



Social Conditions in Urban Public Transport Companies in Europe

Annexes – Country Reports



Europäische Akademie
für umweltorientierten Verkehr



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A report submitted by [ICF Consulting Services](#)

Date: 14 July 2016

[ICF Consulting Services Limited](#)
5em Etage
146 Rue Royale
Brussels
B-1000
T +32 (0) 2 275 01 00
F +32 (0) 2 275 01 09
Brusselsdowntown@icfi.com
www.icfi.com



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ANNEXES

Annex 1 Austria

Background

Market organisation of urban public transport

Institutional organisation

The law on the organisation of local public transport (ÖPNRV law from 1999)¹ stipulates that in principal it is the Federal State (Ministry for Transport) that plans and organises and provides for the financial base of railway services and urban public transport services (finances to the extent of the timetable 1999/2000). All additional transport requests however are planned by the federal states and their counties depending on the demand. The cities own in most cases the urban transport operator. The regional transport association (Verkehrsverbund) generally manages and finances the federal urban transport. They are owned by the federal states. In practice however, the planning of urban/ local public transport is carried out in coordination between the federal level and the federal states. Thus in this rather complex institutional organisational setting it has been criticised that the voice of smaller cities and rural areas is under represented. It was anticipated by some scholars that the financing of urban transport will become a challenge for some regions and may become a burden. A recent analysis of 2013 shows that in particular cities (with more than 50.000 inhabitants) have issues to provide the finances for urban public transport. ² It seems in particular that the operational costs of public transport exceed the income from the transport provided (this is not including Vienna).

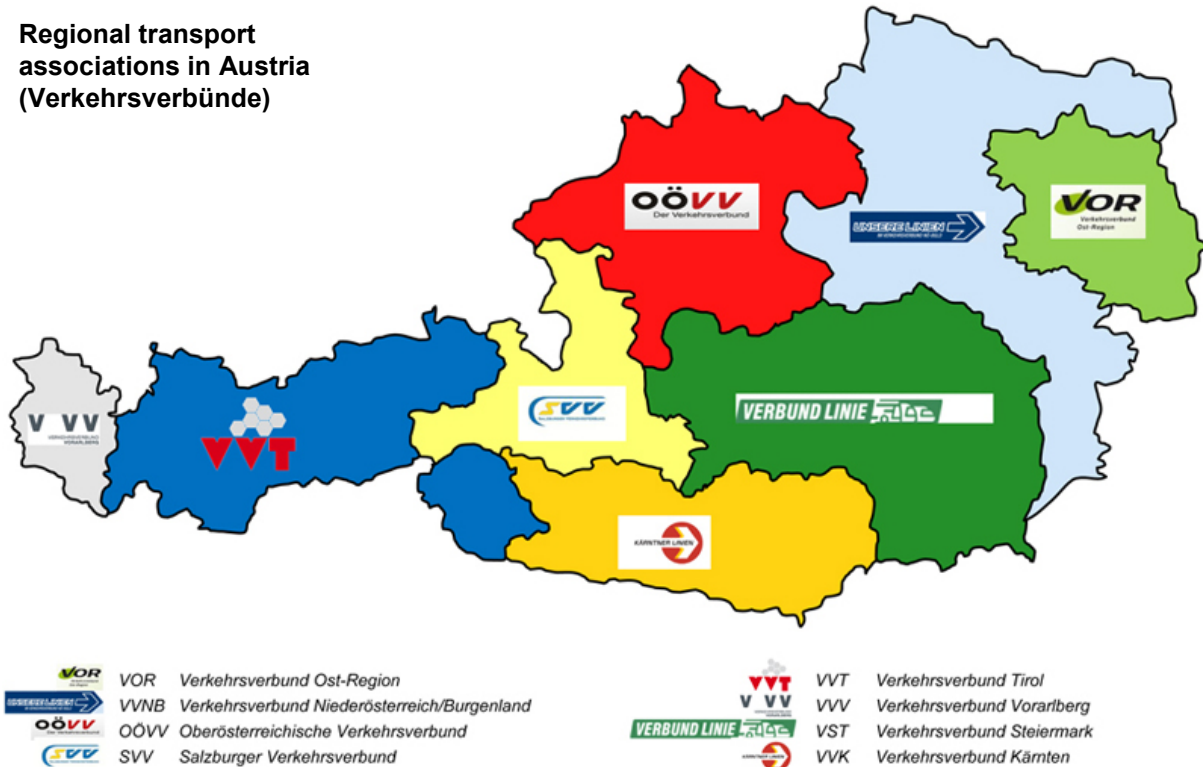
The following figure shows the organisation of the regional transport associations. In total there are 7 such associations since 2016 (the figure below shows 8 – since 2003 it was planned that VOR and VVNB become one association).

¹ Link to the ÖPNRV law :
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20000097>

² Centre for Research in Public Administration –provides several studies on this aspect – see the latest presentation – accessed 27 Oct. 2015 :
http://kdz.eu/sites/default/files/documents/kdz/news/PDF%20Attachment/13_06/03_KDZ_K%C3%B6fel_%C3%96PNV-Finanzierung%20in%20%C3%96sterreichs%20St%C3%A4dten.pdf

Figure 1.1 Regional Transport Associations in Austria

Regional transport associations in Austria (Verkehrsverbände)



Source: VOB

The regional transport associations have also the authority to award contracts. Their main task is however to plan transport and determine schedules, follow up on passenger streams, determine ticket prices, carry out quality control and provide for the marketing and communication of the transport in the region. It is rather the cities and municipalities in urban areas that directly award and manage contracts with the operators.

As mentioned above there are several on-going discussions among responsible authorities, internal operators and trade unions that the current model of financing of urban public transport does not allow to sustainably finance the needs for urban public transport and to improve the offer and infrastructure. It has created an additional burden of financing for local regions, communities and cities. These increasing concerns on the financial situation may also impact on future contracts in urban public transport.

Regulatory framework

General regulatory framework urban public transport

The most important laws that govern the contracting of urban public transport is the federal law on tendering (Bundesvergabegesetz). In addition, the law on licences for operators of bus services (Krafffahriniien Gesetz) and the general law on the organisation of local public transport (ÖPNRV law) are also of importance. The latter law regulates the organisation and financing of local public transport which is partially under the responsibility of the Federal state and partially under responsibility of the federal states. Under Art. 31 of the law on the organisation of local public transport a list of “quality criteria” have been set out when awarding the contract to an operator and that have to be checked. Among these there is the criteria that the operator shall not have committed serious violations of social and labour law provisions. In addition, the “staff and security elements” form part of the quality criteria – referring here to properly qualified staff.

There are a number of minimum social criteria that have to be respected by any operator in the urban public transport when applying for a bid. This includes also the application of the sector level collective

agreement of the sector. Because a change of operator is not regarded as transfer of staff such an obligation could be inserted by the authority in the tender documents. A recent analysis³ on the use of social criteria in transport bids has been carried out on the demand of the Federal Ministry for Transport, Innovation and Technology. One of the conclusions of this study was that under current AT law there are only a few social criteria. And those that are available are only facultative for the tender call to be observed (checked). In principle the definition of social, quality and security criteria is rather unclear under the current applicable legislation and these criteria are interdependent. Thus it has been recommended by the study to provide a clear definition in a guiding document to provide for more legal clarity. The study also observed that currently subcontracting chains used in transport were taken less into consideration when applying social criteria due to the fact that the principle of the “lowest price” was the applicable selection criteria.

2010 the Austrian social partners (chamber of economy, the biggest bus companies, trade unions, chamber of labour) issued a joint statement demanding legally binding social criteria as well as transfer of staff for competitive tendered bus lines. Up till now, the federal states blocked any change of the respective laws. As a “loop-hole” against this standstill, in April 2015, the Austrian Federal Ministry for Transport, Innovation and Technology has provided guidelines on the use of quality criteria in particular social and environmental criteria for bus tenders.⁴ Similar guidelines exist for transfer of staff but until now they are not published yet.

It shall be noted that inter-urban transport is more and more competitively tendered in Austria providing the first examples of tendering experience.

In general the regional transport association/city can decide to put out for tendering urban public transport or to continue to contract with the internal operator. In general, subcontracting is foreseen in the contract or is based on a choice by the authority. The operator cannot make a sole decision about subcontracting.

In all of the bigger cities (more than 100.000 inhabitants) in Austria urban public transport is directly awarded to the internal operator. The way of award does not change too much in practice and the described example of Wiener Linien below provides a good reference.

Overall length of contracts is between 8 to 15 years.

The rolling-stock and its maintenance is part of the contract and the operator has to organise for it, whereas bus depots and infrastructure is organised by the city.

Competitive tenders (for inter-urban transport and subcontractors) are announced on an internet platform according to the ‘lowest price’ principle. There are certain minimum criteria that have to be met, such as age of the buses, which have to be met in order for a company to be considered. Due to the fact that it is hard to lower the price on fixed costs such as diesel, human capital costs often suffer the most. Thus the trade union (Vida) has started a campaign to promote the inclusion of social criteria and quality criteria in the selection of the bid and to apply the concept of the “best bidder” (taking thus also other criteria into account). According to a study from 2014 of the Vienna Chamber of Labour, labour costs represent approximately between 47% or up to 50% of the fixed costs.

Trends for the local transport identified by the Economic Chamber of Austria are that financial pressures at the level of the federal states and cities increased thus there is more pressure for the operator to provide an efficient functioning service with less means. This has also been mentioned by the trade unions and workers representatives. On the other hand it was noted that technical standards of rolling stock have been improved which has been driving the costs up according to the Chamber. Also human capital costs were claimed to have increased and that there was a constant pressure to further increase. Thus wages were said to be higher as for other transport sectors.

³ Public Social Responsibility Institute (2013) - the report can be accessed here:
https://www.bmvit.gv.at/verkehr/nahverkehr/downloads/studie_spnv.pdf

⁴ Guidelines can be accessed at:
https://www.bmvit.gv.at/verkehr/nahverkehr/downloads/leitfaden_qualitaetskriterien.pdf

Regulatory framework employment conditions

In general legislation and collective agreements are most important for setting the terms and conditions of UPT. There are both sector and company level collective agreements. Sector level collective agreements set out basic working conditions for the sector and company level collective agreements further improve these. Company level collective agreements have to always improve the sector level set working conditions. There are two types of company level agreements – so-called “Betriebsvereinbarung” which regulates additional remuneration and bonuses. These agreements are concluded between the shop stewards (Betriebsräte) and management. Secondly there are company collective agreements “Betriebskollektivvertrag” that sets general wage levels for different employee categories for the company level (including additional remuneration) but also working hours, annual leave and training. Such agreements are concluded between trade unions and management. Subcontractors for example are said to apply the sector level agreement and in addition they have “Betriebsvereinbarungen” in place. It shall be mentioned that older employees in public companies are paid according to “specific” company level agreements linked to their status (acquired rights), as young ones (at a certain age) who are paid on the basis of the “normal” company collective agreement for non-civil servant like employees.

Pension rights are generally not part of collective bargaining these are determined by law and depend on choices made at company level.

It has been noted that reforms in the Workers Protection Act (Arbeitnehmerschutzgesetz) and EU rules on working time have changed considerably laws in place in Austria with regard to rest times. The Economic Chamber of Austria noted that these laws have in particular decreased the companies flexibility to organise work hours.

It has been described that overall gross wages have only been marginally above the inflation rate over the past years (despite increases). On the other hand extra-legal benefits are said to have increased.

Although full-time permanent employment contracts are the standard, the civil-servant type contract is no longer concluded. This particular contract has provided job security for many workers specifically in times of urban transport reforms and guarantee employment in the case that a competition could be lost. In addition the difference of the two types are also the level of pension benefits which are said to be lower for those that do not have a civil servant type status.

The maximum weekly working time is 40 hours with the average estimated at around 38,5 hours per week. Overtime was estimated to have increased due to time schedules which have become much tighter over the years and delays have to be borne by the drivers working time. Optimisation of time schedules have also led to an intensification of work load. However there are also external reasons to this – as for example traffic in the cities has increased. The level of stress was claimed to have risen over the past 10 years.

The new vehicles are also more ergonomic for workers having to sit over long periods.

There has been an increase in violence at the workplace by third parties (mainly passengers). There are more and more de-escalation trainings that are offered to staff.

Regulatory framework transfer of staff

There is no obligation for transfer of staff. Thus in a case where the “old” operator lost the bid staff will remain to be employed with that operator. In practice however it happens that workers will be made redundant due to the fact that the company cannot longer employ them. Thus these workers have to search for a new job – which could be found with the new operator however the employment conditions as existing with the “old” operator will not be longer applicable. The new operator will provide for the sectoral agreed employment conditions (see further below) and any other company specific benefits that may not be up to the standards as of the “old” employment of that worker.

Main operators

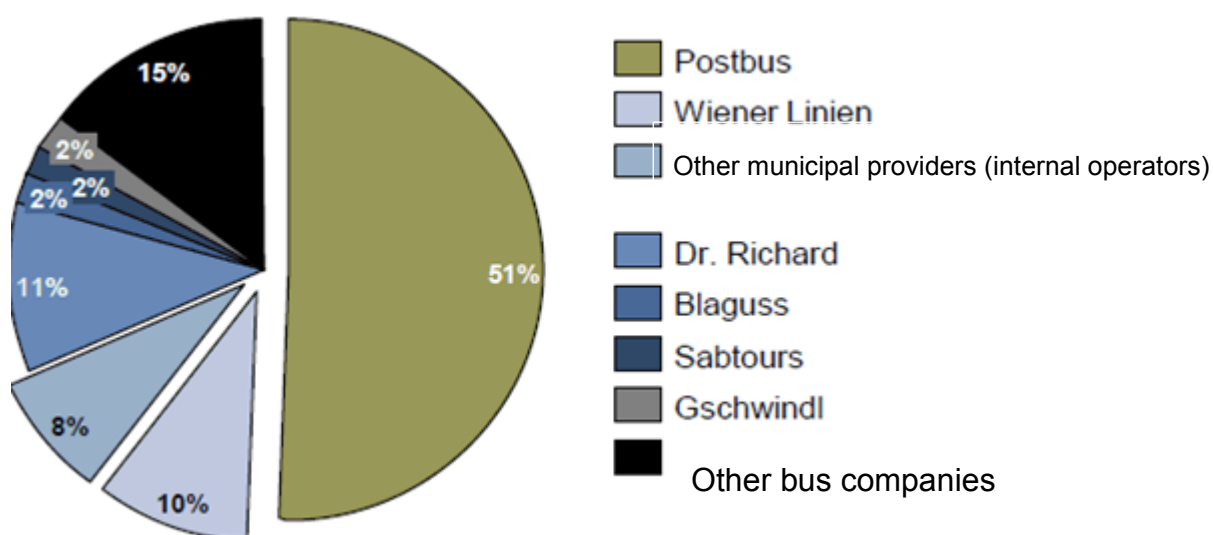
The most important companies for the Austrian urban transport mentioned were:

- Wiener Linien (Including Bus, Tram & Metro)
- Linz AG
- The Innsbrucker Verkehrsbetriebe
- Salzburger AG
- Graz Linien
- Klagenfurter Stadtwerke

The introduction of competitive tendering in inter-urban transport has not led to an increase of foreign multi-nationals. In fact, at this stage there are no other foreign companies present. It has been rather small family owned businesses that have been winning new business. It shall be noted however that the lots tendered in inter-urban transport are only including a small number of routes. It can be that several operators are present in a region because different operators won the lot.

The following figure provides an overview of the market share of over 200 Austrian bus companies.

Figure 1.2 Overview market share bus operators



Source: Press material Postbus

Employment in the sector

The population of Austrian cities is increasing. Vienna is regarded as being the fastest growing German-speaking city in Europe. In October 2014, Vienna had 1.8 million inhabitants. Between 2005 and 2015 Vienna grew by 10.1% inhabitants. As a consequence, urban public transport systems further expand and staff is continuously increasing.

City	Inhabitants	Operator	Workforce of operator
Vienna	1.765.600 (2014)	Wiener Linien (internal operator) – 1/3 of bus lines are subcontracted	8.688 (2014), 7.858 (2004) Number of workers among subcontractors not known
Graz	270.000	Graz Holding Linien (internal operator)	935 (2014), 486 (2004)
Linz	193.800	Linz AG Linien (internal operator)	> 500, Fahrdienst (drivers): 413 (2014, 31 female), 386 (2004, 13 female)

Salzburg	146.600	Salzburg AG (internal operator)	Obus (Bus services) 310 (2014)
Innsbruck	124.600	Innsbrucker Verkehrsbetriebe (internal operator)	373 (2014)

Source: Vida

There are no consistent data about the workforce of the Austrian UPT. The internal operators of the big cities employ around 12.000 workers. Sub-urban and regional train systems are run by ÖBB. It is difficult to judge how many of the railway workers are part of the UPT. The same is true for regional and suburban bus lines as well as for bus services in smaller towns. It was estimated that currently 25.000 employees are active in the UPT sector.

Social dialogue

100% of enterprises and workers (including subcontractors) are covered by the sector level collective agreement. This is because all companies active in this sector have to be a member of the Austrian Economic Chambers (Wirtschaftskammer) which represent employers and with whom collective agreements are concluded.

There are three trade unions active in the urban transport sector:

- Trade union for communal workers
- Trade union for postal services (Postbus drivers employed under specific status)
- Trade union VIDA – representing workers in the railways and bus sector.

Each company can conclude a company collective agreement (with a trade union) or “Betriebsvereinbarungen” (with elected shop stewards) which set in particular additional remuneration. Company collective agreements in general considerably improve sector level agreements in particular with regard to wages.

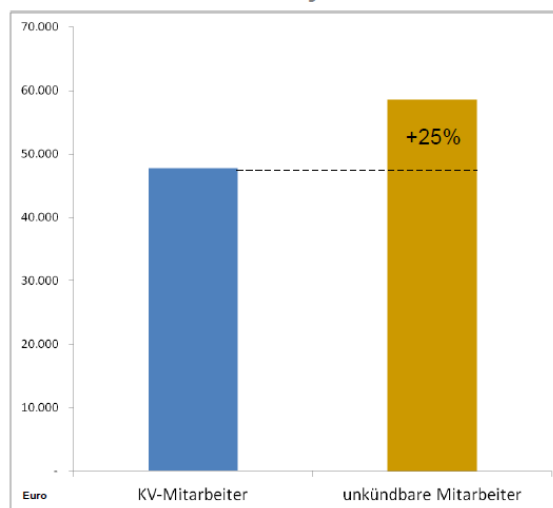
Austrian public-owned transport companies (e.g. ÖBB, Postbus, Wiener Linien etc.) employ workers under a civil servant status (hired prior 1995), as well as employ a workforce that is payed in accordance to collective bargaining agreements (all staff hired after 1995). It is complex to compare both systems (base salaries, additional payments, protection against dismissal etc.) but there is a general rule: At the end of their career, civil servants get higher salaries than colleagues payed by collective bargaining agreements. Therefore there is a better paid but (due to retirement) shrinking group of employees and a growing number of less well paid employees. This causes a number of consequences:

- Tensions within the workforce
- Even when both groups get increases of salaries, the overall payments (=personal cost) does not increase to the same extent. The reason is that better paid civil servant are gradually replaced by less paid colleagues (see data of the Wiener Stadtwerke).
- The following chart illustrates the personnel expenses as cost of civil-servant-style employees of Postbus compared with others. The difference is about 25 %. Due to the fact that urban transport bus services can be tendered Postbus argues to face competitive disadvantages.

Figure 1.3 Comparison personal costs civil servants/employees at Postbus

- 2400 employees under civil servant status 2013
- In 2013 personal costs were around 25 Mio Euros
- Until retirement of all employees under civil servant status in 2044, more than 471 Mio Euro additional costs occur

Average personnel costs per employee per year



*inkl. Überstunden und Nebenkosten

Source: Press material Postbus 2014

Wiener Linien

Background information

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. There was the example that the total length of the city network would equal the distance from Vienna to Rome (more than 1077 km).

The contract for operation has been awarded in 2002 and was automatically renewed in 2007/2008 and runs until end of 2016. The new contract for 2017 has been already agreed by the City of Vienna (Ministry for Transport) who is the competent authority for the network. The new contract is awarded for 15 years. It foresees a system of bonus and malus with regard to the quality and performance criteria. The PSO compensation will be evaluated for each year to set it to the actual needs to avoid over-compensation. The new contract will give much more organisational responsibility to the operator. There is a separate budget for infrastructure maintenance and renewal of rolling—stock. It will be also managed by the operator. It was found that currently Wiener Linien can provide for 60% of the operational costs via its own income. The authority hopes that with the new contract the services will become even more economically efficient because the operator has more possibilities to determine schedules of the different transport modes.⁵

WL is a 100% publically owned company. In the financial contract with the city of Vienna it is foreseen that the PSO remuneration is financed by the City of Vienna. Only metro extensions are financed by the City of Vienna and the federal state.

⁵ Information was retrieved from the website of the city of Vienna : <https://wien1x1.at/site/wie-finanziert-sich-der-oeffentliche-verkehr-in-wien/>

Passenger numbers have strongly increased over the past 10 years from around 750 mio in 2004 to about 950 mio in the year 2014 (which is the highest achieved standard ever). The increase of the number of passengers must also be seen in the light of the overall increase (more than 9,4%) of the inhabitants of Vienna. Another reason for increase of passengers was a tariff reform in 2012 which made transport tickets cheaper (in particular annual tickets).

It shall be noted that the share of modal split of Wiener Linien is 39% which is a successful achievement compared to cities of a similar size.

Around one third of bus traffic is being sub-contracted via open tenders. This has been the choice of the City of Vienna. These are electronically advertised in a competitive tender process. Subcontracts are signed for a 5 year period. Subcontractor companies include: Dr. Richard, Postbus, and Gschwindl. There are no social criteria included in particular referring here to the experience of staff, training and possibilities for a "rest time room" for example. Subcontractors have to offer a minimum price and conform to the minimum labour law standards and those defined in the sector collective agreement for public transport. Terms and conditions are less generous than for Wiener Linien employees, since the collective agreement is less generous. A main difference between the working conditions between subcontractor employees and Wiener Linien workers was noted to be that subcontractor employees tend to have multiple tasks (e.g. drivers also carry out maintenance tasks), whilst Wiener Linien employees spend their working days focusing on their primary task (i.e. driving). It has been noted that in one case the subcontractor simply did not comply by the rules on paying the additional remunerations.

It was argued by the unions and workers representatives that the practice of subcontracting that is currently in place leads to social dumping. The use of the "best price" bid principle and the inclusion of quality and social criteria could change the current situation.

According to WL in response to the union argumentation there is also the possibility to pursue social and ecological objectives by the use of high standards in the respective contract. WL is following this approach and bus traffic is subcontracted to the operator, which offers a minimum price. However the selected subcontractor is also obliged to meet high ecological standards. The social criteria are also respected, due to the fact that WL carries out an exact price check with regard to antidumping. Hence no contract is including prices which could lead the subcontractor to an infringement of working or social conditions. The compliance with the ecological criteria in the contract is strictly monitored by WL. WL has also the possibility to impose a contractual penalty. The monitoring of the compliance with the effective working and social conditions in Austria is in the competence of the national authorities and not in the competence of Wiener Linien.

Hence according to WL the introduction of a mandatory use of the "best price" bid principle isn't reasonable, because the contracting entities, aren't in charge of the sovereign competence to control the social criteria, which have been accepted by the subcontractor during the award procedure. Therefore the use of the "best price" bid principle would result in more expensive contracts for Wiener Linien. But these higher prices wouldn't lead to higher social conditions for the subcontractor employees.

The PSO regulation had an important impact on the way the contracts are made. A positive impact was that there is more transparency on the contracts on the other hand public budget pressures are becoming also more evident. There is an increase of efficiency demands in the contract.

The company and its employees

The company employed in 2014 about 8,600 workers (compared to 2010 - 8,100). Whereby more than 6,800 are employed blue collar workers, more than 1,800 white collar workers (Angestellte), more than 3,600 are employed under a civil servant type contract and more than 200 are trainees. There are 12% of women that work in the company.

The number of workers has increased over time due to the fact that the number of passengers grew and the network was extended as well as night service for the metro. Nevertheless the number of passengers grew stronger than the number of employees. In 2003 for one worker 88.000 passengers

were registered whereas for 2014 it was already 110.000. It is argued that efficiency gains have made this possible (e.g. schedules).

There is one collective agreement for the Wiener Linien at the company level. This covers buses, metros and trams. Every year this collective agreement is renegotiated.

There is a sector level collective agreement that sets minimum standards in terms of social conditions. The company collective agreement tops up considerably minimum standards that are set in the sectoral collective agreement. .

The Wiener Linien also have a responsibility to offer apprenticeships (Ausbildungsverpflichtung). For Apprenticeships the Wiener Linien receive subventions from the City of Vienna. In order to recruit young apprentices the company pays for their education and their driver's license and has to keep them as full-time employee. Initial training is intensive for new employees and can last up to 3 months. All trainings are provided in-house. There is a training policy in place. Training for drivers is provided in-house according to European set standards.

Other additional benefits that WL offers are: an in-house kindergarden (child care), canteen and additional days of leave to shape one's health – to take care of one's own healthiness.

Evolution of social conditions

Overall it was estimated that gross wages have continuously increased however these increases were only marginally above inflations over the past 10 years thus did not affect net wages as claimed by the workers side taking into account also tax progression. The union side thus estimates that wages have rather stagnated over the past 10 years. The additional remuneration has remained stable considering that there were benefits given at one point in time but later were suppressed.

Working time regulations have been more regulated and became more "strict" in particular with regard to rest breaks. The companies weekly working time is currently at 37.5 hours. The workers representatives indicated that up to now a flexibilisation of the organisation of the working time was avoided. As mentioned before, working time intensification has been felt by workers. The rising work intensity has caused more cases of psychosocial illnesses among WL workers but is not higher as compared to other sectors.

The training offer has been improved over time. The in-house training centre has been outsourced in 2013 due to the choice of the City of Vienna.

Approximately 89% of contracts are full-time on permanent basis.

Staff turnover was generally described as low but increasing recently. Staff satisfaction has been noted as high.

Contributions to the company's occupational pension scheme has remained stable.

The company has a policy in place regarding diversity and equality.

Aggressions and violence at the workplace (coming mainly from passengers) has increased. Additional training is provided by the company to help employees deal with such aggressions. There are also more security measures for the drivers e.g. doors for the driver's cab in the old trams and more video surveillance on the trains.

Conclusions on the overall impact on social conditions and the protection of staff

In the case of Austria, conclusions about the effect of competitive tendering in urban public transport cannot be made due to the fact that at this stage all contracts in urban (city) areas are awarded to the internal operator (though with subcontracts competitively tendered out by the operator). The experience collected from competitive tenders launched in the inter-urban transport and the experience of subcontracting shows that the principle of "lowest price" bid has strong roots in the Austrian transport contract award system. This may be due to the way how financing of transport is organised in Austria. The financing of urban public transport has seen reforms in the year 2000 with a stronger shift to federal states and city level. This reform has placed a certain pressure on local public

authorities to seek out only for the lowest price. This practice of “lowest price” award is observed to be heavily used in subcontracting and leads to a pressure on all operators to revise internal costs, most notably labour costs.

In addition, increasing transparency obligations (arising from Regulation 1370/2007) have created legal uncertainty among competent authorities and increased also the administrative burden for operators.

Factors such as economic efficiency obligations and the use of new technology also leads to changes in the operational planning of providing transport services and leads to changes of work patterns or transformation of professions. These have been felt as a pressure by workers – translating into an intensification of their daily working hours – and unions who see their bargaining position for better working conditions under threat.

Due to the fact that there is no transfer of staff in case of change of operator (and this is depending only on the authorities’ choice) uncertainty of job security in the future has risen among workers in the sector.

From the side of the employers the strongest impact on the way of urban public transport organisation has come from changes in the regulatory framework – in particular coming from the European level (PSO Regulation, working time rules etc.).

Annex 2 Belgium

Market organisation of urban public transport

Institutional organisation

In Belgium there are three competent authorities for urban public transport: the Ministries of Transport of the Federal Entities Flanders Region, Brussels Capital Region and Wallonia Region. This means that urban public transport is not organised by the Belgian Federal government level and that it is a competence that is inherent entirely to the federal entity level. Therefore, the Government of each Region is the authority that can award the urban public transport contract for the entire Region, However it has been discussed during interviews that the local level municipality has generally less influence on the operational part of the contract with the operator. It is the federal entity level that controls and awards the contract. Thus, it shall be noted that the shape and the overall orientation of the contract is highly dependent on the colour of the political party in power at the time the contract is about to be renewed. The political level has a strong influence on the shaping of urban public transport in Belgium. All three Regions have decided to award the PSC to their historical internal operator, and whether that is to change or not is subject to the decisions of their respective governments.

Regulatory framework

General regulatory framework urban public transport

The following laws and regulations set out the award of contract to the internal operator:

Wallonia:

Regional Decree of 21 December 1989 (as modified in particular on 1st March 2012) regulating the operation of urban public transport in Wallonia, Article 31bis regulates that the Groupe TEC is considered as the internal operator of Wallonia in accordance with Regulation 1370/2007.

Flanders

Decree 31 July 1990 creation of the Flemish transport operator De Lijn – regulating the overall planning and operation of public urban transport

Decree 20 April 2001 creation of the Flemish Mobility Council – provides for the basis of the network management and basic mobility scheme – this includes political plans on the development of mobility in the region.

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 – nominates STIB as the sole internal operator. The STIB is has the status of a public company sui generis.

All 3 Regions have, in accordance with Regulation 1370/2007, opted for the direct award of a contract to an internal operator. Though in the contracts for TEC and De LIJN there are minimum specifications with regard to subcontracting. In both contracts an upper limit of 50% is established in conformity with regard to the PSO Regulation.

In the contract of TEC a minimum amount for subcontracting is established at 29% excluding alternative transport services (in 2014 subcontracts amounted to 30%). It seems that De Lijn shall subcontract obligatory 50% of its bus line operations.

Contracts are provided in all 3 regions for 5 years.

Rolling stock and its maintenance is part of the contracts. Additional investments and improvements of rolling stock however are generally subsidised and do not form part of the general operational

contract. This holds also true for additional investments in infrastructure or extension projects of the network.

It shall be noted that according to the law Belgian operators are obliged to provide for school transport. Every child in Belgium has the right to public transportation. This type of service demands in particular a high flexibility on the side of the operators as demand for transport of students changes frequently. In general there is a right of mobility under Belgian law also obliging operators to provide services to all citizens, with a view to accessibility for all (physical).

With regard to social criteria. In general the use of social criteria are rather very company specific and they link to the general performance indicators set for the specific contracting period. They may not always be regarded as social criteria but as employment related standards or human resource directions impacting indirectly on working conditions.

In the contract for De LIJN for 2011 – 2015 there are a number of social/ employment related criteria influencing social conditions of workers:

- Requirements of training for drivers (with regard to customer relations and safety)
Line managers shall see with workers on how to improve the service and to develop measures for improvements
- The company shall improve also its internal communication in order to value the work of its people and stimulate their motivation.
- De Lijn shall also be responsible to continue company social dialogue and to continuously improve employment conditions.
- Diversity and equal opportunity policy shall be in place.
- De Lijn shall offer its personnel a wage that is in conformity with the market and which is explicit and transparent.
- De Lijn shall continue its in-house training centre and offer its employees training opportunities that help to improve their competencies. Drivers shall have 35 training hours per year.
- HR shall strive to employ excellent personnel, develop and invest in its workforce in a result oriented manner.
- De Lijn HR management has to avoid to increase the overall number of staff.
- De Lijn shall be sustainable in all its acts. It shall foresee efficiency gains for all internal work processes
- De Lijn has to oblige subcontractors that they employ workers on equivalent working conditions as its internal staff.

In the contract from TEC the following people management principles are named influencing overall social conditions of workers:

- Modernisation of HR management – this means management by objectives; management of competencies; strengthening of supervision, improvement of internal communication
- Improvement of well-being at work – meaning reduction of absenteeism around 8% which is considered to be slightly above the regional average
- Improvement of social dialogue within the company;
- Implementation of the training plan – focussing in particular on transversal training for drivers, technical agents, controllers, employees and management
- There is collective agreement in place that guarantees limited profit sharing of TEC with its workers.

The contract for STIB is not published thus no further information exist with regard to use of social criteria. In the new contract for the STIB focus is on client satisfaction, improvement in modal split share, attractiveness of public transport, investment in extension projects, efficiency gains.

It shall be noted that currently there is a debate in particular in Flanders with regard to the future of UPT contract awards. It may be possible that after 2020 changes will be introduced to make use of a choice. At this stage there is however no certainty about this aspect. The political discussion 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.

It shall be noted that for the Brussels Capital Region the dynamics are a bit different. While in Flanders the overall number of passengers/km are decreasing and in Wallonia it remained stable, the Belgian capital is looking forward to extend its network, to further increase the number of passengers and improve its stand in the modal split share. The union claimed that the decrease of passenger/km has translated in layoffs in the past 5 years in Flanders (rather indirectly among subcontractors). However the overall number of passengers has been growing in all regions in particular in the cities. It has been claimed by the trade union that the investments to modernise ticketing/ introduce an e-ticketing service is highly impacting on the budget. Investments for new transport projects, improvement of the fleet or other innovations have decreased over years thus the vision is not clear with regard to the overall strategy for public transport (in particular Flanders)). The ticket prices have been increased again in Flanders recently and this fact translates the political choices that have been made. Trade unions fear that this will drive away the new customers.

On the other hand, management has highlighted that the e-ticketing service will also provide much better insight to needs and habits of passengers and in the long-term this can help to develop a better targeted offer and increase efficiency levels.

Regulatory framework employment conditions

Sector level collective bargaining plays an important role in Belgium. There are so called sector dialogue commissions (commission paritaire) that negotiate sector specific framework agreements and minimum wages/ additional remuneration and working time limits. The three internal operators have in fact a “sector” specific social dialogue commission (nr 328) but each of the operators has its separate sub-committee. Thus in reality, the three companies have their own company specific collective agreement. Subcontractors are not part of this sub-committee however their employment conditions are equivalent in particular with regard to wages.

Differences between internal operators and staff of subcontractors are mainly additional benefits (next to wages). These are negotiated within the specific social dialogue committee for drivers for subcontractors (nr 140 see further information below). In general those working for subcontractors work more odd hours (early mornings, late evening shifts) and typically in the more rural areas. Drivers may have to provide for some small maintenance tasks compared to main operator drivers. Subcontractor companies do not have internal training centres or other policies in place that enhance competence training such as how to deal with aggressive customers for example. They fulfil in general all obligatory trainings for drivers.

Also with regard to standards for health and safety – the law provides for an important basis – as it establishes workers committees on this subject within the company. Thus health and safety policies developed at company level go beyond general legal standards and apply concretely to specific situations in the company. To form a workers committee for health and safety is however only an obligation for companies having more than 50 employees. Thus small companies among subcontractors may have less favourable health and safety conditions.

Regulatory framework transfer of staff

This part cannot be established as it is not clear whether there would be a transfer of staff in a case of change of operator.

Main operators

Next to the three main operators in the country there are a number of small/medium sized enterprises that work under subcontracts. There are about 80 small sized companies in the country. It was said that the number of small companies has decreased and in particular after a re-organisation of the tendering procedure. Two international companies - Keolis and Transdev (Veolia) - have merged the bigger small operators in the market.

Keolis employs about 2000 employees in Belgium. Its main source of revenue is the operation of regular bus lines in Wallonia and Flanders (Brussels region does not subcontract). The second most important income is made by school transport. It is estimated that Keolis operates about 70% of the subcontracts in Wallonia because it actually regroups a number of small operators that have historic operational rights in this region.

Transdev has sold in 2014 its Belgian company VTB (Velia Transport Belgium) in a restructuring⁶. It was sold to Cube infrastructure and Gimv (an investment company). In 2012 VTB employed around 1,100 staff and operated about 680 vehicles.

Social dialogue

The social partners in the sector are the trade unions and the three companies. There are three trade unions which represent workers in this sector. The CGSP/ACOD which represents all type of workers in all three companies. The union represents workers in the public sector and also in other transport sectors. There is also the ACV-CSC for the public sector representing workers in all three urban public transport companies but also workers that work with subcontracting companies. In addition there is the ACLVB/ CGSLB which also represents workers in the urban transport sector within all three public companies but also subcontractors. Finally, the FGTV/UBT (ABVV/BTB) also represents workers among those companies that are subcontracted.

Social dialogue takes place in sectorial social dialogue committee (commission paritaire for UPT sector it is number 328) which represents employers and all representatives from the different trade unions in one committee of one sector. These committees are established for all sectors. Thus in Belgium all companies fall under sector collective agreement which regulates in general minimum wages, working time, additional remuneration and benefits. The committees have the role to prevent and manage social conflicts/ strikes, they also advise the government and carry out any other mission that has been asked to them.

Each internal operator of the three regions however has its own sub-committee (328 -01 is for Flanders; 328-02 for Wallonia; and 328-03 is for Brussels Capital Region). In these sub-committees any company specific issues and questions are negotiated resulting in a text – a collective agreement that binds the company and its workers. In fact, it is not just a single collective agreement as every type of additional bonus, change, also innovation projects, any HR policy can be part of a collective agreement. Thus there are several specific agreements in place that can be also subject to change.

Sub-contractor companies fall under a different sectorial social dialogue committee. For drivers there is the social dialogue committee 140 (also applies for drivers of touristic operators and is more general).

Overall the setting up of a sectorial social dialogue committee is quite complex – it can be requested either by a minister or by one or more organisations after consultation. The committees are set up on the basis of a royal decree. In total there are more than 102 of such committees active in Belgium today. If there would be a change to the current situation with regard to the award of the contract for urban public transport thus awarding it to a private operator the current set up of the committees may have to be thought through again as technically there is not one specific committee for the urban transport sector as such in place.

⁶ <http://www.transdev.com/en/media/press-releases/transdev-sells-subsidiary-belgium-vtb.htm>

TEC

Background information

TEC is the internal operator of the Wallonia Region. It operates in cities, inter-urban and very rural areas.

TEC is made up of 6 companies in total: SRWT, the holding company, and 5 subsidiaries (TEC Brabant-Wallon; TEC Charleroi; TEC Hainaut; TEC Liege Verviers; TEC Namur Luxembourg). The overall managing company is the SRWT. The 5 companies are each responsible for the operational level (planning and schedules) in their sub-regional area. However, the more strategic decisions in particular with regard to personnel are taken at the group level.

There are 14.693 km of network that is served and there are about 782 bus lines. There is a project of a light rail/tram under way for the city of Liege – which would be the first one for the region. There are further special trams operating in the city of Charleroi.

TEC served more than 260 million passengers in 2014.

The new method for measuring the number of trips (April 2015), based on the contactless ticketing figures, does not allow for comparison with past figures (fixed amount/ticket).

The relevant indicators are the number of users and the turnover which are increasing, despite a non-increasing rate of trips since 2014.

The current operational contract was concluded for 2013 up to 2017. The recent contract stresses that the budget is restricted compared to the previous one and the operator has to increase its productivity and economic efficiency.

In the contract from TEC the following directions are named with regard to people management influencing thus social conditions of workers:

- Modernisation of HR management – this means management by objectives; management of competencies; strengthening of supervision, improvement of internal communication;
- Improvement of well-being at work – meaning reduction of absenteeism around 8% which is considered to be slightly above the regional average;
- Improvement of social dialogue within the company;
- Implementation of the training plan – focussing in particular on transversal training for drivers, technical agents, controllers, employees and management
- There is collective agreement in place that guarantees the profit sharing of TEC with its workers.

Currently while the contract foresees the possibility to subcontract up to 50% of lines – the level of sub-contracting amounts to 30% for the entire company (can vary in the different regions) in 2014 for regular bus line services. In addition 100% of specialised services are sub-contracted – referring here to school busses in particular. The school bus services are highly flexible and represent “uncontrollable” costs. There is competitive tendering for the subcontracts of school bus services, in accordance with public procurement procedures and through specific regional regulation. For the rest of the services, the contracts in place have all been terminated during the notice period, TEC is preparing the competitive tender of these subcontracts. The majority of subcontractors are family owned enterprises. However due to the changes of procedures for subcontracting which occurred first on Flemish side (see below) to organise competitive tenders for subcontracts more companies are part now of international groups or cooperative companies.

Currently, each of the 5 TEC is the manager of these subcontracted lots and determines the schedule and operation for the subcontracted operators.

Overall TEC has the responsibility for the overall operation of the network also for its commercial revenues. . The regional government determines larger innovation projects – such as the electronic

ticketing system or construction of new tram lines (e.g. Liege).. There has been a number of technologic innovations resulting in new IT related professions. To allow for more innovation it may need some research and development – however this is not available in-house.

The rolling stock and maintenance has a fixed budget and depots and maintenance is carried out by TEC. A few services are outsourced such as cleaning but this is not done on a systematic level (depending on each TEC).

The company and its employees

The company employs more than 5000 workers (more than 3000 are drivers). The distribution can be seen in the following table.

Table 1.1 Workers - 5 companies TEC

2014	TEC Brabant	TEC Charleroi	TEC Hainaut	TEC Liege Verviers	TEC Namur
Total number of workers	347	1095	762	1813	844

Source: TEC Annual Report 2014

The city of Liege is the most important network with most of the passengers within the region and employs thus most of its employees.

There are about 11% women that work for TEC group.

There is a very small share of fixed term work contracts.

As stipulated above the company has in place a collective agreement. This agreement also sets out conditions of the occupational pension scheme.

Evolution of social conditions

In general, it has been claimed by management side that the salaries have been increasing over the past 10 years. This has been confirmed by the trade unions however these increases have been made due to an increase of the index of cost of living and inflation. The increases are only marginal above the increases of the cost of living. Thus trade unions found that there has not been an important evolution for salaries with regard to the overall development of prices and economic situation. The purchasing power remains thus limited.

The salary scheme foresees an overall scheme of recognition of seniority. Seniority is valued in the system of pay and it shall conduct also to an evolution of the professional profile and competencies – promotion to other positions.

There have been no changes with regard to additional remuneration. They have been increased in proportion to general wage increases. The company provides extra benefits such as lunch vouchers (employer pays the majority of contribution); hospital insurance (additional to general health care insurance) and vouchers that can be used for all kinds of purchases. There is also a end of the year bonus.

Working time has remained the same – 38hours per week. There is few over-time and limited number of night work to be carried out (mainly in Liege). There has been an increase of part-time work in recent years because this has also been favoured by legislation – such as part-time for older workers (a kind of pre-pension reduction of working time); more parental leave rights. It has been remarked by both sides that the working time has somewhat intensified in the past due to higher traffic in urban zones.

The rate of absenteeism has remained stable around 8%. However, the contract foresees that this rate shall be reduced in the future. It affects in particular blue collar workers. The quality of management can have an important impact on the motivation of workers.

The number of training has increased for all kinds of employees. The policy for training has improved. Development of competencies will be rewarded.

One of the 5 TEC has also developed a diversity and equal opportunities policy that is bound to be implemented in the other companies of the TEC Group.

The company introduced measures after negotiation with the unions to improve the security in buses due to an increase of aggressions in particular in evening hours towards bus drivers. There is more cooperation also with the police and judicial bodies (improving the penalties for aggressions towards bus drivers). Security buttons have been put in place. The reporting in the company of aggressions has improved so that these incidents can also be followed up in a better manner and reactions are faster.

Conclusions

The impact of direct award on social conditions cannot be assessed due to the fact that the contract has been awarded only once. Nevertheless, the recent economic crisis had impacted on the overall budget allocated for the operation of the network. The contract includes a number of performance indicators and further accentuates on levels of performance and quality of services. Customer satisfaction will play also an important role. The contract foresees as well a penalisation of the case of non-announced strike actions and aims to promote better social dialogue. At the time of the negotiation of the contract the government had discussed issues of strike actions and the resulting lack of service provision. Thus the form of a contract allows the competent authority to demand specific results also with regard to broader human resources management. The general political debate in the region at the time of negotiating the contract in 2012/2013 and the introduction of a minimum amount of subcontracting (of at least 29%) demonstrated the political will of the government in place to make urban transport more cost efficient in particular in more rural areas. The debate on the way of award whether direct or by competitive tenders can always revive in case of a government change. The unions claim that this debate has created uncertainties among workers.

DE LIJN

Background information

DE LIJN is the internal operator of the Flemish region. DE Lijn operates about three tram networks in Antwerp, Gent and the special line on the Belgian coast. The majority is bus lines. There were more than 540 million passengers in 2014. The number of passengers has been increasing considerably over the recent years. The economic crisis did though impact on the number of passengers and this translated in a slight decrease.

In the contract for De LIJN for 2011 – 2015 there are a number of social/ employment related criteria:

- Requirements of training for drivers (with regard to customer relations and safety)
Line managers shall see with workers on how to improve the service and to develop measures for improvements
- The company shall improve also its internal communication in order to value the work of its people and stimulate their motivation.
- De Lijn shall also be responsible to continue company social dialogue and to continuously improve employment conditions.
- Diversity and equal opportunity policy shall be in place.
- De Lijn shall offer its personnel a wage that is in conformity with the market and which is explicit and transparent.
- De Lijn shall continue its in-house training centre and offer its employees training opportunities that help to improve their competencies. Drivers shall have 35 training hours per year.
- HR shall strive to employ excellent personnel, develop and invest in its workforce in a result oriented manner.
- De Lijn HR management has to avoid to increase the overall number of staff.

- De Lijn shall be sustainable in all its acts. It shall foresee efficiency gains for all internal work processes
- De Lijn has to oblige subcontractors that they employ workers on equivalent working conditions as its internal staff.

The contract is subject to renewal and is currently debated with the government.

