within the limits of staffing requirements of the new operator) due to a sector specific agreement universally binding for all companies providing improved employment security. As a result, it can be argued that positive quality effects and efficiency gains through competition can also be achieved if such protective framework conditions for staff exist. It might even be argued that such protective framework conditions can also contribute to higher quality of service for example by improving social peace and staff motivation.

On the other hand, it has been reported from the Netherlands that in the first phase of competitive tendering, authorities set price as the most important criterion. This is considered by the trade unions to have led to quality of service concerns in some provinces despite the fact that also in the Netherlands a binding sector collective agreement exists and transfer of staff is obligatory under national law.

From the examples analysed for this study it appears that price and technical offer generally prevails in the selection of an offer. For the trade union perspective there is a considerable distinction between 'best value offer' and 'lowest price offer' with regard to the outcome for social and employment conditions. The best value offer seeks to optimally combine price and quality within the given parameters, providing the greatest overall benefit for the tendering authority including social considerations. In a lowest price offer approach, the tendering authority selects the operator only on the basis of the lowest price for services within the given parameters. The latter would not place attention to the social and other quality criteria. Some authorities and employers have argued – on the other hand - that even if social conditions are not explicitly set out at the awarding stage (whether for internal operators or private operators) employment law and existing collective agreements already implicitly define a significant number of social standards. The choice between "best value" and "lowest price" is thus irrelevant. This argumentation is primarily used in countries were binding or generally applicable sectoral collective agreements are in place.

It can be considered that better quality achievements may thus be achieved in combination of other factors (not just a question of choice of award), such as bonus-malus payments by the authority. It was not possible to consistently collect information with regard to payment of quality bonuses or to what extent penalty clauses are used. These type of clause are also used in contracts directly awarded to an internal operator e.g. Wiener Linien or La Rochelle RTCR.

It has also been argued in the literature that quality management can best be achieved by setting out clear criteria on quality including, measuring and controlling these in tender documents, good communication between the authority and the operator on the importance of achievements and targets.[19] If quality management is not clearly set out at the tender stage and if tendering is focussed too much on price, quality improvement or delivery will not be achieved[20].

The following examples demonstrate that in case of direct awards quality can be improved if the contract sets out clear quality criteria and quality management systems: De Lijn, Flanders, Belgium or the Austrian operator of Vienna Wiener Linien.

[19] This has already been highlighted within earlier research projects carried out under EU funding – Consortia led by CERTU -2001 – published material of PORTAL – Quality and benchmarking in public transport – material available at the following website: http://www.eltis.org/sites/eltis/files/kt1a_wm_en_9.pdf; or the PROCEED project – consortium led by Trivector Traffic - Principles of successful high quality public transport operation and developments, deliverables available at: http://www.proceedproject.eu/

[20] See also example Van der Velde, D.

Case study Belgium

De Lijn Background

De Lijn is the internal operator of the Flemish region. De Lijn operates three tram networks in Antwerp, Gent and the special line on the Belgian coast. The majority of its service provision are bus lines and De Lijn served more than 540 million passengers in 2014. The number of passengers has been increasing considerably over recent years. The economic crisis did, however, impact on the number of passengers and this translated in a slight decrease. The contract held by De Lijn is subject to renewal and is currently being discussed with the government. The contract obliges the operator to subcontract around 50% of its services. Since 2002, De Lijn has been issuing such subcontracts on a competitive basis. There are around 80 such contracts in place with different companies. However, many of the smaller family owned companies became part of larger international companies such as Keolis and former Veolia/Transdev. The operational contract with De Lijn provides that the subcontractor's employees have to be employed on equivalent working conditions as those working for De Lijn. This prevents competition based on labour costs.

The company and its staff

De Lijn has more than 8000 employees (about 5000 workers are drivers) of which around 18% are women. The number of employees has increased over the past 10 years (in 2004 the company had 7,200 workers). The current operational contract specifies that the company shall not further increase staff levels, resulting in a hiring freeze. While working hours have remained the same the number of part-time staff has strongly increased over the past 10 years. This is due to an increased demand for flexible forms of work. Furthermore, part-time work options have been incentivised by legislation (part-time for older workers, part-time for workers with families etc.). Around 35% of staff is aged over 50. The increase in the retirement age may affect the sector in the future. The company has several collective agreements in place that concern remuneration and additional remuneration, bonuses and occupational pension scheme.

Evolution of social conditions

The evolution of salaries has remained stable and has increased at the same pace as inflation and the index of the cost of living. This is also true for additional remuneration. It was however remarked that wages may not be very attractive compared to other sectors. This can also be a problem when looking for very specific occupational profiles – in particular technicians. Thus currently there is a revision of salary schemes under way relating particularly to bonus schemes. Working time has remained the same. Overtime is very limited and depends on the function and service affected. No intensification of working time was remarked though traffic congestion does impact on drivers. Pension benefits have not changed over time. The rate of absenteeism has not changed considerably overall over the past years. However as in all sectors the numbers of long-term absences has increased. Psychosocial risks have also increased in the transport sector. This is mainly due to aggression and violence that occurs more frequently. The company has in place a broad range of training measures helping employees on how to deal with such incidents and buses have been provided with cameras, security cabins for the drivers and an emergency button that is directly linked to the police. Cooperation with the police has been improved on this subject to improve the security of the drivers. Overall training has increased. The company has an in-house training centre. Issues on health and safety are followed up closely by the committee on safety and health prevention. These policies are introduced in cooperation with workers and trade unions.

Case study Austria : Wiener Linien

Background

The Wiener Linien (WL) is the internal operator of the city of Vienna. It has an extensive city network of bus lines, light rail and metro. There are 5 metro lines, 29 lines of light rail/tram services and 115 bus lines. The total length of the city network would equal the distance from Vienna to Rome (more than 1077 km). The contract for the operation of these services awarded in 2002 and was automatically renewed in 2007/2008 (and runs until the end of 2016). The new contract for 2017 has already been agreed by the City of Vienna (Ministry for Transport) which is the competent authority for the network. The new contract is awarded for 15 years. It foresees a bonus malus system with regard to the quality and performance criteria. Around one third of bus traffic is being sub-contracted via open tenders.

The company and its employees

In 2014, the company employed around 8,600 workers (compared to 8,100 in 2010). More than 6,800 employees are blue collar workers and around 1,800 are white collar workers (Angestellte). More than 3,600 are employed under a civil service type contract and more than 200 are trainees. Around 12% of employees are women. Ap-

proximately 89% of contracts are full-time on a permanent basis. The number of workers has increased over time as passenger numbers have grown and lines have been extended. There is one collective agreement in place for the Wiener Linien at the company level. This covers buses, metros and trams. Every year this collective agreement is renegotiated. Wiener Linien also has a responsibility to offer apprenticeships (Ausbildungsverpflichtung). In order to recruit young apprentices, the company pays for their education and their driver's license and has to retain them as full-time employee. All training is provided in-house. There is a training policy in place. Other additional benefits that the company offers are: an in-house kindergarden (child care), canteen and additional days of leave to improve one's health.

Evolution of social conditions

Overall it was estimated that wages have continuously increased but only slightly above inflation. The company's weekly working time currently stands at 37.5 hours. Work intensification has been felt by workers due to increased volumes of traffic and an increase of passenger numbers. The rising work intensity has caused more cases of psychosocial illnesses among workers but is not higher than in other sectors. The training offer has been improved over time. Staff turnover was generally described as low but increasing recently. Contributions to the company's occupational pension scheme have remained stable. The company has a policy in place regarding diversity and equality. Aggression and violence in the workplace (coming mainly from passengers) has increased. Additional training is provided by the company to help employees deal with such incidents. There are also more security measures for drivers e.g. doors for the driver's cab in the old trams and more video surveillance. The outcomes of this research also show that the general use of public contracts (as set out under the PSO Regulation), protective framework conditions for employees (in case of use of competitive tendering), incentives for operators and penalties if not performing well while at the same time the authority and operator have to ensure transparency in management of transport services seem to have a positive impact on quality, passenger numbers and efficiency of service provision.

Further arguments have been provided by literature that improved quality and efficiency is not linked to the type of award. The institutional and the regulatory framework considerably influences those outcomes. Also the type of contract, the way of risk allocation and quality management seem to play an important role. One issue that has not been taken into account to a satisfactory extend in the literature is the role of the human factor in quality management. It has been recognised that education and training is important for quality services however the overall social conditions have not been taken into account. The outcomes of this research also show that the general use of public service contracts (as set out under the PSO Regulation), protective framework conditions for employees (in case of use of competitive tendering), incentives and penalties for operators seem to have a positive impact on quality, passenger numbers and efficiency of service provision, At the same time it is important for the authority and operator to ensure transparency in management of transport services..

Nevertheless, the existence of competitive tendering seems to create effects on employment conditions in all countries notwithstanding the kind of choice of award process available. Countries where internal operators are dominant are also placed under the "threat" of opening the market. This may lead to restructuring of internal operators and puts pressure on unions and works councils to renegotiate collective agreements. The case of La Rochelle can provide an example of such a situation.