Since 2002 DE LIJN subcontracts on a competitive basis. There are about 80 contracts in place with different companies. However, many of the smaller family owned companies became part of bigger international companies such as Keolis and 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 thus prevents a competition based on labour costs.

Outsourcing is depending on the localities but is not done in a strategic manner.

The company and its employees

DE LIJN has more than 8000 employees (about 5000 workers are drivers) of which about 18% are female workers. The number of employees has increased over the past 10 years (in 2004 around 7,200 workers). The current operational contract specifies that the company shall not engage in increasing further staff levels. There is a hiring freeze at the moment.

While the general working hours have remained the same the number of part-time staff has strongly increased over the past 10 years (figures yearly report 2014). This is due to an increased demand of work-life balance. Part-time work option has been incentivised by legislation (part-time for older workers, part-time for workers with family etc.).

About 35% of staff is aged 50 plus in the company. 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

Evolution of salaries has remained at a stable level and has not increased compared to inflation and index of cost of living. This is also valid for additional remuneration. Both sides have replied in this sense. It was remarked that wages are not very attractive compared to other sectors. This can also be a problem when looking for very specific profiles – in particular technicians. Thus currently there is a revision of modernisation of salary schemes in particular bonus schemes.

Working time has remained the same. Overtime is very limited and it depends on the function and service affected. No intensification of working time was remarked though traffic congestion does impact on drivers. Increases of aggressions during traffic can be a stress factor.

Pensions did not change over the recent time. The overall retirement age has however increased.

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 aggressions and violence that occur more frequently. The company has in place a broad range of training measures helping employees on how to deal with these type of acts and the buses have been provided with cameras, security cabins for the drivers and an emergency button that is directly linked with the police. The cooperation with the police has been improved on this subject to improve the security of the drivers. This has happened also due to the pressure by the trade unions.

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.

It was noted that subcontracted staff does not benefit of the same types of training.

Conclusions

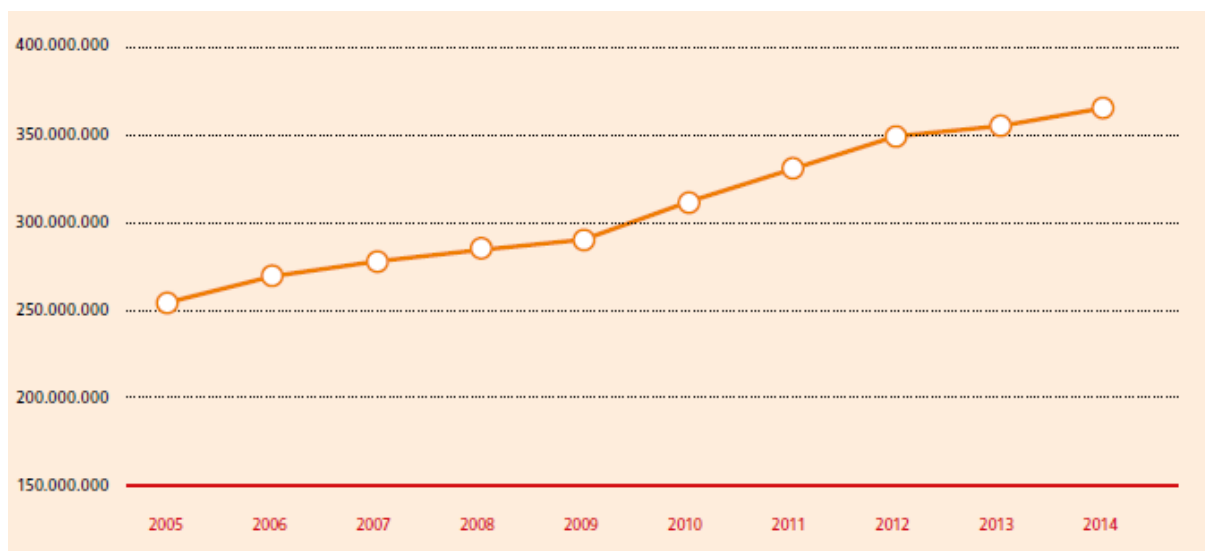
The operational contract with the government and De Lijn has changed over the years and more performance targets have been implemented. This has created more pressure on social conditions and productivity. The overall political debate on whether the entire network will be tendered out competitively has increased uncertainty for staff and fostered a heated debate. At this stage no clear political line could be given with regard to the future. The union claims that this translates in a decrease of operational budget and does not provide for enough room to actually improve the operation of the network.

STIB/MIVB

The Brussels region operator STIB operates 4 metro lines, 19 tramways, 50 bus lines and 11 night lines.

The contract is directly awarded by the Brussels Capital Region. The current contract was awarded in 2013 and runs until 2017.

Figure 1.4 Evolution of passengers in Brussels Capital Region



STIB Annual Report 2014

The number of passengers has strongly increased over the past 10 years and in 2014 it has been more than 350.000 passengers.

The current operational contract places an emphasis in improving the transport share of urban public transport in the city. The contract aims to increase to 60% by 2017 the share of the number of citizens in Brussels that use public transportation on a regular basis (compared to 50% in 2010). The operator shall thus increase of more than 20% the frequentation of its services. In order to increase its capacity, the contract has also put in place a project to increase the commercial speed of buses and trams. Quality has to be improved and should be measured. The contract sets a number of quality standards that are controlled by an external independent agency. The contract has also foreseen a bonus-malus system according to which the STIB has to pay penalties in cases where the quality criteria were not obtained (this system exists since 2007). Also passenger satisfaction will be measured annual. This survey will also include questions on security measures. More controls and security staff shall be deployed.

Next to these standards, also rolling stock shall be in the future more environmental friendly. This means also that a certain number of bus lines become tram lines. The STIB has a separate budget (subvention) for investments in rolling stock or “extra-ordinary” investments (in cases of extensions).

The company and its employees

While the current contract gave place to a number of important investment projects, the budget for the exploitation of the network however has tightened. The STIB was asked to make savings⁷. One of the objectives concerning the staff was to reduce staff absences which have been in 2013 around 7,8% (up to 10% at certain times).

In 2014, 74% of the operational budget represented labour costs. The STIB employs 7.200 workers (FTE) whereby 98% are employed by a permanent employment contract working full-time. The share of women among staff is around 8% in 2014.⁸ The number of staff has increased over the past 10 years.

The company has in place a diversity policy and has a diversity committee in place which implements actions points of the diversity policy. Within the STIB more than 40 nationalities work together.

The company has also in place an extensive medical service which provides also assistance for cases of psycho-social risks. It is an external service that provides confidential advice but paid by the company.

There are numerous company specific collective agreements setting out standards for specific advantages/benefits, working time, pensions, incapacity, or classification (wages) of functions.

Working time has been annualised and working hours are between 7 to 8hrs per day with a limit of 37h30 hours per week with the effective possibility to work up 40 hours per week (having thus additional compensatory rest days). Overall overtime occurs in particular for maintenance less for drivers. Overtime hours have decreased over the recent past.

Over the past there have been many discussion regarding the working hours and intensification of working time. It has been argued by the workers side that the bus driving schedule have become tighter and sometimes not realistic taking into account traffic or deviations. Thus breaks have sometimes shortened. This has contributed to increasing stress at the workplace in particular for bus drivers. It has also affected metro drivers taking into account the frequency of metros and possible technical issues causing thus delays. Delays have a direct impact on working hours for drivers.

The company has also a number of extra-legal benefits in place: such as end of year bonus, lunch vouchers, hospitalisation insurance, free utilisation of STIB, DE LIJN and TEC services (also for members of family), as well as reductions with the train services (SNCB); extra-legal benefits for children of the employee, and 35 days paid annual leave.

The salary increases each year with acquired seniority. Wage levels have been increasing slightly above the inflation rates over time.

The company has an in-house training centre and has a training policy in place providing also continuous training opportunities. The company claims to have more than 300 types of professions and thus offers a variety of careers and career evolutions. In 2014 more than 5000 workers benefited from formal training opportunities (more than 300.000 hours of followed training courses). Training investments have increased over the past 10 years.

Overall impact on social conditions and the protection of staff

There is no transfer of staff or competitive tendering in Belgium for urban public transport services. In fact, only in Wallonia and Flanders public operators have a contractual obligation to subcontract up to 50 % of operational lines. This practice does not have a direct impact on social conditions due to the fact that sector level collective bargaining takes place for public and private employers. In addition, directly awarded contracts determine that employees from private companies shall be employed on similar employment conditions as those employed by the public operator. De facto, there is thus no

⁷ http://www.rtf.be/info/regions/detail_la-stib-devra-reduire-ses-frais-de-fonctionnement?id=7946592

⁸ Data comes from the 2014 Financial report from STIB: https://www.stib-mivb.be/irj/go/km/docs/STIB-MIVB/INTERNET/attachments/Rapport_Financier/STIB2014_Rapport%20Financier_Fr_low.pdf

labour competition among public and private operators (or between private operators). The difference lies rather in details. Subcontracting is used also strategically – to use it for early morning shifts or late evening, in rather rural areas (on the call buses) or for pupil services. Services that have to be carried out at odd hours and where services may be cut in two shifts during the day making thus in practice working conditions more difficult for workers in subcontracted private companies. In Flanders and Wallonia decreasing passenger kilometres were noted and affected mainly those working for private companies (subcontractors). The union representing workers of private companies estimated that there has been a decline by 7- 8% of employees among private operators. Due to these restructurings in particular within De Lijn a collective agreement has been concluded in 2015 to maintain employment and to set up (by using the Social Fund of the sector) a “pool” where laid off staff would be transferred and which would have to be re-engaged with priority in case new work opportunities arise. In order to ensure that conditions are applied of the collective agreement with De Lijn and the private operators – the private companies and De Lijn have set up an independent controlling body named VIA-SOC. This body regularly controls that social conditions are applied among private companies. Thus in practice also de facto no social dumping exists and social conditions are regularly controlled.

The most important insecurity for workers in Flanders and Wallonia among employees working for public operators come from the political discourse which tends to favour the possibility to award via competitive tendering. In Flanders this idea is more pronounced than for Wallonia. This has generated some heated debates among workers and unions. Nevertheless, no clear intentions have been revealed during the time of study in this regard. These plans seem to have been used to pressure operators to be more efficient and to make budget savings.

Summary and conclusions

The following key points summarise the situation in Belgium:

- There are only three competent authorities in Belgium – the Ministries for Transport in the Federal entities Wallonia Region, Flanders Region and Brussels Capital Region awarding directly the contract to an internal operator.
- The regions Wallonia and Flanders have to combine rural transport and city transport in one contract of operation. Rural population disparities and difficulties to attract new users in medium sized cities contributed to a decrease of passenger kilometres in those areas by ending specific trajectories in the Region of Flanders. Operational contracts in these regions provide for the obligation to make use of subcontracting of up to 50%. On the other hand, in the Brussels Capital Region, high investments occur to extend the network and to replace more bus lines by tram lines to further increase the share of citizens making use of urban public transport regularly. No subcontracting occurs in Brussels on the other hand.
- Internal operators have to operate under the logic of an efficient operator (less creation of debt and better investment strategies, better use of resources). This logic had also an impact on the human resource management. On the one side to improve for example training of workforce on the other hand it has led to a review of bonuses and compensation to focus more on competencies and performance.
- Workers within public and private operators work in the majority of cases under a permanent employment contracts full-time.
- Women representation in companies ranges from 8 to 18%.
- Public operators provide numerous extra wage benefits and advantages compared to private companies.
- Working conditions compared between workers in the public and private companies do not differ significantly in terms of wages and conditions at work. Nevertheless, private companies have to provide the less attractive services at more odd working hours (unattractive shifts early morning or late evenings) or have less possibilities to

provide for more informal types of training (not formal training set by law) or extensive health care services.

- The unions claim that the political discourse to introduce competitive tendering has led to an increased employment insecurity among workers in the sector thus affecting motivation over time in particular among employees in Flanders.

Annex 3 Bulgaria

The following report describes mainly the situation of urban public transport for Sofia - the capital of Bulgaria and Burgas - one of the biggest cities in the country, providing some information about general rules and market organization.

Market organization of urban public transport in Bulgaria

The Bulgarian urban transport is organized at local/city level being also subject to local rules for employment conditions. There is no comprehensive data available that could provide an overview over the market organization in Bulgaria. The following table describes the situation in the most important cities in Bulgaria (next to Sofia and Burgas which are further described in detail below). Overall, it was estimated that there are about 50 competent authorities for bus services which are the municipalities. The information is based on research and information provided by interviewees.

Table 1.2 Overview market organization in 5 big cities in Bulgaria

	Plovdiv	Varna	Ruse	Stara Zagora	Pleven
Number of inhabitants⁹	368 983	348 058	159 798	149 266	111 567
Internal operator or private company	Private operators only – 7 companies, 29 bus lines and 7 shuttle bus lines (For the period 2014 – 2015 there were 3 cancelled tenders for transport operators with no awarded winner)	Internal operator and 5 private companies	International company (35% ownership of the city competent authority, 65% ownership EGGED) – local branch - only the trolleys infrastructure is public but not the lines	Internal operator and private company (Dec 2014 a contract between the private company Avtobusni Prevozi – Stara Zagora and the Municipality is signed after a competitive tender)	Internal operator and private company
Types of transport provided	Buses and shuttle buses	Buses, trolleys and shuttle buses	Buses and trolleys	Buses and trolleys	Buses, trolleys and shuttle buses – the second longest trolleys lines in Bulgaria after Sofia
Company collective agreements	No	Yes - only at the public company - Varna urban transport	Yes - at the only one private-public company - EGGED Bulgaria.	No	Yes - only at the public company - Trolleybus transport Pleven
Change of operator and staff			Egged Ruse has adopted the whole staff of the public company that was their predecessor		

⁹ Based on the Bulgarian official Unified system of civil registration and administrative services from 15th March 2015

Source: ICF - based on interviews carried out for this study.

It shall be noted that the status of the private operators is not clear after the study period. It was not possible to retrieve or obtain information as to whether private companies are subcontractors or if not under which status they operate, meaning whether private operators operate a certain number of lines because of a competitive tendering or if services are provided on a commercial basis. Also in the case of internal operators it has not been possible to get further indication whether all services are operated under a public service contract following the rules of the PSO Regulation. It shall be noted furthermore in the context of this study that according to information of the trade unions of the sector collective bargaining occurs only among internal or public operators meaning that private operators only need to take into account minimum terms and conditions as set out by the law.

Main Operators

The following table provides an overview of the most important operators in Sofia and Burgas.

Name	Sofia Autotransport	Sofia Electrotransport	Metropoliten	Burgasbus	Private Operators
City	Sofia	Sofia	Sofia	Burgas	Sofia and Burgas
Public/ private	Public	Public	Public	Public	Private
Transport Mode Covered	Buses	Trolleys and Trams	Metro	Buses and Trolleys	Busses
Km. covered	860	105.5 km for trolleys and 208 km for trams	32	-	-
Number of Vehicles	563	111 trolleys and 190 trams	No information available	170 both busses and trolleys	-
Number of Lines	66 ¹⁰	15 for trams and 10 for trolleys	2	47 bus lines and 2 trolley lines	16 lines in Sofia and 1 suburban line in Burgas
Number of Employees	1976	2083 employees, 753 of them are drivers	1568	848	-

Source: ICF survey

Institutional organization

Public transport in Sofia

The Sofia public urban transport is managed mainly by four companies:

- **Sofia Autotransport EAD** – the company is in 100 % municipality ownership and deals with the bus transport in the capital. By the year 2002, Sofia Autotransport covers all bus lines in the city. Several lines are subcontracted to private operators. Currently 16 bus lines are subcontracted to private operators. These are Karat S, Union Ivkoni, Eridantrans, MTK. It is expected that after the concessions period ends in mid-2016,

¹⁰ Urban and suburban lines included

Sofia Autotransport will take over their control again. There are a company level trade union organizations.

- **Sofia Electrotransport EAD** - the company is in 100 % municipality ownership and deals with the tram and trolley transport in the capital. There are a company level trade union organizations.
- **Metropoliten EAD** - the company is 100 % owned by the Sofia municipality. It has two main activities – subway transportation and investment in development and expansion of the existing metro lines. There are a company level trade union organizations.
- **Urban Mobility Center EAD** - the company is 100 % owned by the Sofia municipality. There is a company level trade union organization. The Urban Mobility Center has the following specific tasks: analysis for development of environmental and operational aspects of public transport in Sofia; implementation and operation of intelligent transport systems for public transport; Organization, management, supervision and finance of the Sofia public transport as an integrated process; Issuing of transportation documents and collection of the transportation revenues; Operation of information-management system for monitoring and supervision of the traffic, based on GPS-identification; Operation of unified automated fare collection system (ticketing system); Advertising and information services in public transport; Finance, construction, operation and maintenance of parkings, garages and open space parking spaces in Sofia – owned by Sofia Municipality; Lending of parking spaces;

The Municipality of Sofia developed an entire policy for urban bicycle accessibility. It has already started a tender procedure for execution of the project for bicycles for rent in the capital. It is still in progress.

Public transport in Burgas

The Burgas urban public transport is managed by Burgasbus EOOD which is 100 % owned by the Burgas Municipality. The company deals with the bus and trolley lines in the city. Burgasbus has company level trade union organizations which defend the employees' interests. Some suburban bus lines are subcontracted to a private operator ("Komfort" company). Burgas is the first Bulgarian city with a bicycles-for-rent system starting work in the summer of 2015. The operation is granted to a private operator from the Municipality. There are no trams or subway in Burgas.

Regulatory Framework

General regulatory framework urban public transport

The following Acts and regulations are relevant for the entire urban public transport sector in Bulgaria.

- Road Transport Act

This is a general act for the road transport. Its provisions concerns:

- public domestic and international passengers' and freight cars carried out by Bulgarian or foreign carriers;
- transport on own account;
- control during transportation;
- special rules for contracts for the carriage of passengers and cargo

- Road Traffic Act

This law governs the rules of the road, open to public use, the requirements for vehicles which drive on these roads, the requirements for qualification for drivers of vehicles, rights and obligations of participants in the traffic and the relevant public departments and their official representatives as well as the coercive measures that apply, and the penalties for violating the provisions of this law and issued on the basis of normative acts.

- Other relevant Acts:

- Decree № 2 of 15 March 2002 on the conditions and procedures for approval of transport schemes and the provision of public passenger buses. Decree № 2 is aligned with the EU Regulation 1370/2007. Its provisions give the opportunity for direct award to internal operators. The majority of the Bulgarian operators are actually internal. Therefore they are directly awarded. Competitive tendering is possible for private operators both according to a specific section of the Decree №2 and the Public Procurement Act. The Decree № 2 in Article 16 and the Regulation 1372/2007 in Article 4 specify that the duration of public service contracts should not exceed 10 years for urban transport and 15 years for trams and subway.

The practice shows that the contracts are for 10 years for bus and rail services. The public service contracts include delivery of passenger services, infrastructure management, bus depot and rolling stock. The competent authorities do not require subcontractors for specific activities. No social standards and criteria are mentioned for tendering processes, or transfer of staff. A trend that can be observed in the country is that the small municipalities, where the financial results usually are negative, prefer to give away the urban transport services to private operators through tendering processes. As mentioned by an interviewee from an urban transport company, it unfortunately often observed that protection of private interests and lobbying in favour of certain private companies at municipal level occurs¹¹.

Decree No 2. regulates the terms and conditions for travel on urban public transport on the territory of Sofia Municipality. It fixes the travel fee and the penalties for violators. The Decree is the only enactment which regulates the tram transport and the subway.

Regulatory framework employment conditions

- Labour Code

The Labour Code is a general code valid for all Bulgarian workers. It also lays out employment conditions for workers in the urban public transport sector.

- Collective Agreements

There is a collective agreement at sectoral level in place which is not legally binding for the described companies. Nevertheless, this agreement is used as a very important basis for company level bargaining. In general, all public operators do sign collective agreements on a company level. Therefore the majority of the employment conditions are according to the negotiated social standards in the collective agreements on a company level. These agreements cover all professionals active in the relevant transport company.

- Others

- Health and Safety Working Conditions Act;
- Decrees about the time schedule of the workers;
- Decree about the work clothes;
- Decree about the work with videodisplay;

¹¹ The statement is direct translation of answers to the questionnaire, provided by interviewee from an urban transport company.

These legal texts are common for all sectors. They are also part of the regulatory framework of the urban transport.

Social partners

The operators which are subject of this study have company level trade union organizations in place. They are members of the two trade union confederations on a national level - CITUB and KT Podkrepa through their membership of the respective sectoral federations. The federation of transport trade unions is the sectoral federation which represents the transport workers of CITUB /Confederation of independant trade unions in Bulgaria/. FTW Podkrepa is the sectoral federation which represents the members of KT Podkrepa /Konfederation of labour Podkrepa/. There are also employers' organizations such as the National Association of bus transport in Bulgaria, Varna Association of carriers and others. They represent their members in their relationship with the authorities.

It was noted by the trade union that trade union representation can be only found among public/ internal operators and that there is no company specific trade union representation in the sector among private operators. Thus for the purposes of this study it shall be noted that employment terms and conditions differ between internal/public operators and private companies due to the fact that internal/public operators conclude company specific collective agreements that increase minimum legislative employment standards and salaries.

Case Studies

Sofia Autotransport EAD

Background information

As already mentioned, Sofia Autotransport EAD is 100 % owned by the Sofia Municipality. The company manages 66 urban and suburban lines which are evenly dispersed around the city territory according to the needs and not to geographical considerations. The company is divided into three departments. Each of them covers different regions of the city and owns a depot and rolling stock. Sofia Autotransport has an overall market share in passenger transportation (all modes of transport including private cars) of 45 %. The company strictly follows all country regulations. There is a company level collective agreement in place.

Although the company does not outsource any of the urban transport functions, 16 bus lines are tendered to subcontractors. Usually the subcontractors are chosen after a tendering process. But Sofia Autotransport EAD is directly awarded its contract by the Municipality. The latest contract was renewed during 2014 and was granted for a 10-year-period. Each company has an own collective agreement which defines the social conditions for the employees.

The company and its employees

Sofia Autotransport EAD has 1976 employees. All of them are full time employees with unlimited contracts. These are not only drivers but also operational staff, who take care of the technical condition of the vehicles, the cleaning staff and others, and administrative and managing staff. A company level collective agreement which specifies the company specific working conditions is applicable to most workers (those that are unionised, those that are not unionised can adhere for a certain payment). The following table lays down trends of social conditions in the company for the past ten years.

Table 1.3 Development of working conditions overview

Year	2004	2009	2014
Wages	383 BGN	-	804 BGN (210 % increase)

Night Work	40 % increase of normal hourly pay	40 % increase of normal hourly pay	40 % increase of normal hourly pay
Working Experience	0.9 % increase of the basic salary per year of work experience	1 % increase of the basic salary per year of work experience	1 % increase of the basic salary per year of work experience
Overtime	-	60 % increased payment from the daily wage for working days; 80 % for weekends; 110 % for official holidays	60 % increased payment from the daily wage for working days; 80 % for weekends; 110 % for official holidays
Bonus	0 BGN	-	50 BGN cash benefit (starting 2015)
Social Benefits	-	Means for cheaper food (usually additional cash for food); Booking holidays in company owned recreation facilities	Food vouchers; Booking holidays in company owned recreation facilities
Pensions	No additional pension scheme	No additional pension scheme	No additional pension scheme
Trainings	60 hours only for the drivers; yearly trainings for professional refreshment	60 hours only for the drivers; yearly trainings for professional refreshment	60 hours only for the drivers; yearly trainings for professional refreshment

The following table provides further details on working hours per category of staff.

Table 1.4 Working hours per profession

	Weekly limit of working hours 2004	Weekly limit of working hours 2009	Weekly limit of working hours 2014
Drivers	40 hours (legal limit for drivers 56 hours including overtime)	40 hours (legal limit for drivers 56 hours including overtime)	40 hours (legal limit for drivers 56 hours including overtime)
Operational Staff	40	40	40
Administrative and managing staff	40	40	40

Only drivers and technical service workers do overtime. Despite the fact that the law restricts the uncontrolled overtime, the stress from the overloaded traffic in the capital as well as the few days for relaxation, is reported to lead to increase in illness among employees. As a whole the trend over the past 10 years is intensification of the drivers' work load and lack of drivers to take over additional work load.

The company is the leading for bus services in urban transport for years. Its dependency on the Municipality sometimes disturbs change processes as these are difficult to implement and thus are rare. Thus the company is highly dependent on the political level for company specific employment policies. However it is involved in many projects for renovation of the rolling stock and the whole urban transport infrastructure which has been asked by the Municipality. The trade union organizations on

company level strive for better social conditions in the future and hope that the European regulations will help them.

Sofia Electrotransport EAD

Background information

Sofia Electrotransport EAD is owned entirely by the Sofia Municipality. It deals with the tram and trolley transport in the city. It consists of three tram depots and two trolley depots. The company does not outsource any of its activities. On the contrary, it maintains the specific infrastructure and the vehicles on its own. The services of the company are contracted through a direct award by the Municipality. The latest contract was signed in 2013 for 10 years. No lines are currently tendered to subcontractors. The company has been renovating the rolling stock and the infrastructure recently - 50 new trolleys and 20 new trams were bought by the company in 2014. About 30.82 % of the distance is the Sofia Electrotransport share among all other modes of urban public transport Sofia. This means about 95 348 252 passengers per year.

The company and its employees

In 2014, 2083 employees worked for Sofia Electrotransport. 753 of them were drivers. All of the 2083 are full time employees with unlimited employment contracts. Only few of them who work in the technical service area have extended daily shifts. It happens from time to time that workers are hired for a short period and a specific project only. A company level collective agreement which specifies the company specific working conditions is applicable to most workers (those that are unionised, those that are not unionised can adhere for a certain payment). The collective agreement is an auxiliary instrument which regulates the social conditions in the company as well as sets the objective to reduce the number of aggressions against drivers. The latest salary increases in 2014 were only obtained after a severe industrial conflict. The following table describes most common trends of the past ten years:

Table 1.5 Development working conditions Sofia Electrotransport EAD

Year	2004	2009	2014
Wages	-	1.5 % - 2.5 % average increase in 2007 when Bulgaria joins the EU	5 % average increase in 2013 and the Trade union; the current wage is approximately 800 BGN
Night Work	40 % increase of normal hourly pay	40 % increase of normal hourly pay	40 % increase of normal hourly pay
Working Experience	1 % increase of the basic salary for each year of experience	1 % increase of the basic salary for each year of experience	1 % increase of the basic salary for each year of experience
Overtime	-	60 % increased payment from the daily wage for working days; 80 % for weekends; 110 % for official holidays	60 % increased payment from the daily wage for working days; 80 % for weekends; 110 % for official holidays
Bonus	-	-	60 BGN for drivers and 40 BGN for other staff; the bonus is often reduced in quantity by sanctions and bans
Social Benefits	-	Means for cheaper food (usually additional cash of 13 BGN per day for food)	Means for cheaper food (usually additional cash of 13 BGN per day for food)

Pensions	No additional pension scheme	No additional pension scheme	No additional pension scheme
Trainings	Preliminary training before starting work in the company; a second induction when beginning work; no other trainings considered	Preliminary training before starting work in the company; a second induction when beginning work; no other trainings considered	Preliminary training before starting work in the company; a second induction when beginning work; no other trainings considered

The following table outlines the development of working hours within Sofia Electrotransport EAD.

Table 1.6 Development working times Sofia Electrotransport EAD

	Weekly limit of working hours 2004	Weekly limit of working hours 2009	Weekly limit of working hours 2014
Drivers	40 hrs with up to 30 hours per month overtime	40 hrs with up to 30 hours per month overtime	40 hrs with up to 30 hours per month overtime
Operational Staff	40	40	40
Administrative and managing staff	40	40	40

Unfortunately there is a great turnover of staff in the company. The overtime and the low wage levels demotivate workers. There is no specific demographic policy for the company. In addition issues about security of staff are often at hand. Aggressions against drivers have been an issue for years and occur frequently. The trade unions claim that they contribute as much as possible to improve the situation for drivers.

In conclusion, Sofia Electrotransport has budgetary issues and its relationship with the Municipality slows down the processes to change status quo. According to the trade union, due to the conservatism of the management many of the trade union proposals were restricted or rejected. The EU regulations are considered only indirectly through the local legislation. The trade union considers that the company definitely needs reforms.

Metropoliten EAD

Background information

Sofia Municipality entirely owns Metropoliten EAD. The company is certified to work not only in the area of transport of passengers but also in investment. The reason is that it expands dynamically its network in order to cover the whole city. Sofia is actually the only city in Bulgaria with a subway. There are two lines of the metro so far. But the third line is already under construction. Metropoliten is the most recent and most promising company in the Sofia public transport in terms of increase of passengers and turnover. With its only 32 km so far, Metropoliten manages the transportation of about 50 000 passengers per hour. Just for the purposes of comparison, the other types of transportation service about 4 000 – 5 000 passengers per hour. The subway is fast and a secure way of transport and is preferred by more and more citizens of the capital. The number of passengers increased drastically during the past 10 years – from 21 900 000 for 2004 to 83 842 000 for 2014. Currently Metropoliten has a share of 27.07 % of the distance covered by the public urban transport with all its types of transportation. The company has a directly awarded contract with no limited period shown in the contract. No parts of business are subcontracted. Only the ticket validation automates are maintained by an external company because of the specific mechanism. The company strictly follows all country regulations and Municipality orders.

The company and its employees

Metropolitan EAD managed in 2014 1568 employees. 16 % of them are drivers, 80 % work as operational staff, the rest (4 %) are administrative personnel. 32 % of all employees are women. All employees are bound by the company level collective agreement. However the enterprise refers for some of the provisions to the sectoral collective agreement. The sectoral collective agreement is not obligatory for the sides that are signing a contract. It is just a recommendation to use it. The company level collective agreement foresees many improved social advantages for workers such as financial support during illness, food supplements for each working day, additional annual and parental leave rights, as well as recreation and sports activities for workers.

The workers in Metropolitan are full time employees with permanent contracts. Typically new employees are engaged with a part-time contract for 6 months which is seen as a probationary period. After that the employee signs a full-time contract. Another exception are workers in the technical service area, who have extended daily shifts (shift work contracts). The company states that there has been an intensification in personnel's work in the recent years due to the increase of the number of passengers and new metro stations. However the trade union expressed a divergent opinion. To their opinion, intensification of work is not relevant because of increase in staff levels and strict daily shifts. The following table provides an overview of development of social conditions and trends.

Table 1.7 Development working conditions Metropolitan

Year	2004	2009	2014
Wages	-	-	Up to 5 % increase each year
Night Work	-	-	-
Working Experience	1 % increase of the basic salary for each year of experience	1 % increase of the basic salary for each year of experience	1 % increase of the basic salary for each year of experience
Overtime	Increased payment with coefficient 1,6 from the daily wage for working days; 1,85 for weekends; 2 for official holidays	Increased payment with coefficient 1,6 from the daily wage for working days; 1,85 for weekends; 2 for official holidays	Increased payment with coefficient 1,6 from the daily wage for working days; 1,85 for weekends; 2 for official holidays
Bonus	No bonus system	No bonus system	No bonus system
Social Benefits	-	Means for cheaper food and medical care	Means for cheaper food and medical care
Pensions	No additional pension scheme	No additional pension scheme	No additional pension scheme
Trainings	Initial training ending with an exam; no successive trainings	Initial training ending with an exam; no successive trainings	Initial training ending with an exam; no successive trainings

The following table describes the development of working hours.

Table 1.8 Development working time Metropolitan

	Weekly limit of working hours 2004	Weekly limit of working hours 2009	Weekly limit of working hours 2014
Drivers	Up to 48 hours	Up to 48 hours	Up to 48 hours
Operational Staff	Up to 48 hours	Up to 48 hours	Up to 48 hours

Administrative and managing staff	40	40	40
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It is interesting to point out that the company claims that there are no overtime hours. However they note up to 48 working hours per week for the drivers and the operational staff. According to the Regulation 50 of the Ministry of transport, information technology and communication from the year 2001 the working hour week is regulated to 40 hours/ per week, the trade union define these 8 hours more as overtime. Metropolitan has no demographic policy for attracting young people and managing the aging staff issue. The company considered that no demographic policy was necessary. The turnover of staff is in the normal levels. Metropolice organization provides for security in the subway and panic buttons which are connected to the Metropolice are installed for drivers and ticket officers. Despite the described measures, the company considers that there is actually no security policy for staff in place.

Burgasbus

Background information

Burgasbus EOOD is a 100 % owned company by Burgas Municipality. The company covers the bus and trolley transport in the city. It has a directly awarded contract for the period of 10 years. However the company subcontracts several suburban lines to one subcontractor company. Maintenance of the infrastructure and the vehicles is ensured by Burgasbus. There are 47 bus lines and 2 trolley lines that operate in the whole city. The network of roads of the public urban transport in Burgas is considered a well-developed one. The Burgas Municipality is very active and participates in a number of EU projects for subsidies in the sector. Burgas is the first city to replace all old vehicles in urban public transport with new ones.

The company and its employees

Burgasbus EOOD employed in 2014 about 848 employees. A company level collective agreement which specifies the company specific working conditions is applicable to most workers (those that are unionised, those that are not unionised can adhere for a certain payment). Most of the workers are full-time employees with permanent contracts. But there are exceptions drivers working on specific services provided by Burgasbus to companies are engaged only for 4 hours – when they drive in and then out the passengers from their working place. Burgasbus often participates in tender processes in order to improve its competitiveness.

The following table describes the development of social conditions for workers in Burgasbus for the past 10 years.

Table 1.9 Development of working conditions at Burgasbus

Year	2004	2009	2014
Wages	226 BGN	449 BGN	533 BGN
Night Work	No information available on pay	No information available on pay	No information available on pay
Working Experience	-	0.9 % increase of the basic salary for each year of experience	0.9 % increase of the basic salary for each year of experience
Overtime	60 % increased payment from the daily wage for working days; 80 % for weekends; 110 % for official holidays	60 % increased payment from the daily wage for working days; 80 % for weekends; 110 % for official holidays	60 % increased payment from the daily wage for working days; 80 % for weekends; 110 % for official holidays

Bonus	No bonus system	No bonus system	No bonus system
Social Benefits	-	Food vouchers (vouchers for food shops and supermarket and food coupons (cash))	Food vouchers (vouchers for food shops and supermarket and food coupons (cash))
Pensions	No additional pension scheme	No additional pension scheme	No additional pension scheme
Trainings	-	-	Every three months there is a training for health and safety and evacuation in emergency situations; initial training for start

The following table provides an overview of working hours at Burgasbus.

Table 1.10 Development of working hours in practice at Burgasbus (not legal or company level collectively agreed working time)

Practice hours	Weekly limit of working hours 2004	Weekly limit of working hours 2009	Weekly limit of working hours 2014
Drivers	48	48	48
Operational Staff	48	48	48
Administrative and managing staff	48	48	48

Burgasbus has only few job openings. In fact this is one of its major problems – the aging of workers. Another issue is the recently changed rules for drivers' applications. The drivers should invest around 1500 BGN in initial training before applying for a job position in the urban public transport. This is considered as an important investment in particular for younger workers.

There is also no defined security policy for cases of aggression. It was considered that intensification of work has not much changed over the past ten years.

Overall Impact on Social Conditions and Conclusions

In most big cities urban public transport contracts are awarded directly to an internal operator. Smaller municipalities or cities (outside of Sofia) tend to award services to local Bulgarian private operators. International operators are not yet significantly represented in the Bulgarian urban transport market but are increasingly entering. Nevertheless, the use of tendering processes have increased over the recent past but it is not clear to what extent they are a typical feature of the Bulgarian urban transport market. Currently, the situation is not very clear with regard to how services are awarded to private operators. According to the trade union a number of municipal operators have been privatised long before the accession to the European Union. Thus the issue of transfer of staff was considered so far as not relevant. Representatives of the sector, apart the sectoral trade union FTTUB seemed not familiar with the European regulations concerning this sector. Whether reference to social conditions in direct awards or tendering procedures exist is not clear, the sector trade union considered it to be uncommon due to the fact that this has not been a common practice so far.

An important characteristic of the sector is the current need for renovation in infrastructure and rolling stock and a general restructuring of public owned companies towards a logic of a profit-making company. More companies also rely on subcontracting lines. Research in this sector has been proven difficult. It has been difficult to approach operators in this sector and there is a lack of available public information.

In general, the urban public transport sector is not considered as attractive for workers due to low wage levels and long working time. High staff turnover is often a reality among bus and trolley bus operators. Employment and social conditions have improved to some extent with wage levels having slightly increased (over the whole period of the past 10 years when taking into account cost of living increases and inflation increases). In some cases workers receive now additional bonuses. Mostly companies try to compensate for low wages by the provision of food vouchers and coupons delivered in cash to workers. There are no additional pensions or health care schemes in place. Training policy is almost not existent – training is mainly observed at induction. No policies for career planning or promotion within the hierarchy are in place. Some companies have policies in place with regard to security of drivers to prevent aggressions or protect drivers from third party aggressions. This issue has been increasing over the recent past.

There is a sector level agreement in place but it only sets the framework for company level bargaining and does not set sector specific minimum employment conditions. Among all public operators company level collective agreements are in place and company agreements are often not similar. . However in private companies, trade unions are less or not present according to the sectoral trade union and workers are likely to be less protected with less favourable employment standards compared to public companies. Company collective agreements improve employment standards in favour for workers compared to national or local legislation. They are the most important way for improving social standards in the sector.

Special thanks to all interviewees, who took part in the research:
 Orlin Pranjev, Director of the Innovation projects department, Sofia Electrotransport EAD
 Anton Angelov, PhD, Researcher of the development of the public urban transport in Bulgaria
 Emilia Ivanova, HR Specialist in the Sofia Electrotransport and a chairman of the trade union organization of the company
 Maria Georgieva, A chairman of the Sofia Autotransport EAD trade union organization
 Tatqana Pachkova, tickets officer and a chairman of the Metropolitan EAD trade union organization
 Dilqana Stefanova, Metropolitan EAD
 Prof. D-r Engineer Stoyan Ivanov, Executive Director of Metropolitan EAD
 Todorka Popova, a chairman of the Burgasbus EOOD trade union organization
 Svetoslav Karabadzakov, HR Specialist in Burgasbus EOOD
 Daniela Zlatkova, Executive Secretary, Mila Nikolova, Sector Responsible, FTTUB, sectoral trade union

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Report was prepared by **Diana Mihova** for the purposes of the Social Conditions in Public Urban Transport Companies in Europe research.

The Report is based on the interviews with the listed persons and on desk research including:

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Annex 4 Czech Republic

Background

Market organisation of urban public transport in the Czech Republic

Institutional organisation

The term urban public transport (UPT) in the Czech Republic means the public transportation of people in urban areas with an organized system of lines and stations/stops which is operated by qualified personnel using buses, trams, trolley buses or other means. This type of service is ordered directly by municipalities via a carrier contract. Thus defined UPT systems however do not exist de jure – the operation of UPT networks is governed by two pieces of legislation (see below) and each UPT segment (bus services, trams and trolleybuses) is regulated by different legislation, i.e. the operator must respect a range of legislation, even though UPT networks are usually managed by a single operator.

Moreover, urban public transport is often complemented by and linked into suburban and inter-urban transport systems. Currently in the Czech Republic in a number of regions there is a tendency to link UPT systems (run by municipalities) and regional transport systems (organized by regional authorities) so as to create and develop integrated transport systems which tends to complicate the analysis of this sector. No institution (the Czech Statistical Office, the Ministry of Transport of the Czech Republic, employer associations, trade unions) in the Czech Republic has data referring solely to the UPT sector (the number of firms operating in the sector, number of employees, number of vehicles etc.). The Czech Statistical Office only gathers data for urban and regional transport (together).

Regulatory framework

General regulatory framework urban public transport

The main legal norms governing the operation of UPT systems in the Czech Republic consist of the following:

- 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.

This "dual-tracking" creates a number of problems according to the Association of Transport Companies in the Czech Republic – operators of urban public transport systems that function as one system are forced to follow two separate pieces of legislation which is reflected in terms of the relationship between UPT operators and the central administration authorities. The Ministry of Transport of the Czech Republic has no section devoted solely to urban public transport. The long-term goal of the Association of Transport Companies is that the UPT sector has one single partner with whom to liaise in terms of the amendment and creation of relevant legislation¹².

The major part of UPT services is not provided on a commercial basis involving carriers who assume a full commercial risk, rather, such services are commissioned in the context of so-called services for the transport of passengers according to Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road, and repealing Council Regulations (EEC) No 1191/69 and (EEC) No 1107/70. With regard to the Czech Republic, this regulation was in part implemented and further extended by means of Act no. 194/2010 Coll., on public passenger transport services and the amendment of related legislation. The basic

¹² See Macháček, 2012.

objective of the Act was to establish a procedure to be followed by the state, regions and individual municipalities with regard to the provision of transport services which, in §2, is defined as "ensuring services on all the days of the week particularly to schools and other educational institutions, public authority institutions, places of employment, public health facilities providing basic health care services, and so as to satisfy cultural, recreational and social needs, including return transport, thus contributing to the sustainable development of the whole of the relevant geographical area concerned."

The legislation also stipulates the division of roles in terms of the provision of transport services between individual territorial public authorities, i.e. that the state provides for nationwide public rail passenger services, that regional transport services are provided for by regional and municipal authorities (in the case of larger cities) and that regional authorities provide for transport services beyond the normal jurisdiction of the region where required

UPT services are therefore commissioned by the cities concerned. Such services can be provided by the city itself (internal operator) or by a hired carrier. The carrier must be in possession of an assigned licence, have an approved timetable and infrastructure capacity allocation and must ensure the provision of adequate vehicles, personnel, equipment etc. These regulations specify only the minimum required standards; however, the competent authority may on their own initiative impose stricter conditions (e.g. informational devices, conditions covering the transport of persons with reduced mobility, technical specifications in terms of the vehicles employed, etc.). The city selects a carrier either by means of a so-called direct award or via competitive tendering, i.e. the basic obligatory method usually employed for the selection of carriers. Competitive tendering is governed by Act No. 137/2006 Coll. on Government Procurement.

Candidates (carriers) submit their bids and proof of qualification based on a published notice concerning the initiation of a tender. The basic deciding criterion of such tenders consists solely of the economic advantage of a particular tender (i.e. the price), a fact that is criticized by trade unions because only the bidder who ensures the lowest operating costs can win the tender and, according to the unions, the only field in which there is potential for reducing costs is that of wages and salaries¹³.

The direct awarding of UPT services is, in accordance with Regulation No. 1370/2007 and Act No. 194/2010, allowed in the following cases:

- 1) The contract is concluded with the operator subject to the control of the respective public authority.
- 2) The contract is concluded with a carrier for transportation over short distances (up to 300 000 km per year) and for small financial amounts (€ 2 million).
- 3) There is a threat of disruption to public services (the contract may not exceed a period of two years).

The legal responsibility of the city for ensuring a transportation system consists not only of the physical responsibility for transportation itself, but also the economic responsibility for its funding. As already mentioned, the provision of services on a commercial basis does not make up a crucial element of UPT services, rather such services are commissioned in the context of so-called public transport services, and thus losses incurred by operators of public service transport services, supported by proven cost calculations (fuel, salaries, overheads, depreciation, etc.) are settled by the customer service body (i.e. the city in the case of UPT systems). Part of the payment of a demonstrable loss even consists of a reasonable level of profit on condition that such profit must be returned to the public transport sector (in particular investment in the transport fleet).

The share of revenue and thus the subsidy varies according to the service provided and the region (between 75% and 25%) – it is also influenced by the willingness and ability of the ordering party to

¹³ In this context, a respondent from ODS mentioned an upcoming amendment to the Act No. 137/2006 Coll., on Government Procurement, which shall allow other evaluation criteria, not only the price. The ordering party will thus be allowed to make decisions based on criteria other than the lowest offered price, i.e. there will be room for drivers' higher wage in the offer. However, this opinion is not shared by the other respondents (PM DP, ARRIVA).

subsidize operations. For example, in Prague sales account for approximately 25% of revenues and the remaining 75% consists of a subsidy¹⁴.

Further important legislation with respect to the area of public transport consists of Act no. 526/1990 Coll., on pricing and which regulates fares charged for public transport services. Furthermore, Ministry of Transport regulations have an important influence on public transport services with concern to public rail and road transport, regular public transport timetables, proof of the financial capacity of the carrier, procedures for compiling financial models and determining maximum amounts of compensation, provable losses with concern to public rail services, defined parallel public transport and so on.

No information is available on subcontracting in this sector, apparently it practically does not exist – according to respondents (the transport trade union – OSD) prices in this sector are so low that there is no scope for subcontracting.

Regulatory framework employment conditions

Labour relations are regulated by Act No. 262/2006 Coll., Labour Code and, within its framework, by collective agreements (both higher-level and company level) and individual employment contracts. Labour Code is applicable to all employees in the Czech Republic, no matter if their labour contract is permanent or temporary or part-time or full-time, although employment relations of certain groups of employees are subject to special legislation (not case of UPT). Labour Code, following the principle “what is not prohibited, is permitted”, regulates, inter alia, the following labour law relations: the way of origination, duration and termination of employment, working discipline, working conditions, working hours, breaks at work, overtime work, night work, sick leave etc. It also regulates the wage and reimbursement of wage, occupational health and safety, employee care, female and juvenile workers' working conditions, individual labour disputes, compensation for damage etc.

Regulations of collective bargaining can be found in the Labour Code and in Act No. 2/1991 Coll., on Collective Bargaining, as amended. It regulates the collective negotiations between the respective trade unions organisations and employers (only trade union can conclude collective agreement in the Czech Republic), the participation of the state, as the case may be, the purpose of which is the conclusion of an collective agreement. It regulates the requisites of the collective agreement, the procedure of concluding collective agreements, collective disputes, strike within a dispute related to the conclusion of a collective agreement etc.