Case study France: La Rochelle

La Rochelle is a small sized agglomeration consisting of 28 municipalities and has approximately 162,000 inhabitants. The competent authority is the Communauté d'Agglomération La Rochelle. Urban public transport is provided by the internal operator Régie des transports communautaires Rochelais (RTCR). Overall the network Yelo comprises 29 bus lines of which 18 lines are operated by RTCR and 6 lines are operated by Transdev. Furthermore Transdev also operates 12 school bus lines (getting students to La Rochelle from surrounding municipalities). RTCR also operates a maritime connection (4 boats) and the system of rental bikes and a shuttle service. The maritime connection is subcontracted to a specialised enterprise. The last contract was awarded to RTCR in 2010 for 6 years. The new contract was negotiated under difficult conditions due to the fact that the authority wanted the RTCR to make a number of important savings, thus indirectly requiring the operator to revise its social conditions in particular by revising the companies''s collective bargaining agreement in place since 1983. The operator has to improve its competitiveness and efficiency and follow high quality standards remunerated with a bonus-malus system. Without the agreement for changes on the side of the RTCR there was a clear threat by the authority to open the transport network to competition. Eventually there was a vote on this issue and it was agreed that RTCR will operate

the lines at least up to 2024. The operator was asked to make around 40% of savings, but this initial objective has now been reduced. One of the ways to make such savings was to reduce labour costs, as such cost make up 72% of operating costs. Thus the operator had negotiated an interim agreement with staff in 2010 to change remuneration and benefits and a new company collective agreement has been signed in 2014. This agreement has been signed by the unions CFDT (considered to be representing majority of workers) and CFE-CGC but not by the union CGT.

A similar experience has been presented at a workshop of this study in Frankfurt by the competent authority of the region of Hannover in Germany. Urban public transport is provided by an internal operator. In 2008 and in preparation of the renewal of the public service contract the competent authority of the region Hannover and the company Üstra (internal operator) reached a partnership agreement up to the year 2020 which specified that the company had to restructure to provide for a marketable cost structure, compliance with the business plan and to achieve better client satisfaction. The agreement also implied that workers increase productivity and to accept some concessions with regard to social conditions (not specified what this means in practice). In exchange, the workers have an employment guarantee for up to the year 2020 and the region of Hannover would not make use of competitive tendering[21].

From the current study, it is difficult to make a global assessment of the impact of choice of award on social conditions as this strongly depends on national and local circumstances, particularly the existence of binding sectoral collective agreements, national or collective agreement provisions on the transfer of staff in the case of change of operator and the respective protection level of acquired rights and the level of pressure on public budgets more generally. The following indications have been observed:

- At the moment of preparation for the first competitive tendering in a market, internal operators have also restructured considerably, in some cases leading to layoffs or recruitment freezes and in some cases stagnation or reduction in wages (particularly for newly recruited staff) or intensification of work organisation;

- If competition is purely carried out on the basis of lowest price, quality and sustainability criteria may not be achieved. Tendering experiences over time provided evidence that in order to achieve punctuality; good customer service, clean buses, use of new technology and efficient use of vehicles, good human resource management is needed and adequate staffing with decent working conditions ensured; sector specific working conditions can be achieved by universally applicable sector collective agreements or sector agreements applicable to the large majority of operators and/or legally required transfer of staff in cases where no sector agreements exist or are not applicable to the majority of operators;

- There has been a transformation in relation to the types of staff employed: decreasing number of administrative staff; thus relative increases in operational staff; (albeit not in all cases) leading to fewer job profiles in a company and possibilities for career opportunities;

- The increasing use of outsourcing and subcontracting which can pose issues in countries where such workers are not protected by the same collective agreements as core staff;

- The transformation of work organisation; higher driving times; rest breaks not always respected to the benefit of punctuality; more discussion of accounting time for preparation of shift and time for ending shift into effective (paid) working time. This can lead to higher absence rates, stress levels and fatigue;

- Employment insecurity of staff increases impacting on motivation; transfer phases are felt as a highly stressful situation having to integrate a new company structure and management;

It must be reiterated that some of these effects can be observed within internal and private operators in the context of preparing for changed economic and competitive conditions. Positive effects among internal operators have also been created by focussing on improved efficiency and an increase of number of passengers while number of staff and working conditions have been maintained (e.g. Wiener Linien).

[21] In the meantime a directly awarded PSO contract according to Reg.1370/2007 has been concluded in 2015

4.1.3 Impact of contract design on social conditions and quality of services

While the type of award can have an important impact on quality, social conditions and employment, the design of the contract itself also plays a role (at the award stage) and influences employment conditions. This is true for all types of award processes. UPT operators are dependent on the local transport situation and the ambitions of competent authorities offering public transport services to citizens that are reflected. Other important factors are transport plans, number of passengers, population size and age, and other market specificities including the number of operators present. PSO contracts are not remunerated in the same manner; each contract has its specificities with regard to the service request, and infrastructure present:

- An important factor seems to be the average share of cost coverage from ticket revenues – these seem to vary considerably between Member States and cities from 20% to up 55%,

- The same holds true for the average share of personnel costs which can represent between 39% and up to 70%. The share of personnel costs is generally higher for bus operators compared to operators of multimodal networks (including tram and metro);

- another important aspect is the cost for material (rolling stock, depots) and maintenance which depends on the average age of the rolling stock (the more rolling stock is aged the more often maintenance is required).

The overall country specific framework for financing urban public transport also plays an important role for the competent authority to invest in infrastructure and rolling stock. Furthermore, the general economic situation of a country seems to be important: the economic crisis had an important impact on passenger numbers at least temporarily for example in Ireland. Labour market evolutions can also play a role within a region – the development of industrial zones or the entry of new employers create demand for transportation. On the other hand, demographic change, and the wider socio-economic profile of a region can influence the transport offer.

Transport plans are developed under the responsibility of the local/regional authorities. An important question is the extent to which an operator can influence those plans. Having a more strategic power will allow the operator to design the transport offer more efficiently with a longer term perspective. Overall it is for the competent local authority to evaluate transport needs, develop sustainable and efficient transport plans and to determine long-term transport strategic planning. This can also mean to multiply modal split – such as newly designed services for bicycle rent or car sharing, sometime also water based transport, or cable cars. Such decision can bring in new operators providing for such alternative modes of transport or can be provided by the same operator for bus, tram and metro services. Also the contract length can play an important role in this regard, the more frequent tendering occurs there is less possibility to plan in a longer term for the operator including personnel developments and training and there is also less possibility to engage with staff and to carry out a meaningful social dialogue at company level due to the lack of future business predictability.

The strategic influence of an operator is also influenced by the type of contract and risk allocation. Different types of contract exist:

- Management contract, where the authority bears the whole risk
- Gross cost contract where the operator bears the industrial risk (costs) and the authority has the commercial risk (revenue collection).
- Net-cost contract where the operator bears the industrial and commercial risks while the authority generally still retain property over infrastructure or in some cases also rolling-stock.

In order to guarantee service quality many contracts contain bonus-malus clauses (see also pages 50/51). In labour intensive industries such as UPT there is a particular tension between productivity, provision of quality and cost reduction. Work organisation and social conditions are at the centre of these tensions and in the majority of cases analysed, workers have clearly felt that their work conditions have worsened and that work has intensified.

4.1.4 Use of social conditions[22] in contract award processes improving workers social conditions

When discussing the use of social conditions in contract award processes with stakeholders for the purposes of this research, it became clear that there are differences in the understanding of what constitutes social conditions and how their performance is ensured or measured. For instance, some stakeholders considered that requirements to deliver proof of an employer having met their legal obligations in relation to social security payments, legal training requirements or indeed collective agreements in force (and applicable to all) fell into this category. For instance, at a pre-bid stage, a number of documents may need to be provided to ensure that the bidding companies comply with employment regulations and implement sector level agreements. Regulatory frameworks can thus provide for specific certification or demonstration of a number of social conditions e.g. documentation concerning social security payments, this has been explicitly found in Austria and Finland.

[22] Reference to PSO regulation

However, such instances do not really constitute examples of requiring social conditions within the definition used in this study which is linked to requirements which are over and above what is legally mandated for all providers.

It was considered that setting out social conditions at the bidding stage above legally mandated rules can improve the outcome for workers and avoid social dumping as set out by the PSO Regulation under Recital 17, in particular in countries where no universally binding sector specific collective agreement is in place or to balance the bidding position in cases where company agreements may strongly vary. For the competent authority setting social conditions may also add value with regard to specific quality requirements. Following examples were found within the study: local geographic knowledge of staff, full language competencies; drivers trained in customer service; staff levels; health and safety practices and training and career development, but also factors such as employment of persons with disability; apprenticeships or employment of long-term unemployed can be social conditions.

The desire by authorities to assure the level of staff working conditions, wages and benefits (or to secure employment) appears limited (and is even seen as a fact that should not be dealt with by authorities when considering the contract design). Exceptions exist, like for example when authorities require subcontracting in order to stimulate local SMEs and at the same time want to limit labour cost competition between operator and subcontractors by providing a clause of equal working conditions.

As already mentioned, it is a pre-bid condition that operators implement applicable collective agreements in place at sector level, pay for pension benefits and social security and follow all other legal employment requirements. It is up to the authority to control such requirements at the bidding stage. An example had been presented by an Austrian competent authority of the region Voralberg (VOR). The control capacities to carry out such checks of offers and to continuously check social conditions (e.g. pay according to collective agreement; training requirements) over the course of the execution of the contract can be seen as important as otherwise this may lead to opportunist behaviour among the bidding companies.

In Germany, regional laws on requiring respect for representative collective agreements (Tariftreue) when tendering for UPT (and other) services is one an example of how to ensure 'minimum' terms and conditions taking into account that a number of bidders would have less beneficial terms and conditions in place than the chosen representative collective agreement.

Germany – laws on respect of collective agreements ('Tariftreue')

The basic idea behind the concept of 'Tariftreue' is to inform and require all potential bidders – and eventually the successful contractor – in a tendering process to respect certain adequate minimum social standards with regards to wages (and working conditions) for staff in the context of the delivery of the contract. TTGs are agreed at level of the Bundesländer, with 14 of the 16 Bundesländer having such legislation at the end of 2015. It shall be noted however that these laws vary quite considerably with regard to taking into account evolution of wage and wage components. They not only cover the urban public transport sector (ÖPNV) sector but all sectors subject to public tenders (such as the regional public transport sector by bus and rail for example). The applicable social standards to be used are determined in relation to the specific sector – in this case of course the ÖPNV.

The minimum social standards to be respected are determined with reference to one (or several) collective agreements pertinent to the sector. Because different collective agreements can be found in the ÖPNV sector, a relevant or representative collective agreement is determined at state level– often in consultation with a committee of representative bodies including the social partners (in some cases these bodies make a final decision on the representative collective agreement). This does not mean that a (new) operator has to adopt a particular collective agreement[23] but means that it has to abide a predetermined minimum standard set in the representative collective agreement, which can of course be exceeded.

The 'representative' collective agreement is usually determined with reference to its geographical application and the number of employees in the sector covered by this agreement. Another criterion is the number of employees who are members of the relevant trade union in the sector. The nature of the representative collective agreement chosen varies from region to region and in many cases more than one collective agreement is mentioned. Overall, the use of the private sector agreement in the bus sector in this regard is becoming more widespread, which usually has lower social standards than the respective regional public transport agreement

Successful bidders not respecting the minimum social standards required by TTGs are in principle subject to financial sanctions (although enforcement appears to be an issue); existing contracts can be terminated and companies could be excluded from further bidding processes.

[23] In the context of the principle of the autonomy of collective bargaining, this would not be possible.

It is worth noting that the setting of 'representative collective agreements' is not without its challenges, as the case of Nordrhein-Westfalen demonstrates. Here, an administrative court ruled the regional TTG to be in contravention of the regional constitution. With reference to the new law on minimum wage in Germany, the court argued that such legislation is no longer required to protect workers from social dumping and was seen to be in contravention of the freedom of collective bargaining. The decision has now been referred to the regional constitutional court

A number of regions have carried out – or are in the process of carrying out evaluations of their TTG with the goal of assessing the impact of the legislation and improving its content and implementation. The evaluation in Rheinland-Pfalz finds that the regional TTG has had an important impact on wage trends, particularly as some commercially offered services are also bound by its provisions (80% of bus traffic in the region is offered on a commercial basis). In a survey 44% of companies considered that wage levels paid had increased as a result of the TTG. However, it is by no means a guarantor that in cases of change of operators existing wage standards will always be maintained. If a contract transfers from a company with collective agreements at a high level (higher than those of the representative collective agreement), staff can still suffer salary reductions in cases of change of operator. It is also noted that given the proximity of some networks to regions offering higher wage standards, significantly issues could arise (and often still do arise) in recruiting staff if it were not for the wage standards effectively set as minima by the TTG. However, the evaluation also find that there can be shortcomings in enforcement and control, which can serve to undermine the intention of TTG if it is not ensured that all competitors ultimately abide (as a minimum) by the standards set by the representative collective agreement. Furthermore, it is considered that private providers often 'subsidise' their participation in competition in such tenders by offering wages at the required standard for drivers on these routes while offering lower wages to drivers on commercial routes not covered by the requirements of the TTG (something which is not possible for – for instance – municipal operators)

It is important to note that "commercial viable services" (Eigenwirtschaftliche Verkehre) are not covered by TTG.

Another aspect considered by the trade union side to be a factor to improve employment security for staff and provide for the same social conditions in case of change of operator, is the automatic transfer of staff to the new operator that can be provided for under national legislation (Netherlands, France and UK) or by a binding sector level collective agreement (Finland) as the experience shows

Transfer of staff always occurs in **the Dutch public transport market** when a change of operator takes place, as it is established in public transport legislation (WP2000). Direct and indirect staff are all transferred to the new operator. For indirect staff not fully relatable to the relevant concession a calculation is made, on the basis of the relationship of the percentage of the loss that occurred due to the lost concession and the total turnover represented by the concession of the book keeping year before the re-tendering took place. An equal percentage of indirect staff that is not directly relatable to the concession will be transferred to the winning bidder. This manner of calculating the number of staff that will be transferred is stipulated in article 37(2) of the WP2000.

In Finland transfer of staff is not included in competitive tendering documents. The Lonka-contract is a complementary part of the sector level collective agreement and it´s binding to all competitors. The Lonka-contract, which was established in 1998, includes principals for transfer of staff. The transfer of staff is limited to bus drivers and maintenance (repair shop workers). According to the Lonka contract some conditions of employment will remain in spite of the transfer to a new employer (holidays, wages on sickness leaves etc.). The probationary period in the case of transfer of staff is regulated in Employment Contracts Act. The Lonka-contract regulates on establishing a pool of staff (which takes in those drivers affected by the tendering procedure) which is managed by the local Public Employment Service and obliges the winner of the competitive procedure to employ staff first from the unemployed persons of the pool. Through this process all drivers are generally re-hired by the new operator. However some may also decide to leave the sector.

Transfer of staff in case of a change of operator after a tendering procedure can also fall under the national rules implementing Directive of transfer of undertaking 2001/23/EC, as it is the case in the UK. The so-called 'TUPE' law implementing Directive 2001/23/EC foresees that a transfer of staff also occurs in case of service provision change: meaning this is where a service provided in-house (e.g. cleaning, workplace catering) is awarded to a contractor; a contract ends and is given to a new contractor; or a contract ends and the work is transferred in-house by the former customer. This option has not been specified under the Directive 2001/23/EC and is a specificity under UK law. In France, the Labour Code specifies that staff has to be transferred if a tendered service is carried out by a single autonomous entity. On the other hand in the Netherlands, it is the transport law – so-called WP 2000 - organising the

market that foresees an obligatory transfer of staff. This obligation has been regulated without taking into account of Directive 2001/23/EC and regulates the specific case of transfer of staff in case of change of operator in the urban transport and railway sector. On the other hand, in Finland it is a sector specific agreement that sets out obligatory transfer of affected staff though by using another legal form. It is in this case not a direct transfer but due to the Finnish industrial relations model the transfer is supervised by the social partners and the transfer is negotiated.

Transfer of staff in case of change of operator can ensure that employment conditions are kept over a certain amount of time (mostly one year after transfer) and workers do not lose most of their acquired rights. But it can also avoid other issues and provide for continuity of service.

Two examples from Germany (operators of municipal and regional transport) show that in the start-up phase of new contracts, some operators experienced issues with retaining/recruiting sufficient staff to operate services, leading in some cases to significant service cancellations (and fines for operators). From the employers' side, since instances are attributed to the shortage of bus drivers resulting from the boom in long distance bus services in the country, whereas trade unions are more likely to emphasise differences in levels of pay, with some new operators considered to pay significantly lower wages. What is clear is that there is uncertainty among workers in the transfer phase in the absence of a requirement for transfer of staff. In the rail sector in Germany, this has recently been addressed via national legislation stipulating that contracting authorities 'should' require the transfer of staff. Initial discussions also considered that the bus sector should be included, but this was not accepted in the German Parliament (although at regional level at least one region recently adopted specific legislation also covering the bus sector).

Germany: Negative consequences of failure to provide for transfer of staff

Case study Kaiserslautern-Kusel

At the end of 2014, the competent authority Verkehrsverbund Rhein-Neckar issued a European-wide tender for bus services in the city and area around Kaiserslautern in two lots. Both lots cover a total of 2.2 million traffic km at a cost of 1.4 million Euros per year. Both lots are let for 10 years and were awarded in 2015. For both lots the social conditions set out under the regional TTG applied (representative collective agreement is that negotiated for private bus providers at regional level). No transfer of staff was foreseen. Lot 1 was won by RBW Regionalbus Westpfalz and Lot 2 by Südwest Mobil GmbH. In both cases the DB daughter company Saar-Pfalz Bus was the incumbent, losing out on both lots.In both cases, the new providers struggled to deliver elements of the service due to shortage of bus drivers and high levels of staff sickness absence. The latter was provided as a reason for frequent cancellations of bus services by Südwest Mobil GmbH. The company also cancelled its collective agreement with the trade union ver.di, leaving drivers fearing for the jobs and terms and conditions. A lack of bus drivers also led to cancellations of school bus services by RBW Regionalbus Westpfalz which meant that the company had to pay for taxi transport to ensure that pupils could get to and from school. Companies are now increasingly seeking to recruit drivers abroad.As a result of the tenders, the losing bidder, Saar-Pfalz Bus, which had a collective agreement offering higher wages is threatened with closure with its 274 drivers fearing for their jobs. The chair of the company's works council indicated to the local press that it was possible that the company could disappear by 2019 as it struggles to compete in the market place despite the provisions of the TTG (as it continues to offer higher wages in its collective agreement)

Case study Oberursel-Bad Homburg

The case of bus service provision in Oberursel and Bad Homburg (Land Hessen) demonstrates not only the uncertainties associated with changes of operator without transfer of staff but also those related to wider staff shortages. In the autumn of 2015, both towns elected not to renew contracts with their current provider (Verkehrsgesellschaft Mittelhessen, VM) because of frequent cancellations of services which the company attributed to high rates of staff sickness and staff shortages. Despite the company's efforts to improve motivation, recruit additional staff and reduce absence rates, in both towns the decision was taken not to prolong an existing contract despite the fact that this would have only been for an additional year, while a tender process to jointly contract a provider from 2017 onwards is under way. Neither this joint tender, nor the tender to provide services for one year foresee a transfer of staff which further worsened the current position as concerns over their future and efforts to find new employment further contributed to higher sickness rates, staff shortages and services being cancelled towards the end of the year 2015. Both Bad Homburg and Oberursel were forced to introduce emergency timetables but the local press (Taunus Zeitung, 10, 11, 18 and 20 November 2015) reported that further cancellations occurred even in these reduced emergency timetables and bus traffic finally more or less came to a standstill. The new contract for one year was awarded to Transdev (operating under the name Alpina). The company was able to recruit sufficient staff, including by encouraging workers from other Transdev bases to move to this service. Transdev was also chosen as the provider for the new contract starting from 2017 onwards.