Regulatory framework transfer of staff

National law does not cover this situation as a case for transfer of business and also the law organising urban transport does not foresee any transfer of staff nor did the authority demand this under the terms of reference.

Main operators

According to the Czech Statistical Office, sector 49.31 Urban and suburban surface public transport – consists of a total of 83 business entities¹⁵. Here it should be pointed out that the aforesaid NACE includes suburban transport, i. e. not only operators in the UPT sector. No data is available on the UPT sector specifically.

Largest operators in the sector are members of Association of transport companies of the Czech Republic (Sdružení dopravních podniků ČR, [SDP ČR](#)), which associates 19 urban public transport companies operating in the country's major population centres. Of these 19 companies, 18 are owned and established by municipal authorities and one is owned by Arriva Teplice part of the Arriva Group. All members of the association operate municipal bus services as well as 7 tram systems, 13 trolleybus systems and one metro system (in Prague). These transportation systems serve a total of nearly four million people (ca. 37% of the population of the Czech Republic). For a detailed overview

¹⁴ According Jiří Došlý, Prague Public Transit Company (Dopravní podnik hlavního města Prahy, DPP).

¹⁵ In 2013.

of the transport companies operating in the UPT sector, please see UPT companies in the Annex – again, the data includes companies that, in addition to operating in the UPT sector, are also involved in the suburban and/or interurban transport sectors.

Employment in the sector

Data on employment in the NACE 49.31 subsector is recorded by the Czech Statistical Office – again, data is available only for this NACE which includes suburban transport which, in turn, does not form a part of this study.

Companies and employees in 49.31 Urban and suburban passenger land transport

Year	2004	2008	2009	2010	2011	2012	2013
Number of active firms	n. a.	84	85	87	82	79	83
Average number of employees	n. a.	31,059	30,971	30,272	29,377	29,216	28,737

Source: Czech Statistical Office

Of this number, the 19 largest transportation companies in the Czech Republic employed 20,628 people in 2013. Association members saw a decline in the number of employees of 16.5% during the period 2004–2014. According to employers and trade unions in the sector there has been a problem with a shortage of drivers over the last ten years – this is true not only for the UPT sector, but for the whole of the road transport sector. This occupation is clearly unattractive for potential young drivers; hence, the driver training system is producing no new recruits. At the same time the number of drivers generally is declining, partly because of retirement and partly because they are attracted by work abroad (mainly in Germany and Austria), where drivers are usually offered significantly better working conditions. The UPT sector, especially public transport companies, are also facing the loss of drivers to other sectors – road transport etc. Drivers previously employed in the UPT sector are particularly attractive to commercial transport carriers since it is generally assumed that these drivers are experienced and, moreover, resistant to stress. The departure of drivers from the UPT sector to other sectors has added to the general deterioration of conditions in the UPT sector. The situation is generally considered alarming by interviewees who see the only solutions to be the increasing of salaries in the sector and in the education system, via which it is seen as essential that the profession is made more attractive.

Social dialogue

Social dialogue and collective bargaining and its development in the field of urban public transport is no different from social dialogue in other sectors in the Czech Republic. Two unions are active in the UPT sector: The Trade Union of Transport, Road and Car Repair Services Workers of Bohemia and Moravia (Odborový svaz pracovníků dopravy, silničního hospodářství a autoopravárenství Čech a Moravy, [DOSIA](#)), which represents workers in the transport, road management and car repair sectors in Bohemia and Moravia, and the Trade Union of Transport (Odborový svaz dopravy, [OSD](#)). According to OSD representatives, the UPT sector is somewhat marginal for them and the main focus of their activities lies in other sectors (i.e. freight, air and water transportation). Employers in the sector are associated in the Transport Union of the Czech Republic (Svaz dopravy České republiky, [SD ČR](#)) employer organization – local integrated transport section which includes not only the urban public transport sector but also other types of public transport, especially suburban transportation, as well as rail structure manufacturers and producers of tram transportation equipment etc.

Collective wage bargaining occurs both at the company and the sector level. The dominant level of collective bargaining in the Czech Republic is the company level in general. Higher-level collective agreements and company level collective agreements are legally binding and closed HLCAs serve as

a framework or guideline to determine the form of company collective agreements in the sector. Company collective agreements may not modify the rights and obligations of employees to a lesser extent than those conferred by higher-level collective agreements. For this reason, HLCAs contain a slightly higher number of general provisions adopted from the Act No. 262/2006 Coll., Labour Code – there is thus potential for their development in company collective agreements. The parties involved in higher-level collective agreements consist of trade unions and employer organizations. Higher-level collective agreements are binding on those employers who are members of the negotiating employer organization that concludes the higher-level collective agreement as well as for employers who leave the employer organization during the period of validity of the collective agreement.

As far as the sector under discussion is concerned, a higher-level collective agreement is negotiated between DOSIA and the Transport Union – local integrated transport employer organization. The most recent HLCA was concluded for the period 1 January 2013 to 12 December 2016 and is binding for members of the local integrated transport sector, i.e. not only the urban public transport sector but for members working in other sectors. The HCLA covers around 20,400 employees.

Company-level collective agreements are concluded by the employer and the trade union organization. Trade unions operating within a company conclude collective agreements for all employees including those who are not members of a trade union. If a number of trade unions are active within a company, they act in concert on behalf of all employees with all the legal consequences thereof, unless they agree otherwise among themselves and with the employer. According to OSD estimates, company-level collective agreements cover 90% of all employees in the sector. The three largest UPT companies (in terms of employees) at which CLCAs have been concluded consist of the following:

- Prague Public Transit Company (Dopravní podnik hlavního města Prahy, [DPP](#)) – the latest CLCA was concluded for the period 2016 to 2017 covering 10,950 employees
- The Brno Public Transport Company (Dopravní podnik města Brna, [DPMB](#)) – the latest CLCA was concluded for the period 2014 to 2015 covering 2,716 employees
- The Ostrava Public Transport Company (Dopravní podnik Ostrava, [DPO](#)) – the latest CLCA was concluded in 2014 for the period 2014 to 2018 covering 1,923 employees

City of Prague

Background information

The City of Prague has about 1.24 million inhabitants and if including the larger urban zone than even up to 2 million inhabitants. The urban transport network is called the Prague Integrated Transport system (PIT) and integrates all modes of transport (including trains) within 11 tariff zones thus also including sub-urban zones. There are about 1,1 million passengers in 2014 which has remained stable over the past 10 years. The internal operator Dopravní podnik hlavního města Prahy, a. s. , Prague Public Transit Co, Inc (DPP) operates the network under a directly awarded contract by the City of Prague (competent authority) for metro, tram and bus lines. The actual network organiser is however the governmental agency called ROPID representing the city of Prague. This agency is in charge of planning of transport development, organisation of public tenders, financial allocation and monitoring of the functioning of the network and information systems.

The PIT includes 3 metro lines with a total length of 65,2 km and forms the backbone of the system. It has furthermore 22 tram lines (9 night lines) and 120 bus lines as well as a funicular train and 6 ferry lines. DPP also operates about 19 school bus lines and 16 sub-urban lines.

The latest contract has been awarded in 2009 for a period of 10 years up to 2019. The contract covers the maintenance of rolling stock (trams and buses) as well as maintenance of infrastructure. The contract only referred to general applicable employment conditions set under national labour law and referred to the company collective agreement. There was no important impact on social conditions of this contract. However this contract stated that each year 5% of the bus services will be put out for competitive tendering by the authority. Thus a number of tenders have been launched since then. DPP can also participate in these tendering procedures. The company has however also lost some

lines after tendering. Tenders are organised for single bus lines not several lots. Generally, the most important focus in these tenders are technical requirements for rolling stock and price. No social conditions have been mentioned in these procedures. One of the operators that has gained in market share in the Prague sub-urban region is Arriva.

No services are subcontracted. The company outsources cleaning of bus and tram vehicles as well as the maintenance of the metro trains.

The company and its employees

The company employed in 2015 about 10,950 employees of which 13,4% are women. More than 90% are employed on open-ended full-time contracts. Total staff has decreased over the past 10 years (2,000 staff members). Drivers represented about 39% of workers in 2014 and their share has been increasing over the past ten years while the number of other staff has decreased over the past ten years.

Staff turnover is for drivers about 5,3% and for other staff 3,1%. Staff turnover has remained stable over time.

The most important regulatory framework regulating social conditions is the company collective agreement improving working conditions in particular with regard to wages, wage components, other benefits, training and annual leave (one week in addition). Legal obligations set rather aspects for health and safety at the workplace and working time. Working time for drivers is 40 hours whereas for other staff 37 hours.

It shall be noted that the company has 21 union organisations in place and with whom the company has to negotiate an agreement with all representatives at an equal level thus requiring 21 signatures. There is no regulation concerning representativeness for workers unions. This case remains however quite unique and is typical for public companies.

Evolution of social conditions

The following sums up on the main developments concerning social conditions:

Contractual arrangements: Over the last ten years, there has been no significant changes concerning the proportion of staff on open-ended contract and full-time contracts, which have remained very high in both cases.

Wages: according to interviewees wages have increased since 2004 for all categories of staff. The latest company-level agreement on wages concerned the 2010 and 2015 period and has been unifying the wage system for all employees. Usually company collective agreements remain in place for 2 years this last one was an exceptional longer period. The general economic situation in the country as well as the general economic situation of the company are the key factors explaining more favourable working conditions. Variable remuneration has however increased in particular for pension benefits.

Remuneration for wage components: according to the company management remuneration of wage components has considerably increased while the union has claimed that this remuneration remained stable.

Other benefits: The benefits that are said to have improved where the union and management agree is pension benefits and liability insurance in cases of damage by the employee to the employer. The company found as well that recreation for children has improved as well as, meal vouchers, leisure vouchers and contributions to work anniversaries. On the other hand accommodation for employees has decreased and so have opportunities for family recreation. The life insurance for employees does no longer exist. Finally, annual leave, social support and support to the annual ticket to use the network for employees are benefits that have remained the same.

Sickness leave: .Sickness absences are about 7% for drivers, 2% for operational staff, and 4.5% for administrative staff. The sickness absence rate has been decreasing slightly over the past 10 years. This can also be explained by the fact that the first 3 days of sick leave are unpaid.

Training: The company has a training policy in place covering all staff. The training opportunities have improved over time. There is an internal-training centre available. In 2014 drivers have spent approximately 18 hours of training compared to 20 hours for operational staff and 25 hours of other staff.

With regard to working time it shall be noted that overtime occurs rather regularly in the company – in 2014 it amounted to 4.4%. Work intensification was not noted by drivers but rather for other staff. It was noted by unions that cost pressures do exist and the number of administrative staff is decreasing.

DPP also aims to ensure security of drivers and has installed video surveillance in all transport means and offers training on how to deal with passenger aggressions or how to have good relationships with customers. These security policies have however been put in place only after pressures by the union side.

It has been mentioned by the union that the company experiences recruitment difficulties over time in particular for bus drivers. The driving licence has been paid previously during military service, now this is to be considered a quite high investment for young people.

Transfer of staff

This study does not include transfer of staff. In the cases where the company has lost the competitive tendering for single bus lines no staff has been transferred. National law does not cover this situation as a case for transfer of business and also the law organising urban transport does not foresee any transfer of staff nor did the authority demand this under the terms of reference. DPP has been re-deploying staff on those lines and no staff has been made redundant as a consequence.

Conclusions

From this case study it is difficult to assess what the impact was for workers at the DPP once new legislation came into force and opened the possibility for authorities to launch competitive tenders. The company just recently experiences loss of operation of lines but has however a good market situation due to the fact that it disposes of important experience of the network and rolling stock. The union side has mentioned pressures by the authority concerning the operational budget. An important number of investments concerned the renewal of rolling stock and extension of the metro lines. The impact of recent tenders for DPP employees will thus have to be evaluated at a later stage.

City of Pilsen

Background information

Plzeňské městské dopravní podniky, a. s. (Pilsen City Transport Company, [PMDP](#)) is a public limited company 100% owned by the City of Pilsen. The main and most important activity is public transport operation in Pilsen. Transport is secured by buses, trolleybuses and trams (3 lines). Other services provided by the company are also closely related to transport (upper lead of railroad construction, supply and operation of the electronic dispatching and reservation system, public transport operation in the city surroundings, driving school, washing of vehicles, vehicle repairs including painting, etc.). The company also operates other services outside the UPT sector - three night services serve communities outside the Pilsen city boundary, disabled and retired citizens are served by the call-up "Senior Express" service, and two minibuses are employed for the transport of disabled schoolchildren.

The latest contract has been directly awarded in 2010 for a period of 8 years up to 2018, however, it has been prolonged up to 2020. No services are subcontracted. The company outsources cleaning of bus and tram vehicles.

The company and its employees

In 2014 the company employed 812 people¹⁶ (in 2004 according to the annual report the number of employees stood at 1,160) and the number is tending towards a decrease. Around 500 employees are drivers. The company does not employ temporary agency workers. All employees are covered by the Labour Code regardless of the length of employment or the nature of the employment contract (permanent/temporary contracts). New employees are recruited for a fixed time period; with concern to drivers, following the termination of fixed-term contracts, 99% of contracts are extended indefinitely.

Two trade unions are active in the company, both of which are members of DOSIA and with which both organizations cooperate. The UPT company concludes company-level collective agreements on a regular basis. Provisions concerning working conditions are dependent on the financial situation of the company which, to a great extent (due to the fact that the UPT company is 100% owned by the city) is influenced by the political situation at the city hall. Nevertheless, the trade unions consider working conditions in the company to be above average (compared to other companies operating in the UPT sector).

The working hours fixed by means of the collective agreement consist of 37.5 hours a week for all employees. As far as work intensification is concerned, both employers and unions agree that it is on the increase with regard to drivers due to a general shortage of drivers in the labour market. This is being reflected in an increase in overtime hours which, however, are paid in compliance with the Labour Code.

Evolution of social conditions

Wages: according to interviewees wages have increased since 2004 for all categories of staff. The average wage increase is 7% per year.

Training: The company provides driver training as required by legislation and has its own driving school. According to legislation, the company management is responsible for driver training and the company has a system that monitors the required training. In addition to mandatory training required by legislation (relating to drivers), the company provides training for other employees according to their requirements; such training concerns in particular relevant changes in legislation. The estimated number of training hours per driver per year is between 15 and 17 hours; training for other employees varies according to individual circumstances.

¹⁶ In 2014.



Transfer of staff

This case study does not include transfer of staff. PMDP provides UPT in Pilsen based on the direct award for many years, so the transfer of staff is not an issue.

Arriva

Background information

In the Czech Republic, ARRIVA Group¹⁷ operates ca. 2,000 buses, 35 trolley buses and 4 trains. UPT is of rather marginal importance for the entire group; the core of its activities consists in regional (interregional) passenger bus transport¹⁸. As estimated by the corporate management, the ARRIVA's share in the IPT sector is approx. 5%. UPT is mostly based on direct award, only two contracts for securing the UPT are concluded after competitive tendering – the only criterion in that process is the price. The standard duration of the contract is 10 years. None of the transport services is subcontracted.

The company and its employees

In 2014¹⁹, the Group was employing approx. 5,000 workers of which 83% were drivers, 7% operational staff and 10 % others. The UPT sector employs 2–3% of the total number of employees. Individual companies in the Group conclude their own collective agreements. Within the companies in the ARRIVA Group 17 CLCAs have been concluded

As far as the higher-level collective agreement concluded in the sector is concerned, this is also valid for all ARRIVA Group companies.

Working hours are 40 hours per week (corresponding to the limit specified in the Labour Code). Regarding work intensification, it is growing, according to the management, when the reason is a shortage of drivers.

The absolute majority of employment contracts are full-time contracts (90%). Most of the contracts are open ended contracts.

Evolution of social conditions

Wages: Wages in 2010–2013 were stagnating due to the economic crisis; nevertheless, the wage growth in 2015 was 5% for drivers and ca. 2–3% for the other employees (administrative and managerial staff). No difference is in the wage of a new driver and a driver after 10 years of employment. However, newly (due to the shortage of drivers in the market) new drivers receive even the attendance bonus.

Remuneration for wage components: These components are increased only if required by law.

Other benefits: The company provides their employees lunch vouchers, petrol allowance and employee fare.

Sickness leave: Sickness absences are about 5 % in 2015 (3.5% in 2009) for all employees.

Transfer of staff

This study does not include transfer of staff.

Conclusions

Working conditions in companies of the ARRIVA Group derive from legislation (Labour Code) and collective agreements. In comparison with e.g. PMDP, their working conditions are slightly worse. Nevertheless, it must be taken into consideration that the description concerns the whole Group – the UPT data are not available, which makes comparison with the other two companies under review impossible.

¹⁷ Organizational structure of the group is rather complicated, that is why we don't describe it. However, it can be found in annual reports of the companies.

¹⁸ Source: ARRIVA, <http://www.arriva.cz/o-spolecnosti/historie-arriva-transport-v-cr/>

¹⁹ Source: Interview with the management of ARRIVA, 7 January 2015.

Equally as DPP and PMDP, ARRIVA has been also facing a shortage of drivers in the long term – ARRIVA tries to resolve this shortage particularly by offering part-time jobs and recruitment campaigns.

Overall impact on social conditions and the protection of staff

The UPT sector is very hard to quantify. Statistics do not include UPT as such; it is only monitored as part of the road (bus) or railway transport. Conclusions of this analysis are thus more general and relate to the other types of public transport as well, unless otherwise stated.

The most serious problem of the sector (not only of UPT, but also the road transport as a whole) is a shortage of drivers. The occupation is not attractive for the young and despite various recruitment events (focusing on pupils, apprentices and secondary school students or on women) organised by some companies, new drivers do not apply for this job. Older people leave the labour market and retire gradually. Moreover, public transport drivers are also sought after in other sectors (freight transport), or abroad (Germany, Austria), where better working conditions (not only the wage-related ones) are offered. According to respondents, the job attractiveness needs to be increased, when first of all, the short-term measure is to increase wages and improve working conditions. In the long run, the education system must be adjusted to make manual occupations attractive too.

Unfortunately, the sector fails to offer conditions for a wage growth of employees, drivers in particular. In the Czech Republic, the contracts to provide UPT are usually concluded based on the direct award, when the ordering party is always interested in the price of the service provided. Cities usually do not want to contribute to UPT operation more than necessary and at the same time, they impede increasing the end customer fare (the public always finds an increase of the fare unpopular and cities dislike to take this step). Prices for the provided services in the sector are thus pushed to the lowest possible level and as a rule, companies save on wages.

According to OSD, the obvious trend of the future is the competitive tendering, but it alone will not bring a significant change. Under the current legal regulation, it is allowed at the tender evaluation to apply only one criterion which is the lowest price. However, the lowest price offered simultaneously means that the operator must offer and ensure the lowest costs, when the savings again are usually possible on wages only. In this context, the respondent from OSD sees a solution in an amendment to the public procurement law which should newly allow other evaluation criteria, not only the price. For the time being, however, the law is being prepared. It is necessary to mention that the other respondents do not regard a potential amendment to the public procurement law as a solution.

It is not common that when concluding a contract, the ordering party specifies the requirements related to working conditions, neither for direct award, nor for the competitive tendering.

Working conditions in the companies under review differ; working conditions in the companies that are owned by the city primarily depend on the political representation and the political will. Working conditions in private companies are affected by the economic situation of the company which is also reflected in the conditions contained in collective agreements, when most employees of the UPT sector is covered by company-level collective agreements.

Transfer of staff in UPT has not been noticed. According to the respondents, if something like that occurs in the future, it is not likely to have a major influence on working conditions of the transferred staff. A new operator will gladly re-employ the employees, especially drivers, because there is a shortage of drivers in the market. If he wants to retain the driver, he will have to offer at least the same working conditions as the previous employer. In this respect, the market situation is favourable for drivers and gives room for improvement of working conditions. With regard to a shortage of drivers, improvement of working conditions is the only way to make the occupation attractive in a short period of time, regardless whether UPT contracts are concluded based on the direct award, or the competitive tendering.

Summary and conclusions

- The UPT sector is very hard to quantify. Statistics do not include UPT as such; it is only monitored as part of the road (bus) or railway transport.
- The most serious problem of the sector is a shortage of drivers. This market situation is favourable for drivers and gives room for improvement of working conditions.
- Most of the contracts are based on the direct award. Competitive tendering is a trend, but according to the respondents, this trend won't affect working conditions in the sector.

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List of Interviews

Name	Position	Company	Place of interview	Date of interview
Daniel ADAMKA	Managing Director	ARRIVA TRANSPORT ČESKÁ REPUBLIKA a. s.	Prague	7 January 2016
Petra CHMELÍŘOVÁ	Head of HR Department	Pilsen City Transport Company (Plzeňské městské dopravní podniky, a. s.)	Pilsen	7 January 2016
Jiří DOŠLÝ	Head of Sectoral Relations	Prague Public Transit Company (Dopravní podnik	Received by e-mail	22 December 2015

		hlavního města Prahy		
Alfonz KOKOŠKA	Department of Collective bargaining	Trade Union of Transport	Prague	6 January 2016
Ivo NOVOTNÝ	HR Director CEE	ARRIVA TRANSPORT ČESKÁ REPUBLIKA a. s.	Prague	7 January 2016
Robert PAŠEK	Member of Supervisory Board (employee representative)	Pilsen City Transport Company (Plzeňské městské dopravní podniky, a. s.)	Pilsen	7 January 2016
Ondřej ŠTANTEJSKÝ	HR Director	ARRIVA TRANSPORT ČESKÁ REPUBLIKA a. s.	Prague	7 January 2016
Jiří ZABLOUDIL	Chairman of Basic Organisation of Trade Union of Transport in Motol	Basic Organisation of Trade Union of Transport in Motol	Prague	18 December 2015

Annex 5 Germany

Background

Market organisation of urban public transport in Germany

The urban public transport market in Germany comprises busses, trams/light rail (Stadtbahn), underground/metro, suburban rail (S-Bahn) and some waterborne services (the latter two are not covered by this study). In terms of passenger numbers (of which there are approximate 11 billion per annum), buses made up 47% of the traffic, followed by trams and metro with 32%. The remainder was delivered by suburban/regional rail services. It is an expanding sector in terms of passenger volumes which continues to be dominated by public providers, particularly in the large cities. Between 2004 and 2014, passenger numbers increased from 9,209 million to 10,083 million²⁰.

Based on passenger numbers, over 88% of passenger in the sector were served by public transport companies, 4.8% by companies in mixed ownership and 6.9% by private operators. When measured in relation passenger km, 84% were delivered by publicly owned companies and 11% by private operators²¹. However, in the context of successive requirements for market opening linked to Regulation 1370/2007, the sector has witnessed significant change in the last 15-20 years, which increased trends towards tendering, particularly in the bus market.

Overall, the trend has been for a slight reduction in the market share of long-standing publicly/municipally owned operators at the expense of new market entrants. The share of the market taken by international operators are increased somewhat and there is only one example of bringing back in house of previously externally tendered services in the bus sector. Changes have mainly taken place in the bus sector, while the operation of metro and tram services remains dominated by municipal operators. However, this does not mean that there have been no changes in relation to wages and social conditions, although this tends to have happened more than 10 years ago, in preparation of greater market opening. Furthermore, although direct awards remain dominant in some market sub-segments, contracts insist that efficiency savings must be made and companies have to be 'run well' (*gut geführt*). Benchmarks are set on what this means and companies that are not considered to be 'well run' can lose their contracts.

For the whole of the UPT sector, it is estimated that 19% of services are directly awarded; a further 17% are directly awarded to SMEs in relation to small contracts (*geringe Verkehrsleistung*); 40% are competitively tendered under the provisions of Regulation 1370/2007 and 24% are awarded under general procurement legislation (*allgemeines Vergaberecht*) as they include the provision of vehicles etc. A number of contracts also remain under legacy provisions (*Besitzstand*) not yet governed by regulations on direct award²².

There has also been a significant trend towards the sub-contracting of bus service operations, as well as the outsourcing of elements of service provision such as cleaning, catering etc. which have also impacted on social and wage standards.

Institutional organisation

The roles and responsibilities of competent authorities in Germany are regulated at national level by the 'Law on Regionalisation' (*Regionalisierungsgesetz*) and the 'Law on Passenger Transport'²³

²⁰ VDV-Statistik 2014; Köln, September 2015, p.24, referring to VDV members which represent 90 % of the public transport market

²¹ Statistisches Bundesamt, Verkehr, Fachserie 8, Reihe 3.1, Jahrgang 2012, S.3

²² Figures provided for this paragraph came from replies to the ICF survey from the union side. It shall be noted that the VDV report of 2014 states that 37% of all urban transport services were carried out by urban light rail mode and all of these have been awarded directly to the internal operator.

²³ Personenbeförderungsgesetz of 21 March 1961, most recently amended in 2013

(*Personenbeförderungsgesetz*) and at regional level by respective regional laws on local public passenger transport (*Personennahverkehrsgesetze der Bundesländer*).

The Law on Regionalisation (Article 3) states that responsibility for the planning, organisation and financing of urban/regional public transport shall be determined by the German Länder. The 'Law on Passenger Transport' (Article 8 (3)) stipulates that the organising authorities determined by the Länder (Germany's 16 regions) have the responsibility for an adequate urban/regional public transport offer.. Regional legislation on the whole entrusts municipalities (*Städte*) or regional authorities (*Landkreise*) with this task. However, other organisational forms are also possible and in some regions, a number of authorities have established joint bodies (*Verkehrsverbände* or *Zweckverbände*) which amalgamate the responsibility for planning and organisation of (urban) public transport services for a wider region in one institution. In the region of Hessen an independent body (with representation of the relevant municipalities and regional authorities) is responsible for the planning of public transport services in the Rhein-Main urban conurbation (around Frankfurt). Overall, there are approximately 400 competent authorities in Germany in the bus sector and 68 in the tram/light rail/metro sector. It is these competent authorities which decide the local transport plan (*Nahverkehrsplan*), as well as the method of award chosen. In addition, separate authorities at regional level are responsible for issuing permits to companies wishing to offer urban public transport services (*Genehmigungsbehörden*). It is worth mentioning that these authorities are not municipalities (*Städte*) or regional authorities (*Landkreise*) in each case, meaning that there is another authority which has to provide a permit for offering UPT, even if the local authority has chosen a direct award or competitive tendering process. As is further indicated below, in Germany there is a basic assumption in national law that UPT services are delivered without any subsidies and in this case are not subject to Regulation 1370/2007. That means that the priority for a permission has to be given to a bidder who does not request any subsidies at all times one shows up, regardless the wishes of the municipality or regional authority.

In the report should be mentioned, that in this case the TTGs are not applicable and no social standards or collective agreements except the national labour law must be applied.

Regulatory framework

General regulatory framework urban public transport

The delivery of urban public transport is regulated by the 'Law on Passenger Transport'²⁴. Here it is notable that the law (art 8 (4)) starts from the premise that (urban) public transport services are delivered on a commercial basis and companies can apply for permission to operate routes on this basis. Should delivery of the service not be feasible on commercial footing (e.g. if a subsidy or general interest element be required), the rules established by Regulation 1370/2007 become applicable. Recent data show that 21% of turnover of companies in the sector is linked to such compensations²⁵. Although Regulation 1370/2007 is directly applicable (no national implementing legislation is required), the decision was made to supplement article 8 of the Law on Passenger Transport (new articles 8a - on the award of public service contracts - and 8b - on competitive tenders, amongst other things) to ensure legal clarity.

The primacy given to services delivered on a commercial basis means that in situations of tenders, if a provider applies claiming to be able to deliver such services without public subsidy, their bids have to be treated preferentially. In such cases, no social standards or collective agreements have to be respected by the operator beyond what is provided in national legislation (see also below).

Public service contracts in the field of urban public transport can be awarded under Regulation 1370/2007 or under European Procurement Directives (implemented in Germany in the form of the Law against the restraint of trade - *Gesetz gegen Wettbewerbsbeschränkungen*²⁶).

²⁴ With the exception of urban light rail services which are regulated by the 'General Railway Law' (*Allgemeines Eisenbahngesetz*), but which are not covered here.

²⁵ Resch, H (2015); Brancheanalyse: Zukunft des ÖPNV, Hans Böckler Stiftung

²⁶ See <http://www.gesetze-im-internet.de/gwb/>

Also of importance in the award of urban public transport service are regional laws on collective agreements (*Tarifverträge*). These laws, which exist in 14 of the 16 German Länder (and include different provisions from region to region) aim to ensure minimum wage and social standards by reference to a 'representative collective agreement' whose standards must be applied (as a minimum) by all bidders and are thus the main way in which social criteria are enforced in the tendering of UPT services (for more information see section 1.3.3 below). Furthermore, in the context of the revision of the public procurement law, a mandatory provision for the transfer of staff in tendering of suburban/regional rail has been included in December 2015. During the legislative process before the German parliament an extension of such provision to forms of urban public transport (bus/urban rail) was also discussed but later rejected (see section 1.3.3 for more details).

Until 2019, when the requirements of Regulation 1370/2007 enter into force fully, all competent authorities are free to decide whether to award urban public transport service contracts on the basis of direct award (e.g. to internal operators, in emergency cases or for small contracts) or competitive tender. Such decisions tend to be influenced by political and commercial considerations, thus providing for different patterns of award across the country. Generally speaking, large cities tend to award directly to internal operators with integrated urban rail/bus services, whereas in smaller towns and more rural areas, award on the basis of competitive tender is more common. Similarly, bus services are more frequently tendered, whereas so far all tram/light rail/metro services have been awarded directly.

The trend over the last 10 years has been for an increase in competitive tendering, but generally speaking, the share of passengers transported linked to directly awarded services remains high (see above) as this is still the common method of award in the large urban conurbations. EU Regulation as well as financial (and in some cases political) considerations, are the main reasons behind the increased use of competitive tendering.

In preparation of 2019, many large cities are currently in the process of preparing (for the first time) for direct award processes according regulation 1370/2007, generally in detailed consultation with the transport provider.

Stuttgarter Straßenbahnen AG (SSB)

Background information

Stuttgarter Straßenbahnen AG (SSB) is a provider of local and regional transport services (buses, light rail including school buses etc.) in the city of – and area around Stuttgart. SSB is an integrated public transport company being also responsible for providing and maintaining vehicles, depots and infrastructure (planning, construction and maintenance of light tracks, tunnels, stations, bus stops in co-operation with the relevant municipalities). SSB transports around 175 million passengers per year – a number which has been increasing steadily (from 158 million in 2004). Currently a direct award according to regulation 1370/2007 is under preparation for the year 2018 (it is anticipated that this will be for a contract of around 22 years and SSB is involved in the planning and development of this process).

The company and its employees

SSB is a public company owned by the City of Stuttgart. In 2014, the company had 2,993 employees (an increase by around 330 staff since 2004) of whom 1200 are drivers and a further 1,150 are other operational staff. 16% of employees are women (up from 13.9% in 2004). In addition, 3120 individuals work for sub-contracted providers (little change since 2004). Staff turnover is very low at an annual average of around 1.8%.

Employment conditions are determined by a mixture of national and regional collective agreements and a company level agreement (*Betriebsvereinbarung*), as well as relevant legislation in the field of training and health and safety.

Most staff work full time and on open ended contracts.

Evolution of social conditions

- In the years observed for this study (2004-2014) there has been a small increase in salaries more or less in line with inflation. Reductions in salaries were previously agreed during the restructuring phase of the company and in preparation for potential market opening in the late 1990s. Between 2004 and 2014 there has also been an increase in other elements of pay and social conditions. In 2008, an increase in weekly working time from 38.5 hours to 39 hours was agreed. Other specific benefits offered by the company have remained unchanged (offer of company/subsidised housing, staff canteen, since 2014 support for childcare, free travel for staff and families). Overall, there has been an intensification of work particularly for operational staff as a result of reduced preparation and waiting times and an increase in passenger and traffic volumes. Rates of sickness related absences have increased in the last 10 years for all categories of staff (apart from 'other operational personnel' where there has been a reduction).

Transfer of staff

There has been no change of operator and no transfer of staff.

Conclusions

- Significant efforts to increase efficiency have already been made by the company since the 1990s and the most significant changes in collective agreements and terms and conditions date back to this period. Since then, terms and conditions have kept pace with inflation and social standards have remained relatively unchanged. However, due to the increase in passenger numbers and traffic volumes there has been an intensification of work for staff in all categories. The company currently operates its services under a legacy contract and is preparing for the first direct award process in 2018. It is expected that preparations undertaken in recent decades have placed the company in a good position to meet the requirements of local transport plans under the new contract. Increasing measures are being taken to address demographic change

and the ageing of the workforce in the company. Vehicles and services and constantly being modernised.

The length of contracts ranges from 8-15 years (in urban bus transport) to a maximum of 22.5 years (mainly in the delivery of metro and tram services). In the bus sector, directly awarded contracts tend to be of a slightly longer duration (15 rather than 10 years), but competitively tendered contracts usually have a duration of less than 10 years.

The provision of rolling stock is generally part of the contract, and particularly with longer term contracts, competent authorities often seek to use such contracts to ensure the updating of rolling stock, in line with new environmental and other regulatory requirements.

Infrastructure management is also often part of such contracts, or is done in shared management with the local authority or municipality (particularly in the upkeep to bus/tram/metro stops). Depots are generally owned and operated by the provider.

Subcontracting is not required by competent authorities and neither are limits set on subcontracting of services. In practice, sub-contracting of service delivery is increasingly common in the provision of bus services. This is illustrated by the fact that when looking at the delivery of bus services, only 10% are awarded directly to private operations. However, when actual delivery is taken into account, nearly 35% of such services are delivered by private companies, demonstrating the level of sub-contracting in this market segment²⁷. It should be noted, however, that some subcontracting also occurs to daughter companies of municipally owned companies.

Regulatory framework employment conditions

In Germany, basic employment conditions, for instance in relation to working time and health and safety are regulated in law. In addition, since January 2015, a law on minimum wages is also in force, setting minimum standards while continuing to encourage the agreement of (enhanced) wage standards through collective agreements. National legislation (in some cases based on EU legislation, as in the case of working time and health and safety in the workplace) also exists in relation to training standards.

There are no national sectoral collective agreements in the ÖPNV sector. Such sectoral agreements are negotiated at the regional level for public service operators which are then supplemented (in many companies) with company level collective agreements. There are also agreements in the private sector for bus operators, which tend to set standards below those negotiated for public operators, but the details vary from region to region. For the trade unions this means having to negotiate with a wide range of employers' organisations and individuals employers.

Regulatory framework on social conditions and transfer of staff

Social conditions

While the use of social aspects in tendering for ÖPNV services pre-dates the entry into force of Regulation 1370/2007 (and the inclusion of its key provisions into the Law on Passenger Transport), and Articles 4(5) and 4(6) and Recitals 16 and 17 of the regulation are now often quoted in tender processes with reference to the use of social criteria, requirements for transfer of staff which competent authorities are currently free to stipulate (or not) arose only with reference to the Regulation and relevant articles mentioned above.

Albeit pre-dating the Regulation in many Bundesländer, its provisions have since been used as the rationale behind the conclusion of laws on compliance with collective agreements (*Tariftrüegeetze*, henceforth TTGs). These laws intend to set a level playing field for social aspects among all bidders in public tendering procedures, in particular regarding wage standards, and are thus intended to prevent

²⁷ Rech, H (2015); Brancheanalyse: Zukunft des ÖPNV, Hans Böckler Stiftung, p.29

the risk of social and wage dumping.²⁸ While social dumping has been a key concern among trade unions for some time, the Association of German Transport Companies, VDV²⁹, also indicated its concern about this and spoke out in favour of provisions regarding the compliance with collective agreements³⁰.

TTGs can also refer to other aspects such as the application of international labour standards; include temporary agency workers and subcontractors in the framework of applicability of sectoral wage agreements that are determined as a reference. Although it is also possible (and is often the case) for tenders to make specific provisions regarding staffing levels, qualifications required and training to be provided to staff, the most important way in which social criteria are integrated into competitive tenders in the ÖPNV sector in Germany is through TTGs.

What is '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. They not only cover the ÖPNV sector but all sectors subject to public tenders (such as the bus sector 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 mostly 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 agreement³¹ but means that it has to abide by 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.

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.

Source: Rohrmann, M; (2013); *Wird Deutschland Tariftreu?; Arbeit und Arbeitsrecht, Sonderausgabe 2013 "Human Resources - Trends 2014"*, page 48 - 51³²; Rohrmann, M and Eiserloh, H-W. (2014); *Update Tariftreue; Arbeit und Arbeitsrecht 12/14, p720-723*; for further information see also www.agv-move.de.

Efforts to establish social standards in a tendering procedure for the whole of the country, were just successful in the new Public Procurement Act (Law against the restraint of trade) at least for the railway sector in Germany. As a result, the contracting authority should require a transfer of staff in case of a change of operator in the public award.

²⁸ The risk of wage dumping resulting from liberalisation was specifically referred to in the proposals for the state TTG proposed by the CDU and SPD at state level in Saarland; (DS 15/96 of 23.08.2012).

²⁹ VDV organises around 600 companies active in the rail goods and passenger transport sectors. It is the largest lobby organisation of the transport sector in Germany.

³⁰ VDV Presseinformation; 14.5.2013; Kein Sozial- und Lohndumping im deutschen ÖPNV

³¹ In the context of the principle of the autonomy of collective bargaining, this would not be possible.

³² <http://www.sozialpsychologie.uni-frankfurt.de/team/assoziierte-mitglieder/ra-matthias-rohrmann/>

Each Land can therefore regulate the inclusion of social aspects in public tendering procedures and public service contracts. This resulted in a patchwork of TTGs laying down different requirements at the state level. Currently, there are 14 Bundesländer with TTGs in place (see Table below).

The remaining Länder (Bayern, Sachsen) do not currently have laws on compliance with collective agreements (even as a proposal) for public service contracts or any other specific legislation that regulates social aspects for public tendering procedures. The table highlights certain qualitative differences in the provisions stipulated in TTGs³³, including in relation to the selection of representative collective agreement which would apply to tenders in the ÖPNV sector.

Table A5.1 Bundesländer with provisions regarding Tarifreue (position as of November 2015)

State	Relevant legislation
Baden-Württemberg	Landestarifreue- und Mindestlohngesetz (LTMG) of 10.04.2013
Berlin	Berliner Ausschreibungs- und Vergabegesetz (BerAVG) of 08.07.2010 (most recent amendment 05.06.2012)
Brandenburg	Brandenburgisches Vergabegesetz (BbgVergG) of 21.09.2011
Bremen	Tarifreue- und Vergabegesetz Bremen (TtVG) Bremen of 24.11.2009 (most recent amendment 01.09.2012)
Hamburg	Hamburgisches Vergabegesetz (HmbVgG) of 13.02.2006 (most recent amendment 27.04.2009, currently under review)
Hessen	Hessisches Vergabe- und Tarifreuegesetz (most recent amendment 19 December 2014)
Mecklenburg-Vorpommern	Vergabegesetz Mecklenburg-Vorpommern (VgG M-V) of 7.07.2011 (most recent amendment 25.06.2012)
Niedersachsen	Niedersächsisches Landesvergabegesetz (LVergabeG) of 15.12.2008 (most recent amendment 19.01.2012; time limited to 31.12.2013)
Nordrhein-Westfalen	Tarifreue- und Vergabegesetz Nordrhein-Westfalen (TVgG-NRW) of 10.01.2012
Rheinland-Pfalz	Landestarifreuegesetz (LTTG RLP) of 1.12.2010
Saarland	Saarländisches Tarifreuegesetz (STTG) of February 2013
Sachsen-Anhalt	Landesvergabegesetz (LVG-LSA) of 10.11.2012
Schleswig-Holstein	Tarifreue- und Vergabegesetz Schleswig-Holstein (TTG) of 25.4.2013
Thüringen	Thüringer Vergabegesetz (ThürVgG) of 18.04.2011

Source: Prepared by ICF GHK based on Matthias Rohrmann; Agv MoVe (2012), <http://agv-move.net/index.php/14-tarifreue-uebersichten-zur-aktuellen-gesetzgebung>, and Schulten, Thorsten; Tarifreue Regelungen in Deutschland; WSI; July 2013

Unlike in the suburban and regional rail service sector (Schienenpersonennahverkehr, SPNV), where the representative collective agreement generally applied is that of the SPNV sector, in the urban public transport sector, significant differences remain between regions in the stipulation of representative collective agreements and more than one agreement is often chosen. Overall, it can be said that the use of collective agreements for private bus operations is becoming more widespread in this regard, which sets wage standards which are around 10-15% below those of more favourable collective agreements, such as regional sectoral agreements for local transport (Tarifvertrag Nahverkehr). Thus, while TTGs are a way of ensuring the setting of common social and wage standard to be respected by all bidders, their use can still lead to a significant decline in terms and conditions for staff in case of a

³³ The trade union EVG, in its overview of existing TTGs seeks to rank these provisions with the allocation of stars (for more information see http://www.evg-online.org/Arbeitswelt/Personenverkehr/Landestarifreuegesetze/11_09_01_Vergleich_Landestarifreuegesetze/)

change of operator (as well as for new staff). As a minimum, bidders are required to respect the wages and connected working time provisions set out in the framework collective agreement. In addition, other stipulations can also be included (for example in relation to holidays, training and other terms and conditions).

This means that in the majority of Bundesländer, competition in the ÖPNV sector is now linked to a set of minimum social standards, unless a commercial offer is made, in which case these standards do not apply (see also section 1.2 above). However, it should be noted that the differences in wages and linked terms and conditions between the sectoral collective agreement and some company agreements can be as high as 20%, thus still providing for significant room for competition on the basis of personnel costs among the different operators.

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 implementation³⁴. 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 this region, the collective agreement for the commercial traffic is seen as representative for the bus sector, whereas in the tram sector it is the agreement of the municipal operator (Rhein-Neckar-Verkehr) in the border region with Baden-Württemberg which is representative. 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 operator³⁵. It is also noted that given the proximity of some networks to regions offering higher wage standards, significant 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 finds 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). Therefore a legislative initiative was introduced in the Parliament of Rheinland-Pfalz. In the regional TTG it will be stipulated that competent authorities in the passenger transport services by rail and by road have to require a compulsory transfer of staff in case of a change operator in tendering procedures on the basis of Article 4 subparagraph 5 of Regulation 1370/2007. The TTG will grant employees the rights they would have been entitled to, if a transfer within the meaning of Directive 2001/23 had taken place. Furthermore the legal conditions will be changed to allow the participation of a service center of the TTG-Act in the inspections of the social conditions by the competent authorities, which are regulated with the TTG-Act in a tendering procedure.

Transfer of staff

Regarding rules on the transfer of staff two situations have to be distinguished:

³⁴ An evaluation has been completed in Rheinland Pfalz and others are under way in Nordrhein-Westfalen, Mecklenburg-Vorpommern, Sachsen-Anhalt and Niedersachsen. Further evaluations are planned in other regions.

³⁵ Kienbaum (2015); Evaluierung des Landesgesetzes zur Schaffung tarifrechtliche Regelungen; Landtag Rheinland-Pfalz, Drucksache 16/477, 25.02.2015), p53

- The tendering of a contract which involves the transfer not only of personnel, but also of 'material', including vehicles, workshop facilities and machines etc.
- Tenders which only essentially involve a transfer of staff as rolling stock is either to be leased or – as has increasingly been the case – the provision of new rolling stock is part of the tender specification.

Generally speaking, in the first case, a transfer of undertakings within the meaning of EU Directive 2001/23 is considered to have taken place. In Germany, the relevant legislation is laid down in Article 613(a) of the German Civil Code and the law on restraint of trade (see above).

In the second case, Regulation 1370/2007, Article 4(5) provides the opportunity to grant employees the rights to which they would have been entitled if a transfer within the meaning of Directive 2001/23 had taken place.

Here it is important to re-iterate that Regulation 1370/2007 does not in itself lay down any obligation on competent authorities to apply social standards or to require the transfer of staff in the case of a change of operator. Only in federal states/Länder with TTGs is the inclusion of minimum social standards legally provided. Competent authorities have to abide by these provisions when issuing tenders. TTGs at federal state level can contain provisions to ensure that incumbent providers can be required to provide details of the staff to be transferred across and their existing terms and conditions. However, staff transfer is not required (only enabled) through provisions in TTGs or other federal state level regulations. It is therefore entirely within the remit of the competent authorities (albeit arguably influenced by political priorities and requirements at regional level) whether or not to include provisions regarding the transfer of staff in their tenders for UPT services.

The possibility to require a staff transfer in the case of a change of operator has become possible for the first time as a result of the PSO Regulation. As a result, the requirements for the incumbent to provide details of the staff to be transferred across as set out in TTGs is considered to be vital.

So yet again, the laws on compliance with collective agreements can play a determining role in the cases of tendering and transfer of staff. Some of the laws in the above named federal states allow the competent tendering authority to stipulate in the tender documents that staff has to be taken over in case of change of operator. The use of this provision remains relatively rare.

It is also important to note that in such cases relevant employees have to be offered a transfer, but they are free to decide whether or not to accept this offer. A refusal to do so is, however, at their own risk. Generally speaking, if they decline the offer to transfer and their existing employer cannot offer them alternative employment (which, with the exception of DB, due to its demography collective agreement, they are not required to do), they will be considered to be redundant and will lose their job.

In practice, since 2008, only 18 tenders in the bus sector have required transfer of staff and in 7 of these cases, there was a change of operator³⁶. Since the tram/light rail/metro sectors are dominated by direct awards, this provides a good insight into the state of play with regard to requirements for transfer of staff. It must also be noted that when transfer of staff is required by a competent authority as part of a tender procedure, this generally relates only to operational staff. One potential reason for not requiring this more regularly, are complexities linked to the identification of affected staff, particularly in complex network systems where drives can be active on a variety of lines. The procedure for selecting relevant staff needs to be transparent and the competent tendering authority needs to dispose of a quite substantial knowledge on labour laws and collective agreements. Specific agreements need to be made with the bidding operators so that staff will be taken over under the working conditions of the previous (current) operator.