The Social Ministry of the Land Rhineland Palatinate has described such issues at the workshop in Paris pointing out that it issues with regard to security and continuity of work relationships. If no transfer is foreseen in the tender documents in Germany in most cases no transfer occurs. This creates uncertainty for workers, being more often on sick leave and creating for the incumbent issues to provide the service until end of the contract. If the new operator has only accounted for minimum wage in its bid calculations it can become challenging to find staff until take up of service in particular in Federal States such as Rhineland Palatinate where labour shortages in this sector are well known.

Nevertheless, while transfer of staff can be beneficial for workers affected by the change it also does not come without challenges. If the transfer is directly requested by the competent authority (if no other national rule provides for this) then tendering procedures may proof to be also challenging for the competent authority and it needs a certain amount of experience to successfully handle such transfer situations as an authority. This had been demonstrated by the case of Germany. The Ministry of Social Affairs of the Federal State Rhineland Palatinate, which is in charge of implementing the law on TTG (see blue box above) has created a Service Center that informs citizens, operators and also authorities about the application of the TTG law and possibilities to make use of transfer of staff.

4.2 Change of operator and practical implementation of requirements of transfer of staff

The following sections go on to discuss some of the practical implications arising from provisions regarding the transfer of staff.

To remind: There are five basic situations in which a transfer of staff currently takes place within the context of a change of operator in urban public transport. Three situations can be legally qualified as 'transfer of staff' while two situations are de facto situations of transfer of staff:

- Transfer of staff is required by national legislation (e.g. transport laws) – this is the case in the Netherlands.

- By national law specific implementation of Directive 2001/23/EC the situation of change of operator after competitive tendering is always considered as transfer of undertaking This is a national specific implementation extending the scope of the EU Directive on Transfer of Undertakings which does generally not qualify a change of operator after competitive tendering as a transfer of business. This is the case for example in the UK and in France;

- Tender documents require a transfer of rolling stock and assets. As a result, a change of operator is considered to qualify as a transfer of undertakings as foreseen by national rules implementing the EU Directive 2001/23/EC regarding staff transfer in case of transfer of undertakings. As a consequence staff is transferred to the new operator.

Two de-facto situations of transfer of staff:

- Competent authorities can make use of Article 4(5) of the PSO Regulation – either explicitly or implicitly – to require a transfer of staff in the case of a change of operator (no transfer of assets). This situation was found in cases in Germany and in Stockholm

- Transfer of staff is not mandated by the competent authority but can be in practice negotiated between transferor, transferee and relevant trade unions on a case by case basis or can be 'regulated' within a sector collective agreement. Situations of case by case basis negotiations were found in Sweden (outside Stockholm). In Finland, there is a sector collective agreement in place that foresees that in case of change of operator a specific 'transfer unit' is created under the auspices of the public employment service and from which the new operator is limited to recruit staff. At this stage, most of the workers were in practice thus transferred to the new operator or chose to leave the sector and find work elsewhere.

The main questions to be discussed relate to:

- Who is transferred?
- Which terms and conditions transfer?
- How long do transferred conditions remain in place?
- What are the main factors determining the outcomes of a staff transfer process?

This is illustrated using some examples from existing practices in the UPT sector.

4.2.1 Who is transferred in the case of a change of operator

The decision on which staff is affected by a transfer of the operation of certain lines to a new operator is not always straightforward. Particularly in the case of local bus services (if several lots are involved), drivers can often be working on many different routes and therefore only part of their workload may be affected by the transfer of a particular part of the service. Particular challenges can also be faced in apportioning administrative and head office staff to defined aspects of the operation affected by a tender (and change of operator).

Experience shows that the rule generally applied is that any staff working more than 50-60% on the affected service are included in the transfer and will be offered a move to the new operator (in cases were transfer of staff is provided). The determination of who falls into this bracket with reference to work schedules and job descriptions (in particular indirect staff) can be a difficult and time consuming process.

It is usually the responsibility of the incumbent operator to furnish the relevant information in line with what is required by the competent authority to allow it to make a transparent declaration to all bidders.

In France in the urban public transport, all staff is transferred except the top management. Information about the staff has to be provided from the old operator to competitors .This is an anonymous list of employees concerned by the transfer (no name but birth date, seniority, wage composition etc.).

In Germany, it is considered by some contracting authorities that it would not be necessary to require operators to deliver this information according to a set timetable in order to require a transfer of staff under the PSO Regulation in practice. Currently, legislation is unclear in this regard. . As this process is considered to be very complex, some Länder have made specific guidance available, as well as providing access to a dedicated team of staff which can assist in the determination of relevant personnel to be transferred.

In Finland all affected staff will be transferred into a pool administered by the local Public Employment Service. The sector level agreement ensures that staff affected will have to be hired by the new operator first while keeping some of their acquired rights.

All case studies conducted for this project make it clear that national rules and practices provide for specific processes for such information to be furnished in a way which will allow operators to incorporate this into the financial modelling of their personnel costs at the bidding stage, as required by the PSO Regulation in Article 4(5) in combination with Recital 16.

It is important to note that in situations where the transfer of staff is not mandated by national rules by applying in a strict sense the provisions of Directive 2001/23/EC on transfer of undertakings, the selection of staff to be transferred (and the conditions under which they are transferred) is in some cases defined rather broadly and sometimes indeed left up to the competent authority to frame – and the new operator to finally determine.

In the Netherlands staff to be transferred are listed in the tender documents. The incumbent has to communicate the details of the staff directly affected and calculate the number of indirectly affected staff.

Apart from the German examples existing experiences within this project could be analysed of the determination of the selection of staff to be transferred across in countries where transfer of staff is linked solely to the reference of Article 4(5) PSO Regulation This demonstrates the difference between applying the latter legal framework compared to the requirements of the Regulation to implement staff transfer *'within the meaning of Directive 2001/23/EC'*.

In Italy, the National Authority for Transport has recently defined guidelines for the awarding of local public transport services, measure n. 8 covers the point on transfer of staff. According to these guidelines the transfer of staff should follow the 'principle of prevalence' (il principio di prevalenza) i.e. the staff who is in prevalence assigned to services will be transferred. At this stage no specific example exists to further understand the practical implications of this guidance.

In the UK all staff linked to the delivery of the respective service (and in some cases sub-contractors) are offered to transfer to the new operator. In practice, it seems that the names and conditions of staff are communicated in the tender documents in advance. It has been reported that some abuse has occurred in transfer cases, where operators would transfer among others the least well performing staff by affecting them to the services just before the transfer. In Sweden transfer is only mandated by very few competent authorities such as Stockholm. In practice, a transfer of certain staff does take place through negotiations between transferor, transferee and – due to strong union interference – with the trade unions. However, the winner of the contract selects the staff he wishes to take over that are often the younger and thus cheaper employees while older staff members are threatened with unemployment, not all staff is transferred and uncertainty remains.

4.2.2 Which terms and conditions transfer and how long are these conditions protected

The following sections aims to set out more specifically which terms and conditions transfer and how long the social conditions under which staff was transferred will be protected. The question of which terms and conditions transfer, at which level and how (e.g. company level collective agreement, sectoral collective agreement (generally binding or only applicable to signatory parties), or representative collective agreement) for long these are protected depends on the basis on which the transfer takes place and specific national provisions in place.

When a change of operator takes place, and provisions of national legislation consider that transfer of staff should apply all staff recruited by the transferor to operate the service transfers across.

Different national rules apply as regards to outsourced workers or individuals on fixed-term contracts. In the UK, for example, these individuals also transfer across if they are in contract on the date of the transfer, but this is not the case in all other countries where staff transfer is mandated under these rules. Similarly, there are differences regarding the specific terms and conditions which transfer across and how long these are protected.

In the UK, TUPE Regulations stipulate that the transfer includes all terms and conditions of employment, e.g. salary, sick pay, holidays; hours and place of work; notice provisions; duties; continuous service entitlements etc. In addition, transferor's liabilities such as personal injury claims, tribunal cases; ongoing grievance issues pass on to the transferee.

TUPE protects these terms and conditions 'at the point of transfer'. Following a transfer, the new operator is subsequently entitled to re-negotiate terms and conditions. However, this rarely leads to a significant change in provisions as trade unions in this sector are traditionally strong and changes to term and conditions have to be negotiated and agreed and cannot be unilaterally imposed. It is considered that workers on precarious contracts tend to be in the most difficult position as their terms can be reviewed when their contracts come to an end after a transfer.

Dismissals following a TUPE transfer are allowed for economic, technical and organisation (ETO) reasons, which have been variously interpreted by the courts and are a significant source of case law. Valid economic reasons have been considered to be, among other things, reduced demand for services; technical reasons include the introduction of new technologies which limits staffing requirements; and organisational reasons include restructuring (but not directly resulting from the transfer). In theory, it could be considered easy to re-badge a change in conditions are resulting from restructuring rather than a TUPE transfer, but case law has shown that because of full disclosure requirements, the courts are usually able to see if the underpinning reason for a change is the transfer and will consider changes to conditions to be unlawful.

For example, a significant worsening of terms and conditions and a location change has be considered as significant detriment to workers which means that they can consider themselves to be constructively dismissed and therefore entitled to damages.

ETO reasons primarily play a role for the restructuring of management teams in the case of a change of operator. The new operator generally wishes to bring in its own management team at the highest level and although it is generally the case that the old contractor also wishes to retain their management staff, this is not always the case where a new position cannot be found for them. In such cases ETO reasons are often used to lay off managerial staff from the previous operator unless they can be otherwise deployed.

As a result of these provisions, it is argued, including by trade union representatives in the sector, that the 'the only thing that changes when the new operator takes over is the uniform'.

In **Italy**, in case of transfer of staff, national legislation provides that the new operator has to grant a treatment not inferior to the previous operator. This does not necessarily mean that the exact terms and conditions of the transferor are maintained. The goal of 'no inferior treatment' is reached in different ways at regional level, making compulsory the application of a collective agreement and protecting the acquired rights.

In the **Netherlands,** although a transfer of a transport concession is not necessarily regarded as a transfer of undertakings, paragraph 4 of the WP 2000 articles 36-43 cit. sets out: A concession has to be renewed with an operator after it has ended; should the context of the concession change (this is the case in if the operator changes) it cannot be regarded as the same concession; employees considered to be working on the affected lines are offered a transfer to the new operator. All existing wages, terms and conditions and entitlements transfer to the new operator for the period of at least one year. After this, new conditions can be negotiated, but these are generally those applying in the relevant sectoral collective agreement, which is binding and applicable to all operators. In cases where this collective agreement exceeds the standards of the transferred terms, the improved standards come into force. In situations where this is not the case, specific provision can be made for supplementary payments made to transfer staff to continue to protect their conditions. This is, however, not mandatory. In practice, it happens more frequently that companies negotiate which company practices and agreements are transferable or they negotiate new agreements in order to "harmonise" standards between the incumbent and the new operator.

In the urban transport sector in **France,** in case a company-level agreement was in place in the transferred entity, this agreement remains in place during a transition period of

3-months and in the following 12-months period, there is a legal obligation for the new operator to negotiate a new collective agreement. At the end of this period, either the new company-level collective agreement enters into force or, if negotiations failed, the less advantageous minimum level sectoral level collective agreement applies. When the former company-level agreement stops being applicable, employees do not retain collective benefits acquired although unilateral commitments from the employer remain valid. Individual rights from the former company-level collective agreement are incorporated into the employment contract (and therefore can only be changed with the agreement of each employee).

In **Germany,** where the transfer of staff is optional and can be required by a competent authority in application of Article 4(5) PSO Regulation, it is the competent authority (on the basis of the regional TTG or the PSO Regulation) which decides not only which categories of employees are to transfer, but also which terms and conditions are protected and for how long (see also section 6.1.1 above). In the limited examples which are available, these are either the terms and conditions of the transferor or the nominated representative collective agreement(s). The definition of 'terms and conditions' has been limited to wages and working hours. Protection usually applies for the term of the contract or until the relevant sectoral collective agreement is re-negotiated.

4.2.3 What are the main factors determining the outcome of a staff transfer process

Based on the (limited) existing experience of staff transfer in the urban public transport sector, it appears that a number of key factors determine the outcome of a staff transfer process and its implications for social standards:

- The nature of the legislative framework being applied (national implementation of Directive 2001/23/EC with specific provisions for public transport, or other national legislation or collective agreement, or application of the PSO Regulation);
- The precise detail of the legislation relied upon;
- The recognition and strength of trade union organisations in the sector; and
- In cases where there is no provision in principle by the competent authority to require staff transfer leading to voluntary negotiations on transfer of staff.

On the whole it appears that the application of national provisions requiring the transfer of staff whether in the law regulating urban transport or national provisions on the transfer of undertakings (if transfer of service is included) or universally binding collective agreements, it provides greater legal certainty than the direct application of Article 4(5) by a competent authority to require staff transfer within the meaning of Directive 2001/23/EC. Although also this legal basis for transfer can provide a level of employment protection, this protection is not assured for all workers and more flexibility appears to be applied in practice with regard to who is transferred and under which rules.
Where Article 4(5) is relied upon it is often the shape of the national or indeed regional legislation providing for the possibility of staff transfer which is the determining factor. There can be significant differences in the detail of legislation and what it means in practice who transfers and under which conditions.

4.3 Summary of findings

The social partners aimed to get a better understanding of the factors influencing the choice of award process in UPT, and the impact of the choice of award and the use of social conditions and transfer of staff on employment and working conditions in the sector.

With regard to factors that influence the choice of award, this can depend first of all on the national institutional framework in place. In addition, economic factors are the most cited ones among consulted stakeholders. Contracting authorities that have experience with competitive tendering take the view that competitive tendering will considerably improve effectiveness, efficiency and quality in service provision and it will allow for new operators to enter leaving more options for the competent authorities. On the other hand, it was shown in the case of France that some authorities have decided to use direct award again for similar economic reasons. In many countries, direct award remains the dominant chosen procedure to award UPT services, in particular in bigger cities and for networks with multi-modal transport means.

In order to measure the consequences of the choice of award process, the study relied on interviews with operators and employees in a situation of a direct award and in competitive tendering but also on literature. The findings show that it is not the choice of award alone that impacts on quality and employment conditions alone but that the factors impacting such conditions can be multi-faceted. First, it was shown that significant restructuring and changes in conditions have taken place both in countries applying competitive tendering and those preparing for tendering or have been "threatened" by competitive tendering (even if no such tendering has taken place yet). Ten-

dering itself is only one of the reasons for such changes. Other factors are economic and institutional. Furthermore, the quality of working conditions and the security of employment in the UPT sector is impacted by the industrial relations framework and the existence or otherwise of collective agreements and in particular their level of working conditions and scope of application. Other important factors are the use of social conditions and general quality criteria and provisions regarding the transfer of staff.

The use of social conditions plays a particularly important role in countries where considerable differences between bidders exist (due to varying company collective agreements leading to a different starting position, and because no sector collective agreement exist that sets out sector specific minimum conditions). The trade union side further emphasises that the additional requirement for transfer of staff (where not yet obligatory) can further improve the outcome for staff and maintain social conditions in the sector. It has been demonstrated in a few examples (Germany) that this option does provide continuity of service and maintaining social conditions equally to systems where transfer is automatic (obligatory) in case of change of operator.

There are countries where transfer of staff is automatic (obligatory due to legal framework conditions) and there are countries where no transfer would occur if the competent authority would not make use of the possibility offered under the PSO Regulation (Art. 4.5). The analysis of transfer of staff practical implications of different rules showed that the outcome with regard of protection of terms and conditions is different for each of the options.

- Transfer of staff is required by national legislation (e.g. transport laws) or a de facto transfer of staff is required by sector collective agreement binding on all operators.
- The situation of change of operator after competitive tendering is always considered as transfer of undertaking under national rules implementing Directive 2001/23/EC due to national specific rules. It has to be kept in mind that the Directive on Transfer of Undertakings does generally not qualify a change of operator due to a tender procedure as a transfer of business.
- Tender documents require a transfer of staff as well as materials and assets. As a result, a transfer of operator is considered to amount to a transfer of undertakings under Directive 2001/23/EC and rules regarding staff transfer as transposed in national law apply.
- Competent authorities rely on Article 4(5) to require a transfer of staff in the case of a change of operator.

One of the main challenges is the procedure to determine affected staff. In this regard administrative and managerial staff may also be affected indirectly by a change of operator and thus have a high risk to not be taken into account and lose their position. Only in the case of the Netherlands, administrative staff is taken into account under affected staff while in others this is not clear, or not the case.

Protection of terms and conditions of affected staff is ensured in a transfer process. However this protection is often limited to one year. After this period operators may re-negotiate conditions. In addition, it is not always clear which terms and conditions may transfer in particular those from company practice concerning more often non-wage benefits. These may be lost in cases of transfer.

Nevertheless, while transfer of staff can be beneficial for workers affected by the change it also does not come without challenges. If the transfer is directly requested by the competent authority (if no other national rule provides for this) than tendering procedures may prove to be also challenging for the competent authority and it needs a certain amount of experience to successfully handle such transfer situations as an authority (e.g. Germany case Rhineland Palatinate).

5 Summary of findings and conclusions

This document provides a summary of the main findings and conclusions of a study on social conditions in urban public transport companies in Europe.

5.1 Background and aims and objectives of the study

The delivery and quality of UPT services plays a significant role, both in relation to supporting local and regional economic development, the environment and employment opportunities, as well as in ensuring inclusion and the ability of all individuals to participate fully in family life and wider society. Furthermore, in many European cities and towns UPT operators provide for significant local employment. Regulations regarding the provision and award of such services can therefore potentially impact on all these factors.

With regard to employment and social conditions, it is notable that Articles 4(5) and 4(6) of the PSO Regulation offer the option (but do not oblige) for competent authorities, to require public transport operators to meet certain minimum social conditions and service quality criteria or to require a transfer of staff to the new operator within the meaning of Directive 2001/23/EC even if the conditions of the Directive are not fulfilled.