In order to assist the local competent authorities in tendering procedures and the application of the law on compliance with collective agreements, the regional Ministry of Labour and Social Affairs in the Land of Rheinland Pfalz has set up a special inquiry service/ helpline responding to the specific questions that competent authorities may have. Furthermore, the Ministry has published a guideline on the laws

³⁶ Based on data made available by DB for this study.

application and steps to undertake when opting for inserting an obligation of transfer of staff in the tender documents which has also been shared with other regions.

The current situation could have changed in light of discussions of the Germany Parliament on a proposal put forward by the lower house (Bundesrat) to change existing legislation (Law on restraint of trade, article 131, paragraph 3), substituting a current provision which stipulates that competent authorities **can** require transfer of staff in tendering processes to one which indicates that the **shall** do so³⁷. This proposal was put forward at the instigation of a number of regions with the aim of providing greater protection for workers in the public transport sector and thus also the security of service provision. The proposal shies away from using the term '**must**', in order to offer competent authorities some leeway for exceptions where necessary. In an early response, the government indicated that it might be favourable to such a provision, but only in relation to the tenders for suburban/regional rail services (and not bus, tram or metro services).

The initiative to bring forward such a change in the law was partly motivated by a number of negative examples, widely highlighted in the press, where changes of operator occurred (and transfer of staff was not foreseen) and traffic was significantly disrupted in the run up and in the aftermath of the change of operator because the old operator struggled to retain staff up to the date of the handover and new operators failed to recruit and train sufficient drivers in time for the change-over.

This situation is aggravated by an acute shortage of bus drivers in Germany, which is partly the result of the boom in long-distance bus services, which has reduced the pool of available drivers for UPT services. This was further aggravated by the fact that drivers licences obtained during military service are no longer accepted and overall the sector has become less attractive due to work intensification and relatively low salaries.

On 18 December 2015 the discussions have been settled with a final adoption of the text of the so-called Vergaberechtsmodernisierungsgesetz (law on the modernisation of public tenders) including a mandatory "shall"-provision only for suburban/regional rail, but not for bus or tram/light rail/metro services.

Consequences of failure to provide for transfer of staff

Case study Kaiserslautern-Kusel

At the end of 2014, the Verkehrsverbund Rhein-Neckar on behalf of the competent authorities 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 reasons for frequent cancellations of bus services by Südwest Mobil GmbH. The previous operator 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. This was attributed to a lack of drivers resulting from the boom in long distance bus services.

³⁷ Stellungnahme des Bundesrates; Entwurf eines Gesetzes zur Modernisierung des Vergaberechts; Drucksache 367/15; 25.9.2015, p.7; [https://www.bundesrat.de/SharedDocs/drucksachen/2015/0301-0400/367-15\(B\).pdf?__blob=publicationFile&v=1](https://www.bundesrat.de/SharedDocs/drucksachen/2015/0301-0400/367-15(B).pdf?__blob=publicationFile&v=1)

Another assumption is that the former drivers were not willing to work for lower conditions and changed the profession. 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).

After negotiations the new operator of Lot 2 has absorbed 62 full-time workers of the old operator.

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.

Example of tender requiring transfer of staff: Bus services in the area of Worms/Wonnegau

Contrasting the above examples, the same competent authority as in the case of Kaiserslautern, Verkehrsverbund Rhein-Neckar, issued a Europe-wide tender for bus services in the areas of Worms and Wonnegau in 2013, which was awarded to DB daughter company Rheinpfalz Bus. As well as the application of the TTG, the tender required a transfer of operational staff. The line covers 3.3 million traffic km at a price of approximately 23 million Euros, which also includes the provision of new vehicles. As a result of the transfer of staff from the previous provider, there were not issues in the start-up phase of the new service. 80 Workers were affected by the transfer of staff.

Main operators

There are between 350-400 operators active in the bus sector (more than twice that if long-distance bus operators and all sub-contracting companies are taken into account). In the urban rail segment (tram/light rail/metro) segment there are 68 operators, all of them public companies.

For bus services on a regional level as well as in medium/small cities, the main provider is DB Regio, with other large international providers being Netinera or Transdev (these do not represent more than 10 % of this market segment). However, it must be borne in mind that in the bus sector, small, local, often family run companies play a significant role also in terms of the fact that many such companies have been bought and subsumed into larger companies and in the sense that they are being used as sub-contractors by larger companies. It is also worth noting that the market share of DB Regio is made up of different regional daughter companies (often forms by purchasing other smaller providers), which do not operate under the same collective agreement as the core DB company. These steps have been

undertaken by DB in order to be able to compete in a highly competitive market and to retain a high marking share.

Bus services in larger cities are almost entirely operated by public companies (internal operators owned by the cities) often in integrated public transport networks with urban rail (metro/light rail/tram). BVG in Berlin, KVG in Cologne and Hochbahn Hamburg are the largest of these.

Exceptions are one partly private tram operator in the East German city of Görlitz where Transdev is involved and the city of Frankfurt/Main where urban rail and part of the bus network is operated by the public company VGF (under a direct award) and part of the bus network has been tendered to private operators (DB and Netinera).

Employment in the sector

Estimates about the number of individuals employed in the UPT sector in Germany differ (also depending on how the sector is delimited). According to Resch (2015), there were approximately 150,000 individuals employed in the sector in 2013 (excluding suburban and regional rail services). Overall, during the last 20 years, there has been a decline in employment in the sector. Employers attribute this decline partly to an adaptation of workforce of East German public transport companies after reunification, trade unions argue that UPT provision has in fact increased and the reduction in staff has led to an intensification of work for workers in the sector. Trade unions also indicate that in some companies reductions in directly employed staff indicate the extent of outsourcing and subcontracting mainly relating to municipal owned companies. A lot of collective agreements include quotas to limit this practice, the proportion lies between 15 and 38 per cent. The significant reductions in employee numbers in the sector took place during the key restructuring phase of 2001-2010 and earlier, while more recent years seeing some slight increases in staff numbers in some companies.

Just under 60% of workers in the sector are drivers, while around 16% work in technical and maintenance services with the rest engaged in administration (Resch, 2015, p.37).

Social dialogue

With market opening, social dialogue in the sector has become increasingly fragmented as the trade unions in the sector (Ver.di and EVG for the light rail sector) having to negotiate with an increasing number of employers' organisations and individual companies. On the employer side there are 16 communal employers' organisations organised within VKA (*Verband Kommunaler Arbeitgeber*); 20 private associations (in different regions) and 3 employers' organisations at national level: AgVMove, AGVDE and AVN. In addition, there are around 80-100 different company collective agreements.

Sectoral collective agreements only exist at regional level, which in principle only bind signatory organisations. Different sectoral collective agreements exist for different market segments at regional level and there are different agreements applying in the public and private sector. It is estimated that there are around 40 sectoral collective agreements at regional in the bus sector, 16 in the tram and 16 in the metro segment. The most favourable sectoral agreement at regional level tends to be the collective agreement local transport (*Tarifvertrag Nahverkehr*) which can often provide for wages and terms and conditions 30% higher than private sector collective agreements. In order to account of demographic changes, Ver.di has negotiated at 'demography collective agreement for local transport (Demografie-Tarifvertrag Nahverkehr) with VKA. This provides to the introduction (at company level) of measures to support specific health initiatives in the workplace, the possibility to offer mixed rules in the run up to retirement or the offer of part-time work and partial retirement. It also includes further work-life balance measures and measures for the transfer of knowledge and the re-integration of workers after sickness related absences.

In addition, DB Regio has a demography collective agreement (not applying to its daughter companies) which guarantees employment (although employees may be required to be mobile to retain a job, in which case support can also be made available).

Sub-contractors are not bound to the same agreements as core companies holding a specific contract (unless they happen to be part of the same sectoral agreement, but will of course not benefit from the

same company level agreement). Overall, terms and conditions of staff in sub-contracted companies tend to be lower.

Some company collective agreements offer standards significantly higher than sectoral collective agreements at regional level, but company level agreements can also be lower than collective agreement if they were once outside certain sectoral agreements.

In the bus sector it is estimated that 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%.

Overall, the nature of collective agreements and terms and conditions in the sector already began to change in the 1990s when the sector was preparing itself for market opening and it was not yet clear whether the option of direct award would continue to remain a possibility under re-shaped EU legislation. Municipal operators under legacy agreements have therefore already at the time made significant efforts to increase efficiency and many virtually ceased new recruitment for a number of years and negotiated new collective agreements with substantially lower salary standards and terms and conditions for any new entrants. This led to significant process and organisation changes within companies as cost savings were implemented at the behest of local and regional decision makers. One indicator for this is the share of costs linked to staffing which declined from around 44% to 37% over the 10 year period between 2001 and 2010 (VDV data quoted in Resch, 2015, p.98).

In relation to collective agreements, greater flexibility was achieved by separating collective agreements for the UPT sector from central agreements for the public sector. New regional level sector specific agreement have led to reductions both in salary levels and in overall terms and conditions, particularly for new recruits. According to Resch (2015) this contributed to the possibility for the continuation of direct awards to (restructured) municipal companies and ensured that restructuring could take place with more limited job losses (and almost no compulsory redundancies).

Among collective agreements in the private sector there is considered to have been a slow trend towards improvements in collective agreements, albeit significant differences remain.

In a situation where passenger numbers have increased and employment has declined, it is noted (Resch, 2015) that significant work intensification has taken place placing additional pressures on operational staff, but also on administrative and managerial staff.

For operational staff, this is not only or mainly due to an increase in overall working time, but an increase in time spent 'at the wheel', as preparation and waiting times have been reduced and paid breaks and cover to travel to and between work sites has been reduced. In additional shifts have lengthened and in some cases absences from home have increased. In addition, increased passenger numbers and traffic have increased not only pressures on attention spans but also increased challenges to keep to timetables. Available statistics show that rates of absenteeism due to sickness have increased in recent years and stood at an average of around 8.76% in 2013 (Resch, 2015, p.131). This has led many companies to introduce additional 'carrot' or 'stick' policies to reduce these absence rates and associated costs to the business.

BOGESTRA

Background information

BOGESTRA is a provider of local and regional transport services (buses and trams, including school buses etc.) in the conurbation around Bochum and Gelsenkirchen. The company is also responsible for providing and maintaining vehicle and depots and services the infrastructure (in co-operation with the relevant municipalities stations and bus stops are kept up by sub-contracted providers). BOGESTRA transports around 145 million passengers in 2014 (up from 134 million in 2004). Its contacts falls under the legacy provisions determined by the municipal authorities, which are currently in the process of preparing the first direct award for 2019 (it is anticipated that this will be for a contract of around 22 years and BOGESTRA is involved in the planning and development of this process).

The company and its employees

BOGESTRA is a 98% municipally owned company (shared ownership between the cities of Bochum and Gelsenkirchen). In 2014, the company had 2260 employees (an increase by around 70 staff since 2004) of whom 1065 (47%) are drivers and a further 32.4% are other operational staff. 17% of employees are women (up from 15.6% in 2004). In addition, 309 individuals (headcounts, not full-time equivalents) work for sub-contracted providers (little change since 2004). Contracting out is limited to cleaning services. Staff turnover is relatively low at an annual average of around 4%.

Employment conditions are determined by a company level collective agreement, as well as relevant legislation in the field of training and health and safety.

Evolution of social conditions

- In the years observed for this study (2004-2014) there has been an increase in salaries more or less in line with inflation. Reductions in salaries were previously agreed during the restructuring phase of the company and in preparation for potential market opening in the late 1990s. Between 2004 and 2014 there has also been an increase in other elements of pay and social conditions. In 2008, an increase in weekly working time from 38.5 hours to 39 hours was agreed. Other specific benefits offered by the company have remained unchanged (supplement to vending machines, free travel for staff and families, health promotion measures etc.). Overall, there has been an intensification of work particularly for operational staff as a result of reduced preparation and waiting times and an increase in passenger and traffic volumes. Rates of sickness related absences have increased in the last 10 years for all categories of staff.

Transfer of staff

There has been no change of operator and no transfer of staff.

Conclusions

- Significant efforts to increase efficiency have already been made by the company since the 1990s and the most significant changes in collective agreements and terms and conditions date back to this period. Since then, terms and conditions have kept pace with inflation and social standards have remained relatively unchanged. However, due to the increase in passenger numbers and traffic volumes there has been an intensification of work for staff in all categories. The company currently operates its services under a legacy contract and is preparing for the first direct award process in 2019. It is expected that preparations undertaken in recent decades have placed the company in a good position to meet the requirements of local transport plans under the new contract. Increasing measures are being taken to address demographic change and the ageing of the workforce in the company.

Summary and conclusions: Overall impact on social conditions and the protection of staff

The following key points need to be borne in mind when discussing the overall impact on social conditions and the protection of staff resulting from increasing competition in UPT market:

- Some of the impact on social conditions pre-dates the study period and already took place in 1990s and early 2000 in preparation for greater market opening;
- Main impact felt in bus market as tram/light rail/metro services are predominantly directly awarded to internal operators;
- Impact on social conditions 'buffered' in most regions by TTG, but this does not mean that there cannot be negative consequences on terms and conditions for workers;
- Transfer of staff can be required by competent authorities (and some TTGs explicitly foresee this possibility), but is so far rarely used;
- Negative examples of traffic cancellations due to staff shortages when there is no transfer have led to proposals in front of parliament of require that competent authorities should ask for transfer of staff, but only in relation to suburban/regional rail services (new German public procurement act VergRModG has been adopted end of 2015);
- Even where transfer of staff is required, it is only for operational personnel and covering working hours and wages; thus not necessarily all aspects of terms and conditions are covered.

Despite increasing competition in the local and regional bus market, the German UPT landscape continues to be more significantly dominated by direct award than in the case in some other EU countries, particularly in relation to passenger numbers. Direct award remains the standard award procedure in large cities and urban conurbations, where historically many internal operators - owned and controlled by the competent authorities - exist. Some of the direct awards have a duration of up to 22.5 years (often integrated urban rail/bus contracts). Competitive tendering is more widespread in the bus market in smaller towns and rural areas. Here, competition between the largest provider DB and its daughter companies, other international providers and small local businesses is significant. The multitude of different collective agreements (and indeed businesses not covered by collective agreements) has led to significant price based competition which is to some extent 'buffered' by the existence of laws on respect for collective agreements (TTGs) in 14 of the 16 German regions.

However, the absence of competition in significant parts of the urban rail and bus market in larger cities does not mean that there has been no impact on social conditions in this sector, which is dominated by municipal public companies. Both employer and trade union representatives agree that changes in collective agreements, which basically broke the bond between national public sector collective agreements and new regional agreements for the ÖPNV sector, already brought some significant reductions in wages and terms and conditions of staff (particularly new staff) since the mid-1990s. This had two reasons: Pressure on public finances and preparation of the sector for competition at a time when it was not yet known whether the possibility of award on the basis of direct award would be retained. This and other restructuring measures have led to significant efficiency savings in municipal public companies, but is argued to have placed them in a position to retain direct awards (under conditions of greater budgetary stringency) and was largely achieved without compulsory redundancies (Resch, 2015).

It is estimated that outside larger cities around 40% of UPT contracts are tendered and a further 24% are awarded under general procurement legislation (thus also requiring a transfer of staff). Given that tendering most takes place in smaller towns and the rural bus market, this means that this market segment is primarily awarded through competitive tenders. Social conditions for such tenders are mainly set through regional TTG in 14 of the 16 German regions. TTGs require all bidders to meet – as a minimum – the requirements or one (or several) collective agreements declared as being representative. In the bus market this increasingly means that the 'representative agreement' is that of the private bus market, negotiated at the regional level. The standards in such agreements fall below sectoral collective agreements negotiated with representative of municipal providers.

An evaluation of the regional TTG in Rheinland Pfalz shows that while the TTG is considered to have had a positive effect on overall wage levels (as some private providers had to raise the rates paid), TTG provision do not rule out that workers can be worse off in the case of a change of operator. In some cases, reductions in salaries can be significant, as differences between representative collective agreements and previous company collective agreements can up to 20%. It is also worth noting that upon changing employers, experienced staff can lose salary elements and holiday entitlements linked to their seniority with their previous company.

Overall the impact of competition on social conditions in the bus market must be considered to have been negative for workers.

Another aspect affecting job security in the sector is the relative absence of examples of competent authorities making use of the possibility to require transfer of staff, which is offered by Regulation 1370/2007 and is also offered by some TTGs. Data gathered by DB shows that this possibility was only used in 18 tenders in the bus sector between 2008-2014. This may be due to uncertainty over the regulations or may be motivated by political or financial considerations. Some regions are offering advice to competent authorities who wish to make use of this possibility, as it can be administratively challenging and requires existing providers to deliver a significant amount of employee data and information. Furthermore, experienced employees lose higher wages and other benefits like holiday entitlements acquired due to seniority in the firm.

Even where transfer of staff is required, this is usually limited to operational staff and key aspects of their terms and conditions such as wages and working hours and obviously does not provide protection with regard to terms and conditions for new staff.

Due to the overall labour market situation in Germany (impacted by demographic change and a widespread shortage of skilled staff) and the growth in the long distance bus market, there is a significant shortage of bus drivers. This, together with the uncertainties facing existing staff at a time of contract change over, has led to significant issues with cancellations of traffic in some cases where transfer of staff was not foreseen. Lack of such provisions is therefore increasingly seen by some stakeholders as having a negative impact on consumers and has resulted in efforts to change legislation to determine that competent authorities should require (rather than can require) transfer of staff. The lower house of the German parliament was in favour of making this applicable to the whole sector, but the government has rejected this and finally a mandatory provision has been only adapted for the suburban/regional rail sector in December 2015.

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Matthias Rohrmann (AgV MoVe)

Lothar Schuster; Ministerium für Soziales, Arbeit, Gesundheit und Demografie, Rheinland Pfalz

Siegfried Moog, DB Regio Bus

Mira Ball, Ver.di

Ulrich Weber, SSB

Reinhold Bauer, SSB

Klaus Felsmann, SSB (works council)

Gisbert Schlotzauer, BOGESTRA

Dieter Schumann, BOGESTRA (works council)

Ralf Wenzel, DB Regio Bus Hessen (member of the works council)

Annex 6 Finland

Background

Market organisation of urban public transport in Finland

Institutional organisation

Finland has three types of competent authorities for urban public transport: municipalities, in the metropolitan area the transport authority (HSL) and the ELY-centres (Governmental Centres for Economic Development, Transport and the Environment).

It can be estimated that there are 41 competent authorities in Finland. There are 10 municipalities as competent authorities responsible for regions (in cities of Joensuu, Jyväskylä, Kuopio, Lahti, Oulu, Pori, Tampere, Turku, Hämeenlinna and their city-regions; metropolitan area) and in 16 cities tendering transport inside their city area (of which 7 cities in the metropolitan area). The Metropolitan area consists of Helsinki, the capital of Finland and its neighboring cities Espoo, Vantaa and Kauniainen, and in urban public transport also cities of Kerava, Kirkkonummi and Sipoo. There are 15 ELY-centres as regional authorities in Finland. If the ELY-centre evaluates, the urban public transport can be produced in a more inexpensive and inclusive way, it makes as an authority decision to launch competitive tendering according to PSO rules and be itself a competent authority in the tendering process. The ELY-centres acquire primarily inter-city public transport and municipalities can contract in addition independently transport for intra-city public transport for their purposes.

The biggest competent authority is the Helsinki Region Transport (HSL) which began its operations in 2010. HSL is a joint local authority whose member municipalities are Helsinki, Espoo, Vantaa, Kauniainen, Kerava, Kirkkonummi and Sipoo. HSL plans and organizes public transport in the region and improves its operating condition, and produces bus, tram, metro, ferry and commuter train services.

In the metropolitan area there has been tendering since 1994. In the metropolitan area the market is economically the most interesting in terms of size. In this area approximately 1,2 million people are living in this area compared to the 5 million people of Finland in total. It can be estimated that about half of bus drivers of Finland work in urban public transport in the metropolitan area. With the start of the use of competitive tendering the competent authorities have developed enhanced competencies to carry out tenders in an efficient manner. There has been tendering in city of Turku since 1999 and city of Tampere since 2008. In other bigger cities competitive tendering has started only recently in 2013. The majority of cities which organise tenders in urban public transport are rather small (about 35000-80000 inhabitants) and population density is much lower than in metropolitan area. Thus the size of the urban public transport market is much more limited. Nevertheless, tendering of small lots occur every year. Due to the small size of lots and the renewal of tender regulation the competencies of competent authorities for these areas are rather limited.

Regulatory framework

General regulatory framework urban public transport

In Finland there is "The act on public contracts in special sectors³⁸" (Finnish Statute Series No 349/2007), for the water, energy, transport and postal services sectors. It's a special act based on Public Contracts (348/2007) ³⁹that governs the entry into force of Directive 2014/25/EC of the European Parliament and of the Council on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (2007/66/EC). According to the Act on public contracts for these sectors, direct awards can be used only in specific cases, e.g. in cases of

³⁸ Laki vesi- ja energiahuollon, liikenteen ja postipalvelujen alalla toimivien yksiköiden hankinnoista

³⁹ Laki julkisista hankinnoista

unpredictable acute situation or if there has been made a framework agreement. This act is national Act and there aren't any regional differences in its's implementation.

The regulation 1370/2007 (the so-called PSO Regulation) is a Regulation that needs to be applied directly in national law. PSO has accelerated the use of competitive tendering even though it was already in use in bus transport sector.

The Act on Client Liability for Service Provision (1233/2006)⁴⁰ requires that companies obey the Finnish legislation in providing transport services. This Act sets out basic rules for companies intending to participate in procedures of competitive tendering. It regulates that a company has to certify that it follows the universally binding collective agreement (wage and wage components, training) and the national legislation on working hours. According to Act on Client Liability for Service Provision companies have to 1) provide information on whether the enterprise is entered in the Prepayment Register and Employment Register, and registered as VAT liable in the Value Added Tax Register; 2) Extract from the trade register or equivalent information otherwise obtained from the trade register; 3) report on the contracting partner's tax payment status; 4) certificates of pension insurance taken out and of pension insurance premiums paid, or an account that a payment agreement on outstanding pension insurance premiums has been made; 5) account of the collective agreement or principal terms of employment applicable to the work; 6) account of the organisation of occupational health care services. The Regional State Administrative Agency for Southern Finland is tasked with supervising compliance with the Act.

Other general legislation for urban public transport is Public Transport Act⁴¹ (869/2009) which regulates 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 the Act on the Professional Qualifications of Truck and Bus Drivers (273/2007), the Act on Degrees on Professional Qualifications of Truck and Bus Drivers (640/2007)⁴² and Act on usage of alcohol in school and daycare transport (1110/2010)⁴³ regulate aspects of urban public transport.

The typical procedure in transport is competitive tendering. It is estimated that currently in bus transport 90 % of procedures are competitive tendering and 10 % are direct awards. In bus transport the competitive tendering has been in use in the metropolitan area since 1994. In the beginning bus transport markets were centralized, but after year 2004 new companies entered the market and competition became more severe. In bus transport direct awards has been only used in special cases of disruption of transport. Competitive tendering procedures have increased since 2013, as bigger sized towns started the tendering only since the PSO Regulation is in place. In the municipalities the financial support to their own bus companies has decreased and development went from a mixed market (private and public companies) to a private market. In the metropolitan area all companies are privately owned companies and none is owned by local authorities. The last one having received support from a city is Helsingin Bussiliikenne. Recently, however there was a decision to sell this company to the private company Koiviston liikenne. The market of bus transport has been rather stable and the number of competitors has not changed significantly.

The only direct award made currently is for the metro and tram transport. Since 2010 the HSL has been the competent authority for metro and tram transport (available only in Helsinki area). The public company HKL is providing for metro and tram transport. Metro and tram have a direct award until year 2024. No decision about competitive tendering for these services came to our knowledge during the period of research.

⁴⁰ Laki tilaajan selvitysvelvollisuudesta ja vastuusta ulkopuolista työvoimaa käytettäessä

⁴¹ Joukkoliikennelaki

⁴² Laki kuorma- ja linja-autonkuljettajien ammattipätevyydestä; Valtioneuvoston asetus kuorma- ja linja-auton kuljettajien ammattipätevyydestä

⁴³ Laki alkulokun käytöstä koulu- ja päivähoitokuljetuksissa

In the metropolitan area inter-urban short distance train transport is at the moment provided by VR, the state owned company of VR-Group. There has been made a decision that there will be competitive tendering for inter-urban short distance train transport, which will be launched in 2021. There's an intermediate contract in place and negotiations are held to prepare for competitive tendering.

In the metropolitan area the contracts last in general 7 years with an option to prolong for another 3 years, and in some municipalities up to 5 years. In some cases the contract period can be shorter. There are special cases where the contract period is shorter due to the changes expected to happen in land and housing, that will affect transport system. One reason for shorter contract periods could be the building of the metro longer into the western part of the metropolitan area in Espoo. Also some bus routes can be affected by the recently opened train connection to the Helsinki airport. There are only few cases of transport tendered by the governmental organisation Centres for Economic Development, Transport and the Environment (ELY Centre) that have shorter contract periods lasting between 1-2 years.

The tendering also includes rolling stock. Rolling stock is provided by the bus company and tendering is about providing transport to the specific route – not an area - being awarded. One area can have 1-5 routes and some of them are even smaller. This organisation of tendering is used to allow also SMEs to take part in tendering processes. There's also in some rare cases of tendering procedures where only staff and services provision was tendered for and the competent authority provides in such a case the rolling stock.

Bus depots are owned by the companies. Bus depots include usually garage and mechanics, unless the company has subcontracted these services. Most bus companies have garages of their own and some have subcontracted them; some also outsourced cleaning services. Some companies have bus depots which are satellite depots that are outside platforms. It's estimated that this can affect the quality of services, e.g when in the winter company has cold busses leaving from satellite depot. Bus terminals and services in them (social rooms, security guarding) are owned by municipalities and in the metropolitan area by HSL, the competent authority in the area. Bus terminals provide services for all bus companies, and companies pay to municipalities by usage of terminal

In the competition there are criteria for price and quality of rolling stock, for example air conditioning and security equipment. The emphasis has been put on the quality of the rolling stock and low-emission standards to improve the quality of the air in the metropolitan area for example. In the future one criteria will be the amount of electric busses. The most important weight is given to price when selecting an offer.

Subcontracting is not required by the competent authority. The use of a subcontractor is rare in bus transport. If a company wants to use subcontractors, it has to be announced in the offer when responding to a call for competitive tendering. In comparison the terms and conditions for employees are the same for those working for the subcontractor as for employees with the main contractor. Wages and other terms of work are based on the collective agreement and also sub-contractors must comply with the agreement.

Cleaning and subsidised canteens are usually outsourced (meaning previously were in-house). Also the mechanics in the garages and the maintenance is increasingly subcontracted. There are more leasing garages and subcontracted maintenance staff in companies than 10 years ago and bus depots owned by bus companies have decreased.

In Finland social criteria or transfer of staff is not included in competitive tendering or direct award process and documents in direct way. Social criteria do not play an important role because it is considered that these are specified under national law, binding collective agreement and Lonka-contract. A company that is bidding has to certify that it follows the rules of the binding sector collective agreement of AKT and ALT. The Lonka-contract is a complementary part of the collective agreement and it's binding to all competitors. Lonka-contract, which was established in 1998, includes principals for transfer of staff. Lonka-contract has been also adopted in cities that have tendered their public transport since 2013.

Regulatory framework employment conditions

In Finland there is national minimum regulatory legislation for social conditions at work in place. There are several labour laws (e.g. Employment Contracts Act⁴⁴, Working Hours Act⁴⁵, Annual Holidays Act⁴⁶ and Occupational Safety and Health Act⁴⁷), that are binding to all employers in Finland.

Companies, that take part into tendering, have to demonstrate that it has employment conditions in place allowing them to conduct the work according to national legislation (annexes of payment of taxes, pension and other payments of employers, licence of public transport, working hours). Since 1.9.2015 there has been also provisions on occupational health care included to Act of Client Liability for Service Provision, and a company has to extract a copy of contract with the occupational health care service provider. Under 9 § in the Act of Client Liability for Service Provision it states that the competent authority must pay a negligence fee if it has made a contract acknowledging that the winning company will not fulfil the legislated tasks of employers.

In order submit a bid in a competition procedure, a company has to certify that it follows the universally binding collective agreement (wage and wage components, training). Following up universally binding collective agreement is statutory according to Employment Contracts Act (55/2001)⁴⁸ and Act on Confirmation of the General Applicability of Collective Agreements (56/2001).

The most important criteria is for the drivers to have driving licenses and a licence required by EU Directive 2003/59/EC concerning professional competence. There is legislation on professional competence and lifelong learning of drivers. (Act on Professional Qualifications of Truck and Bus Driver 273/2007⁴⁹)

Regulatory framework transfer of staff

Metro, tram and train transport are currently provided under direct award.

The transfer of staff is limited to bus drivers. Important contract for transfer of staff is the Lonka-contract, which includes regulation on transfer of business in tendering process in the area of bus transport. According to Lonka contract concluded in 1998 some conditions of employment will remain in spite of the transfer of employer (holidays, wages on sickness leaves etc.). The probationary period in transfer of staff is regulated in Employment Contracts Act.

Lonka-contract regulates on establishing a pool of staff (which takes in those drivers affected by the tendering procedure) and obliges the winner of the competitive procedure to employ staff first from the unemployed persons of the pool. Lonka-contract has been adopted before PSO Regulation entered into force.

Main operators

There's one metro and one tram operator in the capital of Finland. The Helsinki City Transport HKL provides services under direct award. HKL is responsible for running the trams and the metro as well as construction and maintenance of tracks, stations and depots. Municipalities support HKL, but it doesn't affect ticket prices. Metro and tram are contracted until 2024. At this stage, no political decision for competitive tendering of these services was made.

There is also the state-owned railway company VR, which provides long-distance inter-city transport and inter-urban short distance train transport in the metropolitan area. VR, has a direct award until 2024.

⁴⁴ Työsopimuslaki (55/2001)

⁴⁵ Työaikalaki (605/1996)

⁴⁶ Vuosilomalaki (162/2005)

⁴⁷ Työturvallisuuslaki (738/2002)

⁴⁸ Laki työehtosopimuksen yleissitovuuden vahvistamisesta

⁴⁹ Laki kuorma- ja linja-auton kuljettajien ammattipätevyydestä

A recent political agreement was reached deciding that inter-urban short distance train transport in the metropolitan area will be tendered in 2021

In Finland about 75 % of bus transport is local city transport, commuter or short distance transport, 15 % of travels is inter-city transport and 15 % charter transport. There are about 160 bus companies of which 80 are active in local urban transport. About 40-60 companies are operating with public service contract.

The bus companies are mainly privately owned. The share of internal operators is about 1 % and the share has decreased during the last ten years. There are two companies of the municipalities in the cities of Tampere a company called TKL and Pori a company called Porin linjat. In Turku there's a mixed model where about 80 % of bus transport is obtained by competitive tendering and 20 % is direct award to a municipality owned company Turun kaupunkiliikenne. Helsingin kaupunkiliikenne, has been owned by city of Helsinki, but in October 2015 it was sold to a private bus company Koiviston auto. Pohjolan liikenne and its subsidiary company operating in the metropolitan area are a public-owned company. They are part of VR-Group, but they don't get any financial support from the government. There are two international bus companies operating in the metropolitan area. The share of international groups operating UPT services is estimated to be 30 % and risen during the last ten years

The metropolitan area of Finland makes about 60 % of market share e.g counted by passenger amount. The biggest bus companies after tendering in January 2015 in the metropolitan area are Nobina (international group, 36 %) Helsingin bussiliikenne (22,9 %), Transdev (international group 18,9 %) and Oy Pohjolan Kaupunkiliikenne (16,9%) Other companies are Oy Taksikuljetus (1,9 %), Tammelundin liikenne (1,9 %), and Åbergin linja (1 %), Etelä-Suomen linjaliikenne (0,3 %), Nurmijärven liikenne (0,1 %), Nikkanen (0,1 %) and Andersson (0 %). Koiviston auto -yhtymä is also a big company providing transport services also outside metropolitan area. Market share of the companies is restricted in the competition documents so that one company can't take monopoly in the Finnish market.

Employment in the sector

There are about 13 000 employees in Finland in the urban city transport and 11 000 of them are working in the metropolitan area. There are about 11 000 bus drivers in Finland and about 5 000 of them work in the metropolitan area. The figures of employment remained stable over the past. Even in good labour market situations there has been a lack of staff. Also during the economic recession in Finland, and during procedures of transfer of staff there has not been lay off of personnel. One of the reasons is that the amount of passengers in particular in the metropolitan area has risen over the past.

Social dialogue

In Finland there are 2 national sectoral agreements for the urban public transport business in place.

The majority of employees are members of The Transport Workers' Union (AKT). There are two national collective agreements between ALT (employers) and AKT, one that covers bus drivers and one for operational staff (mechanics in garages). The national collective agreement has two regional annexes for the metropolitan area and Turku region. According to the collective agreements there are some regional differences of wages as in other professions. AKT includes bus drivers and mechanics in the garages as members. The social partner for the employers of the private sector is The Employers' Federation of Road Transport (ALT).

For the employees in metro and train service and two bus companies owned by municipalities (Tampere and Turku) the representative social partner is The Trade Union for the Public and Welfare Sectors JHL. The social partner for employers of public sector is The Local Government Employers (KT) For employees and employers working in public transportation sector there's also one collective contract being **(the general public sector collective agreement for local government KVTES)**.

The 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. The outsourced staff is not included in the process of transfer of staff.

In the urban transport business in Finland there aren't any local, branch or company level collective agreements.

The sector collective agreement is universally binding. If a company is not a member of The ALT, even then it has to follow the collective agreement. If a company wants to take part in a competitive tender, it can't have any severe problems with employees or court cases between social partners.

Case Study

Pohjolan liikenne and its subsidiary company Pohjolan kaupunkiliikenne

Background information

Pohjolan liikenne is one of the biggest transport company that operates all over Finland. Pohjolan kaupunkiliikenne operates in the metropolitan area. There's are about 2,7 million passengers a year. Pohjolan kaupunkiliikenne is the third largest bus company in the metropolitan area based on the competitive tendering in 2015.

The competitive tendering typically does not include social criteria. Competitive tendering includes generally service of driving and provision of rolling stock. There's regulatory framework about the minimum level of rolling stock and extra features that provide benefit in the competition process. Selection criterion in tendering is 84 % price and rest rolling stock that will be used. Step by step the amount of requirements for rolling stock has increased, e.g. emission levels (Euro 6-standard), air-conditioning and noise levels. In the future, there will be requirement to have electric busses. The contract period is generally 7 years with an option to prolong another 3 years. There are some special routes that have shorter 5 year contracts due to structural changes, for example due to widening of the metro and commuter train network. In a recent tendering procedure of January 2014 13 routes were under competition in the metropolitan area.

In the metropolitan area the competent authority is HSL. In 2014 there were about 353,3 million travels made in this area. The amount of passengers increased for buses services of about 6,2 % and in commuter trains by 3,2 %. HSL has a follow-up system for quality of services for winning companies and contracts include a bonus-malus system. Previously in the early stage of tendering, the price competition was intensive and it affected the quality of rolling stock. Now, HSL follows places more importance on quality of rolling stock. HSL carried out for 15 years co-operation with a national research centre in investigates busses . HSL measures customer satisfaction and asks regularly passengers' opinion about the quality of rolling stock and also the client service, such as service attitudes and friendliness of staff.

Using subcontractors is rare in bus transport in the metropolitan area. Subcontracting is used in some cases, e.g. where smaller companies have bus depots located closer to the destination of bus services. The social conditions are similar for subcontracted staff as for staff of the main contractor because of Employment Contracts Act (55/2001) and Act on Confirmation of the General Applicability of Collective Agreements (56/2001)

The company and its employees

Pohjolan liikenne is a company which provides currently public transport in some middle-sized cities in Finland (Kotka, Imatra; Savonlinna was recently lost in the tendering). There are about 800 drivers and 25 employees working in bus depots in garages. About 500 of the drivers work in the metropolitan area. The majority of the employees are male and work as bus drivers. The amount of employees has increased in ten years. The number of workers in outsourced services (cleaning of vehicles; mechanics in the some bus depots) is about 85. The operational staff (employees in garages) are in Helsinki in service of Pohjolan liikenne, which has an own depot there. In the city of Kuopio the garage is outsourced. Company is has responsibility towards the authority for maintenance of the rolling stock and

due to that quality of outsourced core-work as garages. Typically cleaning and subsidised canteen are provided by separate companies.

In Pohjolan liikenne 92 % of the employees have full-time and open ended contracts. The turnover of bus drivers is in Pohjolan liikenne like in other bus companies, rather important. This is due to hastiness and stress caused by keeping up in timetables.⁵⁰ Some employees experience the work too stressing, so they leave the business. For the recruitment of new staff there is vocational training which includes also work-trainers. One challenge is that the young people who have finished their vocational training easily leave the company and move from transport business into to other professions.

Pohjolan liikenne follows the rules of the Finnish labour legislation regulating the working hours, annual leave, occupational safety and health, pension payments and licence of public transport. Bus drivers and company internal mechanics follow the sector level collective agreements between AKT and ALT. Outsourced staff follows other agreements (etc. Contact Service Union United PAM, The Finnish Metalworkers' Union). Collective agreement include provisions about wage, wage components and training. All sector collective agreements in Finland are binding and the difference between them is small.

Evolution of social conditions

Collective bargaining between Transport Workers' Union AKT and Employers' Federation of Road Transport (ALT) and Lonka-contract has an important influence on social conditions of the company. At company level there are meetings between management and union representatives. Every year the company commissions a study to assess the working environment.

Pohjolan liikenne provides bus transport based on competitive tendering. In competitive tendering procedures the company has to demonstrate that applies conditions for conducting the work according to Finnish legislation (annexes of payment of taxes, pension and other payments of employers, licence of public transport and according to Act of Client Liability for Service Provision e.g. report the occupational health care). The company also has to inform the competent authority if it uses subcontractors in the bid.

In the contract reference was made to the EU Directive 2003/59/EC concerning professional competences and drivers licences of bus drivers, and for employees a requirement to apply the sector collective agreement. There's legislation in place setting out the framework for professional competences and training (Act on Professional Qualifications of Truck and Bus Driver 273/2007). The contract includes the obligation to organise transfer of staff according to Lonka-contract.

For bus drivers the working hour is based on periodical work. Regular working time is among bus drivers 80 hours in 2 weeks period, for mechanics in garages 40 hours a week and in managerial work 37,5-40 hours per week. The regular working time has remained stable, but amount of maximum working time has decreased. Working overtime is rare. Overtime arises only in cases of sickness absences. Another reasons is also that over time pay is rather expensive for employers (e.g. up to 100% of base salary/hour). Amount of working overtime worked has been stable over the past.

Wages and wage components are fixed by collective agreement and they have increased more than in industrial business in average. Gross monthly wages have increased in the last 10 years for the same working hours exceeding increases of cost of living/inflation indexes. The percentages of share of wage components have remained the same, but as the basic wage has increased, so have simultaneously the other wage components. Total wages has increased also due to fact, that 10 years ago there were no bonus system. According to collective agreements the highest level is for those having over 12 years of work experience, They have about 7-11 % higher salary than those being in the lowest level having under 4 years of work experience.

⁵⁰ Haatainen Jaana (2003). Bussiliikenteen kilpailuttamisen henkilöstövaikutukset. Tutkimuskohteena pääkaupunkiseudun bussiliikenne.; Kangasniemi Mari, Lehmus Markku, Lehto Eero, Lähdemäki Sakari & Uimonen Sakari (2015). Liikenneverkostot ja kilpailutuksen vaikutukset – esimerkkinä bussiliikenteen kilpailutus. Palkansaajien tutkimuslaitos raportteja 31.

Bus drivers had access to housing in 1990's due to some rental apartments. Back then the company provided for housing in cases where drivers coming from outside the metropolitan area. Rental apartments were sold in the early 2000's. In bus depots there are subsidised canteens. The company provides working clothes (jackets, shirts and waistcoats) which is regulated by the sector collective agreement. Pohjolan liikenne provides also secure boots with discount as a company level benefit. Before an organisational change in 2009 employees of Pohjolan liikenne got 50 % discount in trains of national railway company VR, part of the same group as Pohjolan liikenne). Pension benefit will weaken in the future for younger generations (valid for all sectors including urban public transport) due to national changes in legislation.

Pohjolan liikenne organizes the periodic training as required by Directive 2003/59/ EC for Bus Drivers. Training is not provided by the company itself, but educational institutes outside the company. Training is coordinated by the Ministry of education and Ministry of employment and the economy. There are many kinds of training available. Even though there are a lot of trainings available, some employees find their content too similar and not get much benefit from these training offers. In the metropolitan area there are a lot of migrants working as bus drivers. Training of Finnish language is available for them. Pohjolan liikenne organises in-house initial training for the operational and managerial staff, and drivers training for operational work. Periodic training is given for bus drivers: 1 day/year and compulsory training given by the competent authority 0,5 days/year and for managers during the last years up to 5 days/year . Average hours of training received has increased among the drivers and among other staff it remained stable in comparison to the situation ten years ago.

The buses of Pohjolan liikenne include technical equipment, e.g. security cameras almost in every bus, closed safety cabin and panic button. Also training is given about how to avoid dangerous situations. There's security officers in bus terminals provided by the competent authority.

With regard to health and safety it was remarked that the introduction of the use of secure boots decreased risks of sliding at winter time.

According to the industrial relations law ageing and equality of employees has to be taken into account and plans need to be developed in all companies having more than 20 workers.

As from occupational well-being perspective, competitive tendering raises uncertainty among employees, because they do not know if they can remain at work in the case where the company may lose the competition. Work intensity and stress has increased among drivers. There's a tendency that the urban public transport sector and bus driving is not considered as an attractive profession. There has been even a bigger change in work intensity among managerial staff. The amount of persons working in managerial position has decreased. Also the background of drivers has changed, which has increased the need of guidance to employees by management. Work intensity has affected turnover of managerial staff, which has increased during the past years.

Transfer of staff

The tendering procedure starts mainly a year before the actual tendering. For example: the period of tendering is announced in August, the start of tendering procedure is October and the decision is reached in December. After 21 days waiting period the contract is made and the company has 6 months for getting the rolling stock and staff with which it operates into effective operation.

In 2013 also the biggest cities in Finland have tendered their urban public service transport. This decision has affected the situation and staff needs in the company, e.g. if it loses the tendering. Pohjolan liikenne has lost competition in the city of Savonlinna. In metropolitan area Pohjolan liikenne lost competition of some routes e.g in the city of Espoo.

It's the decision of company management if the company takes part in a tendering procedure. When the bid sent out, information is provided to the staff. During the process of co-operation procedure of industrial relations that takes from 3 weeks to the maximum 5 weeks the employees know staff that will be affected. In a co-operation procedure between unions and management the affected staff by the tendering procedure is agreed. Protection of workers is not included in the tendering processes and

award decisions or PSO-Regulation, but its regulated by Lonka-contract. In the operational contract there's an obligation for the company to comply with the Lonka-contract.

Straight after the announcement of the competition results starts the co-operational process of industrial relations. In 4-5 weeks, the staff subject to the new contract is directed to a pool of workers. The pool of workers is managed by the local public employment office. During the process of co-operation procedure of industrial relations, which takes to a maximum 3 weeks, the names of employees under threat of unemployed are placed into this pool of workers.

The winning company will need also more workers due winning the competition. Thus it calls the employees to work interviews and organises health inspections. The winning company selects the workers it wants and the rest will become unemployed. The company can't take any other drivers than those on the pool unless it needs more staff. Bus drivers are not automatically transferred to the winning company. If employer needs e.g. only 10 drivers and there are 20 in the pool, the rest could be laid off. In practice, all staff has been re-taken by the new operator in all cases of transfer in the sector unless workers decided themselves to leave the pool for a different work. According to Lonka-contract the staff of the company that lost the operation transfer with some of their existing working conditions.

In recent a competition in metropolitan area 200 bus drivers were affected by transfer of staff. Due to the loss of the operations in the competition the employees have to change their workplace. The loss caused also structural changes in bus depots. Transferring isn't voluntary, which is mentioned also in Employment Contracts Act. There were about 110 drivers of in the pool managed by the public employment office waiting for a solution of the winning company and to hire them. Approximately 50-60 were under real threat of unemployment. Finally, a small percentage of employees have voluntarily found another job and the rest have transferred as workers to the winning company. As a result of the process all drivers got work, but this is also because some workers found work outside the sector and also some of the oldest bus drivers were going voluntarily to early pension. It should also be mentioned that even in good economic situation there has been shortage of labour and the most experienced drivers may have left the company rather than awaiting the decision of the winning company. In the metropolitan area there are a lot of migrants working as bus drivers. Among migrants the bus driving professions is valued as an attractive and notorious profession among nationals bus driving is rather seen as an unattractive profession.

In the past 10 years there has been a lack of staff rather than having too many employees in the sector. All employees of the companies losing competitions have got work within the winning companies. There can be some company-based rules in the transfer of staff e.g. passing the health check, but they haven't increased the amount of employees who don't get work in the winning company. The amount of unemployed did not increase but the sickness absences peak in periods of tendering. Staff will continue as salaried employees and their working conditions and wage remain the same.

There has been no changes in the process of transferring staff during the past 10 years. Before tendering fix-term contracts were in placed and employees did not have to change the employers unless they wanted. Now employers change and this may cause uncertainty among drivers. Even though employers may change, the work remains the same and the process ensures equal employment conditions due to Lonka-contract. The working conditions will be the same in all companies due to binding sector collective agreement between AKT and ALT or JHL and KT. It has not been noticed that clustering among employees due to competitive tendering and transfer of staff took place – meaning selection of the least attractive employees being transferred.