The European social partners in the UPT sector (UITP on the employers' side and ETF on the trade union side) have commissioned this study with the primary goal of gathering information about the market organisation of the sector and the legal framework underpinning it, as well as the setting of employment and working conditions and the role of collective bargaining within this. The study sought to chart how social conditions have evolved over the past 10 years. More specifically, the social partners wanted to understand to which extent Regulation 1370/2007 has played a role with regard to requiring bidders to meet certain social conditions and/or requiring a transfer of staff in case of change of operator as well as the impact this may have had on employment security and working conditions in the sector.

The goals of this study carried out on behalf of ETF and UITP were essentially fourfold. It aimed to:

- describe how urban public transport is organised in the different Member States and how working conditions are determined;
- describe social conditions in urban public transport for a sample of companies personnel and the development over the last ten years;
- describe the impact of direct award and/or tendering for public service contracts in urban public transport on social aspects and the protection of staff, and
- describe the impact of change of operator in urban public transport on social aspects and the protection of staff.

Based on a review of the (limited) scientific literature and other documents at national and transnational level, a survey and interviews of members of ETF and UITP and interviews with individual employers, workers representatives and competent authorities in twelve European Member States (AT,BG, BE, CZ, DE, FI, FR, NL, IE, IT, SE, UK) the following core findings are presented.

5.2 Market organisation of UPT services

5.2.1 Trends in award processes

Although in most of the capital cities and bigger cities in the majority of Member States direct award of public service contracts continues to be the prevalent awarding procedure, the use of competitive tendering has become more widespread in the award of UPT services (either single lines or whole networks) over the past decade. A number of different factors have acted as drivers for competent authorities to decide to use this form of award (rather than direct awards). These include the national legal framework sometimes requiring tendering but also include economic and political motivations, which are sometimes interlinked. In the context of the greater stringency of public finances, not only – but increasingly – as a result of the economic crisis, some competent authorities have looked to competitive award processes to obtain greater cost- efficiency and provide effectiveness in the delivery of UPT services. Even where the competitive route has not been chosen, it is notable that public authorities directly awarding contracts to internal operators[24] have also sought such efficiency savings.

Similarly, the belief by some stakeholders in the late 1990s that a push towards competitive tendering was likely to emerge at the European level (in the context of the preparation of the PSO regulation) and the political and regulatory drive in some Member States towards market opening, has also contributed not only to the increasing use of competitive tender award processes, but also other restructuring processes in the sector.
Despite this trend, mainly observed in the bus sector, significant differences remain between and indeed within Member States and by mode of transport. In Belgium, Greece, Ireland and Luxemburg, all urban public transport services by bus are directly awarded to an internal operator. In all other countries, both types of award (tendering and/or direct award) are used for bus services. In practice, in more than 10 Member States, the use of competitive tendering is rather marginal and is mainly used in small to medium sized urban areas. In the UK, Sweden, France (outside Paris), Finland (only Helsinki metropolitan area), Netherlands, Denmark and Norway the use of competitive tendering has already been implemented prior to the adoption of Regulation 1370/2007. The use of competitive tendering has particularly increased in the Netherlands and Finland over the past 10 years and today covers more than 80% of the bus lines. While in Germany most of the competitively awarded contracts date from 2008 and earlier and concern rather regional bus services, most cities award contracts directly to an internal operator (and in many cases are now preparing for first direct award processes in application of Regulation 1370/2007). In Italy the use of competitive tendering has been increasing in the recent years but has not reached such high levels as in the France or the Netherlands.

An exceptional situation can be found in the UK where the majority of urban bus services in England (outside London) Wales and Scotland is provided on a commercial basis (no public service contracts, no exclusive rights nor compensation but application of general rules on financial compensation for maximum tariffs for certain categories of passengers) with exceptionally tendered bus routes that are socially desirable. Commercial bus services are also very common in Germany in regional transport and smaller cities (indeed the legislation includes provisions on the primacy of commercial viable UPT service provisions which is a German context specific situation– so-called "Eigenwirtschaftliche Verkehre"). On the other hand, bus services in London are tendered while bus services in Northern Ireland are operated by an internal operator.

Overall (and with the notable exception of France), integrated networks (bus, tram and light rail or metro services) are most likely to be directly awarded to internal operators in larger cities and towns and bus services (particularly in smaller towns) are more likely to be competitively awarded. Most tram or metro services tend to be directly awarded to an internal operator (as part of a network) There are only few examples of tendered tram services, mainly when tram services where newly built – e.g. case study examples of Dublin, the LUAS Network, or part of a tendered network as it is the case in France or Utrecht.

Metro services are rarely tendered, with some exceptions such as Stockholm Metro or in France metro services in the cities Lyon, Lille, Rennes or Rouen.

A specific difference between contracts of tendered bus services and tendered tram/metro services is that rolling stock and infrastructure remain in the ownership of the awarding authority in cases of tram/metro services.

5.2.2 Trends in market organisation: key companies active in UPT

The urban public transport sector is characterised by internal operators in capital and big cities (with notable exception of Nordic countries and of some bigger cities in France). These operators are integrated companies providing for inter-modal transport services, infrastructure services, rolling stock and garage services. The bus services sector is characterised by a number of international companies and a high share of small and medium sized companies. It is also notable that many large companies have created daughter companies (often by purchasing such SMEs) or several medium sized operators merged to become a large company.

Although urban public transport is still characterised by a high number of internal operators but the increasing use of competitive awards has contributed to the entry of a number of international companies onto the market. This is the case for a number of French companies, such as Keolis, Transdev and RATP Dev. Other important European operators are Arriva DB, National Express, Nobina and Abellio (subsidiary of the Dutch rail company NS).

International companies however only a have a significant share in 8 Member States (in the 28 Member States analysed); primarily those that have introduced also to a large extend competitive tendering as main form of award. In the majority of Member States they only play a limited role on the UPT market.
For the tram services market Keolis and Transdev are the most important international players in cases where tendering occurs. However, a large majority of urban track bound services (metro, light rail and tram) is run by internal operators and publicly owned companies (such as RATP in Paris) in all EU Member States.

Overall, the trend indicated by interviewees and survey results is that the number (or role) of internal operators has declined over the past 10 years.

5.3 Employment in the sector

Employment data for the UPT sector alone is difficult to obtain due to the fact that national statistics mostly cover all types of passenger transport including by rail, coach (long-distance) and inter-urban transport.

In Sweden and France an overall increase of staff has been noted which concerns in particular an increase in the number of drivers. While in Finland and the Netherlands overall employment has remained stable it was noted that the number of drivers has slightly increased. In the UK and Belgium the number of employees has remained stable overall, with variations over the past years. In Germany, Italy and Ireland the number of employees in the urban public transport has declined slightly.

The sector is largely male dominated and the share of female workers represents between 8 to 18% among operators studied for this project.

A large majority of workers are employed on permanent and full-time employment contracts. In the Netherlands and Sweden the share of temporary agency workers has increased over recent years.

In most countries, a trend towards the intensification of work has been noted as a result of the numbers of operational staff not keeping pace with increases in passenger numbers; increased traffic congestion and the overall arrangement of working time which have led to the number of driving hours increasing, even in situations where overall working hours have remained the same.

5.4 The use of subcontracting and outsourcing

The use of subcontracting is an option that a number of competent authorities provide for in tender documents as set out under the PSO Regulation Article 4.7. The use of subcontracting may be related to historic cooperation with small and medium sized private transport companies established in the region of the network. The situation of the use of subcontracting has been further researched to understand if subcontractors follow the same or similar social conditions, why subcontracting is used, and how the use of subcontracting has evolved.

In the majority of cases subcontracting is allowed in a range from 15 to 30%. The exception to this is Belgium where contracts determine that internal operators shall subcontract at least 30% and up to 50% of services (Wallonia and Flanders Region only). In Italy, Germany, Netherlands and Austria, interviewees considered that subcontracting has been increasing over the past 10 years.

In most countries employment conditions among subcontractors are not on a par with those of the main operators due to different company level agreements. Otherwise, in the following countries subcontractors fall under the sector level agreement (the same as for main operators): Finland, Austria, France, the Netherlands (unless it concerns taxi services, or touring coach companies) and Sweden (if signed the sector bargaining agreement). In the case of Belgium, subcontractor's employment conditions are on a par with the main operator due tender documents requiring this from the internal operator. In general, subcontracting seems to be used due to historic cooperation of internal operators with local SMEs. Subcontractors would be mainly active in suburbs or less populated areas, or to provide for flexibility for school children transportation or other specific transport services. Subcontracting is also seen as a mean to deliver services more cost-efficient. This is holds true for direct award and competitive tendering situations.

Also the development of outsourcing has been analysed and to what extent outsourcing trends occurred in the UPT sector. Within the study it has been observed that outsourcing mainly occurs for maintenance (technical), security and vehicle cleaning services. This is a trend that concerns all in-depth countries and internal and private operators alike though not to the same extent. Internal operators still tend to operate a significant part of maintenance services or vehicle cleaning services in-house. Security services are the most common outsourced service. Outsourcing of maintenance (technical) can be a strategic choice in cases of competitive tendering, this has been mentioned in Finland, Sweden and Netherlands.

It was not possible to asses to what extent social conditions differ for outsourced workers as this can strongly depend on professions and the collective bargaining framework. In countries where the nature of the collective bargaining framework means that all such workers are covered by the same agreement, it is ensured that such sub-contracted workers benefit from the same terms and conditions. This cannot be guaranteed in other countries.