Conclusions of the case study

In Pohjolan liikenne transfer of staff is implemented through by a process according to Lonka-contract obligatory in all cases of change of operator after tendering. Since establishment of Lonka-contract in 1998 employees are put into a pool of workers to be selected by the winning company. In fact they are made redundant and placed in the pool of workers. The new operator can only select staff from the pool of workers in case he needs workers to exploit the new contract (which generally is the case). Through the years there has been a need of bus drivers and no one has been left unemployed due to competitive tendering. Nevertheless, this effect is achieved due the labour market situation rather than by the fact that the Lonka contract guaranteed employment with the new operator. While it can be an insecure

situation for a driver, unions and employers welcome this solution. In fact, also unions are involved in the transfer procedure and there is also a form of social pressure to hire out all workers from the pool.

During the years the competition in tendered bus transport market has increased and routes have been unified into longer entities. This has decreased the need of staff and employment. During the time work intensification occurred among both among bus drivers due to intensification of driving timetables and managerial staff due to the staff decrease and employees needing more guidance.

It's noticed that work absences peak after losing a tender and during the start of co-operational process for transfer of staff. Staff turnover has increased due to competitive tendering. Staff turnover has increased also due to the change of employees attitudes and now less committed to one company

Lonka-contact and sector collective agreements assure that transferred staff keeps some of their social conditions of work. Working with fixed-term contracts and working part time or overtime is rare in the sector. Using of part time workers is regulated by collective agreement of bus drivers (7 §, 2 paragraph). No decrease of social conditions, wages or other terms of work occurred since the stronger take up of competitive tendering procedures in the bus sector.

Overall impact on social conditions and the protection of staff

In Finland competitive tendering has been used in urban city transport since 1994 and its use increased in particular in 2013 due to the fact that also smaller cities make use of competitive tendering. Research on tendering and its impacts on social conditions was carried out. The results of study published in 2003⁵¹ showed that competitive tendering had increased economic savings and efficacy in bus transport market. Number of workplaces have decreased in particular among administrating staff and increased among bus drivers. New connections in urban city transport could have be opened with the saved funds. According to the study published in 2003⁵² competitive tendering has affected work conditions in a negative way. The employees didn't trust the purposes of tendering and competent authorities organising for tenders. Tendering has increased efficacy at work, but it had also increased a lot hastiness and mental pressure at work. Employees experienced increased employment insecurity which is the most negative effect of competitive tendering. Especially bus drivers were interested to change the sector with the wider introduction of tendering. Tendering had affected negatively also on the personnel managing of the companies.

In a 2015 study⁵³ the effects of competitive tendering and its effects to various themes, one of which are social effects have been researched. The results show that the effects of tendering have kept similar as about 10 years earlier. The most negative effect of competitive tendering is insecurity, threat to become unemployed and unpredictable changes at work. Insecurity at work has increased during the 10 years. Working overtime hasn't increased, but over half of bus drivers feel that hastiness and stress at work due to tight timetables weakens their well-being at work. On the other hand, bus drivers felt the effects of tendering mainly positive. According to the study, competitive tendering has a neutral or a bit positive effect on wage levels. Tendering has raised wage level at least in the most successful companies.

A decision for competitive tendering of commuter train transport in metropolitan area was recently reached. Thus it was recommended to social partners to begin the negotiations to prepare the competitive tendering situation e.g. in order to provide training for train driving.

In the early stages of competitive tendering, the companies competed with each other by price. Later the quality criteria for rolling stock got more priority in the competition so that the market would be on more stable ground. In the transfers of staff the position of employees is secured. In the future there can

⁵¹ Valkama Pekka & Flinkkilä Jussi (2003) Pääkaupunkiseudun bussiliikenteen kilpailuttamisen talousvaikutukset.

⁵² Haatainen Jaana (2003). Bussiliikenteen kilpailuttamisen henkilöstövaikutukset. Tutkimuskohteena pääkaupunkiseudun bussiliikenne.

⁵³ Kangasniemi Mari, Lehmus Markku, Lehto Eero, Lähdemäki Sakari & Uimonen Sakari (2015). Liikenneverkostot ja kilpailutuksen vaikutukset – esimerkkinä bussiliikenteen kilpailutus. Palkansaajien tutkimuslaitos raportteja 31.

become changes in the need of bus drivers as the train connection to the airport has been opened and a new metro connection will be launched. It is estimated that 150 buses (10 %) will be not needed anymore. On the other hand the amount of passengers has risen and the unemployment of bus drives has remained low in comparison to other professions. In the metropolitan area there are a lot of migrants working as bus drivers, with about 60 nationalities. Their situation has remained the same as with other groups of employees.

In Finland public transport is generally tendered. There has been made a study about markets of public transport⁵⁴. The results show that cost-efficacy of companies has improved due to competitive tendering.

According to a study made in 2015⁵⁵ bus drivers in the metropolitan area had changed the employer via transfers on average 1,42 times. The transfer of staff is limited to bus drivers. The Act on Employment Collective Agreement⁵⁶ is binding for all companies and staff protected the whole contract period even though employer changes. Lonka-contract is binding and keeps some conditions of employment similar in spite of transfer of staff. Sector level collective agreements binding to all companies in the sector secure employment conditions also in cases of change of employer (because there are typically no company level agreements in place).

There has not been any relevant legislative changes in the Finnish employment laws that would affect especially social conditions of the workers in the urban public sector.

Summary and conclusions

In Finland competitive tendering is the most common form in the bus transport and in the future in commuter train transport. Metro and tram operations are obtained via direct award for the next ten years. Competition has increased in bus transport tendering market and tendering has spread from metropolitan area to the other bigger cities of the country.

The focus of competitive tendering is in providing the rolling stock for certain routes. During the years the competent authorities have emphasised quality of rolling stock and passenger satisfaction with rolling stock has improved and affect working conditions of drivers. In the future in the metropolitan area the enlargement of metro route will affect bus connections and need of staff. In the other biggest cities of Finland financial support for public transport has decreased and affected the companies' possibilities to operate on not economically viable routes.

In Finland nationally binding collective agreements and Lonka-contract, a contract between social partners launched in 1998 to secure transfer of staff in case of change of operator, has secured the work conditions of bus drivers in the tendering processes. Competitive tendering has affected social conditions by increasing work intensity and stress. Tendering has increased employment insecurity in particular among bus drivers. At this point, due to favourable transport market and overall labour market developments most staff was re-employed by the new operator after tendering.

A report written by Sari, Pitkanen, Rehabilitation Foundation, Finland, an independent non-profit organisation.

⁵⁴ Joukkoliikenteen kilpailutuksia ja markkinoita koskeva tutkimus 2014. Hyvää joukkoliikennepalvelua kohtuullisin kustannuksin. Liikenneviraston tutkimuksia ja selvityksiä 1/2015.

⁵⁵ Kangasniemi Mari, Lehmus Markku, Lehto Eero, Lähdemäki Sakari & Uimonen Sakari (2015). Liikenneverkostot ja kilpailutuksen vaikutukset – esimerkkinä bussiliikenteen kilpailutus. Palkansaajien tutkimuslaitos raportteja 31.

⁵⁶ Työehtosopimuslaki 436/1946

Annex 7 France

Background Section

Market organisation of urban public transport in France⁵⁷

Institutional organisation

The organisation of urban public transport is under the responsibility of local level authorities (municipalities). Since France has about 36.000 municipalities, these are generally organised in groups of municipalities (*Communautés Urbaines*, *Communautés d'Agglomérations*). Local authorities define urban public transport policies on their territory.

The competent authorities for urban public transport are in charge of:

- defining urban transport policy on their territory including, routes and frequency;
- defining how investments in urban public transport are made, choosing the mode of management of the network (direct award or competitive tender), the operator and monitoring the operation of the public transport;
- in most cases, buying rolling stock.

In the region around Paris (Ile de France), urban public transport is organised differently as in the rest of France as a single structure (Syndicat des Transports d'Ile-de- France, STIF) assumes the role of organising authority for public transport in the region, in application of Decree n° 2005-664 and article L. 1241-5 of the Transport Code. The STIF gathers the region of Ile-de-France, the 7 *départements* in the region and the municipality of Paris.

Regulatory framework

General regulatory framework for urban public transport

The main legal framework concerning the organisation of urban public transport in France is the Loi LOTI (1982). The opening of the market for urban public transport services is regulated by the law 93-122 of 29 January 1993 (so-called 'loi Sapin') while the different forms of management of public transport services are described in Article L. 1221-3 of the transport code (*code des transports*). In 2013, the government decided to reform the decentralisation of public administration. A first act was adopted on 27th January 2014: the "Loi de modernisation de l'action publique territoriale et d'affirmation des métropoles"⁵⁸. This Act creates "métropoles", reinforces the competences of transport competent authorities and turns those *transport* competent authorities into *mobility* competent authorities.

Moreover, it entrusts the region with coordinating powers for intermodality and complementarity between different modes of transport.

A second act was adopted on 7th August 2015: the "Loi portant nouvelle organisation territoriale de la République"⁵⁹. This Act affects the division of competences between the territorial levels by transferring the competence for the organisation of suburban road transport to the regions (and not the departments anymore). It also gives a new definition of what constitutes "urban public road transport" based on criteria such as average distance between stops and bus average frequency of passage.

The impact of this restructuring has not been taken into account by this research.

Urban public transport can be operated in different ways:

⁵⁷ Note: the following section does not cover inter-urban public transport.

⁵⁸ Law of 27 January 2014 on the modernisation of territorial action and affirmation of metropole cities – law also called "loi MAPAM" or "loi MAPTAM".

⁵⁹ LOI n° 2015-991 du 7 août 2015 concerning the new territorial organisation of the French Republic.

- Competent authorities can provide the public transport internally, on their own budget (for very small networks)
- **Direct award:** Services are provided by a public-owned operator created by the competent authority ('régies' or SPL, local public-owned company).⁶⁰ . A contract for a limited duration is issued between the competent authority and the operator.
- **'Delegation of public services' (DSP) - Competitive procedure:** This type of contract has become a "concession" according to the European Directive on concession contracts 2014/23/EU which was recently transposed by France⁶¹. Services are provided by an operator, who has been selected by the competent authority following a competitive tendering procedure, and has agreed a contract for a fixed-term period with the competent authority. Public service contracts are concluded for the entire urban network. It is unusual to split the network into several lots.
- **Public procurement (*marchés publics*).**

Direct award is used in about 15% of all networks (10% of networks that are members of the UTP). These are contracts awarded directly to an internal public-owned operator, 'régies' or SPL (local public-owned company).⁶² . Direct awards exist for small-and medium sized networks; however there are various examples of larger cities that rely on internal public-owned operators such as Cannes, La Rochelle (see case study below), Marseille, Nice, Poitiers and Toulouse.

Competitive procedures (DSP) are used in about 85% of all networks of urban public transport (and 90% of operators are members of the UTP, the national association representing networks of urban public transport).

The DSP procedure is defined in Article L. 1411-1 of the code of local public authorities (*Code général des collectivités territoriales*). It occurs when the tendering authority (a legal public person) delegates the management and part of the organisation of a service to an operator (legal public or private person) via a contract, which is set for a delimited duration, and when remuneration of the operator is linked to the revenues generated by the use of the service: The operator assumes industrial and commercial risks and must report to competent authorities on their management on the network and on the quality and costs of services provided.

The selection of the operator is made against a list of specific requirements (tender specifications) prepared by the competent authorities. Since 2007 a law also foresees that competent authorities make reference to social and environmental criteria to improve the quality of service. The law is however imprecise as to whether the authority is obliged to make reference to such criteria or whether it has an option⁶³. In addition to the use of social criteria used to select offers, social clauses are included in the contract.

Public authorities have to publicise competitive tenders and tacit renewal of contracts is forbidden. The data collected by the UTP shows that competitive tendering leads to a high level of competition among operators, as about 30% of cases of DSP lead to a change of operator.

Local authorities do not have to make a definitive choice between direct award or competitive tendering. In the last decade both cases of changes from direct award to DSP, and from DSP to direct award have

⁶⁰ In 2010, the code of local public authorities was amended to allow the creation by local authorities of sociétés publiques locales ('local public-owned companies') to manage the delivery of public services (Art.L. 1531-1). These companies must be created by at least two shareholders (local public authorities).

⁶¹ The Directive was transposed in France by the Ordinance n° 2016-65" dated 29 January 2016 and the Decree n° 2016-86" dated 1 February 2016.

⁶² In 2010, the code of local public authorities was amended to allow the creation by local authorities of sociétés publiques locales ('local public-owned companies') to manage the delivery of public services (Art.L. 1531-1). These companies must be created by at least two shareholders (local public authorities).

⁶³ Law n° 2007-1224 du 21 août 2007 on the modernisation of social dialogue and continuity of public service in public transport (*loi sur le dialogue social et la continuité du service public dans les transports terrestres réguliers de voyageurs*) stipulates under its Article 12: " Competent authorities make reference in their public service contracts to social and environmental quality criteria.

occurred across France. Between 2010 and 2013, 10 urban transport networks have moved from DSP to direct award (*régies* or *sociétés publiques locales*).

The use of **public procurement (*marchés publics*)** is very limited in France (around 6%⁶⁴) concerning urban public transport and is submitted to specific legislation (Code des marchés publics). In this case, the operator is paid by the competent authority; remuneration is not linked to revenues generated by the use of the service.

General regulatory framework for urban public transport in the region of Paris

In the region of Paris, as mentioned above, urban public transport is managed by a single structure, the Syndicat des Transports d'Ile-de-France (STIF). It comprises the city of Paris and seven counties "francilien" part of the region Ile-de-France. The STIF has multiannual contracts with different operators: the RATP (*Régie autonome des transports parisiens*, main operator), the SNCF (operating suburban light rail lines) and about 90 private companies grouped in the Association Optile. The STIF defines for all operators the content of service offers, how the network is operated and financed, and sets prices for users.

Due to the specificities or organisation of urban public transport in this region, it was not subject to competitive procedures until 2009. A gradual opening up to competition is foreseen by the law on the regulation of rail transport adopted in December 2009, called Loi ORTF⁶⁵ in conformity with the PSO regulation. All new lines created since 2009 are subject to comparative tendering procedures. For existing lines, the STIF will be able to choose between direct award or award by competitive tender after a transitional period. The length of the transitional period depends on the type of transport (bus, tram and metro/light rail). The STIF will choose between direct award or award by competitive tender starting from 31st December 2024 for bus services, 31st December 2029 for tram services and 31st December 2039 for metro and light rail services.

It is also expected that some developments may occur as part of the 'Grand Paris' project. This project refers to the restructuring of the Ile-de-France territory and the transformation to the Paris Metropole Region. One aspect of this project is also to improve territorial cohesion and improve urban transport service connection. New rapid transit lines connecting major urban centres in the suburb of Paris are foreseen to be constructed (start in 2015) and will be progressively placed in service until 2022 and 2030⁶⁶.

Regulatory framework employment conditions

Employment conditions in the urban public transport sector are regulated by different provisions:

- General labour law legislation (Labour Code) – concerning minimum salary, etc.
- Cross-sectoral national collective agreements (applicable at national level to all companies)
- The national sectoral collective agreement for urban public transport and its annexes (mandatory for all companies of the urban transport sector, except RATP)⁶⁷. The agreement and its annexes regulate the following aspects: trade union organisation, minimum wage and wage components, working conditions, vacation, sick leave and sick pay, protection against collective dismissal and other dismissal, additional pension rights.
- Company-level collective agreements.

⁶⁴ In 2013 according to data from GART – Association of Organising Authorities – see here: <http://www.gart.org/S-informer/Nos-publications>

⁶⁵ *Loi relative à l'Organisation et à la Régulation des Transports Ferroviaires* of 8 December 2009.

⁶⁶ For further information please further read: <https://www.societedugrandparis.fr/projet/le-grand-paris/reseau-transport-moderne-etendu>

⁶⁷ *Convention collective nationale des réseaux de transports publics urbains de voyageurs du 11 avril 1986. Etendue par arrêté du 25 janvier 1993 JORF 30 janvier 1993)*

While national legislation and the sectoral agreement regulate minimum standards, company-level collective agreements are typically more favourable concerning working hours, benefits, etc.

Regulatory framework transfer of staff

In France, in the case of change of operator in urban public transport following a competitive tender, if the conditions of application of Article L1224-1 of the Labour Code (which implements as well the Transfer of Undertaking Directive) are fulfilled, the legislation imposes an automatic transfer of all staff.

Article L1224-1 of the Labour Code⁶⁸ applies if the tendered service is carried by a single autonomous entity. In that case, the transfer of staff (transfer and continuation of individual employment contracts) is automatic and compulsory. The legislation imposes on the operator to take over work contracts on equal conditions regarding remuneration and seniority. According to case law, an employee who refuses to be transferred is considered of serious misconduct, which will be interpreted as having resigned.

Information about the staff to be transferred is included in the tender specifications. Information provided by the incumbent operator includes an anonymous list of employees concerned by the transfer including their birth date, seniority, wage composition etc., and the communication of every collective agreement binding for the company.

There are no specific provisions in place regarding protection from dismissal after the transfer.

After the transfer of staff, elected staff representatives and work committees remain in place (Article L2324-28, Article L2143-10) if the transferred entity maintain its autonomy. However, the law does not foreseen the transfer of the mandate of the committee in charge of hygiene, health and safety (**CHSCT**).

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 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).

Main operators

The French market of urban public transport is dominated by three very large players, which are active internationally: Keolis, Transdev, and Groupe RATP, respectively the second, third and fifth operators of public transport in the world.

- Keolis is a private company which is owned mostly by the SNCF group (French railway operator), with 54,400 employees in France and 15 other countries. Its total turnover was of EUR 5.1 billion in 2013, including 2.4 billion at international level. The largest urban public transport networks operated by Keolis in France include Bordeaux, Lille, Lyon (see case study), Metz and Rennes. In 2012, 35% of networks affiliated to UTP were managed by Keolis, representing 44% of the French market in terms of number of users.
- In 2011, Veolia transport and Transdev, two large players in the sector, merged and became Veolia-Transdev. Since 2013, the group adopted the name Transdev. The group has 86,000 employees worldwide, with EUR 7 billion turnover in 2013, including 4.410 billion at international level. 37% of networks of urban public transport affiliated to UTP in 2012 were operated by

⁶⁸ Article L1224-1 : Lorsque survient une modification dans la situation juridique de l'employeur, notamment par succession, vente, fusion, transformation du fonds, mise en société de l'entreprise, tous les contrats de travail en cours au jour de la modification subsistent entre le nouvel employeur et le personnel de l'entreprise.

Transdev, including the networks of Montpellier, Nancy, Nantes and Rouen and Saint Etienne (see case study).

- The Groupe RATP is an enterprise owned by the French State⁶⁹. The RATP (Régie autonome des transports parisiens) is the historical operator in the Paris region (Ile de France). In addition, RATP Dev (RATP Développement S.A), a subsidiary wholly owned by RATP and created in 2002, focuses on the development of the group outside the region of Paris. The RATP group is present in 13 countries in addition to France. In 2014, it employed 58,000 staff worldwide and had a turnover of 5.26 billion euros. In France, 4.7% of networks affiliated to UTP in 2012 were managed by RATP Dev (including for instance the networks of Valenciennes and Moulins).

The national association AGIR gathers internal operators (*régies* and public local companies), which represent about 10% of networks represented by UTP.

Employment in the sector

A key source of data on employment in urban public transport is the annual report compiled by the UTP, and which is based on a panel of companies covered by the national sectoral collective agreement for urban public transport.

According to the latest annual report (2014)⁷⁰, the total number of staff in urban public transport companies can be estimated at 51,500 staff in total (including estimations for companies not represented in the panel), excluding RATP and SNCF⁷¹. Employment in urban public transport has increased in past years despite of a difficult economic context: within a decade, about 6,500 jobs have been created in the sector.

About two thirds of staff are drivers, 17% occupy technical positions, 6% are other workers (not working in vehicles) and 2% are managers. Employment in the urban public transport is dominated by standard work contracts. There is a low occurrence of temporary agency work (1.1%) and of fixed-term contracts (2.2 % of staff in in 2014), compared to 6% in the transport sector and 8% across all economic sectors. In 2014, only 5% of staff worked part-time, which is lower than in the transport sector (11%) and across the economy (16%), but the average work duration was of 34.4 hours, slightly lower than the average across the transport sector (36.1 hours) and all economic sectors (35,6 hours).

The sector remains largely male-dominated with 18,8 % of female employees in 2014, despite significant progress made over the last decade in increasing the share of women in its workforce, most visible for some categories of staff such as management.

The subcontracting rate could be up to 50% (e.g.Lorient), or 20% (Chambéry), and even in such an important network like TCL in Lyon reach 8%. The subcontracting companies often belong to the same multinationals as the main operator. The personal costs of subcontractors are lower due to the fact that their employees are covered by a different sector collective agreement - the road passenger transport national collective bargaining agreement. Wages of employees in road passenger transport can be estimated to be 10% lower compared to wages of employees covered by the urban transport national collective agreement. Other terms and conditions of employees covered by the road passenger transport collective agreement are also less favourable and more flexible, thus creating a distortion in the competition for UPT services.

⁶⁹ The legal status of the RATP is a State-owned industrial and commercial establishment (établissement public à caractère industriel et commercial, EPIC).

⁷⁰ http://www.utp.fr/images/stories/utp/publications/UTP_Bilan_social_2014.pdf

⁷¹ Bilan social 2014, UTP

Social dialogue

A national sectoral collective agreement is in place, covering all companies and workers in the urban public transport sector⁷². The only exception is the RATP, which, due to its specific status of a State-owned company is not subject to the national sectoral agreement, but to company-specific provisions.

The decree of 23 July 2013⁷³ sets the list of six trade unions recognized as representative in the collective agreement for urban public transport, and their weight in relation to the collective bargaining process:

- Confédération générale du travail (CGT) : 40.00 %
- Confédération française démocratique du travail (CFDT) : 24.22 %
- Confédération générale du travail-Force ouvrière (CGT-FO) : 16.04 %
- Union nationale des syndicats autonomes (UNSA) : 9.51 %
- Confédération française des travailleurs chrétiens (CFTC) : 6.76 %
- Confédération française de l'encadrement-Confédération générale des cadres (CFE-CGC) : 3.47 %.

On the employer side, the [UTP](#) (*Union des transports publics et ferroviaires*) represents urban public transport undertakings; it has over 170 affiliates including public and private operators and is involved in the negotiation of sectoral collective agreements.

The national sectoral collective agreement for urban public transport and its annexes regulate the following aspects: trade union organisation, minimum wage and wage components, working conditions, vacation, sick leave and sick pay, protection against collective dismissal and other dismissal, additional pension rights, disciplinary matters, hiring and dismissal conditions. Compulsory bargaining on wages takes place every year. Collective bargaining is institutionalized and takes place in a committee composed by employer representatives and employee representatives, chaired by the Ministry in charge of transport.

In addition, collective bargaining also takes place at the company level. While the national sectoral agreement regulates minimum standards, company-level collective agreements are typically more favourable. Provisions laid-out in company-level collective agreements differ from one case to another; and there can also be significant variation between company-level agreements even within the local branch of the same group for the large operators.

⁷² *Convention collective nationale des réseaux de transports publics urbains de voyageurs du 11 avril 1986. Etendue par arrêté du 25 janvier 1993 JORF 30 janvier 1993*) and its annexes, including *Accord du 17 mai 2011 relatif au salaire national minimum et aux salaires minima mensuels forfaitisés*.

⁷³ *Arrêté du 23 juillet 2013 fixant la liste des organisations syndicales reconnues représentatives dans la convention collective nationale des réseaux de transports publics urbains de voyageurs (n° 1424)*

Lyon

Background information

TCL, the urban transport network in the area of Lyon, is the second largest urban transport network in France, with more than 1.7 million daily users. It supports the needs of 1.3 million inhabitants living in 64 municipalities around Lyon. The TCL network includes 4 lines of metro, over 120 lines of bus and 8 lines of trolleybuses, 5 tramways lines (73 vehicles and 2 lines of funiculaires). The network has been extending over time.

The managing authority responsible for the TCL network is SYTRAL (*Syndicat Mixte des Transports pour le Rhône et l'Agglomération Lyonnaise*). It represents about 59 municipalities in the region. The SYTRAL is in charge of elaborating urban public transport policy of the area and defining the content of the offer, making investments, setting prices for users and selecting the operator in charge of running the network (and its maintenance).

The operator of the network is selected by the SYTRAL for a fixed period of six years, following a competitive tendering procedure. Keolis Lyon is currently in charge of operating TCL since January 2011. It was selected by SYTRAL against competitors Veolia Transport and Transdev. Keolis Lyon had already been appointed as operator during the period between January 2005 and December 2011.

The contract operated between SYTRAL and Keolis Lyon is of a specific nature as it is a specific form that can be used for public service delegation and public procurement and is called “régie intéressée”. Within such a contract it is the competent authority that collects all revenues and compensates the transport operator directly. The authority is also owner of the material and rolling stock as well as of human resources. The profit for the transport provider can be made through performance bonuses.⁷⁴

Keolis Lyon subcontracts up to 8% of the lines to other local operators, including school transportation (total) and other regular lines. These lines are operated by personal under the far less favorable road transport national collective bargaining agreement.

The company and its employees

Keolis Lyon is a subsidiary of Keolis (a publicly owned company), with its headquarters in Lyon. The company holds its current name since 2005 and was previously called *Société lyonnaise de transports en commun* (SLTC). Before becoming a subsidiary of Keolis, it was a subsidiary of the Transexel group, and later on a part of the VIA-GTI group.

According to the company management, Keolis Lyon currently employs 4479 staff in total, of which about 2800 drivers (60% of staff). The total number of staff has increased slightly since 2004, by about 5%. Only 14.7% of staff are women, although the company is seeking to encourage a greater representation of women in its workforce.

A very large majority of staff have standard work contracts, i.e. open-ended contracts and working full-time. The company makes a very limited use of temporary agency workers (mostly for replacement of employees on sick leave). According to the company management, turnover in the company is very low (below 1% in recent years).

The most representative trade union within the company is [CGT des TCL](#).

⁷⁴ Taken from report. Olivier Domenach (2015): gestion directe ou déléguée, les déterminants du choix, p. 56 - http://_65430983298_1_1421100000.mobilicites.elfeg.net/media/rapport-final-v-14-od-17-07-2015.pdf

Evolution of social conditions

According to the consulted representative of HR at Keolis Lyon, social conditions for employees are determined by combination of different parameters such as general legislation, cross-sectoral collective agreements, sectoral collective agreements as well as company-level agreements (which also define the modalities of implementation of general provisions, for example concerning health and safety).

The representative of management points out that collective bargaining leads to the adoption of new agreements on a regular basis (various collective agreements at the company level have been agreed recently and some are currently waiting for signature) and therefore that company-level provisions have evolved since 2004. Starting in 2008 Keolis had signalled to reform and modernise the company specific social conditions in place. In fact previously more than 300 collective agreements and company practices have formed the basis of the TCL specific employment conditions considered as too complex leading also to contradictory rules or even illegal rules in some cases in place. . Thus in 2008 Keolis had started to re-negotiate a new basis for social conditions by ending all old collective agreements but maintaining the social acquis of staff. This process has caused in particular important strikes in 2009. Since 2009 Keolis aimed to reform working time organisation and has made proposals for changes. These proposals did not receive acceptance from two workers unions (out of 3) representing a majority of workers, which started proceedings at the labour court and are since ongoing. From this point of view it was pointed out by the union side that the work organisation that has been put in place unilaterally by Keolis management as of 1 January 2010 was recognised as illegal by Labour Court of Appeal in Lyon on 19 September 2014. From the management point of view this court decisions needs to be seen in the light that an appeal procedure against this decision is still on-going and the final judicial verdict on this issue is still to come. Management and workers unions continue to negotiate working hours and work organisation for all staff.

The trade union representative pointed out furthermore that the competition between Keolis and Veolia (at this stage not merged with Transdev) had adverse impact on the economics of the DSP contract from 2005-2010. As a consequence, the Group Keolis at the time registered a loss of about 20 million Euros in its enterprise accounts for the same period. This structural economic imbalance lead the competent authority Sytral and Keolis to further implement cost-efficiency measures to close the exploitation deficit. Again, this has lead the Keolis company management to take the decision to end historic company agreements (taking into account that personnel costs are of high important for this type of business) to reach gains in productivity levels.

Further main developments are summarised below:

Contractual arrangements: Over the last ten years, there has been no significant changes concerning the proportion of staff on open-ended contract and full-time contracts, which have remained very high in both cases.

Wages: according to the company management, since 2004, wages have increased for all categories of staff, to a moderate extent. The latest company-level agreement on wages concerned the 2007-2008 period and had a temporary scope. The general economic situation in the country as well as the general economic situation of the company are the key factors explaining the moderate increases in wages during the period considered, according to HR. According to the trade union the 2008-2009 strikes permitted to keep a salary for the 13th month, a holiday benefit; a salary grid based on seniority that is more favourable compared to the sector collective agreement, work on Saturdays and Sundays rewarded higher than other workdays, as well as the company additional health insurance. .

Variable remuneration: The management reports that the share of variable remuneration out of total salary is very low for all categories of staff, except for managers (for whom it can account for 10% of the annual salary). In contrast, for bus drivers, bonuses and incentives only represent about 2% of their annual salary. The weight of variable remuneration has not evolved significantly over time.

Remuneration of night shifts: according to the HR management, an increase in remuneration has taken place in the period considered, due to the adoption new sector level collective agreement provisions but since then it has remained stable.

Other benefits: Additional benefits for employees have been introduced in the period considered, such as meal vouchers (introduced in 2007) and additional health care insurance (since 2010). The company has also a company profit sharing scheme in place. .

Sickness leave: The level of sickness leave is quite important in the company and has increased over time. The trade union representative pointed out that this is clearly a consequence of Keolis Lyon human resource policies. For the union side these policies resulted in a deterioration of mental and physical health of workers, as well as demotivation and increased levels of stress, leading to an explosion of absences and increase of accidents at work.

Training: According to the information provided by HR management about the training strategy implemented in the company, drivers receive both initial training (including integration in the workplace) and continuous training (mostly CO, training on the use of specific vehicles, conflict management). Other categories of staff also engage in training. In 2014 the total number of hours of training provided equalled 120 000 hours and for drivers it represented 85 000 hours of training.

Transfer of staff – N/A (no change of operator for this network).

Conclusions

Keolis Lyon has been in charge of the operation of the TCL network during the entire period considered (2004-2014) as it won successively the last two calls for tender organised by the managing authority (SYTRAL).

Some changes in the company-level provisions have taken place within this period following the adoption of new collective agreements; and wages have increased to a moderate extent for all categories of staff. The type of contractual arrangements have remained unchanged in the company since 2014 as the vast majority of staff is still employed under standard work contracts (open-ended, full-time contracts).

According to the consulted representative of management, there were no requirements in the tender specifications prepared by the SYTRAL which had a strong influence on social conditions or aspects of collective bargaining at the company level. The management reports that the evolution of social conditions and wages in particular have been influenced by the general economic context and the economic situation of the company. It is therefore to assess to which extent the evolution of social conditions in the company have been directly impacted by the competitive tendering procedures.

According to the trade union representative contribution there is a close cause and effect link between competitive tendering procedures and the lowering of social and working conditions.

A7.1 La Rochelle

Background information

La Rochelle is a rather small sized agglomeration. It consists 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). The company status of the RTCR is called EPIC which provides a partly public and private commercial status. If the company would agree with the authority, it could set up a private company to reply for example also to competitive tenders outside of La Rochelle. This is however not the case. Its workers are employed under general labour law and do not have a specific civil servant status.

It should be noted that the number of municipalities forming part of this agglomeration has been increasing recently (2015) from 18 to 28 municipalities. This has however no direct impact for the urban transport operator RTCR as it only covers for the network in La Rochelle city and does not cover for all lines going out to the municipalities (some lines are also longer going beyond the city limit). In fact, the authority will be opening the inter-urban transport for competitive tendering. There is also the Group Transdev which provides for a number of lines coming from outside of the city of La Rochelle but entering also the city (sharing bus stops). All bus lines in La Rochelle Agglomeration operate under the commercial name Yelo. The competent authority is always the same.

Overall the network Yelo comprises 29 bus lines of which 18 lines the RTCR operates and 6 lines are operated by Transdev. Furthermore Transdev also operates 12 school bus lines (getting students to La Rochelle from surrounding municipalities). On the other hand RTCR operates also a maritime connection (4 boats) and the system of rental bikes. The maritime connection is however subcontracted to a specialised enterprise. The staff working on these boats follow specific maritime labour rules which are not similar to the staff working in urban transport (bus lines).

The last contract was awarded to the RTCR in 2010 for 6 years. In general contracts are awarded for periods between 3 to 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 meaning also indirectly pressuring the operator to revise its social conditions in particular revising the companies' 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 for opening the transport network for competition. There had been a vote finally on this issue and it was decided that the RTCR will operate at least up to 2024. The operator was asked to make about 40% of savings. This initial objective has however been reduced. One of the ways to make such savings was to reduce labour costs. Labour costs were said to represent before reforms of about 72%. Revenue from passenger tickets represents only about 20 to 30 %. 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 representing majority of workers) and CFE-CGC but not by the union CGT.

One of the reasons for the authority to pressure the operator to make savings was also a decrease in budget to finance transport (mainly attached to taxes) mainly influenced by the economic crisis. The union side expressed that this pressure is not comprehensive as the RTCR has made benefits in the past years.

Infrastructure and rolling stock maintenance is part of the contract but this is accounted for in the budget. Rolling stock is mostly owned by the authority.

The company and its employees

As stated above the company follows in most cases labour law obligations, the sector level collective agreement and has a company collective agreement in place since 1983. There was an important difference with regard to wages, wage components, rest times and annual leave compared to sector

level standards. Also the new company collective agreement of 2014 is still more favourable than average sector level employment conditions.

The RTCR employs 260 employees of which 165 are drivers. The staff turnover is close to zero and the company has rarely job openings. Almost 100% of workers are employed under permanent contracts working full-time and very few have limited contracts or part-time contracts. About 15% of drivers are women. Overall it is an attractive employer of the region.

Evolution of social conditions

- The number of employees is said to have decreased. There have been 182 drivers in 2010 which reduced to 163 in 2015. This is due to the fact that a number of lines had to be reduced in their frequency (concerned 7 lines). There are less passengers at specific times in the city centre (e.g. early mornings or late evenings). The commercial shopping areas have been more and more created outside of the city. One of the advantages for La Rochelle is that while less passengers use transportation in the summer to go to work or university, the number of tourists that come to the region in the summer keep the number of passengers at an equal level so that still 17 bus lines are operated in the summer season.
- Salaries have been increasing over time well above the level of inflation. This might change possibly for the future with the newly agreed collective agreement. Workers fear that salaries might freeze and will not see increases. Salaries have decreased in 2015 as a consequence of the agreement. The agreement has however also created new benefits. A new quality bonus was put in place (when the company would be paid a bonus for its quality) and which can represent up to 1200 Euros net. It however depends on the performance of the company. The management hopes that with this bonus workers will more closely cooperate to improve quality of service. The company also pays an end of the year bonus and additionally pays hours during public holidays (100%) or on Sundays (60 to 100%) or evening hours. Evening hours (now after 22 hours – before after 21 hours)) are however very rare and so is work on Sundays. Differences in the new agreement are in particular additional pay and small bonuses paid, as well as the differences of pay between grades.
- Working time is 35 hours per week on average. The reference period for working time for drivers is 6 weeks and thus the working hours can vary and working time can be compensated with extra rest days. A shift can last between 6 or 8 hours. Thus a 30 minute rest break is given after 2,5 or 3,5 hours of driving. The new agreement however has reduced this break to the legal limit of 20 minutes. A feeling of fatigue can be created by this type of work organisation but no intensification of work was remarked. Working time is said to have been remained stable. Overtime only occurs occasionally and is rather not typical.
- Absenteeism is low (below the sectoral level of around 7%). Cases of aggression are very rare and also the traffic is usually not dense in La Rochelle.
- Training policies and offer was said to have not changed over time. On average a worker spends 2 to 3 days on training per year.

Transfer of staff (N/A)

No transfer of staff occurred in this network.

Conclusions

The case of La Rochelle shows that also internal operators are in competition with private companies. Authorities seem to do also their benchmarking exercise and try to reduce costs when possible or necessary. At least in this case it is not entirely clear whether the authority had to make considerable savings. It seemed that the authority did not find it appropriate to pay higher salaries and advantages compared to the overall sector. The long-standing company collective agreement had to be revised and wages and wage parts were adapted. The result is that workers are losing trust in the authority and some parts of the workers do not accept the changes entering in a social conflict. Internal operators have to face also a certain threat by the possibility of competitive tendering and the choice

that authorities have. Thus overall the difference between internal and private operators when comparing social conditions may not differ too much. For the authority a private operator can bring sometimes other advantages such as the possibility to bring new investments to the region and private operators sometimes have better price opportunities for maintenance in particular reparation pieces thus decreasing costs for maintenance. However when using an internal operator it can be sure of keeping also investments inside of the region and surpluses in operation is kept in the region not going to private companies and their shareholders.

St. Etienne

Background information

The competent authority for St. Etienne is the Communauté d'agglomération de Saint-Etienne Métropole. It combines about 45 (transportation in only 40 of them) municipalities thus including also suburban transport. The region comprises about 400 000 inhabitants.

The current exploiting company is the TPAS (Transports Publics de l'Agglomération Stéphanoise) also named STAS for commercial purposes and which is a subsidiary of the Group Transdev. The contract has been renewed in 2012 for another 9 years. Transdev has bought shares of this company in 2000 and later the STAS became a subsidiary of the group.

The network includes 3 regular lines of tramway; 1 trolleybus line; 66 bus lines; 3 lines of transport at demand; 2 taxi-bus services and one service adapted for persons with disabilities. The network extends over 10 947 409 km in 2014 and 46 million travels have been carried out in 2014. The number of voyages has increased over the past years (1,9% compared to 2013). The tram services cover about 48% of the voyages that are made and 34% on bus lines.

The STAS has subcontracted about 30% of its bus lines. This is a decision that has some historic background and is also an option preferred by the authority. The company launches thus competitive tendering procedures for subcontracts which last between 3 to 4 years. The service for property has been outsourced as well as specific maintenance for bus tires. It also relies on external services for specific maintenance for trams.

The latest contract was awarded with a number of quality standards that have to be fulfilled; the service offer has to be managed within the budgetary limits and optimisation of the use of public funds, and the company has to contribute to the plans of the agglomeration to fulfil specific environmental objectives. On the other hand the latest contract installed a bonus-malus system focussing on a number of criteria such as punctuality, cleanliness of vehicles and stops, or reduction of fraudulent use of the services (more ticket controls). All these criteria have led to increasing pressures for the performance of the contract and are also to some extent commercial risks for the operator. Also new type of activities had to be carried out such as communication campaigns. There are more details about types of vehicles, IT techniques and infrastructure investments in recent contract. It was remarked by management that the demands towards the operator have raised and more processes need to be carried out in coordination with the authority or at least approved by the authority. Prior to this development the operator could also take more initiative and make proposal this in no longer the case and more negotiations take place prolonging also a number of processes.

In 2013 labour costs represented approximately 61%.

Social criteria did not play a significant role in the award of the contract as it is in general considered that French labour law extensively regulates all aspects of the work relationship and companies have to comply with these legal obligations. The company management explained though that the authority pays more and more attention to human resource management of the operator as social unrest among staff and strikes directly affect the reputation of the transport network as such. Thus the operator had to demonstrate that it can provide for good social climate and attractive work conditions in its bid. The past tender the authority also emphasized training policies, hiring of people with disability and those difficult to integrate into the labour market.

The company and its employees

- The company employs 682 workers of which 410 are drivers. Staff numbers have slightly increased over the past 10 years. About 15% of staff is female. The average age is 44 years. Staff turnover is close to zero and the average seniority is 12.8 years. The company also engages a higher rate than legally defined of people with disabilities – namely 6,1%. The company also uses 4,9% of its payroll budget for training. The company sets up every year a training plan. In 2014 about 19 393 hours of training have been used by 545 staff members. The training plan is also validated by the authority. The authority is also keen that the operator provides a training plan for staff to develop also soft skills and formal skills. Meetings are foreseen with every employee each

year to discuss career progression. Overall management characterised the STAS as one of the most attractive employers in the region.

- The company negotiates wages and employment conditions each year as this is a legal obligation which results in a company protocol. The company has a works council which is also consulted on workers employment conditions. There are a number of legal obligations that prescribe types of company policies that are obligatory, in particular with regard to health and safety. The company has focussed in 2014 to introduce more measures on health and safety at the workplace and introduced a scheme to prevent psychosocial risks.

Evolution of social conditions

- Over time the number of staff has remained stable and increased slightly. There was a moment where staff has been worried about changes (at time of contract renewal) and because work organisation processes have changed over time. But this restructuring has not impacted on the number of staff. In fact the most important changes for staff occurred back in between 1998 and early 2000s when new legislation on working time was introduced reducing the weekly working time. Furthermore in 2006 the decree on working time for urban public transport (Decret Perben) introduced new rules on rest times. The Decree states that each driver shall benefit of a rest break (not at the disposition of his employer) if a shift is longer than 6 hours. In addition a driver disposes of a lunch break of at least 45 minutes. These rules have further changed over time the work organisation.
- The general working hours for personnel during a working week is 34 hours. There are very limited numbers of overtime hours, mainly in cases where a sick leave has to be covered.
- Absenteeism has decreased over time and is currently at 7,6% (previously 2012 at around 9%).
- Salaries have moderately increased above inflation and price indexes. This holds true also for variable remuneration. There are bonuses in place for non-absenteeism and after certain periods of a career. The company also pays lunch vouchers and additional health care insurance. The works council has also the possibility to provide other benefits for housing, social events or price reductions for specific products or stores.
- The amount of training hours has increased over time and the company provides more opportunities for career development.
- The company has recently installed video surveillance in all trams and has installed security cabins for drivers. There is also training in place to help operational staff deal with unpleasant passengers.

Transfer of staff

No transfer of staff has taken place in this network.

Conclusions

From the information received social conditions seem to be an aspect that is well protected under French labour law including sector specific legislation and sector level collective agreements. A number of legal obligations provide for the introduction of policies concerning well-being of workers, health and safety, working hours or wage negotiations. They do not necessarily lead to a company collective agreement but the developed company agreements thereof have a similar status.

It seems that in the case of St. Etienne the particular reinforced training policies is something that has been also developed due to requirements from the authority. The authority does support the fact that an operator shall also provide for good social conditions in order to avoid strike action and thus negative publicity for the network. A good functioning network and an attractive employer (operator) is also a positive communication for passengers and to attract more passengers. Also for the operator itself the equation has been similar: while the authorities' demands for higher quality have increased thus creating more performance pressure on the operator, being an attractive employer can also stimulate employees to work together with management on its objectives.

In this case it is not clear to what extent there has been also competition by other bidders for this network. Thus the impact of competitive tendering on social conditions in this case is difficult to assess.

Conclusions: overall impact on social conditions and the protection of staff

The following key points can summarise the findings from France:

- Social conditions have remained stable over the past ten years, wages have rather increased, working hours reduced and training policies improved. Nevertheless, the competitive tendering process has impacted on staff creating a continuous perceived threat. It obliges unions and management to reflect continuously on human resource policies and staff development.
- In practice, social criteria may not be very specific and can be limited to references to the obligation for the operator to respect existing social legislation and implement the sectoral collective agreement.
- Economic and financial criteria set in the tender specifications, as well as criteria concerning the quality of services provided to users, are the most important factors for the selection between different offers.

While the option for authorities to use competitive tendering dates back to the early 1990s the use of competitive tendering has increased over time. Thus its full-impact on social conditions may have occurred prior to the period of study. In 2015, about 85% of networks are tendered competitively and only 15% are internal awards. This short insight to the sector does not allow to assess how competitive tendering has been used also to influence on social conditions already back in the 1990s. The change from internal operator to private operator may have already an impact to reframe company collective agreements at the time. Internal operators are also under pressure in case where social conditions are above the average of the sector as the case of La Rochelle showed. This however does not only concern internal operators, pressure is also exerted on private operators by authorities as the case of Lyon demonstrates. Labour costs are the most important cost in financing the operation of a network. A recent publication by the Cour de Comptes in 2015⁷⁵ situates on average the labour costs in 2012 of about 54% of the cost of operation of the network. The report first of all aims to highlight that French competent authority's lack the financial means to operate their networks in a sustainable manner. The report remarks that labour costs have been increasing over the years due to increase of salaries and reduction in working time. On the other hand the report notes that the rate for absenteeism of the sector is quite high which causes additional costs for the operators. Thus one of the points made also by this report is that salaries increases need to be related to levels of productivity to increase performance and working hours need to be adapted to the mode of transport and cycles of activity (e.g peak and off-peak hours). Absenteeism must be controlled to delimit costs. The report however also highlights that the authorities are limited in their choice regarding possible operators – there are in principle 3 private operators Transdev, Keolis and RATP Dev or the choice can also be to use an internal operator. In fact however Transdev and Keolis take about 30 to 40% of the market. This situation does not leave enough room for authorities for negotiation. As in practice, a change of operator does not occur that often, about 72% of networks have remained with the same operator since 2005. It has been argued by one of the interviewees that if authorities return to an internal operator that is because also private companies aim to make benefits from service delegation and will not necessarily reinvest in the local region. If a private company remains too strong in one specific region it can also lead to higher prices and abuse of market position. Thus a change of operator may in particular be motivated for economic reasons however due to the obligatory transfer of staff operators are not likely to influence importantly social conditions that have been acquired in a tender bid. The reason for this is also a strong trade union representation in the sector. If this would not be the case the outcomes might be different. Authorities have also become more aware of the impact that social conflicts can have on users of networks and the negative publicity as a result. In particular long-lasting social conflicts can have a detrimental impact on the network and number of passengers in particular in medium sized networks. Thus authorities want to have increasingly demonstrated in tendering bids the human resource capacity to manage staff and exploitation of the network as well as

⁷⁵ 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>

management of conflicts. It is more likely that labour costs will be monitored and changed with a same operator over a longer contracting period. Should an operator take over staff it may take time to gain trust in order to be able to have a social dialogue at company level. In the French case the sector level collective agreement clearly sets advanced sector specific minimum conditions. In a situation of competitive tendering it may however also be used as a guidance from which company level collective agreements may not divert considerably. This will depend on economic, network and operator specific situations.

Sources

Interview partners

Name	Position	Company	Date of interview
Jean-Marie Joly	HR Manager	Keolis Lyon TCL	21.09.15 and several written inputs
Jacky Albrand	CGT – TCL chair	Keolis Lyon	Written input May 2016
M. Cronenberger	General Manager	RTCR La Rochelle	14.12. 2015
Frédéric Rousseau	CGT RTCR representative	RTCR La Rochelle	15.12.2015
Olivier Grontec	General Manager	STAS Transdev – St. Etienne	11.12.2015
Sylvette Mougey	Social Advisor of the General Director	UTP – employers' organisation	September 2015
Alain Surtour	Sector Responsible	CGT – trade union	Written input October 2015

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<http://www.developpement-durable.gouv.fr/L-exploitation-des-services.html>

National legislation :

- Code général des collectivités territoriales : [article L. 1411-1](#) et L. 2221-1 et suivants
- Code de commerce : [article L. 442-7](#)
- Code des transports : articles L.1221-3 et suivants, articles L. 1241-5 et suivants et L. 3111-12.
- [Décret n° 2005-664 du 10 juin 2005](#) portant statut du Syndicat des transports d'Ile-de-France et modifiant certaines dispositions relatives à l'organisation des transports de voyageurs en Ile-de-France
- Code du Travail : [Article L1224-1](#)

Sectoral collective agreements :

- [Convention collective nationale des réseaux de transports publics urbains de voyageurs du 11 avril 1986. Etendue par arrêté du 25 janvier 1993 JORF 30 janvier 1993](#)

Annex 8 Ireland

Background

Market organisation of urban public transport

The following sections provide an overview of the institutional organisation, the regulatory framework, main transport operators, regulatory framework of employment conditions, and changes in social conditions.

Institutional organisation

In Ireland there is only one competent authority for urban public transport which is the National Transport Authority (NTA) that awards all contracts. For the light rail system it is de facto the Transport Infrastructure Ireland (TII) authority that regulates and determines the conditions for the operator of light rail however the contract is concluded by the NTA.

In addition it shall be mentioned that the political influence on the specifications of the contracts awarded is quite important. One of the reasons for this is that the NTA specifies for each year the PSO payment and services that need to be provided. There is a consultation process during which the operator has the possibility also to express any specific needs.

Regulatory framework

General regulatory framework urban public transport

The law that governs the award of contracts for urban public transport is the Dublin Transport Regulation Act from 2008.

This law stipulates under section 52 1.a that: *Dublin Bus has an exclusive right to continue to provide the public bus passenger services that it provides in accordance with the provisions of section 7 of the Act of 1958 and section 8 of the Act of 1986 within the city of Dublin and the counties of Fingal, South Dublin and Dún Laoghaire-Rathdown and contiguous areas.* And under 52.1.b.: *Bus Éireann has an exclusive right to continue to provide the public bus passenger services that it provides in accordance with section 7 of the Act of 1958 and section 8 of the Act of 1986 within the GDA except in so far as such services are provided by Dublin Bus under paragraph (a).*

It furthermore requires under section 3: *The Authority shall, in accordance with section 48, to ensure the adequacy of public passenger transport services in the general economic interest, enter into direct award contracts, which impose public service obligations, with— (a) Dublin Bus and Bus Éireann to secure the provision of public bus passenger services within the GDA to which subsection (1) relates.*

While this paragraph does not appear to leave a choice for the Authority other than direct award, it may however review the contract and seek that parts can be competitively tendered. A contract for bus services and track bound services is awarded for 5 years.

New contracts have been recently awarded to Dublin Bus and Bus Éireann 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. The bus routes that are concerned are mainly to be found in the Dublin area. Shortlists of applicants will be out in November 2015. Reasons for this change are in general economic pressures in the aftermath of the economic crisis that affected Ireland in particular. 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.

Provisions of rolling stock and maintenance is part of bus service contracts. Infrastructure maintenance and bus depots are not part of the contract.

In general 30% of the PSO services are provided by Bus Éireann and 70% by Dublin bus – this will thus change in the imminent future – as 10% of the bus services will go to a private operator.

The Transport Regulation Act from 2009 regulates licences for operating commercial services/transport services in Ireland.

Subcontracting is not specified as a requirement in the direct awarded contracts. Bus operators can, however, choose to subcontract but not without prior agreement by the competent authority. It shall be noted that in Dublin there is very little subcontracting. Within Bus Éireann subcontracting is mainly related to school bus services as these services are very flexible and depend on the number of school children to be transported. These services are provided for the Department of Education and Science and are not part of the PSO contract. Occasional subcontracting occurs for operational reasons within the PSO services. It has been claimed from the union side that subcontracting has been increasing over the past ten years however this is disputed by the management side who point to the reduction in the numbers of contractors vehicles used. It shall be noted that subcontractors employment conditions are generally less favourable compared to those in the main bus operators.

Furthermore it should be noted that services such as office cleaning, security services and catering are generally outsourced. These professions have their own Employment Regulations Orders (ERO) – setting out minimum pay (and other conditions) that are obligatory for all employers of the sectors. Recently in October 2015 a new ERO for the cleaning and the security sector came into force. However EROs do not considerably increase employment conditions for workers.

Social criteria are rather limited in the PSO contracts. There is some reference to health and safety and training and skills levels as these directly affect the quality of the service (see below Bus Éireann). Only in the recent tenders and under recent employment law reforms a company collective agreement may be regarded as “representative” agreement for the sector and which shall be applied in public tendering. It was considered that it would be difficult to compete over social conditions. However, due to the fact that this system is rather new the entire impact cannot yet be estimated.

Regulatory framework employment conditions

The general rules and legislation on employment of workers (in private) companies are applicable.

For the workers in the transport sector company level agreements are the most relevant way to considerably improve employment conditions compared to what is set out in national legislation. This is in particular to be noted for pay. National legislation only plays an important role for health and safety rules and training.

It seems that pay levels have more or less stayed the same at company level and may have slightly increased. Additional remuneration did not seem to have changed. Working hours also did not change over the past ten years. Pension benefits have increased. Training opportunities did not seem to have changed.

Regulatory framework transfer of staff

Normally transfer of staff can only be requested under the PSO regulations – this holds true for bus and tram services. However for bus services the award of a PSO contract could sometimes be considered as a transfer of business as a Transfer of Undertakings as defined under Directive 2001/23/EC. This does depend on the way the contract is awarded – whether rolling stock will be transferred. The transfer of staff for those providing tram services the transfer is automatic due to the requirements (context) of tram operations.

Typically only staff that works on the tendered network would be transferred (drivers and operational staff).

However, due to the growing uncertainty of workers affected by the recently tendered bus services, the unions could reach an agreement with the government that staff is not obliged to transfer and it would be their choice. In principle if they were to change the TUPE rules for transfer of staff would apply. Their current employment conditions could be maintained. The government has also ensured that there will be a guarantee for pensions.

Main operators

The main operator is Córas Iompair Éireann (CIÉ) Ireland's main national public transport provider. It includes the National Railways (Irish Rail), Bus Éireann, Dublin Bus and CIE tours (Tourist Coach Services). In fact, each of the transport operators are operating on their own accounts (fully owned subsidiary bodies) but CIE is the statutory body which holds all 4 companies. It does not only provide for public transport under PSO contracts but also provides commercial services (such as coach services). The three companies for public transport were established under the Companies Acts, as provided for in the Transport (Reorganisation of Córas Iompair Éireann) Act, from 1986.

All major public transport operators are thus 100% public limited liability companies.

In addition, there is only one international company – Transdev (Veolia) - providing light rail/tram services in Dublin – which is the LUAS Network. This network was built in 2000. Since the opening of the tram network and the competitive tendering of the operation of the network no new operators have entered the market.

It shall also be noted that there are some other commercial services provided by international companies such as coach services and inter-city connections.

Employment in the sector

It can be estimated that there are less than 6, 000 workers in the urban transport sector (Dublin Bus, Bus Éireann and Transdev) in 2014. The indications on the trends received was that the overall number has declined recently after the crisis (also due to PSO remuneration decrease and decrease of passengers). However before the crisis, between the periods 2003 to 2008 the number of workers had continuously increased.

Social dialogue

In Ireland there are generally only a few sectoral collective agreements in place that set some minimum standards. Collective bargaining primarily takes place the company level.

In all of the subsidiaries of CIE, company collective agreements are in place. This is also the case for Transdev operating the LUAS network.

The trade unions in the transport sector are SIPTU (Services, Industrial, Professional and Technical Union) representing drivers and operational staff in Bus Éireann, Dublin Bus and Transdev; and TSSA (Transport Salaried Staff's Association) which is an independent UK based union which also represents workers at Bus Éireann and Dublin Bus (but also represents workers in other transport sectors). There are is also a company specific union namely the NBRU (National Bus and Railway Union) representing workers in Bus Éireann, Irish Rail and Dublin Bus.

Staff carrying out office cleaning activities are covered by other collective agreements. Subcontracted staff such as security staff is also covered by other collective agreements which are said to be less favourable as the company agreements at the respective companies.

LUAS Network – Dublin light rail network

Background information

LUAS Network is a light rail tram network in Dublin. This network was newly built and first initiated in 1994. The construction of the first lined started in 2000 and the first tender for the selection of an operator was launched in the same year. In 2002 it was announced that Connex Transport would be the preferred operator and the first line effectively ran as from June 2004. In 2006 Connex became part of the company Veolia and changed its name. In 2008 the contract to operate LUAS for Veolia was extended. In 2009 the contract was once more extended for 5 years. The latest tender occurred in 2014 and was won by Veolia/Transdev worth 150m Euro in revenue. Part of this contract is to provide for maintenance of the rolling stock and infrastructure. The rolling stock and infrastructure is owned by the TII. (*Management of the Luas infrastructure and vehicle maintenance contracts (by novation agreement). The Operator takes some performance risk related to infrastructure and rolling stock maintenance.*)⁷⁶ Thus in practice, contracts for infrastructure maintenance and vehicle maintenance are made with other companies and the TII and Transdev manages these contracts which were already in place at the time when the new contract started. Thus there is one budget for Transdev for operation and another budget for maintenance managed by TII. While the authority finds that Transdev has only some performance risk with regard to maintenance, Transdev claims that the operational risk is quite high as for example cases of vandalism have to be born entirely by Transdev.. Both contracts for maintenance will expire in 2019 (just as the operational contract).

In general, the operational contract is tendered every 5 years for two lines. The Red line is 20kms in length and has 32 Stops and the Green line is 16.5 km and has 22 stops. The network has been extended over the years. The contract is a net cost contract and the revenue risk is born by Transport Infrastructure Ireland (TII). There is a performance bonus and penalty structure in place on a number of performance criteria. In a press announcement⁷⁷ on the award in 2014 it was specified that Transdev makes a surplus in particular due to the strong increase of passenger numbers (see below). For the new contract in 2014 a shortlist of 3 other companies was published that competed against Transdev: FirstGroup, Keolis and RATP. The new contract that Transdev has emphasises performance and management informed that the contract is more challenging in financial terms compared to previous contracts. The penalty structure did not exist in previous contracts and places the operator under pressure. Some contractual risk is also borne by the operator as the ticket prices are linked to the Consumer Index of Ireland. If the prices would reduce it could bring a potential financial imbalance to the contract.

The competent authority is the Railway Procurement Agency, the (TII) is responsible to oversee infrastructure and the contract. However the tenders are organised by the NTA as the sole competent authority for urban transport.

Table 1.11 Passengers LUAS network from 2010 to 2014

	2010	2011	2012	2013	2014
Number of passengers	27.4m	29.06m	29.4	30.5m	32.4m

Source: LUAS website

As can be taken from the table above the number of passengers has steadily increased except for 2009 due to the economic crisis but in 2010 it was as high as prior the crisis. Forecasts are however positive and see the number of passengers increasing in the years to come.

Currently TII informs that lines are being prolonged and be ready in the near future. TII also works on a project called LUAS Cross City which will link the two lines together.

In order to prepare for the new bid Transdev had to make some restructurings prior to the bid phase and as a consequence 6 employees were made redundant. Overall staff levels have not been

⁷⁶ <http://www.tii.ie/light-rail/operations-and-maintenance/operating-contract/>

⁷⁷ <http://www.tii.ie/news/luas/NewLuasOperatingContractAwarded/>

influenced by the tenders as the business is growing due to increase of passengers and line extensions. Yet, the tendering situation was described as a stressful situation for all workers.

The company and its employees

LUAS employs currently more than 280 workers of which are mostly tram drivers (around 172) and some other operational staff and management. Overall, since 2006 staff has increased from 2010 to more than 280 due to line extensions.

There were two collective agreements since the start of the LUAS network (first with Connex, Veolia and Transdev). The first agreement was concluded in 2004 and the second currently in place was agreed in 2010. The agreement has been concluded between the company management and the union SIPTU representing workers in the transport sector.

The agreement of 2010 was considered an interesting one included a “three way” party system to the agreement – the company, the union and its members.

The agreement had foreseen the following:

- the right to strike;
- revised, increased and extended salary scales;
- a continuous driving time maximum of three hours and 45 minutes;
- a roster review for all grades;
- paid maternity and paternity leave, among other leave improvements;
- a bonus scheme (for performance) yielding up to 6.5% of basic pay;
- the introduction of an Occupational Injury Sickness Payment Scheme, separate to the ordinary sick leave scheme;
- meaningful employee involvement;
- fair and equitable disciplinary and grievance procedures;
- regularised accessibility to shop stewards on site;
- a lump sum payment of €150 per year of service – since capped at a maximum of €750;
- an in-term review in September 2011.⁷⁸

The agreement also implemented an internal procedure to resolve disputes. The company thus has in place a number of benefits that are not prescribed by the Irish employment law and benefits and salaries are well exceed the national minimum.

Agreed maximum working hours for drivers are 9 hour shifts and 39 hours average working week. In practice it was claimed that drivers only work 36,5 hours on average. Office staff have a 39 hours working week (but is less for unionise grades) thus on average staff works around 37 hours per week. No working time intensification has been observed.

Several union actions since this agreement occurred. In 2013 SIPTU members fought for better rest times. The current shifts are of 9 hours of length and the continuous maximum of driving time is three hours and 45 minutes. Additional compensatory rest was granted so that effectively working time has decreased over time. Some overtime occurs.

In September 2015 the union had asked for an increased pay as the union claims that pay levels have stagnated recently. However, also in 2015 about 121 members of staff (out of 240 union members) received an increase. Also with regard to the overall period of 10 years under analysis the pay levels were said to have increased. The sick leave scheme (in place since 2004) was also enhanced over time with the introduction of a company specific occupational sick pay scheme in 2010.

The company provides for 4 extra-legal days of annual leave to its staff which is based on the employee’s years of service.

⁷⁸ <http://www.eurofound.europa.eu/observatories/eurwork/articles/industrial-relations/agreement-at-tram-company-includes-three-way-employee-voice-process>

There is an occupational pension scheme in place for which contributions have remained the same over time.

The company pays more attention to all kinds of training also improving more “soft skills” such as customer service, disability awareness etc. Training time has rather increased over the past years.

Turnover has been rather low and did not change over the years. Transdev seems to be an employer that is seen as attractive. It receives numerous spontaneous applications despite no openings. Overall, management also sees that attractive working conditions are important to keep motivation of staff thus helping the company to achieve the performance targets.

Transfer of staff

At this stage, no staff has been transferred. When the LUAS network started – Connex at the time – started recruitments in Ireland.

Recently in early 2015 an agreement was reached between the government and the unions (in view of the possible tendering out of 10% of Dublin bus services) that workers affected by tenders in the transport sector could choose to stay within the “old” operator in case of a change.

At this stage it seems not clear what would happen in a case of change of operator in transport as no experience has been made. A view that was shared was that TUPE regulations would be applicable thus transferring staff to the new operator.

Terms and conditions of employment would have to be guaranteed by the new operator in particular if a registered employment agreement is in place (company level collective agreement can also be considered as a sector wide valid agreement). This is a new possibility in the current Irish labour relations systems with the creation of the Workplace Relations Commission established since October 2015 by the adopted Workplace Relations Act in 2015.

Conclusions

Due to the rather positive development of the tram service (increasing number of passengers) the employment conditions have improved since the start of the service. The re-tendering of the service has created some uncertainty for staff in particular after the latest re-tendering process due to the number of bidders.

Bus Éireann

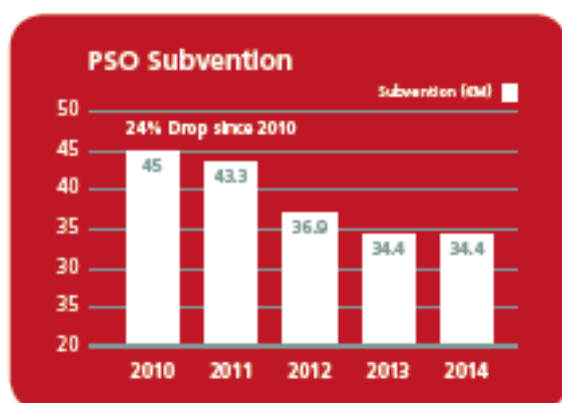
Background information

Bus Éireann is the bus operator for all urban transport services provided outside the Dublin area (but including Dublin outer commuter services). The most important bigger cities in Ireland are Cork and Limerick. Ireland is rather characterized by rural areas. A map can be found when clicking [here](#).

The current contract has been awarded directly for the period of 1st December 2014 – 2020 by the NTA. At the end of the previous contract, a report has been conducted to describe the operations that were carried out (period 2009-2014).

This report highlighted that the PSO remuneration had increased from 25 m Euro to 49 m Euro in 2009 but with the economic crisis the PSO remuneration decreased over 24% in the period 2010 to 2014 to 34m Euro (see figure below). One of the reasons was important public budget cuts and savings that had to be made in the national budget but also because the number of passengers considerably decreased after the time due to higher unemployment rates. The number of passengers has recovered slowly and growth has only picked up recently in 2014 (81.1m customer journeys compared to 76.8m customer journeys in 2013).

Figure 1.5 PSO remuneration Bus Éireann – 2014 Annual Report



Bus Éireann provides 30% of PSO Services. The other 70% of PSO services are covered by Dublin Bus.

The directly awarded contract stipulates some minimum social criteria.

See the following paragraph under Article 38.1 of the contract.

The Operator shall provide sufficient trained, competent and suitable staff with the necessary qualifications, skills and experience to provide the Services to ensure that the Services are provided at all times with reasonable skill and care and in accordance with the Performance Standards.

This can be controlled by the competent authority at any time if requested. Furthermore the contract refers to legal obligations with regard to training and employment conditions requirements as stipulated in the law. The contract also mentions supervision of employees and safety gear to be provided to the employees.

Subcontracting is not possible without prior authorisation of the competent authority. In principle some services are subcontracted with regard to school bus services. This is an additional service that is provided for the Ministry of Education and that does not fall under the PSO regulation. Subcontracting for PSO services is unusual (only of additional capacity and is not related to the economic model). For the school bus services Bus Éireann subcontracts about 90% of the services. In general, employment conditions with subcontractors are less favourable than within Bus Éireann.

Next to its PSO services, Bus Éireann also provides for other commercial coach services (national and international and charter services).

Rolling stock (and its maintenance) is provided by the operator, however the bus depot and the maintenance of the infrastructure is provided by the authority and do not form part of the PSO contract.

The company and its employees

In 2014 Bus Éireann employed 2,456 employees (compared to 2486 in 2013). The majority is employed under full-time permanent contracts. Staff has decreased slightly after the crisis due to less km/passenger served. In the economic crisis a number of staff had to be laid off. However over a period of 10 years the employment levels remained the same. Staff turnover is relatively low.

As mentioned above – Ireland is undergoing a reform of its PSO awarding system and intends to make use of competitive tendering for more lines. The political debate and the changes recently in the practice of award of PSO contracts has created also a debate among workers and caused insecurity among staff impacting on staff morale. Employees fear for their terms and conditions

There is a company collective agreement in place for all employees at Bus Éireann. The agreement covers in particular wages and additional remuneration and overall weekly working time.

Wages increase with the rise of seniority level and experience in the company – on a 4 year scale. For drivers having achieved the maximum seniority rate there is an increase of approximately 18% of the

hourly rate compared to a new starter. It shall be noted that staff are paid according to a daily rate/ per days worked in a month and not per hour/ in a month.

The current weekly working time is 39 hours for drivers.

Generally there is only a small amount of hours during nights or overtime.

The employer side claimed that wages have increased compared to the cost of living over the past 10 years.

It is estimated that work load has intensified over the past 10 years for drivers due to the optimisation of driving time, time schedules and vehicle efficiency. Productivity is a criterion that has increased in importance. In addition, in urban areas pressure on the streets increased due to more cars on the road.

Finally it shall be noted that while all workers are employed under private employment law, there is a number of staff hired before 1986 (thus before the reorganisation of CIE) that has continued to keep a civil servant type status but not in state employment. It provides some small additional advantage in so far as staff believe they have a right to continued employment within CIE.

Overall impact on social conditions and the protection of staff

Overall, in Ireland competitive tendering is a fairly new experience. So far competitive tendering was only used for the tram services - for a network that was newly built at the time. After 3 times of competitive tendering the operator for the LUAS network (tram service) did not change. This has thus provided stability of employment conditions for those workers affected by these tenders. Nevertheless, due to tenders the company had to adapt to recent increased competition in the tendering process (latest one in 2014 – which had 3 more international companies short listed). This has caused some restructuring inside the company. It has also fuelled worries among staff that the operator might change.

On the other side, the recent changes in the directly awarded contracts to the two main companies that provide for urban public transport in the country (Bus Éireann and Dublin Bus) to tender out 10% of the routes of each of both operators could possibly change the philosophy of award of public urban transport in the years to come depending on the experience that will be made in the coming 5 years. These reforms had a considerable impact on staffs' morale in the recent past due to increasing uncertainty of how the reforms will impact on their working and employment conditions. On the other side, the government has made a number of agreements with the unions to improve clarity in this regard and guarantees for pensions, and maintenance of the current employment conditions.

Nevertheless, the figures on the PSO remuneration depending highly on the overall economic situation of a country also shows the impact on the operational level of the public operators. It has led to a decrease of staff numbers, thus layoffs and reduced working time. The transportation offer had to be cut due to decreasing passenger numbers. The overall economic crisis seemed to have had a strong impact on the organisation of public urban transport. It impacts in particular on rolling stock renewal and measures to become environmentally friendly. The government in Ireland seems to expect that money will be saved by tendering out competitively and also help to evolve in the way transport is provided and planned for. There is a drive for more efficiency and higher productivity of workers, hence cost-savings. The recent directly awarded contracts seem to include more performance related indicators which drive also internal operators to improve and focus on efficiency. This may cause work intensification. It has been claimed that more efficiency measures will not necessarily always bring cost-savings or efficiency in service provisions – simply due to the fact that vehicle efficiency, working time and schedules may not be able to match in the best way because bus driving depends also on traffic and numerous facts that cannot be directly influenced.

On the other hand it can be observed that the introduction of European Regulation 1370/2007 had a strong impact on the current assessments and reflections by the government on how to organise public urban transport in the future. In fact Ireland had to reply to a European Commission assessment that accused the state of Ireland of state aide in the urban public transport sector. It has been not entirely clear to what extend PSO remuneration was granted for routes that were not profitable – it was not clear which routes of the network were in fact profitable and thus it was considered that the PSO remuneration was possibly too high (the debate included also funding to renew the fleet). This

has certainly created a certain pressure for Ireland to analyse the situation coming at a moment where public budget cuts had to be made.

The Irish urban transport sector finds itself in a time of possible changes and where a number of political reflections are taking place. The possibility to increase competitive tendering may have an impact on future social conditions of workers in the sector. Its actual discussion creates insecurity among workers.

Summary and conclusions

There are 2 internal public urban transport providers in Ireland – Bus Éireann which provides all urban transport services outside Dublin (but including outer commuter services to Dublin) – and Dublin Bus that provides all urban transport services in Dublin area. In addition, there is a private operator – Transdev – which provides the light rail/tram services in Dublin called LUAS network. The LUAS network is tendered.

Contracts for bus and light rail services last 5 years. The PSO remuneration is assessed each year for the two internal operators. The contracts for bus services include rolling stock provision and maintenance. The contract for the tram service includes maintenance of rolling stock and infrastructure though it does not form part of the operational budget.

There is a sole competent authority – the National Transport Authority (NTA) that is responsible for all contracts in public urban transport.

Regulatory reforms led to a re-organisation of authorities and the CIE as the sole public transport provider (with its fully owned subsidiaries Bus Éireann, Dublin Bus and Irish Rail). It was estimated that this did not have a considerable impact on public urban transport employees.

It was in particular the recent economic crisis that has impacted quite importantly on public budgets for urban transport and reduced thus PSO remunerations. This in turn has led to changes of working conditions at the internal operators. There is a higher pressure to provide for economically efficient transport and important number of performance indicators need to be monitored.

The LUAS tram network has been tendered for operation 3 times since its creation in 2000. The operator did not change and operation went each time to the incumbent. However it was noted that during the latest competition in 2014 the number of international bidders has increased and which led to some restructuring at the incumbent operator prior to the tendering process. Changes in the budget of the operation could not be observed (no figures found to compare) though the authority declared that savings through tendering could be achieved. Due to increasing numbers of passengers and savings achieved through tendering the network is highly interesting as it is said to achieve an operational surplus. The most recent awarded contract in 2014 sets out a system for penalties should the performance indicators not be achieved thus placing also more risks on the operator than it used to be heretofore.

The economic crisis had impacts on both the internal operators, and the private company as the number of passengers decreased. This is a very important parameter for the level of remuneration and benefits that can be achieved by companies. The overall success of a transport mode is important to keep employment secure.

Annex 9 Netherlands

Background

Competent Authorities

The Netherlands consist of twelve provinces, all of which are competent transport authorities. In addition, two authorities on a municipal level are entitled to tender public transport concessions: the area of Amsterdam and the combination of Rotterdam-The Hague. The provinces prepare different lots for regional and city transport. City and regional concessions cannot be easily distinguished; area's that used to be operated by municipal companies have often become part of concessions that include regional public transport as well.

1. Dutch Transport concessions – map



Source: *OV in Nederland*

Government funding is distributed across these different authorities, who then have the choice of allocation for infrastructure and public transport. The Dutch Ministry of Infrastructure and Environment is responsible for the entire train services (NS) and train network. The NS operates the most important part of the train network, a concession which has been directly awarded by the Ministry. Both the NS and Prorail, which is the infrastructure manager on a national level, are publicly owned liability companies. Both of these organisations work on a concession basis and submit yearly management reports to the Ministry. Some regional lines of the rail network to the contrary are subject to competitive tendering by the regional authorities, either in combination with other public transport services, or separately.

The four largest urban regions Amsterdam, Rotterdam, The Hague and Utrecht have been exempted from the obligation to tender their transport concessions. Hence, they are free to choose either direct or indirect award of public transport. Only region Utrecht of these four has started to tender fully its urban network. In addition, Rotterdam and The Hague have started tendering their urban bus services. According to an employee representative it is because of these city concessions and the national rail network that around the start of the new millennium international players entered the Dutch public transport market.

Before the liberalisation of the public transport market the cities had been run by independent transport authorities, whereas regional companies were associated in the VSN (Verenigd Streekvervoer Nederland). Public transport relied strongly on public funding due to diminishing numbers of passengers as a result of increasing ownership of cars. Therefore towards the turn of the century responsibility was decentralised and legal changes were made in order to allow for the liberalisation of the market. Through this route, government hoped to reduce its expenditures on public transport and introduce more efficiency into the sector. Originally the intention was to eventually also allow for the tendering of the national railway services and the countries' largest cities. However, up until now the national railway system has not been tendered and as said the largest cities have the choice to either directly award or competitively tender their urban public transport concessions.

This has meant that, according to an employee representative, international companies have not seen the expected returns on investment. After all, the biggest gains were expected to be made in the biggest cities and by operating the national rail network, not by operating smaller city or regional concessions. Since tenders mostly focus on cost of operation of the network, it meant that companies chose to reduce personnel costs in various ways. For public transport companies it is the people employed that account for around 60 per cent of their expenditures. Another interviewee working for one of the provinces, observed that the companies operating on the public transport market may have originally handed in bids under the market price for their services. Consequently, this has caused an imbalance between the price and the number of hours and services that need to be provided and led to restructuring at the operator. Again another union representative sums up the consequences of efficiency focused policies of transport companies which have to the unions point of view succinctly increased workload due to tighter schedules. Furthermore it was underlined that some companies for the same reasons have sold rolling stock and other property, such as bus depots, and have started to rent these instead. Lastly, there is a feeling that social conditions play a less important role, for example driver's safety. In addition to saving costs on labour, interviewees mentioned that new ways of delivering the same package for a lower price are being sought by operators, for example by sub-contracting lines to taxi-services, or employing volunteers in so called 'neighbourhood bus systems'. This topic will be further discussed in following sections of this report.

Main operators

Most of the main companies in the UPT market providing bus services in the Netherlands are international players: Qbuzz (21 per cent market share), Arriva (21 per cent market share), Connexion (Transdev) (21 per cent market share), Veolia (Transdev) (16 per cent market share) and Syntus (Keolis) (5 per cent market share), and EBS (1 per cent market share, subsidiary of Israeli operator Egged Group). Only Qbuzz is a Dutch company. In addition to these important providers of bus services are the municipal companies, being: GVB (5 per cent market share), RET (5 per cent market share) and HTM (5 per cent market share).

When it comes to public transport by tram the three municipal companies are most important: GVB (40 per cent market share), RET (33 per cent market share) and HTM (25 per cent market share). Qbuzz, being the only non-municipal company within this branch of public transport, holds approximately 2 per cent of the market share in the city of Utrecht.

Tram services mainly are directly awarded to internal operators, as was discussed above. The 2 per cent of the services that is tendered is operated by the Dutch company Qbuzz. When it comes to metro services concessions are fully awarded directly, as it was ten years ago. This is due to the fact that the four largest cities by law are free to choose between direct or indirect award of public transport. In the case of Amsterdam and Rotterdam, the only cities with a metro system, direct award has up until now been customary.

As regards metro services it is only two of the municipal companies that are active: RET (60 per cent of market share), GVB (40 per cent of market share). This is due to the fact that only the cities of Amsterdam and Rotterdam have a metro network.

One of the interviewees, working for the employers association within the sector and providing background data on public transport discussed in this section, indicated that over a period of ten years the proportion of international companies operating bus services in the Dutch public transport sector rose from 30 per cent to 90 per cent when considering participation in tenders. Contracts directly awarded represent currently only 10 per cent of bus concessions compared to 50 per cent ten years ago, which means a decrease of 40 per cent.

Interviewees mentioned that companies such as Veolia and Connexion, which are both owned by the French company Transdev, and Syntus, which is owned by the French company Keolis might be different from a company such as Arriva in that returns on investment might stay within the latter company, whereas gains of the two latter might partly be invested elsewhere. Thus the benefit of having international players on the Dutch urban public transport market is still to be evaluated.

While the competent authorities have been decentralised (to the regions) also the companies seemed to have adapted to this structure. It has been observed that organisational structures are 'flattening out'. The liberalisation of the transport market has led to the devolvement of responsibility from national government to provinces and city regions. In addition, companies might be manifesting a tendency to decentralise as well, as an Arriva interviewee recounted how the organisation, due to its increasing size, is devolving responsibility to the regions and thereby is changing from being centrally run, to a more decentralised organisation with various headquarters across the country. This change goes hand in hand with the tendency for these companies to diminish the size of the management in these companies.

A9.1.1 Regulatory framework urban public transport

In 2001 the law on public transport (*Wet Personenvervoer* - hereinafter WP2000) was implemented. It meant that the tendering of public transport services would become the norm, only leaving space for some municipalities (notably Amsterdam, The Hague and Rotterdam and Utrecht) a choice to tender or to award directly.

At the time of the adoption of the WP 2000 political disagreement existed as to the exemption of the main cities from the obligation to tender its public transport. An employer representative interviewed for this report recounts how the political mandate within these larger cities - which politically tend to be more left-wing oriented - is an important reason that they have been able to continue directly awarding concessions to mostly internal operators. This example provides evidence that the choice to set up urban public transport for competition is a politically guided discussion.

According to an interviewee 80 per cent of bus contracts nationwide are currently competitively awarded, which is an increase of 30 per cent as compared to the situation ten years ago. Services for metro, tram and light rail are almost entirely directly awarded (except for 2 per cent – a tram that is part of the Utrecht network which was part of the network tendered).

Terms and conditions of tenders used can vary depending on the contracting authority and differ in terms of the level of freedom of service design conferred to the transport companies both during the tendering procedure and during the concession, the type and amount of incentives in order for transport companies to meet transport policy goals, the size and duration of concessions and the tendering procedure. A topic addressed by some employee representatives is that in practice authorities do not allow for space for innovation in terms of conditions designing how the required services should be provided. There is no room for flexibility due to the fact that delivery of services is described in too much detail in operational contracts. An interviewee working for one of the provinces equally mentioned that in a changing market which needs innovative solutions it is the tendering authority which should provide the space to actually come up with and implement new ideas. There are only few examples where this is the case. An employee representative working for transport company Hermes recounts how this employer has recently been awarded a concession in the southern province of Brabant that explicitly leaves space for and requires for the winning bidder to partner up with other organisations and innovate, so that in ten years the vehicles will be zero emission vehicles.

Bus Concessions have a duration of six to ten years. Track bound concessions extend over a somewhat longer period, ranging from 10 years when competitively tendered to sometimes 15 years when awarded directly. The provision of rolling stock and bus depots are not part of the contract. One employee representative explains that over time rolling stock, depots and material has been increasingly sold off by transport companies and then leased, as companies aim to make more savings. Also maintenance is often outsourced. For track bound services however, infrastructure management usually is provided by the operator. Sub-contracting is not necessarily required by competent authorities for all forms of urban and regional public transport. Employee representatives mentioned that some authorities do include in their tender specifications the requirement to sub-contract certain services to specific companies. Furthermore, interviewees mentioned that, although not required in general, in bus transport and in city concessions alike, services are sub-contracted by transport companies in order to save costs. One employee representative mentioned that 10 to 15 per cent of the work in the sector is carried out in a flexible way, which includes sub-contracting. Employee representatives highlighted to be opposed against this trend, as it means jobs are lost to drivers working under the collective agreement seen as too costly in such instances. It was also remarked that in general employers and labour unions both are of the opinion that sub-contracting should not occur on a large scale, as it might mean a competitive advantage for those companies able to sub-contract more than others, and leading to dissatisfaction among employees.

The law WP2000 obliges the winning bidder in a competitive tendering procedure to employ personnel and staff previously working for the concession. This includes all operational staff and indirect staff working for the concession, but also part of the indirect staff that is not directly related to the concession, for example in headquarters. In order to determine the number of indirect staff that will be transferred to the new operator a specific formula is used. It will be further discussed in following sections.

As regards social criteria, transport authorities are allowed to include those in tenders. Increasingly emphasis has been placed on the training and management of staff. In the same report an example is mentioned of the province of Gelderland conducting driver satisfaction surveys in addition to passenger satisfaction surveys, and awarding bonuses if satisfaction is above a certain level.⁷⁹ This example shows that authorities are aware of the importance of satisfaction of staff and passengers in order to maintain quality services.

According to one of the interviewees working for the national association for transport companies, however, social criteria are not taken into account by authorities when tendering a concession. A 2007 report observes a trend in accord with this; authorities then showed the tendency to use criteria for the full 100 per cent focused on cost.⁸⁰ A later publication similarly observed that competition mostly concerned pricing of a bid.⁸¹ These studies have been published some years ago, hence the situation might have changed in the meantime. Nevertheless one of the interviewees commented that there are no indications that a change has taken place in this respect.

When asked however, other employees give varying answers. According to one of the employee representatives for the southern provinces of Brabant, Limburg and Zeeland labour unions increasingly manage to influence tendering authorities by at least including some social criteria, such as compliance with collective agreements, ergonomically qualitative vehicles etc. According to this interviewee only through this political route social conditions for employees can gain of importance in tendering procedures. It was mentioned by another employee representative however that provinces have indicated that companies do not always comply with the exact requirements in tenders, as for example in the case that the number of supervisors for social safety required is in practice employed as drivers.

Trade unions also try to raise awareness on issues with subcontracting. It has been mentioned that from the first of January 2016 sub-contractors will have to have a specific certificate in order to provide services to transport companies. However, this certification may not lead to improvements. In the

⁷⁹ PTEG (2010) *Public transport tendering in the Netherlands*.

⁸⁰ Amsterdam Institute for Advanced Labour Studies (AIAS) (2007) *Marktwerking en Arbeidsvoorwaarden: De casus van het openbaar vervoer, de energiebedrijven en de thuiszorg*.

⁸¹ Regioplan (2009) *De effecten van marktwerking op arbeidsvoorwaarden*.

touring bus sector (where the certificate would be used) other ways of holding companies accountable for compliance to the collective agreements are being sought. It was said by employee representatives that it is especially in the touring bus sector, and also the taxi sector, that compliance with collective agreements in place is dubious. This is different for those companies bound by the CAO OV and the CAO multimodaal it was said, since the union network and membership is very dense. Therefore unions dispose of considerable power to control and push for compliance with collective bargaining agreements at company level.

A proposal for a social criterion made by an employee representative is the requirement that a programme for safety of staff is to be provided by the winning bidder. This would mean measures would be taken to ensure safety of drivers, such as the presence of a supervisor. By including it in the tender funds will be available for such a programme. Since incorporating certain requirements means that the financial resources will be in place to carry them out in practice, it is both in the interest of unions and of employers to incorporate those criteria in tender documents.

An employee representative also mentioned the southern province of Brabant, where it was agreed upon that Arriva after replacing the previous operator could hire no drivers over 65 years of age if temp workers were available. On the first day of operation drivers of over 65 years of age - employed as temp workers were scheduled however. After deliberation these were nevertheless taken off the schedule. The employee representative informed that younger workers in the sector should be given a chance in the labour market and were thus in favour of such a criterion.

Nevertheless an interviewee working for one of the provinces said that only compliance with collective agreements usually is part of the tenders within his province, and that remaining matters as regards personnel are viewed as being the companies' responsibility. Whether compliance is monitored by the provinces not clear. An employee representative in that context has mentioned that not all provinces consider this their task.

1.1.2 Regulatory framework employment conditions

In urban public transport in the Netherlands two sector level collective agreements are in place, the most important one is the 'CAO OV' (collective bargaining agreement public transport), applicable to approximately 14,000 employees. The second is the 'CAO multimodaal' applicable to approximately 1,200 employees, who are involved in concessions consisting of a combination of different modes of public transport. There are also company level agreements in place (such as in the case of the The Hague company HTM, the Rotterdam RET, Amsterdam GVB and the city of Groningen). These collective agreements improve upon minimal standards as set in legislation. For example, the law on working time - Arbeidstijdenwet or ATW forms the basis but the CAO OV and the CAO multimodaal state more specific working hour limits, e.g. that a driver is allowed to work a maximum of 8,5 hours per day. Working time for the different professions (as agreed on within sectoral agreements) is 37,38 hours for drivers, 40 hours for other operational staff and 37,38 hours for other staff.

Social dialogue

Within the urban public transport sector various social partners can be identified, depending among others on mode of transport. Employers are mostly associated in the 'Vereniging Werkgevers Openbaar Vervoer' (association for employers within public transport): Connexxion, Veolia, Syntus, EBS, Arriva, Qbuzz. In addition there are some municipal companies: HTM, RET and GVB.

Trade unions within urban and regional public transport acting on behalf of employees are FNV Bondgenoten, CNV Vakmensen, with 3121 members in the sector, VVMC and ABVAKABO FNV. The latter is part of the same umbrella organisation (FNV) as FNV Bondgenoten, with 900,000 members in total. VVMC represents drivers in the diverse modes of public transport, with 4,000 members in total.

According to one of the employee representatives interviewed, up until now union coverage has been high in the sector. Therefore employee organisations have been able to achieve meaningful results in collective bargaining. However, with the number of fixed term and other smaller contracts on the rise union coverage might change in the future. The same interviewee mentioned how employees on smaller contracts will take less risk in terms of voicing opinions, for fear of losing their contract hence tend to not become member of a trade union. The unions, according to the interviewee, are making an effort to reach out to these workers concerned and activate them. Something which these employee

organisations actively fight for is to prevent employers from using ways of employment in which short term contracts are continued to be used.

Collective agreements, as discussed above, are in place on various levels. The one binding most employees (CAO OV) is agreed on a sectoral and national level. The same holds for the smaller 'OV multimodaal'. The municipal companies GVB, RET and HTM have their own collective bargaining agreements, which also holds for the city of Groningen.

As already mentioned, the CAO OV binds over 13,000 to 14,000 employees. In principle, the 'Vereniging Werkgevers Openbaar Vervoer' mentioned before concludes these agreements from the employers side. Since more than 60 per cent of employees within the sector is represented by these companies, the agreement is declared binding for all public transport companies excluding the national railway company and taxi. All types of workers are bound by the agreement, typically excluding management.

According to interviewees and a 2013 analysis of the public transport labour market⁸² of those workers involved in the provision of bus transport 70-99 per cent is bound by collective agreements. The same holds for companies within this same sub-sector. Equal shares can be found among workers and companies providing tram and metro services.

Company level agreements in principle improve on arrangements in collective bargaining agreements within the sector, as these set a minimum standard. Examples will be discussed below.

Employment and employment conditions in the sector

Approximately 22,000 people work in urban and regional public transport in the Netherlands. 9,000 of these work in the cities of Amsterdam, Rotterdam and The Hague. The latter group is bound to collective agreements for the municipal companies of GVB, RET and HTM. The largest part, consisting of around 14,000 people, of the public transport workers however are bound by the previously mentioned CAO OV. Lastly, approximately 1,200 employees are bound by the collective bargaining agreement 'OV multimodaal', covering those concessions that include multiple modes of transport, notably bus and rail services.

One of the interviewees indicated that the number of workers in the sector has remained stable, but the number of drivers has increased. It has been noted by an employer representative interviewed and in reports alike that the number of indirect staff has decreased since the liberalisation of the Dutch transport market, as discussed above. Hence the proportion of indirect staff to operational staff seems to have decreased.

In the analysis of the urban transport labour market mentioned above⁸³ a number of characteristics were mentioned:

- a high average age of 51 years; the age at which employees end their careers has increased from 60,5 years on average to 64,5 years, with people doing the same job for a long time; from 2016 onwards many will leave the sector when reaching the retirement age;
- in some parts of the labour market sickness absence is high; especially the operational professions are physically and mentally demanding and are difficult to continue at high age; 7 to 8 per cent of the workers runs the risk of permanently dropping out of their jobs within the next two years; around 30 per cent of workers suffers from fatigue and around 13 per cent is less or not capable of carrying out their tasks because of this reason; health problems occur relatively often and on average workers exercise less than Dutch employees in general.

Main challenges identified within the same 2013 report are dealing with the high number of workers that will leave the sector, hiring new workers to re-balance the age pyramid of the work force, improving vitality and skills of personnel.

⁸² NS, Prorail, Vereniging Werkgevers Openbaar Vervoer, RET, GVB, HTM, FNV, CNV Vakmensen, VHS/CMHF, VVMC (2013) *Sectoranalyse Openbaar Vervoer*

⁸³ NS, Prorail, Vereniging Werkgevers Openbaar Vervoer, RET, GVB, HTM, FNV, CNV Vakmensen, VHS/CMHF, VVMC (2013) *Sectoranalyse Openbaar Vervoer*

The high average age of the workforce according to one of the employee representatives interviewed is in large part due to the model of competitive tendering. Tenders focus on the costs of concessions (although employee organisations try to influence this and increasingly seem to manage to make authorities include some social criteria as well). Hence the competition has not promoted employment and renewal of staff. No demographic management policy has been drawn up in order to re-balance the workforce ageing pyramid. To the contrary, it seems that the use of temp workers has been very common. These workers will not integrate the internal workforce and thus direct hiring's have been reduced or frozen. .

Also it has often been mentioned that companies do not invest in education of personnel on top of minimal standards included in collective agreements. Investment into education of staff is seen as investment into personnel of the competitor to a certain extent.

Nevertheless pilots are being run with programmes designed for attracting young workers. In the current collective bargaining agreement an arrangement has been included to allow workers above the age of sixty to work 80 per cent, be paid for 90 per cent and make use of pension provisions of 100 per cent of pay. In the financial space that opens up this way - since younger workers are less expensive - employees of under 27 years of age are appointed. The arrangement is said to be used more and more.

Reports and interviewees in the urban public transport sector equally seem to stress that employment conditions have changed rather due to the way work is organised and planned. When it comes to drivers for example discussions often revolve around the time in between bus rides, the duration of breaks, time to get started and time at the end of a shift. Efficiency measures after introducing the obligation to use competitive tendering in the Dutch public transport market have among others meant that time management has become much stricter. It has been mentioned by several interviewees and reports that this has led to a situation where drivers feels under pressure.