5.5 Setting of employment and social conditions in the UPT sector

Like in all sectors, legislation plays a significant role in setting a minimum baseline for employment and social conditions in the UPT sector. The implementation of EU legislation and national rules have a particular role to play in setting the framework for working hours, health and safety provisions and basic training standards. However, in the urban public transport sector such legislation is mostly enhanced through collective agreements negotiated at the national sectoral, regional or company and branch level. The level and content of collective bargaining is of particular importance in the context of competitive tendering, as it has the potential of setting a floor of rights to be respected by all companies in the sector. This is the case when collective bargaining takes place at the national sectoral level and collective agreements are either universally binding or they are applicable to the majority of operators due to a high organisational density of social partner organisations at the employers' side. However, even where such sectoral collective agreements are in place, it is important to note that the standards set therein often exceeded in some company level collective agreements or company practices, in particular when the sector collective agreement is setting minimum standards. This can have an impact on cases of competitive tendering between companies, as companies would need to compete on the basis different company level agreements, possibly giving the advantage to the company having lower salary standards in place. In particular in cases of tenders for bus services wage levels play an important role, due the fact that this is a labour intensive type of service in which wage costs play an important role. In case of change of operator, staff being employed by the incumbent may lose their acquired terms and conditions should the new operator offer lower terms and conditions. Such an effect can be mitigated by the possibility to require transfer of operational staff (thus terms and conditions transfer) either by law or on request by the competent authority; can be negotiated by social partners or required by tender to install an obligatory pool of workers from which the new operator has to recruit guaranteeing specific terms and conditions, or the competent authority can request in tender documents a basis for wage calculations (taken from the incumbent or sector level agreements).

Out of the 12 countries studied more in-depth, the following seven countries feature sectoral level agreements: Austria, Finland, France, Germany (only at regional level), Sweden, Italy and the Netherlands. These are either universally applicable (e.g. Austria, Finland, France (outside Paris) and the Netherlands) or binding on the vast majority of operators by virtue of the coverage of sectoral social partner organisations (e.g. Sweden). In some cases these are negotiated at national level, whereas in other they are specific to a region. This is, for example, the case in Germany, where different collective agreements also exist for public and private sector operators in the same region. It shall also be noted that in France, Netherlands and Germany company agreements or company practices may further exceed social standards in sector agreements. For Germany it shall also be taken into account that branch level agreements can differ strongly, e.g. subsidiaries can offer less favourable employment terms and conditions. In Austria, internal operators or public companies still employ an important share of 'civil servant type' employees following a different sector specific collective agreement as other workers in the UPT sector.

In Belgium sectoral collective agreements exist, but at present these are de facto company level agreements for each of the internal operators (in the three regions).

In the Czech Republic and in Bulgaria sector level agreements exist but they set only a general framework for company level bargaining. Thus, in Bulgaria, the Czech Republic, Ireland and the UK the most important level of setting social conditions is the company level.

5.6 Trends in development of social conditions in the UPT sector

At a first glance, no direct link of the development of social conditions and type of award was discernible. Nevertheless, countries such as Finland and the Netherlands with longer experience of competitive tendering have seen wage increases that have been more favourable compared to countries such as Belgium or Italy for example. However, it should be noted that the countries using competitive tendering have both, binding sector collective agreements and binding provisions on transfer of staff (Netherlands, France, Finland via collective agreement provisions). On the other hand, it shall also be noted that in the majority of company cases analysed not depending on the type of award, work intensification and job insecurity has increased affecting adversely sector attractiveness. Nevertheless, the fact that no direct link could be found may need to be placed in perspective as in other countries restructuring in the sector may have taken place prior or during the time of analysis impacting on wage developments. Also the impact of restrictions on public finances may have played a more considerable role in some countries and impacted on wage developments.

On the other hand, workers in countries relying more on competitive tenders saw their daily routines and working time organisation shift much more to adapt working hours in order to increase the efficiency of the network, for example in the case of bus services, by shortening turnaround times at terminals., , reducing breaks, prolonging driving times and taking off start and end time preparations from shifts off effective working time.

Nevertheless, these trends have also been remarked in company studies with internal operators. In Germany, for instance, it was considered that preparations for the perceived likelihood of tendering becoming a reality across all UPT services in the early 2000s contributed to such trends. At the same time, greater emphasis on efficiency and public sector savings in all countries have also had an important role to play in this regard.

The trend indicates that for overall weekly working hours, standards did not change as such in most countries. Overtime has been in most cases restricted also for financial considerations. In some cases it was mentioned in interviews, that overtime was decreased by the use of temporary agency workers or in some case subcontractors or outsourcing (e.g. rolling stock provision or maintenance) to reduce costs for overtime.

The UK seems somewhat apart. The fact that commercial provision of services does not include any competent authorities to require specific standards or provide for compensation, companies operate at their most efficient economic levels. The sector is characterised by long working hours and low wages (just slightly above the minimum wage). The fact that no sector level agreement exists creates very diverse and company (plant level) specific situations for social conditions.

While a sector assessment in the CEE countries are difficult due to a lack of data, it can be observed that among internal operators in particular in the capital cities, employment conditions seem to be higher than those of operators in the rest of the country.

While wages have strongly increased in CEE countries this has been said to be an effect mainly due to inflation and rise of cost of living standards so that it can be estimated that wage levels have remained rather stable. The fact that there is a sector level agreement though not binding provides still a sector level standard influencing directly company specific negotiations.

On the other hand trends show that training do not go much beyond legal requirements. This trend may have recently changed slightly as competent authorities demand more quality performance criteria in contracts with private but also internal operators. This leads to improved training offers in particular for customer relations and service.

There has been a tendency in some companies over the years to develop work-life balance policies in line with the requests and requirements of staff.

5.7 Current use of social conditions in tendering

Without prejudice to European law, including collective agreements between social partners, and as mentioned above, Articles 4(5) and 4(6) of the PSO Regulation offer the option (but do not oblige) competent authorities to require public service operators to meet certain minimum social conditions or to require a transfer of staff to the new operator within the meaning of Directive 2001/23/EC even if the conditions of the Directive are not fulfilled. This sections looks at the extent to which use has been made of the possibility to formulate social conditions when issuing tenders, whereas the subsequent section assesses provisions with regard to the transfer of staff.

When considering the use of social conditions, it is also important to bear in mind the context of national legislation and collective bargaining. While national legislation has to be adhered to by all bidders, the level of such legal social standards sets minimum provisions such as a legal minimum wage normally not representing the level of working conditions in the urban public transport sector;

The coverage of collective agreements, and the level at which standards in collective agreements are set also has an important role to play in the context of tendering and possible changes of operator. In countries where collective agreements are set at the sectoral level and are binding for the whole sector, the stipulation of social conditions is arguably of more limited relevance if such standards are set at a relatively high level in order to ensure a level playing field for all bidders.

Where no such sectoral collective agreements exist; where they only bind signatory parties (and coverage by social partner is relatively low) and where there is a significant gap between standards set in sectoral collective agreements and in company level agreements, the use of social conditions in tendering would arguably play a more significant role (see also section 5.1.4 above) to create a level playing field among bidders.

The results of the research with regard to the use of social conditions according to the PSO Regulation in award processes (in particular tendering procedures) can be summarised as follows:

- Germany is arguably the only country explicitly making use of the PSO Regulation, Articles 4(5) and 4(6) to set clear social conditions in an effort to prevent social dumping. Specific legislation which exists in 14 out of Germany's 16 regions – the so called laws on compliance with collective agreements (Tariftreuegesetze, TTGs) explicitly aim to safeguard social standards. These standards are those of a so-called 'representative collective agreements' of a specific region which bidding companies in a competitive tendering procedures have to comply with. These laws intend to set a level playing field for social aspects among all bidders in public tendering

procedures, in particular regarding wage standards. While the use of social aspects in tendering for German UPT services pre-dates the entry into force of Regulation 1370/2007 for some Federal States (and the inclusion of its key provisions into the Law on Passenger Transport), Articles 4(5) and 4(6) and Recitals 16 and 17 of the regulation are now often quoted in tender processes with reference when using social conditions to select an offer.

- There are very few cases where social conditions have played a role as one of the selection criteria ; the most important criteria are price, technical requirements regarding rolling stock and quality of service provision (punctuality, rolling stock, cleanliness, customer service, training of drivers);

- In countries with universally binding sector collective agreements, competent authorities consider that labour law and sector level collective agreements already provide for appropriate social standards and thus do not specifically mention these in award procedures or request more favourable terms and conditions as set out in sector collective agreements. This rationale may be questionable as in some cases there can be in an important gap between company level employment conditions and those stipulated in sectoral collective agreements. In Austria, for example, it became clear that on the basis of national legislation the competent authority has to carry out a number of checks of bids such as: staff cost offer (is the price offered in conformity with collective agreement) and experience of bus drivers; check on payments of social security contributions and checks on the correct employment of foreign workers;

- In some cases reference may be made to training requirements, qualification of staff, language capabilities and general proof of good standards and capacity of human resource management (including staffing, retention and conflict management) e.g. in France and Austria, sometimes also specific technical requirements for rolling stock in order to provide for health and safety of drivers can be required (e.g. ergonomic seats in the Netherlands). It has also been mentioned that social requirements such as engagement of apprentices or older workers may be requested. However, these cases seem to be the exception for competitive tendering;

- Reference to social conditions (as mentioned above) and human resource management (e.g. performance and reward and productivity requirements) can also be found in contracts awarded directly to an internal operator, here examples were found in Belgium (Wallonia and Flanders) or France.

One of the main issues that remains with regard to social conditions in tendering procedures is enforcement if the competent authority has chosen to make reference to social conditions. This is also one of the issues highlighted in evaluations of the TTGs carried out in Germany.