Related to the increasingly efficient time use are conditions under which operational staff carry out their work. It was stressed by an employee representative that the tight schedules can mean drivers are forced to sit long stretches at a time. It was said that these circumstances are straining for legs, shoulders, back etc. In the long term, this impacts the employability of operational staff concerned. Ergonomic quality of driver's seats in this context is considered an important topic by employee representatives. Another employee representative mentioned that breaks to visit a restroom were currently a topic of discussion; sufficient time is needed and acceptable facilities need to be in place. As the average age of the workforce is high, it is a problem to not be able to visit a restroom regularly.

A contrary tendency when it comes to time management seems to be that employees and employers alike seek for more customisation in terms of work schedules however. Within the 'CAO multimodaal' for example, a system is used where drivers can choose their preferred working times quite flexibly, taking into account their lifestyle. Possibilities to use the same system in the much more widely applicable 'CAO OV' are being looked at.

While a number of issues on employment conditions have been discussed for operational staff, the aspect of increasing work load is also observed among indirect (administrative) staff as well. The number of indirect employees has been reduced since the use of competitive tendering in Dutch public transport market, but the workload has not. An employer representative explained how indirect personnel nowadays has to work towards targets every year, hence increasingly is managed by efficiency principles.

In terms of time use and efficiency also the number of extra –legal leave days, amounting to 17 days per year, to which all employees are entitled according to the collective agreement - enjoyed by direct staff currently is a topic often discussed between employers and employee representatives. It was mentioned by an employer representative that in comparison to the collective agreement for the touring bus sector, the collective agreement for public bus transport provides for a large number of extra-legal leave days. By the same token an employee representative stressed that reducing this number of extra-legal leave days is something considered an important topic by employers.

Also, the reduction of sickness absence is something employers monitor more actively than before. In several reports it is mentioned that sickness absence increases towards the end of the concession period, something which is related to a number of factors. Among these are diminishing investment in material, this in turn leading to more unreliable vehicles, hence dissatisfied passengers and social insecurity for drivers. Also, insecurity as regards one's job towards the end of the concession period is mentioned as a reason for increased absence of personnel. As already mentioned, the high average age, lifestyle and professional circumstances of employees in the sector are other factors contributing to a relatively high rate of sickness absence.

1.1.2.1 Regulatory framework transfer of staff

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 working for the concession are all transferred to the new operator. For indirect staff not fully relatable to the 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 accord with the WP2000 collective agreements will be transferred to the new employer in case of a change of operator. Often, as several of the employees indicated, the previous collective agreements by which employees were bound will be kept in place. Although the WP2000 stipulates that collective arrangements should be adopted by the new operator, no manner is provided in which this should happen. Often disagreements seem to exist as to what can be seen as a collective arrangement. Hence firstly it has to be established whether arrangements are collective (on i.e. the company level) and then it has to be negotiated whether parties can agree on a certain outcome. It is common that employee councils start legal procedures in these circumstances; according to a 2007 report⁸⁴ in 50 per cent of the changes of operator legal procedures were started at that time. Considering the date of the publication however it is difficult to say to what extent this is still the case.

In certain cases however, a different route is chosen: employer and employee organisations then choose to 'harmonise' collective agreements, which means that arrangements have to be made in order to bind the transferred staff under another (newly negotiated) collective agreement. An example is the case of the personnel that used to work for the municipal company of the city of Nijmegen in the east of the country. It was transferred to Connexxion when it became the new operator for the concession. The company chose to harmonise collective agreements. In the case of Nijmegen the city concession had become part of a surrounding regional concession. In practice it meant that those drivers previously working for the municipal company were more expensive than those working for the regional part of the same concession. It was explained that it is common that those previously working for municipal companies even under market circumstances keep their more beneficial conditions as stipulated in their contracts. Nevertheless, in the long run, it was said, since the group of people working on a certain set of conditions gets smaller due to increasing age, the position of such a small group might get weaker and they might be more prone to loose those advantages. Several employee representatives have however ensured that "harmonised" packages are often the best way as the most advantageous stipulations for employees get selected. An Arriva interviewee said that this decision has been costly for Connexxion, as for example breaks that had previously been unpaid after this process were included in the paid working day etc.

In principle all arrangements that can be seen as a company practice applicable to employees and that can be translated into values of time or money, should be adopted by the new operator. In practice this is said to be not clear. First of all, it has to be established whether arrangements can be translated into a value of time or money, if they were a company practice (when they are approved by the employee's council) and also it will be debated whether these will be transferred to the new

⁸⁴ Amsterdam Institute for Advanced Labour Studies (AIAS) (2007) *Marktwerking en Arbeidsvoorwaarden: De casus van het openbaar vervoer, de energiebedrijven en de thuiszorg.*

operator. As one employee representative indicated, the argument from the side of employers might be that their other personnel does not enjoy the same advantages. Thus, conditions of employment of workers from the “old” operator maybe thus adjusted and hence lowered to their disadvantage.

In the western part of the province of Brabant, a concession won by Arriva, a committee was created in order to establish which measures would be transferred to the new operator and which ones would not. Employee representatives of Veolia, the old operator, and Arriva, the winning bidder, took part, as well as employer representatives from both companies. It is said to be the first example of such a way of addressing this question. Usually so called and obligatory ‘article 40 meetings’ (WP 2000) are held, in which the old and new operators and labour unions are present. However stipulations as for its obligatory content are not very precise what shall happen during such a meeting. In practice, lists of people will be drawn up in such meetings to determine the exact staff to be transferred. One instance was mentioned in which a certain employer had drafted a list consisting mostly of people who were on long-term sickness leave. This was identified as a particularly negative case however. In practice it seems to be the case that employers do try to reach an as positive result as possible for both companies.

When the transfer concerns indirect staff – staff not directly working on lines of the specific concession, e.g. those working at company headquarters in administrative and managerial roles - the procedure can be used as a way to make certain people who are seen as costly and non-productive leave the organisation. These people have been referred to by using the term ‘concession-nomads’. The CAO OV 2014-2015 mentions this group of people and the necessity to take measures as regards their situation (article 102 and appendix 34 CAO OV), example of which include the agreement to inform employees regularly in the period before a transfer, the possibility for other employees to switch employer instead or an employee that was appointed to do so, and restrictions as regards the time period after a transfer during which an employee can be transferred again.

A9.2 Case study: Arriva

The following case study on Arriva Netherlands builds on the entire company and not on a specific network example.

Arriva currently operates 15 concessions across the country. As from 2016 onwards it will also be operating in the most southern province of Limburg. Of its 5,000 employees around 86 per cent are drivers, 10 per cent are other operational staff and 4 per cent fulfil other positions (including managerial and administrative staff).

About 75 per cent of drivers works on a full-time contract according to the company’s information. In the case of other operational staff 90 per cent work on full-time contracts and 85 per cent of those fulfilling other positions is said to be working on a full-time contract. About 80 per cent of drivers work under open-ended contracts and 6 per cent work through a temporary agency according to the employer representative. Almost all staff employed works on a permanent employment contract.

Within the company, sickness absence is said to have decreased since 2004.

1.1.3 Evolution of social conditions

The focus within the company has increasingly moved towards more efficiency, as is among others visible in the way time management has changed; buses are used continuously and do not go into storage in between shifts anymore. In contrast, it’s the drivers who replace one another on the same bus when a shift ends. Special cars are used in which they drive towards the location of the bus at that very moment. The driver who has finished his shift takes the car and drives it to the storage. The idea is that as little personnel and as few buses as possible are deployed while making as many kilometers as possible.

Arriva has attempted to implement an automated system that would determine driver’s schedules. The company has tried to agree with the employee’s works council that the system should always be leading. Nevertheless, the employee’s work council has resisted this change as it feared this would lead to even stricter schedules. Another topic of discussion that was recounted by an Arriva interviewee that driver’s shifts have to be planned in such a way that they able to have at least one

warm meal at home per day (a rule set under the CAO OV). This meant that shifts could not start before half past one in the afternoon, if they last until past dinner time. In the new CAO OV however this starting time has been changed to one o'clock in the afternoon, a significant gain for employers according to one of the interviewees. Another change concerns overtime, which would mean having worked too much over a certain time period, and remaining time, which would mean having worked too few hours. A change made in the new CAO OV (2014-2015) in comparison to the older one is that overtime is cancelled after three months, whereas remaining time is registered over the course of a year.

Targets are set on a yearly basis. In addition, there's an annual budget to take into account. Results in terms of achieving set goals and managing the budget have to be reported to shareholders. In other words, approximately since the new millennium the transport organisations have become (multinational) companies in all the current senses of the word.

Salaries are said to have been increasing since 2004. Something which is noteworthy, as it has been remarked that the companies operating in Dutch regional public transport do not see growing returns on investments. Salaries are agreed upon in the sectoral collective bargaining agreements, hence are binding.

Like salary, additional pay, working hours, extra free days and pensions, training provision is a topic agreed upon in the collective bargaining process. In the CAO OV (most widely applicable collective bargaining agreement within the sector) it is stipulated that employers take care of these programmes and associated costs. Therefore it is also the employer deciding upon the content of these courses.

On a company level some additional arrangements are in place, according to one interviewee in order to make the company more attractive to employees. Arriva strives to become the most attractive employer of the sector. Among those advantages on a company level are a staff card, which simultaneously is a public transport card on which personnel can use Arriva public transport for free. Also, a 20 per cent discount is given to a child or family member of an Arriva employee who wants to buy an Arriva card. The company is allowed to spend 1.2 per cent of its salary obligations taxfree. With this amount arrangements are made for employees, such as a reduction of the cost of membership of an employee organisation, fitness contracts, and shortly employees will be able to buy bikes, smartphones and pc's to a reduced price.

Arriva is also engaged in the area of safety and health at the workplace. It is obligatory (by law) for employers to ask experts to check and estimate the possible safety and health risks for employees. Subsequently employers and employees have a common responsibility to find solutions to the identified problems. They are obliged to do whatever is technologically speaking possible in order to ameliorate the circumstances. An example has been illustrated with reference to diesel buses. The particles emitted are known to be carcinogenic. Hence currently the solution is to not allow these buses to be used in a closed space, as another solution is said to as yet not exist.

A9.3 Case of transfer of staff – Hoeksche Waard Goeree Overflakkee

The concession Hoeksche Waard Goeree-Overflakkee will be operated starting in December 2015 by a new operator. The area concerned is adjacent to the city of Rotterdam. The concession has a maximum duration of ten years and has been awarded to Connexxion and was previously operated by Arriva.

An employee representative, working for Arriva, mentioned the number of drivers that will work for the new operator will be five, whereas previously the concession was operated by nine of them. The most important reason for this change, it seems, is that part of the operational staff is about to reach the retirement age.

Several employee representative interviewed for this study indicated that companies tend to underestimate the necessary size of their employees pool; in their calculations. For example, companies work with sickness rates that do not represent real percentages. Another example that was mentioned was of a transport company calculating the size of its permanent workforce by picking one day of the year and taking the amount of permanent employees on that date as the standard. Additional work then is taken care of by employing temp workers.

In addition allegedly the new operator for the concession discussed here works with a system, as other operators do as well, that automatically keeps track of arrival times, hence delays in the schedule etc. The new operator is said to ask for justifications of any delay met by drivers. One of the employee representatives stresses how this is not a productive practice, as every departure from schedules will have to be explained, even by drivers who are known to be trustworthy employees.

It has been mentioned in among others a 2009 report on effects of liberalisation on labour conditions by Regioplan, that increasing pressure leads to increasing sickness absence. In particular towards the end of concession periods pressure is said to increase as transport companies invest less in rolling stock and in the deployment of personnel, and insecurity exists as to one's professional future.

An employee representative working for the concession Hoeksche Waard Goeree-Overflakkee as a driver, explained the changes of working conditions that will occur under the new operator: rewards for safe driving - proof of which is gathered by accumulating 'damage-free years' by drivers - will diminish, facilities - as an indication things such as cooled water in coffee-machines was mentioned - will be less and other company arrangements previously in place, such as lease-cars enjoyed by certain members of staff, would be less beneficial with the new operator. Also, it is said that usually these agreed arrangements will be left in place only for one year, and that the new operator, Connexxion in this case, after this time is expected to try to change things to its advantage again.

It was said that this change of operator was an example of competition mainly on the basis of price. A situation which was identified by employee representatives as 'a mistake' made by the tendering authority. The reason for this is that in general, it was said, it is less and less possible for bidders to compete on the basis of price alone. This is not the manner in which tenders are won they say, as the people concerned - passengers - are becoming more important again. It seems to be increasingly the case that 'additional points' can be scored for bidding on a certain concession, which can be related to passenger satisfaction, environmental criteria and so on, depending on the demands of the tendering authority. Nevertheless, as another employee representative mentioned, it is probably still the pricing of the bid (which can include mandatory social criteria such as safety measures) that determines the outcome of the competitive tendering procedure in most cases.

Another remark made by various interviewees, ranging from employers, to those working for the province and employee representatives, was that operators adapt to demands included in tenders. As regards social criteria this means that these won't receive attention when they're not part of the tender specifications. In the Hoeksche Waard Goeree-Overflakkee concession requirements were to achieve at least a 'safety experience' equal to that in 2014. In Gelderland, in the east of the country, which was mentioned as a particularly 'good' tendering authority in terms of social criteria, a requirement in the tender was to carry out a satisfaction survey among employees each year. Authorities do attempt to fix previous problems by including certain requirements in the tenders.

A9.4 Conclusion and discussion

The obligation for competitive tendering of urban public transport in the Dutch provinces (except main big cities Amsterdam, Rotterdam and The Hague, Utrecht) has gone in hand in hand with an increased focus on efficiency, as mentioned by all persons interviewed for this study. This can be shown on different levels, such as planning of shifts and time usage, reduction of investment into personnel and related policies, and the manner in which also management and administrative staff is asked provide account to shareholders. It was also mentioned that the quality of facilities for personnel and measures for well-being and safety at work have diminished in comparison to the situation before the liberalisation of the transport market, due to a focus on costs.

Several interviewees highlighted that cost of personnel, amounting to approximately 60 per cent of expenditures, were mainly target to savings. However, it was also said that this might have been already done to the maximum extent. Other routes of keeping expenditures as low as possible might be sought by sub-contracting for example taxi-services or touring bus companies where this is less costly - their collective agreements are said to be much less beneficial for employees, hence cheaper - or deploying neighbourhood transport provided by volunteers.

Personnel mainly seems to be subject to increased time pressure, in order for employers to provide as many bus hours with as few drivers and vehicles as possible. Employers are said to keep looking for further gains in collective bargaining rounds at sector and company level. Issues discussed were:

reduction of number of extra free days, the duration of breaks between bus turnaround times, time in between shifts and time needed to start and rounding up shift included for pay.

Another very important aspect and worry in the sector currently is the high average age of operational personnel and health problems related to age as well as lifestyle and professional conditions. It was mentioned that employers have not formulated any demographic management policy for the long term, but have been mainly focused on the duration of the concession, hence employing personnel on small contracts and investing only the minimum required as it comes to education and programmes to attract younger workers.

An underlying factor may be the increasing appearance of international players in the Dutch transport market. Expecting high returns on investment, it seems that these companies have entered the Dutch market by competing with under-priced bids. Since the most economically interesting concessions have in general not been tendered, savings were sought where no guidelines were in place, hence those labour force aspects not covered by collective bargaining agreements.

Therefore an important remark made by almost all interviewees is that it is only when tendering authorities include social criteria in tenders that employers will comply. Labour unions have been increasingly successful in influencing authorities to adopt conditions under which employees operate, such as ergonomic matters, compliance to collective agreements and control of this etcetera.

Nevertheless tendering authorities seem to adopt different approaches when it comes to social criteria to be taken into account by employers. Some consider this the responsibility of the employer and labour unions. It was said by employer representatives that in the past there have been attempts to reach a consensus between provinces as regards topics such as safety of drivers. These have nevertheless until now not led to binding agreements.

Lastly, many of those interviewed mentioned possible measures in order to ameliorate or solve certain problems discussed. An employee representative suggested to include certain theme's in collective agreements, such as for example the percentage for sickness leave used by employers to calculate the size of their labour force. The term 'level playing field' is often used within the sector. According to the interviewee however, one only truly creates a level playing field when certain topics are not decided on a company level, but on a sectoral level. Hence by making sure social conditions are similar for the different employers, so that no competition on social criteria can take place.

Another suggestion made was that the labour force in the sector could be seen as a common pool of workers by employers. In that way investment into personnel development will become a benefit for all in the sector, instead of being seen as an investment into the competitors' employees. Training could be funded as well by the creation of a sectoral training fund (so called O&O fond).

Something also mentioned by one of the employee representatives was that it is vital that social measures required and compliance with collective agreements are verified in practice, since it is remarked that otherwise employers may not be encouraged enough to implement these arrangements.

Other employee representatives indicate that companies will have to focus again on passenger satisfaction hence also on quality of service. This trend may influence in the future also employment conditions.

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Annex 10 Italy

Market organisation of urban public transport in Italy

Institutional organisation

The Legislative Decree (*Decreto Legislativo* hereafter D.Lgs) 422/1997⁸⁵ is the main piece of legislation governing the local transport sector (*Trasporto Pubblico Locale* hereafter TPL) which also include the Urban Public Transport (UPT) as well as regional transports. The D.Lgs separates responsibilities between regulators and service suppliers. Public authorities (central, regional and local governments) are in charge of planning while companies are in charge of delivering the services.

The Italian administrative structure includes a multiple level of governance and areas of responsibilities. The national level is in charge of completion and safety legislation while, regional and local governments (provinces and municipalities) are responsible for the provision of regional and local public transport services (which include the transport of passengers as well as goods by land, water and air).

It is important to highlight that the TPL is organised in homogeneous areas, which cannot be smaller than a provincial area, to allow for economies of scale and maximise efficiencies. Regional governments are in charge of identifying these areas. For the purpose of this study, it is also worth mentioning that at the moment Italy is undergoing a profound re-organisation of the local authorities with the aim of reducing the Provincial level and develop metropolitan areas.

In 2014 an independent transport authority (Autorita' di Regolazione dei Trasporti, ART⁸⁶) has been established. The authority has competence for all transports services which are provided within the national territory with responsibilities for ensure efficiency, cost containments for users, minimum quality standards for public transport services, criteria for fares and fees, customers rights and claims for compensation, establish criteria for bidding and competitive tendering, regulate/supervise infrastructure managers in relation to access to rail infrastructures and undertakings.

D.Lgs 422/1997 delegates to regional government responsibilities for planning local transports, drafting traffic district plans (*piani di bacino*), regional transport plans (in cooperation with provinces and municipalities) and definition of 'minimum services'. The length of the programming period is three years and regional authorities are compelled to draft three-year programmes as well as approve regional transport plans. At urban/municipality level the main planning policy instrument is the Traffic Urban Plan (Piano Urbano del Traffico, PUT) which is compulsory for municipalities with a population over 30,000 and it is drafted every two years. Additionally, municipalities with a population over 100,000 can adopt a Mobility Urban Plan (*Piano Urbano della Mobilita'*) which focuses on major issues faced in the area and strategies.

Regulatory framework

General regulatory framework urban public transport

As presented in the previous section the main legislation regulating the sector is the D.Lgs 422/1997 together with the so called 'Bassanini Law' (Law no. 59/97). The Bassanini Law was originally drafted to support the development of the sector following a period of depth crisis in the 70's, however this goal was never entirely achieved for a number of reasons including different mechanisms of calculating standard costs across regions, lack of clear distinction between public authorities and delivery companies, issues with the functioning of National Transport Fund (Fondo Nazionale Trasporti, FNT)⁸⁷.

⁸⁵ <http://www.parlamento.it/parlam/leggi/deleghe/97422dl.htm> . The text of the decree after modifications/integration can be found in www.normative.it

⁸⁶ <http://www.autorita-trasporti.it/>

⁸⁷ ISFORT (2014) Il trasporto pubblico locale, la ricerca dell'efficienza attraverso le riforme http://www.isfort.it/sito/ricerca/TrasportoPubblico/Documenti/Oss-Tpl_03-2014.pdf

The D.Lgs 422/1997 completed the deregulation process of the TPL (including the UPT) by decentralising programming responsibilities, separating regulators by service suppliers and introducing the compulsory competitive tendering procedures for the selection of service suppliers. Therefore, Regulation 1370/2007 did not impact on the Italian legislative framework as competitive tendering was already included in the legislation. Regional and local public service contracts are awarded in compliance with the EU Regulation 1370/2007 and the national legislation (D.Lgs 422/1997; art 61 of Law 99/2009; art. 4 bis of Law 102/2002). On the basis of this overall framework regional and local public services are awarded: a) through competitive tendering in compliance with the regulation on public contracts as established by national provisions; b) Private-Public Partnerships (PPP), where awarding authorities are obliged to follow transparent procedures concerning both the contract and the operational and/or administrative role of the private party; c) in-house awarding, according to the national legislation authorities that choose this procedures must also award 10% of the services through competitive tendering procedures; d) Direct award contracts in cases of emergencies and direct award of railway services.

According to the ISFORT (2014) report not many authorities have implemented tendering procedures and direct award is still the most prevalent method. When tendering procedures have been initiated only few companies participated to the call and the service was awarded to the incumbent.

Table 1.12 Some features of the tenders for the award of the service urban TPL in provincial capitals

Number of respondents to the call	Number of foreign companies participating to the call
Less than 3 (69.6%)	None (86.1%)
Equal to 3 (15.2%)	1 (11.1%)
More than 3 (15.2%)	At least 2 (2.8%)

Source: Cited in ISFORT (2014) Il trasporto pubblico locale, la ricerca dell'efficienza attraverso le riforme, sourced as Bentivogli C., Cullino R. e Del Colle D.M, Regolamentazione, cit p.16. Cited in

Awarding authorities should publish a report on type of procedures used and compensation granted to companies. The national legislation allows for subcontracting while regional authorities establish the share of services to be subcontracted and when compulsory.

D.Lgs 422/1997 fixed a maximum period of 9 years for service contracts for regional and local public transport contracts. The duration of the service contracts is established by the regional legislation in compliance with national and EU legislation. Service contracts need to specify the characteristics of the service provided, minimum quality standards, fares yearly adjustment criteria, how the contracts can be modified and penalties in cases of breach of contracts.

According to questionnaires from trade unions to some extent there are cases of local authorities that operate parts of entire urban transport networks with own internal operators and have recently decided to use competitive tendering, awards at regional level include the regions of Friuli-Venezia Giulia, Tuscan, and Emilia-Romagna. In the regions where local governments have not acted in this direction there are plans to move towards competitive tendering in the near future.

To some extent the share of sub-contracting in contracts for the provision of UPT have increased, however it is not possible to estimate the extent of this phenomena. Also the share of outsourcing (e.g. for cleaning or maintenance) has increased, though again data is unavailable to estimate this phenomenon.

From questionnaires completed by employers the share of direct award of public service contracts to own operators have reduced in the last 10 years, from 80% to 50%. While 10 years ago 20% of services were awarded through competitive tendering now this percentage is around 50%. According to trade unions the main driving factors for these trends include regulatory changes and the reduction of financial resources. Policy changes were also considered factors of some relevance from employers.

According to trade unions no significant differences exist in contracting methods between different localities. While from questionnaire completed by employers there may be differences in the type of contracts, in terms of gross-cost rather than net-cost contract. Generally, in Italy the choice is in favour of net-cost contracts i.e. operators bear the industrial and commercial risk.

Contracts in the UPT sector are usually agreed for 8-10 years both in cases of direct award and competitive tendering. These contracts usually include the provision of rolling stock, however no differences were highlighted between mode of transport. According to the questionnaire completed by employers the provision of infrastructure management is part of such contracts, while the questionnaire completed by trade union reports that this is not part of the contracts. Also the provision of a bus depot is part of these service contracts.

Regulatory framework employment conditions

Art. 19 D.Lgs 422/1997 establishes the generic obligation for companies to '*apply the sectoral collective agreement according to the type of transport sector*', therefore social aspects related to wages, working conditions, training and health and safety are regulated by the national collective agreement. Regional governments decide how to regulate the inclusion of social aspects in public tendering procedures.

As specified in previous sections subcontracting is authorised by national legislation and regional regulations establish the percentage that can be subcontracted (usually between 15% and 30%). The questionnaire completed by trade union did not provide information on whether terms and conditions for subcontractors are more or less generous than for core contractors and whether there are differences between modes of transport. While the employers' questionnaire states that wages and other terms and conditions are usually less generous and the training is on a par in relation to compulsory training. According to employers pensions are also similar.

According to the questionnaire completed by employers a certain level of impact can be identified in relation to the increase in tendering on social conditions in the sector. There has been an improvement with reference to wages, other terms and conditions, training and general working conditions; while pension, staff absence and employment levels have remained stable. Staff turnover has reduced. These trends were reported for all modes of transports. According to the questionnaire completed by the trade unions in the sector of metro/tram/light rail there has been a downwards trend in wages and training, as well as general working conditions, staff absence, staff turnover and employment levels; while training and pensions have improved.

Regulatory framework transfer of staff

EU principles and norms applicable when a contract is awarded to a different undertaking are implemented through D.Lgs 422/1997. This aspect is also regulated by the regional level (in compliance with national regulation) and through the tendering process.

According to the questionnaire completed by trade unions in the award of PSO contracts social criteria are sometimes used to select and offer in the tendering process and often the transfer of staff is required on the basis of the provisions of the PSO Regulation. Often both social standards and transfer of staff is prescribed on the basis of the PSO regulation.

When PSO contracts are directly awarded social standards are specified in the PSO contracts, which also require the application of the national sectoral collective agreement.

Employers highlight that the social criteria/social standards used in tender specifications for the selection of an offer require the application of the national sectoral collective agreement, while trade unions points to the fact that the financial offer is the main criteria used to select the offer. There are no differences in the use of article 4(5) and 4(6) of the PSO regulation between competent authorities.

The adoption of the PSO Regulation did not introduce changes in the application of social criteria since the application of social criteria was already a requirement.

The reasons for competent authorities to apply provisions as laid down in articles 4(5) and 4(6) include requirements of specific national legislation, initiative by individual tendering authorities and the existence of binding sectoral collective agreement.

According to trade unions the award of a contract in the UPT is always considered as a transfer of undertakings (implying the transfer of staff) within the meaning of the Council Directive 2001/23/EC. This answer to this question did not depend on the way in which contracts are awarded or other factors. No other information was provided in the questionnaire. If the award of a contract in the UPT

is not considered as a transfer of undertakings, in case of change of operators, the staff is automatically transferred due to relevant legislation, this applies to all professional groups.

While for employers the award of contracts is sometimes considered as a transfer of undertakings and the answer was based on the way in which contracts are awarded.

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 staff⁸⁸. 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, however how this will be 'translated into practice' in open tendering is not clear.

Main operators

The table below provides an overview of the main operators in the urban and suburban TPL 2014.

Table 1.13 Data on some main players in the urban and suburban TPL (year 2014)

Data on some operators in TPL urban and suburban (2014)

Company	ANM Napoli	GTT Torino	AMT Genova	ATM servizi Milano	TIPER Bologna	ATAC Roma	AMAT Palermo	ARST Cagliari	COTRAL Lazio
Production value	199.62 M€	466,18M€	180,76M€	752,5M€	253.44M€	1.199.95M€	95.70M€	152.23M€	330.23M€
Km	5,9 M	67,6 M	26.6M	147,4M	44.08M	153.73M	16.05M	38.96M	75.9M
Fleet	873	1517	736	2919	1200	2526	403	980	1580
Employees	1795	5008	2328	5903	2531	11950	1657	2155	3266

Source: ISFORT (2014) *Il trasporto pubblico locale, la ricerca dell'efficienza attraverso le riforme*

From questionnaires completed by employers a total of 1.011 operators are active in the sector of TPL, including urban, suburban and extra-urban transport, a total of 985 operate bus-lines and 26 regional railways⁸⁹. In urban areas operators usually run all transport modes available in the city, therefore data on main players cannot be split by transport mode.

According to employers' questionnaires the share of international groups operating in the UPT services is 5%, whereas 10 years ago it was 0%. In the UPT market operators do not operate across cities and the market is very much dominated by internal operators. The share of internal operators (through direct award) is now 50% while 10 years ago it was 80%.

Employment in the sector

The section on main operators also provides data on the level of employment in the TPL sector by main players. According to employers questionnaire a total of 110,000 workers operate in the TPL, 16,000 in regional railways, 94,000 in bus-lines, tramways, underground, funicular, inland waterways and transport, the share of drivers within this 94,000 is 60%. When compared to 10 years ago there has been a decline of around 10% in the level of employment. While the share of drivers has remained the same when compared to 10 years ago.

⁸⁸ <http://www.autorita-trasporti.it/wp-content/uploads/2015/06/TPL-All-A-Finale.pdf>

⁸⁹This data are based the Conto Nazionale Trasporti from the Ministry of Infrastructure and Transport <http://www.mit.gov.it/mit/site.php?p=cm&o=vd&id=3969>

According to trade unions the reduced level of employment is mainly due to the decrease of funds in the sector with a consequent reduction of services and employment.

Social dialogue

Collective agreements and the general labour law regulate employment conditions in the TPL. Terms and conditions are defined primarily by national legislation (and implementing decrees), sectoral collective agreements and company level collective agreements. This general framework applies to the entire national territory i.e. there are no differences between regions.

The main social partners involved in national collective bargaining are: trade unions FILT-CGIL, FIT-CISL, UIL Trasporti, FAISA CISAL, UGL FNA; employers organisations (transport associations) ASSTRA and ANAV.

Collective bargaining takes place mainly takes place at two levels:

- Industry level (sector) applicable at national level
- Second level taking place at:
 - company level
 - territorial/district level

National sector level collective agreements are common law contracts and applicable to the entire sector; such contracts are binding only for members of trade unions and employers organisations (both employers and workers) who have signed the contracts. However, *de facto* the effectiveness of collective agreements is higher, and therefore not limited only to members to signatory parties. The national sector collective agreement is used *de facto* as minimum standard by most companies..

The sector collective agreement covers all modes of transport (bus, tram, metro/light and rail) and it is renewed every 2 to 3 years. Collective agreements apply to all professions with the exception of top management where a different collective agreement is in place.

In November 2015 with the renewal of the national sector collective agreement (Autoferrotranvieri-internavigatori Mobilita'- TPL) an average increase of 100 € gross monthly was agreed, in addition to this economic increase, it was agreed that from 2017 companies allocate an additional 100 euro for pension and complementary health care. Collective agreements concluded at second level are more favourable.

The sub-contracted staff exercising public transport activity is covered by the same national sector collective agreement just as employees of the contracting company, while for workers who exercise contracted ancillary activities (cleaning, maintenance, operating activities and supply etc) different national sector contracts apply being less favourable especially for pay. Total remuneration and benefits are however not on an equal level for subcontractors due to less favourable second level agreements or absence of such agreements. The national collective agreement has the function of a primary source of legislation and central regulator of labour relations, common for all workers in the sector of reference, it establishes guidelines for the development of the local agreements, having ownership in defining the rules of referral. Second level collective agreements will provide for more favourable conditions in the matters delegated by the national sector collective agreement. The employers' organisation neither agrees nor disagree that gross monthly wages have remained the same or have increased in the last 10 years. The unions agree that remuneration, in the last 10 years, resulting from the second-level agreements in the company, increased at the same pace as cost of living and inflation indexes. The unions also state that effects of such increases were not felt for net wages due to increasing taxation after the global economic crisis which resulted in high unemployment rates in Italy.

The weekly working hours arising from the national sector collective agreement is 39, which remained the same over the past 10 years; in companies where the second-level bargaining is exercised the weekly working hours are lower than those set by the national contract.

Training has improved steadily over the past 10 years.

Due to the economic crisis the mandatory state pension has fallen and it is partly offset by supplementary pension schemes.

The unions have not completed this part of the questionnaire on wages and conditions.

Case studies

Two case studies were selected for Italy: GTT Turin and TIEMME Siena (Tuscany).

Case study GTT Turin.

GTT is part of a group (Gruppo Torinese Trasporti) which is part of the FCT Holding S.r.l controlled by the municipality of Turin. The company is one of the biggest in Italy in the urban transport sector taking into account the number of passengers managed every year. It provides local bus services and also manages two railway services and the underground services in Turin. GTT has 217 operating trams, 58 metro-trams, 1,202 buses, 40 trains. The services cover 282 municipalities including Turin and covers a population of 2,554 million people.

The questionnaire completed from trade unions confirms the overall background information in relation to the collective bargaining system in the sector. There is also a company level agreement which sets more favourable conditions than the sectoral level agreement. The most important changes that have occurred in the past 10 years relate to the opening of tendering system since 2015, the sector was not affected before. After the latest contractual renewal, the economic crisis has had an impact on the level of state contributions to regional governments which has heavily affected public transports.

The employer confirmed that the main changes which have affected the company in the last years are a consequence of the opening of the market and reduction of public budgets. Therefore companies in the transport sector need now to operate with the objectives of profit, efficiency and productivity, which was not the case in a protected market where companies operate in monopoly.

The services are now provided through public award procedures and this has brought about major organisational and cultural changes. Therefore the main objectives of the last years have been rationalisation of investments, services and costs. The opening of the market meant that companies need to operate with competitive cost levels including labour costs. To reduce the costs the company also rationalised the provision of services and lines, eliminated bureaucratic procedures and simplified administrative processes.

The company has now 4,850 employees, reduced from 5,400 in four years. The company has a recruitment freeze for 4 years, in 2015 the recruitment process was reopened and 90 new bus drivers were hired; there are similar plans for 2016. The restructuring process has reduced the level of administrative profiles and increased the number of bus drivers employed.

One of the major changes that have occurred in the company refers to the quantity and quality of training provided. Now the company has annual training plans organised according to clusters of skills needs and job profiles. The main areas covered by the new training are technical competences e.g. maintenance, new technologies, administration and accounting; customer service and front-line services; leadership, management and multiculturalism; languages.

Internal mobility was also part of the re-organisational plan; however this is the area where the company was least successful due to the difficulties in transfer skills and staff across departments.

The company is also working on the levels of sickness absence, for example in 2014 a productivity premium was introduced for those who reduced the average level of sickness absence of one day.

According to the interview with the employer the main challenge in this sector is the cultural change in the transition from a protected market to a competitive, open environment.

The company outsources between 5% and 10% of the transport services.

The average wage levels for drivers, overall staff and other job profiles has increased moderately in 2009 and 2014.

General economic situation, contractual changes of the network service contract and changes of the general regulatory framework have been identified as the main reasons for overall stagnation in wage levels.

Remuneration/reward for wage components have been indicated as constant for night work, Sunday and public holidays and over-time.

Contractual arrangements are open ended full-time contracts in 95,5% of the cases, this for all professional profiles, the remaining 4,5% are part-time contracts.

The average weekly working time for all professional profiles is 38,5 hours, however over time occurs regularly.

In the last years there has been an intensification of work for driver, although the reasons were not clearly stated; while this phenomenon has not affected other job profiles.

Since 2004 there has been a decrease in the level of sickness absence up to 5%

The company provides in-house training and initial training as required under the Directive 2003/59/EC for bus drivers, as well as in-house training for all other professional profiles.

In-house initial training and ongoing training is provided for all different groups of workers.

Drivers receive on average 152 hours of training, while all other professional groups receive on average 40 hours of training. The amount of training provided in the last 10 years has overall increased.

The company contributes towards an occupational pension scheme for all professional groups. In the last 10 years the level of contribution has remained stable and the pension benefits do not differ for category of staff.

The company does not have any specific policy to deal with the impact of demographic change.

Case study TIEMME Siena

(Information based on interview with CEO of Tiemme, Director of Tiemme, trade union representative)

Tiemme is a transport company operating across the regional territory. It was set up in 2010 through the merging of the four transport companies previously operating in the provincial areas. The company employs 1,058 workers and has 742 buses which are used for public transport services, renting and school services.

The main challenge and priority that the company has been facing in the last years has been the restructuring of the budget and rationalisation of resources to allow the company to operate in line with the opening of the market.

Following the merge the company went through a restructuring process and the employment level was gradually reduced by 105 workers, with the objective of reaching 1,000 employees over the coming years. The restructuring process was implemented mainly through early retirement procedures and recruitment freeze, with the exception of some key job profiles in the finance, audit departments and other high profile management. The rationalisation of resources has also been addressed with internal transfer of workers between departments. Another area of change has been the rationalisation of services to ensure greater coverage of busy routes, better customer service and more efficiency.

The company is trying to improve the productivity levels across job profiles such as bus drivers and for people working in administration. With this logic a new contract has been introduced for bus drivers recruited after the merge. Their contract links part of the salary to productivity bonuses. No changes have been made to old contractual arrangements, salary levels and benefits for those existing employees. A total of 10% of bus drivers are now under this new contract.

Several challenges have been brought about by the merge since four organisations with different company culture and organisational arrangements needed to operate under a single entity. The main challenge relates to the introduction of new technologies needed to operate across different sites and training employees to use ICT technologies. Strong cultural differences between the four companies are another challenge addressed mainly through training. Both employer and trade union agreed that the training has been a major commitment for the company, courses in ICT and English are now offered to all employees, first aid courses will be offered soon. This has been identified as the main change following the merge, for example the majority of administrative workers did not receive any basic training in ICT, and similarly bus drivers of touristic cities had never received basic training in English or any foreign language.

The company has done major investments in new technologies and buses. The average age of the buses operating in urban areas was brought down to 6.5 years in 2015, while the remaining buses still have an average age which is more than double.

The outsourced services account for 7/8% of the school transport service provided by the company and 3/4% of the public transport services.

The level of sickness absence has changed in recent years, with lower levels of sickness absence for staff recently recruited.

In Tuscany there is at the moment an ongoing call (under evaluation when the interview took place) which covers all local transport (only bus transport) in the regional territory. The annual value of the call is around 250 M€ for 100,000 Km.

The evaluation criteria are 40% of the financial offer and 60% for the technical offer. The interviewee explained that the most important aspect in this call will be the investment capacity of the respondents i.e. the ability to demonstrate that respondents in the medium term have the financial capacity to invest in new buses (one offer included 2,000 buses in 11 years). As direct consequence of this criterion, respondents to the call are all companies which already operate in the region, *de facto* this excluded potential competitors from outside the region and small companies. Only two competitors responded to the call, a consortium made up of all historical companies operating in the regional territory and the company which are at the moment operates in Firenze. The tender procedure was interrupted at some point because the second competitor appealed in court on the basis that the criterion of investment capacity was too high and in favour of the incumbent. Other companies expressed interested in the call but did not submit proposals, this included ARRIVA and National express (in consortia with a Spanish company).

With reference to the transfer of staff the Tuscany Region has a legal framework which enforces the transfer of all staff and all conditions deriving from the second level of collective bargaining. The transfer of staff is valid for the first three years, after this period companies can proceed with the restructuring process if needed.

In this specific call the regional government included regional funds to guarantee the level of employment. A limit to sub-contracting has also been included in the call; however this is lower than the proportion of lines that are currently sub-contracted. The lines currently sub-contracted cover isolated areas of the region and are sub-contracted to small local operators, according to the interview these lines are likely to be cut rather than absorbing the current operators.

The tender envisaged a two phase process for the future management of the services, where during the second phase the service infrastructure will be entirely renovated with a greater level of integration between railway and road transport. At this stage of the tender procedure participants are not required to submit a proposal for this second stage, however a significant level of restructuring is expected.

Annex 11 Sweden

Market organisation of urban public transport in Sweden

This report provides an overview of the market organisation of urban public transport (UPT) services in Sweden, including information on the competent authorities involved, the regulatory framework that governs the sector, as well as the determinants and evolution of social conditions.

Institutional organisation

- **Which authority has the competence for urban public transport, on which level and for which transport modes? How many are there? How is the authority structured?**

In Sweden, there are 21 regional public transport authorities (*'regionala kollektivtrafikmyndigheter'*) that are responsible for UPT. The regional public transport authorities have overall responsibility for all modes of local and regional public transport (rail, metro, tram, bus, waterborne) within their territory, as well as daily (cross-border) commuter services. The regional public transport authorities are also responsible for registering commercial public transport, although this segment of the market is still very small.

Local and regional public transport is funded from ticket revenue and from local authority and the county council funding raised through local taxation (and state subsidies). Ticket revenues account for around half of the public transport funding⁹⁰.

The regional public transport authorities are also obliged to develop public transport programmes and to consult with relevant stakeholders regarding such plans (including municipalities where these are not part of the authority). Recent reports have noted that several operators have been critical of how the consultations are carried out, which in turn has contributed to the relatively low interest from operators to engage in the consultation process⁹¹. Such criticism has not, however, been evident from the interviews undertaken for this study, although these have been restricted to Gothenburg and Stockholm. In fact, the interviews undertaken for this study would point towards a better working relationships between authorities and operators. Consultations with the relevant trade unions could however be improved.

In the Swedish capital region, the regional public transport authority is called Trafikförvaltningen, Stocholm läns landsting which is a department of the county council Stockholms läns landsting (SL). The SL services amount to around half of the total local public transport in Sweden.

In the county of Västra Götaland, which includes Sweden's second largest city Gothenburg, the competent authority is Region Västra Götaland. However, it is Västtrafik, owned by Region Västra Götaland, that plan and procure the public transport in Västra Götaland. It is responsible for 2,700 buses, trains, trams and boats. Based on the consultations undertaken for this study, Västtrafik is generally considered to be very competent and keen to promote coordination/ collaboration. It was also mentioned that they are open about the fact that they are politically controlled.

Regulatory framework

General regulatory framework urban public transport

- **What is the law governing the award of public urban transport (are there regional differences)?**

⁹⁰ Trafikanalys (2015), *Avtalen för den upphandlade kollektivtrafiken 2013*
http://www.trafa.se/globalassets/rapporter/rapport-2015_13-avtalen-for-den-upphandlade-kollektivtrafiken-2013.pdf

⁹¹ Transportstyrelsen (2015), *Marknadsanalyser och samråd: Kollektivtrafikmyndigheternas bedömningar av den kommersiella kollektivtrafikens möjligheter*
<https://www.transportstyrelsen.se/globalassets/global/vag/yrkestrafik/kollektivtrafik/tsv-2014-1081-marknadsanalyser-och-samrad.pdf>

The Swedish public transport market is regulated by the Public Transport Act (2010:1065) which was last amended in 2010 and came into force from 1st January 2012. One of the changes made to the Public Transport Act was to allow transport operators to freely establish commercial passenger transport by road, rail, light rail and metro. The commercial market has not however taken off as expected. The amended Public Transport Act also resulted in the establishment of the regional public transport authorities mentioned above.

- **Which kinds of awards are possible? (direct award, competitive tendering...), which procedure is typically used; has there been a change over the past 10 years? What were reasons driving this change?**

The overwhelming majority of urban public transport services have been awarded through competitive tendering over the last couple of decades. Most of the public transport market reform took place in the 1990s and the use of competitive tendering has therefore been fairly stable in the last ten years. Financial considerations is said to have been an important driving factor for the market reforms and hence the increased use of competitive tendering. Direct awards and/ or commercial services account for a very small share of public transport services (around 5 per cent).

There are generally no significant differences in the contracting methods in different localities, but the scope and size of the contracts can vary significantly. For example, each region have between one and 63 contracts, with each contract covering one single bus to 336 buses⁹².

Given the national sectoral collective agreement and prescriptions regarding the specification of the buses, operators mainly compete on the basis of their depot solutions, the optimisation of the services (i.e. minimising dead time or unproductive time) and their ability to deliver high quality services (or at least describe how they intend to do so during the procurement process).

Interviews with a small number of operators in Gothenburg and Stockholm suggests that the competitive tendering process has become more collaborative in recent years. Previously, operators had very little influence over proceedings but recently they have had better opportunities to influence the tender specifications (including changes to timetables, routes, etc). Members of the Swedish Bus and Coach Federation also note that whilst the procurement process has become more complex and more comprehensive in terms of the documentation, the time for submitting bids has remained largely the same. Trade unions are generally not engaged during the procurement process.

- **For how many years do contracts generally last?**

The length of the contracts vary depending on the routes being tendered and the regional public transport authority. Based on the stakeholders consulted in Gothenburg and Stockholm, the contracts generally last for eight years with an option for a further two years. The take-up of the optional years is said to be relatively high, but will be dependent on satisfactory performance by the operator as well as other considerations (e.g. the regional public transport authorities prefer to spread the tendering process so that they do not all fall during the same period; it may also be desirable to group routes that had previously been covered by separate contracts)

- **Is the provision of rolling stock, infrastructure management, bus depot usually part of the contract?**

The provision of rolling stock, infrastructure management, bus depots varies across the regional public transport authorities. For example, in Gothenburg bus depots are generally not provided by the authority. Instead, it is up to each operator find solutions that best fit their needs. In Gothenburg, for example, one of the operators have signed an agreement with the bus supplier to use their land and facilities as bus depots and offices. Often it can be quite a challenge to find suitable land and/ or facilities for bus depots at short notice.

In Stockholm, the situation is very different with bus depots and infrastructure being provided by the regional public transport authority. Most buses in Stockholm are owned by the operators.

⁹² Trafikanalys (2015), *Avtalen för den upphandlade kollektivtrafiken 2013*
http://www.trafa.se/globalassets/rapporter/rapport-2015_13-avtalen-for-den-upphandlade-kollektivtrafiken-2013.pdf

■ **Is subcontracted required by the competent authority? How do terms and conditions compare for sub-contractors?**

Based on the interviews undertaken for this study, there is generally no requirement from the regional public transport authorities to use subcontractors. Any planned use of subcontractors should, however, be set out in the tender response. Following the award of the contract, the regional public transport authority must be consulted about the use of subcontractors unless it was specified in the tender response.