5.8 Provisions regarding the transfer of staff in cases of change of operator and their impact on the protection of staff

There are five basic situations in which a transfer of staff currently takes place within the context of a change of operator in urban public transport. Three situations can be legally qualified as 'transfer of staff' while two situations are de facto situations of transfer of staff:

- Transfer of staff is required by national legislation (e.g. transport laws) – this is the case in the Netherlands.
- By national law specific implementation of Directive 2001/23/EC the situation of change of operator after competitive tendering is always considered as transfer of undertaking. This is a national specific implementation extending the scope of the EU Directive on Transfer of Undertakings which does generally not qualify a change of operator after competitive tendering as a transfer of business. This is the case for example in the UK and in France;
- Tender documents require a transfer of rolling stock and assets. As a result, a change of operator is considered to qualify as a transfer of undertakings as foreseen by national rules implementing the EU Directive 2001/23/EC regarding staff transfer in case of transfer of undertakings. As a consequence staff is transferred to the new operator.

Two de-facto situations of transfer of staff:

- Competent authorities can make use of Article 4(5) of the PSO Regulation – either explicitly or implicitly – to require a transfer of staff in the case of a change of operator (no transfer of assets). This situation was found in cases in Germany and in Stockholm
- Transfer of staff is not mandated by the competent authority but can be in practice negotiated between transferor, transferee and relevant trade unions on a case by case basis or can be 'regulated' within a sector collective agreement. Situations of case by case basis negotiations were found in Sweden (outside Stockholm). In Finland, there is a sector collective agreement in place that foresees that in case of change of operator a specific 'transfer unit' is created under the auspices of the public employment service and from which the new operator is limited to recruit staff. At this stage, most of the workers were in practice thus transferred to the new operator or chose to leave the sector and find work elsewhere.

Thus, in four out of 16 countries where information was gathered (France, Finland, the Netherlands and the UK), transfer of staff occurs on the basis of national law or sector collective agreement (Finland) in case of change of operator after tendering. In seven countries (Austria, Denmark,

Czech Republic, Hungary, Slovenia, Sweden and Bulgaria) typically no transfer of staff occurs due to the fact that in most cases the change of operator cannot be seen as a transfer of business under national legislation implementing the EU Directive 2001/23/EC on transfer of undertakings (though it may happen depending on the precise content of the award process – in particular if assets are transferred, this is the case for Denmark where this occurs more often) and no other national rules exist for such a situation. In the case of Italy the situation is not clear.

Examples where competent authorities have made reference to Regulation 1370/2007 are rare (e.g. Germany, potentially also Sweden and Italy). Taking into account that up to this moment only very few examples exist from countries where competitive tendering occurs and where transfer of staff is not mandatory it was explained in interviews that the use of this possibility can be considered to be legally complex and technically difficult, potentially making public authorities reluctant to use it.

In Germany, a number of regional authorities are providing guidance to assist in such processes. New legislation only covering the rail sector has recently introduced a 'should' regulation with regard to the requirement for transfer of staff. The option to make this binding for all urban public transport services (albeit originally proposed) was not adopted at the federal level, but is being implemented in regional legislation in Rhineland Palatinate.

In Belgium and Latvia the situation remains unclear but due to the fact that only direct award is currently used it is irrelevant at this stage. This is also the case for bus services in Ireland. This may change in the future and employees have preferred to negotiate with government that transfer of staff would be voluntary for the employees concerned not obligatory with the option to remain with the original employer. This leaves employees a choice as to whether they wish to transfer or not taking into account that tendering would be still marginal if current Irish projects would be implemented (intentions to tender 10% of Dublin bus services). It seems that in countries where a change of operator would not necessarily be considered as a transfer of business thus not automatically triggering a transfer of staff, the Regulation has provided legal clarity and certainty. In France and the UK, a change of operator is considered a transfer of undertaking (transfer of service) in all cases and thus transfer of staff occurs due to national rules.

In the Netherlands, transfer of staff is obligatory due to a provision in the national law regulating the award of concessions in urban public transport.

While in Finland, a change of operator would not be considered a transfer of undertaking requiring transfer of staff, there is however a universally applicable sectoral level agreement requiring the transfer of staff in case of change of operator after tendering

5.9 Conclusions

The assessment of the organisation of the UPT market in the European Union shows a complex picture relative stability in the nature of operators in some countries and towns and cities and significant change in others, with the increasing entry onto the market of new operators, including large transnational companies which generally have their roots within national (public) operators or were acquired by national operators.

Economic, political and regulatory drivers have contributed to an increasing use in competitive tendering with the goals of achieving the delivery of more cost- efficient, effective and environmentally friendly services. It was not the subject of the study to analyse if those objectives were achieved. Some cases of "municipalisation" have been observed in France.

While the PSO Regulation 1370/2007 does not require the use of competitive tendering, it has provided an impetus contributing to restructuring in the sector in many countries (alongside the other reasons outlined above).

In addition to requirements in national law and collective agreements, the PSO Regulation includes the possibility of using social conditions in tendering, this is not obligatory.

This study has shown that as a result, the use by competent authorities of social conditions and the requirement for the transfer of staff (solely on the basis of the PSO Regulation) is currently limited.

This means that in countries which do not currently have universally applicable sector collective agreements (setting requirements above the minimum standards specified by law) or sector agreements that are binding for the majority of companies in the sector, or any other binding way to secure terms and conditions at the end of a public service contract (e.g. binding transfer of staff), there is no guarantee for employment nor protection of terms and conditions in case of change of operator. . This also affects countries where company level agreements significantly improve on such general standards.

The solution adopted in Germany (14 out of 16 regions) of setting representative collective agreements as a reference for wage calculations in tenders could achieve a similar outcome, but it must be noted that in many cases, such representative collective agreements are not those providing the best possible wage and employment standards. Also only one of the 14 Länder recently decided to include a compulsory transfer of staff in regional legislation.

The study highlighted some examples of negative consequences arising in cases where transfer of staff is not prescribed, as incumbent operators struggle to retain staff up to the point of transfer and new operators are sometimes unable to recruit and train sufficient staff to ensure an effective and efficient takeover of the service. In some cases – and particularly in the context of overall driver shortages – this has in some cases led to deteriorating service quality and service cancellations (at least in the short term). On the other side, workers are increasingly exposed to stress situations in such cases of change or possible change of operator not knowing whether they will be re-emplo
yed by the new operator and under which terms and conditions.

The evidence gathered by this study does not provide a conclusive picture with regard to the impact of different forms of award on employment conditions and stability or indeed the quality of services delivered.

This is because the factors impacting on trends such as the availability of public budgets to invest in transport infrastructure and services, the regulatory and collective bargaining framework or the overall political decisions taken by Member States or competent authorities in these areas are multi-faceted and interlinked.

Additionally, the evidence gathered by this study is limited due to different circumstances only revealing during the information gathering and analysing phases:

- In several of the analysed countries the timing of the introduction of a new award regime (basically competitive tendering) or the announcement of the use of competitive tendering predates the period analysed, 2004-2014, and thus the impact on working conditions has happened before.

- Countries such as France (outside Paris), Sweden, Netherlands and Finland with more experience/ longer tradition of competitive tendering have both elements in place for socially framing the competitive tendering procedure (universally applicable sector collective bargaining agreement and compulsory transfer of staff). In the UK (in London) only one element exists, transfer of staff, which guarantees continuity of employment and a certain protection of acquired terms and conditions but comparing the level social conditions between UK (London) and the other countries it can be compared that sector level agreements set sector specific minimum terms and conditions limiting competition to the sector specific social standard. None of the countries in the sample with more experience/tradition of competitive tendering did not provide at least for either of the social framing elements of competitive tendering. There are countries in the sample that do not provide for such elements (BG, CZ, DE (for some regions)) but within these countries only a few examples of competitive tendering exist. Thus, the consequences of such a situation cannot be fully assessed.

- The sample included 6 company specific cases and two broader company specific experiences of competitive tendering of urban public transport services and/or a change of operator. Direct award of public service contracts to an internal operator is predominant. Evidence to research effects of competitive tendering with a change of operator is thus limited. Interestingly, some effects on social conditions could be similarly observed among internal operators due to the fact that there is the possibility/choice to tender and the obligation to sign a public service contract according to the PSO Regulation with an internal operator

The study showed that the reduced availability of public sector budgets to invest in transport infrastructure and services and the political and/or economical driven choice for higher cost-efficiency and effectiveness had an adverse impact on working conditions in both awarding regimes, direct award and competitive tendering while the mechanism were different in the different regimes.

It should also be mentioned that a different interpretation of the evidence gathered from the countries and company case studies is possible, depending on the focus:

The trade union side focusses on the mechanism inherent in the competitive tendering procedure, when companies are competing on the basis of the cheapest price offer and neither the legal framework nor the competent authorities in their tender specifications set a level playing field for all competing bidders and prevent from competition on the basis of working conditions in this labour intense sector.

The employers' side focusses on scarcity of public budgets, the need for "doing more with the same amount of money" thus increasing efficiency, improving quality and stimulating innovation. It is the responsibility of competent authorities to define the level and quality of services to be delivered by the companies, independently of the awarding procedure. It is the responsibility of the operator to provide the best suited solutions and propose innovation to better meet passenger needs.

The study therefore serves to highlight the advantages as well as the pitfalls of different regimes, based on specific case study examples which should contribute to wider learning with regard to good practices in ensuring employment security, social standards and service quality.

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ANNEXE

Country reports – separate document


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