The use of subcontractors varies across operators and regions. For example, one of the operators in Gothenburg uses Buss i Väst (an amalgamation of smaller bus operators) as a subcontractor, whilst in Stockholm the same operator do not generally make use of subcontractors.

Whilst there are no guarantees that subcontractors will be covered by the same collective agreement as the main operator, the overwhelming majority of operators are covered by the national sectoral collective agreement.

■ **Are social criteria, social standards (including direct award) or transfer of staff foreseen in the regulations? What social criteria are used? Has there been an evolution in the application of social criteria?**

Social criteria and/ or transfer of staff is generally not specified in the tender documentation. There are, however, exceptions to this general practice. For example, in Stockholm there is generally a request for transfer of staff. Moreover, a recent tender for bus services in Kalmar County included requirement for transfer of staff (if the contract involved the takeover of five or more vehicles, or if the contract involved fewer vehicles but was labour intensive). Similar practices have been evident in Umeå and Dalarna.

Importantly, there is currently some disagreement regarding the requirement of transfer of staff in the tender specifications. This is further discussed in the subsection describing the regulatory framework for transfer of staff.

Regulatory framework employment conditions

Please describe overall applicable employment conditions and hierarchy of social standards relevant for UPT sector and type of professionals.

In addition to the national sectoral collective agreement, employment conditions in Sweden are also regulated through a number of Acts, including:

- the Working Hours Act 1982:673 - working time, rest breaks, shift workers.
- the Annual Leave Act 1977:480 - minimum holiday entitlement.
- the Discrimination Act 2008:567 - protection from discrimination and harassment.
- the Employment Protection Act 1982:80 - protection against unfair dismissal.
- the Work Environment Act 1977:1160 - prevention of illness and accidents in the course of employment and promotion of a safe work environment.
- the Employment (Co-Determination in the Workplace) Act 1976:580 - employee representation and consultation.

There are no statutory minimum wages under Swedish law. Wages are regulated through CBAs, some of which stipulate minimum wages.

Regulatory framework transfer of staff

When transfer of staff occurs after tendering please set out in this section whether this occurs due to the fact the competent authority requires for it (PSO regulations), or due to regulatory provisions – is the award of a UPT contract considered as a transfer of undertaking? Is transfer of staff limited to a certain number of staff?

The transfer of staff/ undertakings is determined by EU procurement laws and guiding principles (equal treatment, non-discrimination, proportionality, transparency and mutual recognition), as well as

the Swedish Employment Protection Act (LAS) and the Swedish Co-Determination in the Workplace Act (MBL).

There are, however, significant differences in the interpretation of the legislation and case law in this field between the Swedish Bus and Coach Federation and the Swedish Municipal Workers' Union. Indeed, the Swedish Bus and Coach Federation questions the legality of transfer of staff in the Swedish public transport context.

There have been a couple of court cases in the past that have been influential in the way transfer of staff is interpreted by some procurement experts in Sweden. For example, there was a case in 1998 involving Swebus, where the Gothenburg County Administrative Court found that the public transport authority had no right under the Employment Protection Act to require the new transport operator to take over the former operator's employees. Notably, the arguments put forward to support this view related to other similar cases rather than assessment of the actual case concerned. An appeal was launched but the court decision was upheld by the Administrative Court of Appeal.

Some procurement experts have taken this decision to mean that, by definition, a change of contractor for regular bus services can never imply a transfer of undertaking. It is likely that the Liikenne case, which came after the Swebus decision, has also contributed to this view. In the Liikenne case, the ECJ ruled that:

'..in a sector such as scheduled public transport by bus, where the tangible assets contribute significantly to the performance of the activity, the absence of a transfer to a significant extent from the old to the new contractor of such assets, which are necessary for the proper functioning of the entity, must lead to the conclusion that the entity does not retain its identity.'

The Swedish Municipal Workers' Union, however, are of the opinion that a transfer of staff is compatible with EU procurement laws and guiding principles. This view is, according the Swedish Municipal Workers' Union, further supported by the PSO regulation (1370/2007), most notably through Article 4(5). To date, the PSO regulation has not had a significant impact on the way the transfer of staff issue is handled in Sweden (although it is expected that changes will be made to relevant laws in 2016 to more fully reflect the PSO regulation⁹³).

Notably, the circumstances surrounding the procurement of regular bus services in Sweden often differ from those prevailing in the Swebus and Liikenne cases⁹⁴. For example, operators rarely own the buses, they tend to be leased for the duration of the contract. Consequently, there is no rental agreement that the new contractor can take over. It may, however, be the case that the same buses are being driven but leased under a separate contract⁹⁵.

The main arguments against the transfer of staff are principally made along two lines:

1. That there are limitations to the social criteria that can be requested beyond what is harmonised at EU level and that such criteria must be consistent with the 'internal market test'. This test implies that the requirements must be justified by a compelling public interest and also otherwise be non-discriminatory and proportionate. Some procurement experts argue that the requirement to transfer staff does not pass this test.
2. That the social criteria can be compatible with EU law, even if they go beyond what is harmonised. However, the requirement for transfer of staff is, according to some procurement experts, contrary to the principle of equality.

The Swedish Municipal Workers' Union, however, argue that this view is based on a *'questionable interpretation of case law and a sloppily written guidance from the Swedish Competition Authority'*.

Given the different interpretations of the legislation and case law in this field, the transfer of staff is generally not demanded by the competent authorities. The main exception is Stockholm where a

⁹³ <http://www.regeringen.se/remisser/2016/01/remiss-utkast-till-laggradsremiss-om-upphandling-av-vissa-kollektivtrafiktjanster/>

⁹⁴ Blekemo, A., 2010, En verksamhet är en verksamhet är en verksamhet, in Ahlberg, K. (ed.), Vänbok till Ronnie

⁹⁵ Ahlberg, K. and Bruun, N. (2011), *Public procurement and Labour Law – Friends or Foes?*, in Rönmar, M. (ed.), Labour Law, Fundamental Rights and Social Europe

transfer of staff is generally required following the award of the contract. There has, however, been an increasing trend for transfer of staff to be required (albeit from a relatively low base). For example, a transfer of staff has recently been required in Kalmar, Umeå and Dalarna. In Kalmar, the transfer of staff was justified on the basis that it would have a bearing on the quality of the service to be procured.

In cases of transfer of staff, it should be clear from the tender documentation which employees that should be transferred. Based on an operator in Stockholm, it is primarily operational staff (drivers and other operational staff) that are transferred. The transfer of other operational staff may depend on the vehicles to be used. Indeed, some of the mechanical staff specialise in certain vehicles. Moreover, some activities may be outsourced.

Other staff (managerial and administrative) are less commonly transferred. At one of the operators in Gothenburg around a third of other staff are transferred whilst a third are recruited externally. The remaining third is often recruited internally (i.e. from the new operator).

Notwithstanding any disagreements regarding the legality of the formal inclusion of transfer of staff in the tender specifications, it is very common for employees of the old operator to transfer to the new operator even if it is not required by the competent authority. In such cases, the relevant staff are, however, most commonly requested to apply for a job at the new operator. This, in turn, means that there are no guarantees for employees to be re-employed by the new operator.

In both cases, it is up to the employees to decide whether they wish to transfer. If they do not wish to transfer, they can apply for a different job at their current employer or even seek new employment elsewhere.

Reapplying for a job can be a stressful experience particularly for those that have worked with the same employer for a very long time, although once a contract has been signed there is generally job security until the end of the contract (which is generally eight to ten years). Indeed, there are very few redundancies, particularly for drivers.

Generally, in Stockholm all employees that want to be transferred to the new operator have been transferred since 2005. Where transfer of staff has not been specified in the tender document, the trade union normally initiates a negotiation process, following the award of the contract, with the new operator regarding the transfer of staff.

The stakeholders interviewed for this study report that, in some cases, it can be harder for temporary workers to get transferred to the new operator. This is partly a result of new operators utilising their own pool of temporary workers.

As the working conditions are primarily determined through the sectoral agreement, there should, in principle, not be a change of working conditions even if there is no formal transfer of staff requirement. There are, however, some provisions within the sectoral agreement that can be renegotiated at the local level (e.g. working schedules) which may not transfer to the new operator. Only in case of a legal case of transfer of undertaking where staff transfers, previous working conditions should in most circumstances remain for at least a year before they can be renegotiated. However, there is currently no case of 'formal staff transfer' in the UPT sector in Sweden.

The transfer of staff requirement, where applicable, is seen as creating a more secure employment for the employees and also limits costs associated with the recruitment of staff. On the other hand, it limits the flexibility and influence of the new operator.

Main operators

Provide an overview of the number of companies in the country by detailing number of different types of companies for bus, tram and light rail/metro services. Including the following facts:

- Which companies are the main players? What type of companies are there for which mode of transport?
- Some numbers on: market share/contract value of networks operated?
- Evolution of market share

There is no specific data on urban public transport in Sweden. More broadly, there are around 300 operators providing regular bus services ('linjetrafik'), falling from around 400 ten years ago. Around a third of the 300 line bus companies have no employees, whilst six companies have 500 employees or more. These six companies accounted for more than four fifths of the employees (81.2 per cent)⁹⁶.

It is estimated that only around 15 of the 300 bus companies operate within an urban environment.

Urban public transport services are primarily provided by multi-national operators, with Nobina and Keolis being the largest operators. The Swedish Bus and Coach Federation estimate that Nobina and Keolis have a combined market share of 45 per cent (30 per cent and 15 per cent respectively). Other large operators include Transdev, Arriva and Buss i Väst. Notably, it has become more common for operators to operate UPT services in different cities.

Tram services are mostly provided by internal operators (Göteborgs Spårvägar AB in Gothenburg and AB Stockholms Spårvägar in parts of Stockholm) but also include a couple of private operators (Transdev in Norrköping and Arriva in parts of Stockholm).

The proportion of internal operators in the UPT sector has fallen in recent years and now only account for a small share of the sector.

Whilst use of outsourcing has increased in recent years for services such as cleaning and maintenance, subcontracting has not been a significant feature of the evolution of the sector.

Employment in the sector

Provide an overview on the number of employees, in case of decline please provide information on reasons for the decline.

As mentioned above, there is no specific data on urban public transport in Sweden. However, the Swedish Bus and Coach Federation annually compiles a statistical report on the situation in the Swedish bus industry, including employment in the sector. The data presented below has generally been sourced from the Swedish Bus and Coach Federation annual statistical reports⁹⁷.

There are around 30,000 employees in the urban public transport sector, including around 26,000 from members of the Swedish Bus and Coach Federation and 4,000 in municipal bus operators).

In terms of the members of the Swedish Bus and Coach Federation, there has been an increase of around 20 per cent since 2008. Bus drivers account for a very high share of the total number of employees in the UPT sector (around 85 per cent).

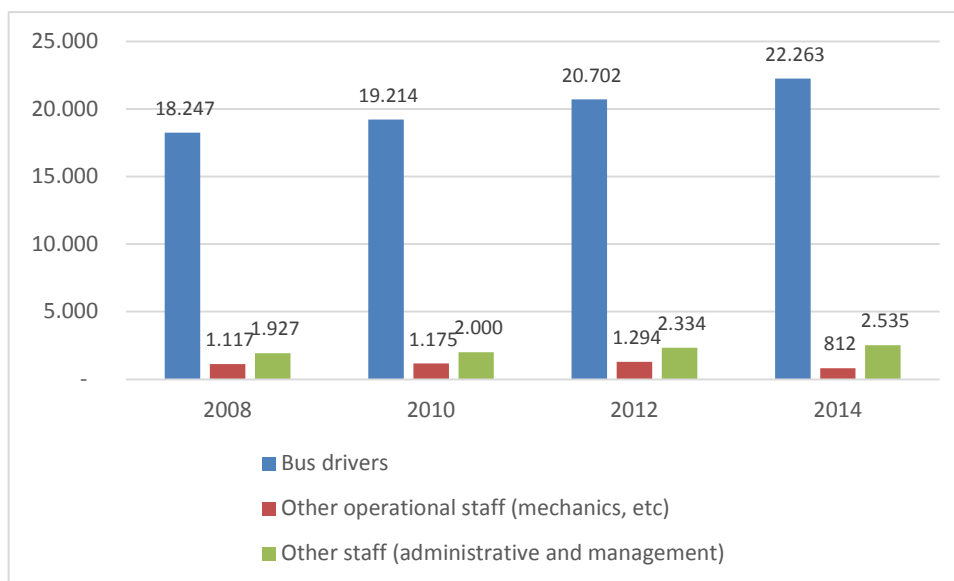
⁹⁶

http://www.transportforetagen.se/Documents/Publik_F%C3%B6rbunden/BuA/Rapporter/Statistik%20om%20bussbranschen%202015-08.pdf

⁹⁷ Sveriges Bussföretag (2015), *Statistik om bussbranschen*

http://www.transportforetagen.se/Documents/Publik_F%C3%B6rbunden/BuA/Rapporter/Statistik%20om%20bussbranschen%202015-08.pdf?epslanguage=sv

Table 1.14 Number of employees, by type of employee and year (2008-2014)



Source: Sveriges Bussföretag (2015), *Statistik om bussbranschen*

The average age of bus drivers has increased in recent years and was 48 years in 2014. It is one of the 25 occupations with the highest average age. Bus drivers are also characterised by a relatively high proportion of employees from ethnic minority groups.

The sector is characterised by a relatively low turnover of staff (particular if retirements are excluded), although the age structure of the sector means that a large proportion of the workforce will need to be replaced over the next decade.

Whilst UPT operators have always made use of temporary workers, it was mentioned by the trade unions that the use of such workers has become more strategic. Ten years ago temporary workers were generally students or people with a strong interest in the sector that worked in the sector as a complement to other employment. There is no statistics on the use of temporary workers, although based on the interviews undertaken for this study it is that temporary workers may account for up to 30 per cent of workers.

Temporary workers are always covered by the same collective agreements as other employees and thus benefit from similar working conditions. However, temporary workers do not have the same level of protection as permanent employees. For example, they do not have regular working hours and do not have the same protection when it comes to sickness leave. Their employment contracts are also easier to terminate. It has also been reported by the trade unions that temporary workers are put in a precarious position as they rely on the employer to provide them with a sufficient number of hours each week/ month. As such, the trade union worry that they may not feel in a particularly strong position to voice their concerns about their working conditions.

It has become less common for the permanent workers to work overtime. Any need for overtime tends to be met by temporary workers. This also means that the employer does not need to pay additional remuneration for overtime. The national sectoral collective agreement generally restricts overtime to 200 hours per year.

From the employer side, it has been mentioned that it would be preferential for permanent employees to work 75 per cent of a FTE position and then complement with additional hours as and when required. This would, according to the employer, allow a greater number of employees to benefit from permanent contracts and thus greater job security.

Social dialogue

- **Who are the social partners? How are they structured and whom do they represent in the sector?**

- **Are sectoral collective agreements in place?**
- **At which level are collective agreements typically concluded? And how many are in place (national, regional, local, branch, company...)?**
- **Who is bound by these collective agreements (only signatory parties or more widely)? Which type of workers are covered (all professionals active in UPT, employees of subcontractors)? What is the share of workers covered by collective agreements?**
- **What is the difference between sectoral and company level collective agreements for different terms and conditions of employment?**

The social partners involved in negotiating collective agreements in the UPT sector are the Swedish Municipal Workers' Union (Kommunal) and the Swedish Bus and Coach Federation (Sveriges Bussföretag) and the Swedish Organisation for Local (Municipal and County Council) Enterprises (Kommunala Företagens Samorganisation, KFS).

The main collective agreement in the UPT sector is the national sectoral collective agreement ('Bussbranschavtalet'), which has been in place since 2003. It is only signatory parties that are bound by the collective agreement. The signatory parties, however, account for almost the whole sector which means that the coverage is very extensive. The existence of a national sectoral collective agreement means that the overwhelming majority of operators are covered by the same salaries, working hours, pensions, etc.

Some parts of the national agreement can be negotiated at the company/ local level. For example, local agreements can negotiate on the scheduling of working hours.

There is also a separate national collective agreement for municipal owned operators. This has been negotiated between the Swedish Organisation for Local (Municipal and County Council) Enterprises, the Swedish Municipal Workers' Union, Vision, Unionen and Saco.

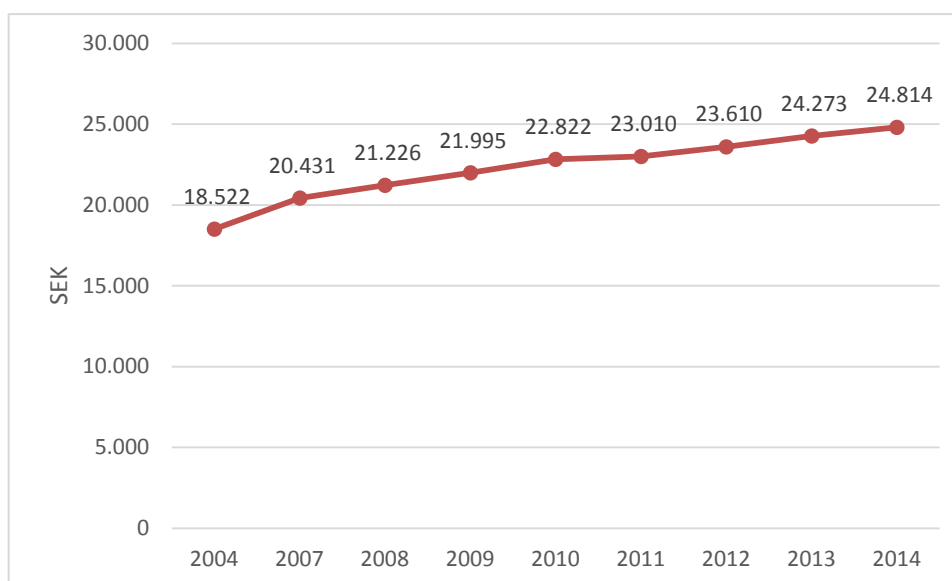
Company/ local level collective agreements may also exist, for example, if an operator is not a member of the signatory parties).

In addition to the collective agreements there are also a number of regulatory standards that play an important role in shaping the social conditions in the UPT sector. Such regulatory standards relate to training, health and safety and working hours.

Evolution of social conditions

The social partners disagree on the trajectory of gross monthly wages over the last 10 years, with the trade union suggesting that they have increased in line with the cost of living, whilst the employer organisation suggests that the gross monthly wages have exceeded increases in cost of living/ inflation indices. According to the figure below, the average monthly salary of bus drivers has increased by, on average, three per cent per annum over the last ten years.

Table 1.15 Evolution of average salaries for bus drivers, 2004-2014



Source: Sveriges Bussföretag (2015), *Statistik om bussbranschen*; this does not include municipal owned bus operators.

Salaries are determined through a tariff system based on the number of years' service. The maximum salary can be achieved after eight years. Each tariff step (five in total including the starting salary) represents two years' service. From June 2015, the tariff steps for the gross monthly salary were as follows:

- Starting salary - 23,494 SEK
- After two years' service - 24,135 SEK
- After four years' service - 24,539 SEK
- After six years' service - 25,387 SEK
- After eight years' service - 25,887 SEK

Workers in Stockholm and Gothenburg have salary supplements to compensate for the higher cost of living in these two cities.

The social partners largely agree on the trajectory of additional remuneration (e.g. overtime pay, night work pay, on-call benefits). Both parties suggest that additional remuneration has increased in line with the cost of living/ inflation indices.

Subcontractors are often bound by the same sectoral agreement as the main operators and thus have the same overall pay and benefits.

Collectively agreed weekly working hours have generally fallen slightly or stayed the same in the last 10 years.

In terms of the training provision, the employer organisation believe that there has been a continuous improvement over the past 10 years. The trade union neither agrees nor disagrees with that statement. Since 2008, there is legal requirement for bus drivers to have a certificate of competence in order to transport passengers. This certificate is valid for five years and will need to be renewed following this period. The renewal training covers at least 35 hours and can be divided into modules that are at least 7 hours each.

The Swedish Municipal Workers' Union and the Swedish Bus and Coach Federation have similar views in relation to the pension benefits. They both consider pension benefits to have increased in the last 10 years. Private sector employees in the UPT sector benefit from a state pension as well as an occupational pension scheme. The occupational scheme has been negotiated through a central agreement between the Confederation of Swedish Enterprise (Svenskt Näringsliv) and the Swedish Trade Union Confederation (LO).

Annex 12 UK

Market organisation of urban public transport in the UK

The institutional organisation and regulatory framework that governs urban public transport services differ hugely within the UK. We have therefore approached the analysis with such differences in mind. In particular, we distinguish between 1) London; 2) England (outside London), Wales and Scotland; and 3) Northern Ireland.

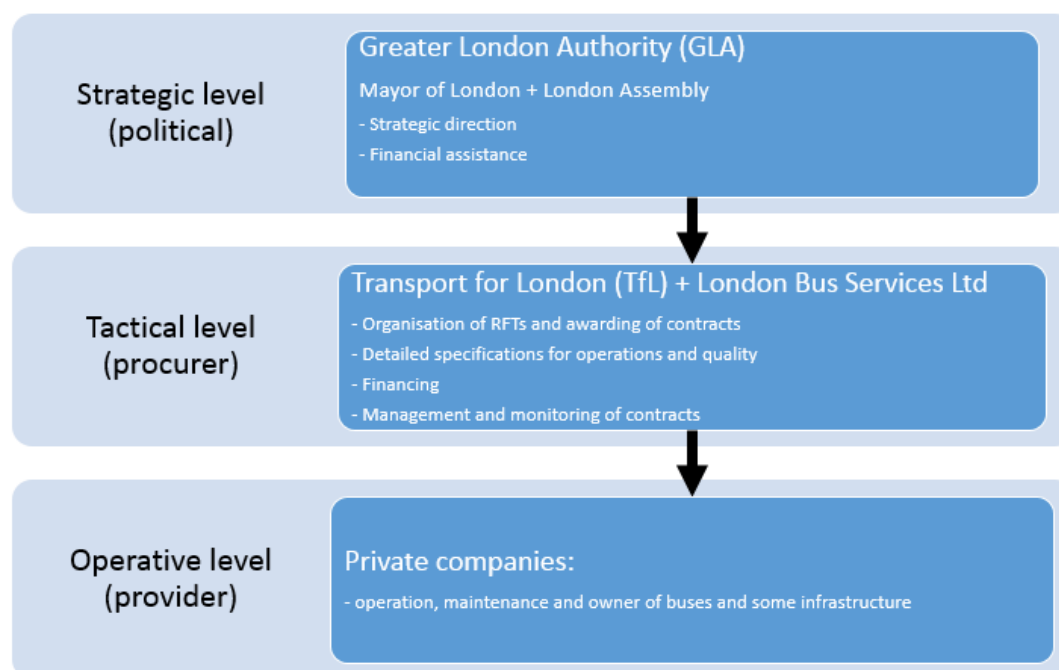
1.1.4 Institutional organisation and regulatory framework in London

In London, responsibility for local transport lies with the Greater London Authority (GLA). The GLA is made up of a directly elected Mayor and a separately elected Assembly, which scrutinises the Mayor's activities. The Mayor leads the preparation of statutory strategies on transport, spatial development, economic development and the environment, and sets budgets for the relevant local agencies. Specifically, the Mayor has a statutory duty to promote and encourage safe, integrated, efficient and economic transport facilities and services in London⁹⁸.

Local transport services are managed via an executive agency of the GLA, Transport for London (TfL), which has responsibility for all transport within the Greater London area including some cross-boundary suburban rail services (the Overground). Its roles include the specification of local bus services (through London Bus Services Limited) within London, the licensing of taxis, the maintenance of the strategic highway network, the operation of the London Underground (via London Underground Ltd, LUL) and traffic management. The majority of TfL's public funding comes through a grant from the Department for Transport (DfT).

The organisation of the London bus network is further illustrated in the figure below:

Figure 1.6 Organisation of Greater London local public transport



Source: Adapted from traffiQ (2011) *Best Organisation of Local Public Transport in Major Cities*

⁹⁸ Greater London Authority Act 1999: s141.

The London urban public transport market (particularly bus services) is heavily regulated. Indeed, London's bus operators compete for the right to provide services under exclusive contracts awarded – for up to seven years – by TfL on a route-by-route basis. TfL sets all service and fare levels on the Mayor's behalf. Bus operators bid on service cost and quality but do not bear any fare risk or reward, which lies entirely with TfL. Bus operators receive an income from TfL, with bonuses and deductions made for good and poor service performance. This means that operators earn a profit by reducing their costs and/ or providing a good service. London Bus Services Limited (London Buses) plans all bus routes and specifies service levels and ensures service quality. Similarly to PTEs outside London, LBS is also responsible for bus stations, bus stops and other communal support services. The bus services are operated by privately owned operating companies, which work under contract to London Buses.

1.1.5 Institutional organisation and regulatory framework outside London

Outside London, the institutional organisation and regulatory framework is very different. Governance rests with Passenger Transport Executives (PTEs)⁹⁹, or otherwise are unitary authorities, district or county councils.

In non-metropolitan areas, local bus and light rail networks, are the responsibility of upper tier municipalities (counties and unitary authorities) through so-called Local Transport Authorities (LTAs). Specifically, LTAs (as defined by the Transport Act 2000) have a statutory duty to prepare a Local Transport Plan (LTP) and are required to make an assessment of requirements for supported services and meet the identified requirements.

In the six English metropolitan areas outside London¹⁰⁰, Integrated Transport Authorities (ITAs) are the strategic bodies responsible for local transport networks. However, ITAs are gradually being replaced with Combined Authorities (CAs) that have a broader local economic development remit. Passenger Transport Executives (PTEs) typically remain the executive arm of ITAs and CAs, and have direct responsibility for local public transport¹⁰¹. For five of the six metropolitan areas the PTEs are responsible for the following aspects of public transport planning and delivery:

- Planning of local rail services in partnership with DfT;
- Planning and funding socially necessary bus routes;
- Working with private operators to improve bus services - e.g. through bus priority schemes;
- Running concessionary travel schemes - i.e. for older, disabled and young people;
- Investing in local public transport networks - including new rail and bus stations;
- Developing and promoting new public transport schemes - like light rail and guided bus networks;
- Managing and maintaining bus interchanges, bus stops and shelters.

In Wales, four regional transport consortia (SWWITCH; Sewta; TraCC and Taith) were, until recently, responsible for the development and implementation of regional transport plans (RTPs). Delivery of RTPs was primarily funded by a Welsh Government Regional Transport Consortia Grant (RTCG) and included funding for administration of the consortia. However, the consortia have now been abolished and local authorities now prepare joint transport plans within any grouping of their choosing, or prepare their own individual plans.

⁹⁹ Accountable to established integrated transport authorities (ITAs) made up of local councillors in the areas that they serve.

¹⁰⁰ The six metropolitan, city regions are: Greater Manchester, Liverpool City Region, South Yorkshire, Tyne and Wear, West Midlands, West Yorkshire

¹⁰¹ Across some parts of England, some strategic investment decisions are made by Local Enterprise Partnerships (LEPs), which are partnerships between the local government bodies and private businesses. There are currently 39 LEPs in England, not all of which coincide with the administrative boundaries of existing counties and metropolitan areas.

Bus services in Great Britain (outside London) do not have the same level of statutory or political support as in London. In London there is an absolute duty upon government to ensure that public transport services are provided. LTAs, on the other hand, only has a qualified legal duty to secure public passenger transport services. They have discretion as to whether or not they need to take action to ensure that bus services are provided¹⁰², and they can ultimately refuse support for bus services if they wish to do so, with some limited exceptions¹⁰³.

The bus markets in Great Britain (outside of London) are fully liberalised and are only subject to safety and punctuality licensing requirements imposed by traffic commissioners¹⁰⁴. Consequently, operators design and develop their own commercial services and set their own fares.

LTAs can fund local bus services by tendering contracts for unprofitable services. As such, operators are not forced to run unprofitable routes by providing a cross-subsidy from other services. If the LTA cannot fund the service, it is lost to those who still need it. Outside London, approximately 22 per cent of bus services are LTA supported although this can vary from 5 per cent of services in some urban areas to 100 per cent of services in some rural areas¹⁰⁵. In 2015 approximately, £303 million bus service operators grants were paid by central and local government.

In addition to letting contracts for tendered services, the public sector intervenes in the provision of bus services by requiring all operators to offer free travel (after the morning peak) to disabled people and individuals older than the State Pension Age. Compensation is paid in accordance with the principles of Regulation 1370/2007 by local transport authorities from their overall funding settlement from central government; this amounted to approximately £1 billion in 2014/15. This benefit is given on a national basis within England, Wales and Scotland and on a cross-border basis with the Republic of Ireland in the case of Northern Ireland residents (the last of these with a different age threshold). Local transport authorities can also set other discretionary concessionary fares, for which operators must also be appropriately compensated.

Central and local government support for local bus services consists of payments for supported services, Bus Service Operators Grant (BSOG) and concessionary travel reimbursement, which is effectively a subsidy to concessionary passengers. In 2014/15, the estimated total net support paid in England was £2.2 billion, of which £1.1 billion or 48 per cent was for concessionary travel. English non-metropolitan areas had the highest net spend on concessionary travel (£508 million) and was significantly higher than London which had the lowest (£239 million).

¹⁰² Transport Act 1968: s9A and Transport Act 1985: s63.

¹⁰³ For example, the provision of free school travel to under-16s and administering concessionary fares.

¹⁰⁴ Seven individuals with responsibility in their area for licensing bus, coach and heavy good vehicle operators and drivers and also for registering local bus services.

¹⁰⁵ Campaign for Better Transport (no date), Campaigner's guide to saving your bus service, London. http://www.bettertransport.org.uk/sites/default/files/pdfs/Save%20Our%20Buses%202014.PDF_.pdf

Table 1.16 Estimated net support paid by central and local government (£million, current prices), 2014/15

£ million	Net Public Transport Support ¹⁰⁶	Concessionary Travel ¹⁰⁷	Bus Service Operators Grant ¹⁰⁸	Total estimated net support ¹⁰⁹
London	586	239	-	825
English metropolitan areas	117	306	85	509
English non-metropolitan areas	190	508	166	863
Total	894	1,053	251	2,198

Source: Department for Transport, Statistical Release: Annual Bus Statistic: (table BUS0502a)

Concessionary LTAs have three regulatory interventions open to them if they have concerns about service provision: voluntary partnerships, quality partnerships and quality contract schemes (QCSs):

Table 1.17 LTA regulatory interventions

Regulatory intervention	Description
Partnerships	<p>Voluntary and quality partnerships provide exceptions to general competition rules that allow cooperation between LTAs and operators. Quality partnerships will stipulate that operators can only provide bus services if they meet the LTA's requirements (for example on fare levels or frequency of services). However, neither partnership obliges an operator to provide a service; operators can cut services without liability.</p> <p>Only 15 voluntary partnerships and seven quality partnerships have been established to date. Reasons for the limited use of partnerships include the fear of bus operators ceasing to provide services once the LTA has made the investment, the difficult negotiating process, the lack of limits on competition with other operators, and perceived difficulties in meeting the competition test. State aid issues also arise under partnerships if an LTA provides funding. Where partnerships have arisen, they have generally come about through strong leadership from an LTA, sometimes using the threat of a QCS to encourage operators to enter into a partnership¹¹⁰.</p>
Quality Contract Schemes (QCSs)	<p>QCSs grant LTAs powers to regulate their local bus market in a manner similar to TfL's. To introduce a QCS, an LTA must satisfy the following five-point test¹¹¹:</p> <ol style="list-style-type: none"> 1. the proposed scheme will result in an increase in the use of bus services; 2. the proposed scheme will bring benefits to bus passengers by improving the quality of bus services; 3. the proposed scheme will contribute to the implementation of the local transport policies of the LTA;

¹⁰⁶ Public Transport Support is the total of all local authorities' net costs incurred in support of bus services, either directly or by subsidies to operators or individuals. The bulk of these costs will be accounted for by payments to operators providing tendered or supported bus services (including non-local services in some cases). However, the figures also include administration costs and inter-authority transfers, meaning that a small proportion of the sums shown will not reach bus operators. In London it will also include depreciation on capital.

¹⁰⁷ Concessionary Travel is the total of all local authorities' net costs of statutory or discretionary concessionary bus travel.

¹⁰⁸ Bus Service Operators Grant (BSOG) is a subsidy provided by Central Government to operators of local bus services.

¹⁰⁹ Figures reflect net revenue cost to the public purse.

¹¹⁰ Greasing The Wheels: Getting Our Bus And Rail Markets On The Move (2014)

¹¹¹ Transport Act 2000: s124.

	<p>4. that contribution will be in a way which is economic, efficient and effective;</p> <p>5. any adverse effects of the proposed scheme on operators will be proportionate to the improvement in the wellbeing of persons living or working in the area to which the proposed scheme relates and, in particular, to the achievement of the objectives set out in the other four requirements of this test.</p> <p>Should an incumbent operator object to the QCS, they can refuse to continue services but must give 112 days' notice. However, the time it takes to implement a QCS could be over one year.</p> <p>A recent study suggests that the QCS test are too onerous. In addition, the process is expensive for LTAs. If operators proposed a counteroffer once the assessment was done, this would necessitate a re-evaluation of the test, thus increasing costs.</p>
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Source: *Greasing The Wheels: Getting Our Bus And Rail Markets On The Move (2014)*

To date, no LTA has successfully introduced QCSs, although Nexus, the Tyne and Wear PTE, is currently attempting to do so¹¹². Plans in other areas, such as in Yorkshire, have been abandoned. Some of the stakeholders, however, note that the fact that it is there is an option to introduce QCSs has probably helped progress discussions and implementation of partnerships. Formalised partnerships have primarily been implemented in the core city regions, but informal partnerships based on consensus have also been implemented across Great Britain.

1.1.6 Institutional organisation and regulatory framework in Northern Ireland

In Northern Ireland, the Department for Regional Development has direct responsibility over local and strategic transport matters. The department sponsors the Northern Ireland Transport Holding Company (also known as Translink), and provides financial and administrative support to help ensure the operational delivery of transport policy in Northern Ireland. This extends not only to the planning but also the delivery and governance of all public transport in Northern Ireland. NI Railways, Ulsterbus and Metro are all part of Translink. Translink provides services all over Northern Ireland and also to Dublin, in a partnership deal with its counterpart in the Republic of Ireland. It also provides local bus services in many towns and cities all over Northern Ireland including Bangor, Derry/Londonderry, Ballymena, Omagh, Craigavon and Antrim. The Metro service operates throughout Belfast, right out to the suburbs.

1.1.7 Regulatory framework for urban public transport

Regulatory framework timeline

During the 1980s the UK carried out a programme of deregulation and privatisation of bus and rail services. The impetus for regulatory change was largely political, with the Government at the time (led by Margaret Thatcher) being strong advocates of increased competition and privatisation.

In particular, the legislation to deregulate the 'local' bus service industry outside London was introduced in the 1985 Transport Act. The overhaul of the traditional 'local' bus service and reform of the licencing system started with the establishment of Passenger Transport Authorities (PTAs) (renamed Integrated Transport Authorities, ITAs, in 2008), with responsibility for planning local transport services (jointly with metropolitan district councils).

The 1985 Act replaced the old licensing system (i.e. quantity controls) with a system of registration and simultaneously removed local authorities' obligation to co-ordinate public passenger transport in their area. This allowed bus companies to register any service that it

¹¹² <http://www.nexus.org.uk/busstrategy>

chose to operate on a commercial basis. However, local authorities can invite tenders for additional – non profitable – routes if there is a social need.

Part III of the 1985 Act required the sale of the National Bus Company subsidiaries to the private sector. Deregulation was intended to increase competition through an increase in the number of competitors and by reducing the possibilities of entry-deterring behaviour. Privatisation, in itself, was not necessarily going to increase competition. The PTEs moved to a role of maintaining common facilities and financing less profitable but socially necessary services, although these had to go to open tender.

The 2000 Transport Act enacted civil enforcement of bus lanes and tramways. The 2008 Local Transport Act allows any group of local transport authorities to apply to the Secretary of State to create an ITA/PTE. Existing PTEs/ITAs can also expand to take in neighbouring Local Transport authorities (LTAs) if all the LTAs concerned so wish and if the Secretary of State approves.

Regulatory framework employment conditions

Working conditions in the UK are governed by a minimum charter of employment rights, based in various Acts, Regulations, common law and equity. This includes:

- National Minimum Wage Act 1998 – this gives the right to a wage of at least £6.50 for over 21-year-olds
- Working Time Regulations 1998 – makes explicit the right to 28 paid holidays, breaks from work, and attempts to limit excessively long working hours (in the UK employees are allowed to opt out of working time limits)
- The Employment Rights Act 1996 – provides right to leave for child care, and the right to request flexible working patterns, rules on dismissal, and employer insolvency and redundancy payments
- Health and Safety at Work etc. Act 1974 – encourages, regulates and enforces workplace health, safety and welfare
- Equality Act 2010 – this Act codifies various others and covers inter alia, equal pay, race, disability, sex and sexual orientation discrimination.

Regulatory framework transfer of staff

The 2006 Transfer of Undertakings (Protection of Employment) Regulations and the Service Provision Change (Protection of Employment) Regulations (Northern Ireland), collectively known as 'TUPE' are UK-wide provision for the treatment of employees.

There are two types of transfer protected under TUPE regulations:

- **business transfers** - this is where a business or part of a business moves from one employer to another, e.g. mergers where two companies close and combine to form a new one. The identity of the employer must change, to be protected under TUPE during a business transfer.
- **service provision changes**¹¹³ – 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.

When TUPE applies:

- the employees' jobs usually transfer over to the new company - exceptions could be if they're made redundant or in some cases where the business is insolvent
- their employment terms and conditions transfer

¹¹³ These elements only apply in Great Britain. Separate Regulations, namely the SPC Regulations, are in place in Northern Ireland.

- continuity of employment is maintained
- Employees are not protected under TUPE if the contract is:
- for the supply of goods for the company's use (e.g. a restaurant changing food suppliers)
 - for a single event or short-term task (e.g. a catering company being used for a large corporate event)
- Only the employees who can be clearly identified as providing the service being transferred are protected.
- Source: <https://www.gov.uk/transfers-takeovers/overview>

The TUPE regulations have recently been amended and the new regulation came into effect in January 2014¹¹⁴. The main changes to TUPE are as follows:

Table 1.18 Changes to TUPE

Relevant Transfers		
Service provision changes	Change 1	The activities carried out under outsourced or tendered work must be "fundamentally the same" for TUPE to apply.
Contracts of employment		
Changes to terms and conditions	Change 2	Altering contractual terms and conditions.
	Change 3	Dismissals are no longer automatically unfair because of a change in the workplace location.
	Change 4	Terms and conditions from collective agreements may be renegotiated after one year provided that overall the contract is no less favourable to the employee.
	Change 5	In some circumstances contractual changes arising from new collective agreements agreed by the outgoing employer are not required to be incorporated after a transfer.
Dismissals and redundancies		
Dismissal	Change 6	An employee will be automatically unfairly dismissed if the sole or principal reason for the dismissal is the transfer.
Redundancy	Change 7	Redundancy consultation can begin before the transfer if both employers agree.
Redundancy Employee liability information (ELI)		
ELI	Change 8	Information about transferring employees should be given earlier.
Information and consultation rights		
Who should be consulted?	Change 9	Businesses with fewer than 10 employees are not required to invite the election of representatives for consultation purposes if no existing arrangements are in place.

Source: ACAS (2014) 2014 changes to TUPE http://www.acas.org.uk/media/pdf/t/r/9908-2901767-TSO-ACAS-TUPE_is_changing-ACCESSIBLE.pdf

TUPE is potentially open to misuse and could, in some cases, allow operators to transfer unwanted staff following competitive tendering losses.

TUPE has recently been established, through common law, as an entitlement but not an obligation for staff. In 2014, the Employment Appeal Tribunal held that five employees from Centrewest London Buses Ltd who resigned after facing a significant change in office

¹¹⁴ These amendments do not extend to Northern Ireland.

location, had been constructively dismissed. Other comparable cases have had similar outcomes.

1.1.8 Main operators

In Wales, Scotland, and England (outside London), the majority of bus services are operated by commercial companies that decide what services to run and what fares to charge. There are no exclusive rights of operation.

In 2011, this market consisted of approximately 1,245 companies operating registered local bus services in Great Britain. The bus market is dominated by five companies¹¹⁵, which in 2011 were responsible for roughly 69 per cent of all local bus services outside London¹¹⁶. Notably, only five other operators have a share of services which exceeds one per cent of the reference area, and 95 per cent of all local bus services in the reference area are provided by 219 operators. Apart from the private-sector operators, there are also 11 municipally-owned operators¹¹⁷. The high levels of concentration in the bus market has resulted in the former Competition Commission concluding that head-to-head competition is uncommon, which in turn has led to inefficient markets¹¹⁸.

As of October 2013, there were 835 bus operators in England (outside London). The main operator was Stagecoach, followed by First and Arriva. Together these three operators account for 55.2 per cent of weekly bus vehicle trips¹¹⁹.

¹¹⁵ First Group, Stagecoach, Arriva, Go-Ahead and National Express.

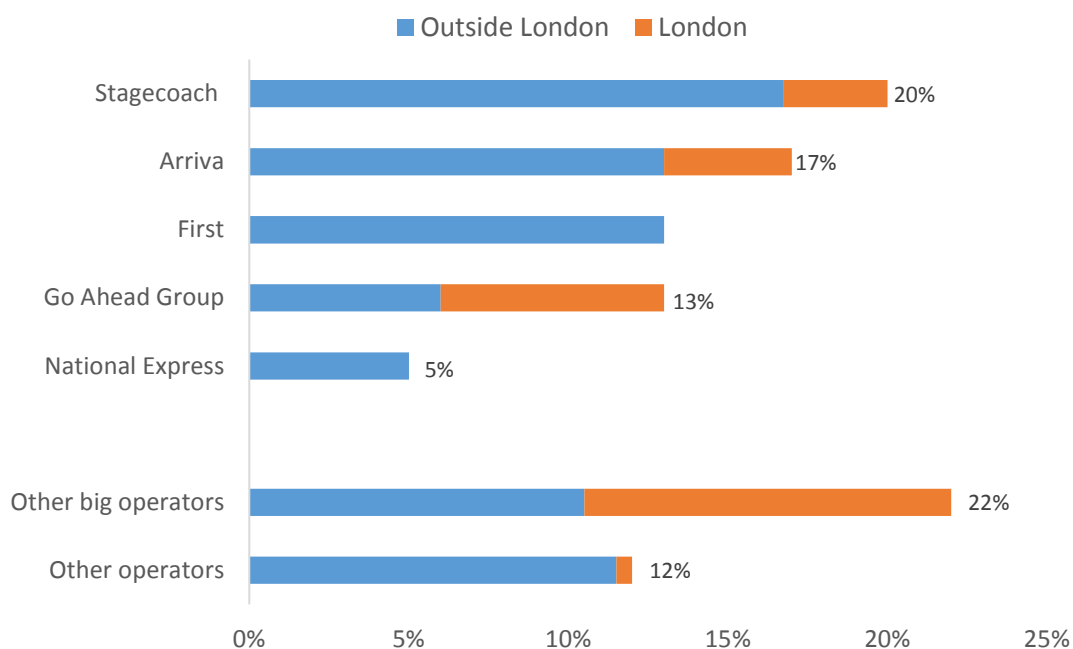
¹¹⁶ House of Commons Transport Committee (2012), Competition in the local bus market, Third Report of Session 2012–13

¹¹⁷ Competition Commission (2011), Local bus services market investigation: A report on the supply of local bus services in the UK (excluding Northern Ireland and London)

¹¹⁸ Competition Commission (2011), Local bus services market investigation: A report on the supply of local bus services in the UK (excluding Northern Ireland and London)

¹¹⁹ A 'bus vehicle trip' is a single vehicle working from the origin to the terminus of a timetabled route. This measure therefore reflects service frequency variations between operators as the more frequent routes will generate a higher number of vehicle trips.

Figure 1.7 Bus operator market share of services, 2013¹²⁰



Source: Department for Transport, Statistical Release: Annual Bus Statistics: England 2013/14

In terms of the 'Big 5', it is only Stagecoach and Arriva (now owned by Deutsche Bahn) that are present in all markets (UK bus, London bus, light rail). First Group has recently sold its London bus business to Metroline and a smaller Australian transport group. Go Ahead does not currently operate a light rail system, although Keolis, its rail franchising partner, does. National Express also recently sold its London bus operation.

Outside the 'Big 5', and excluding the London Underground, the key players are Abellio (owned by NS, the Dutch rail operator). Abellio is currently only present in the London bus market.

Both the UK and London bus market have shown a trend towards increasing concentration over time. Indeed, larger bus operators (PLC-owned or having fleets of over 100 buses) provide virtually all London services and over 80% of total mileage run outside London, but smaller operators account for over 40% of supported service mileage. Around half the local bus mileage operated by the smaller operators is on supported services¹²¹.

Belfast's buses and most of Northern Ireland remain in public hands and are operated by Metro (previously Citybus) and Ulsterbus (both are wholly-owned by Translink). Ulsterbus is responsible for most of the bus services in Northern Ireland. They operate around 20 bus stations which include: Armagh, Antrim, Lisburn, Bangor, Newtownards, Downpatrick, Newry, Craigavon, Dungannon, Omagh, Enniskillen, Londonderry, Coleraine, Ballymena, Magherafelt, Larne and Newcastle and others within Belfast and 1,100 buses. The Translink Metro service (previously Citybus) operates bus services within the Greater Belfast Area. Metro operates 12 bus corridors (QBCs) in Belfast, plus a number of additional route.

As the Great Britain market (outside London) is so different to other European countries the main barrier for entry is the knowledge and competence of working in a deregulated market.

¹²⁰ Department for Transport (2014) Annual Bus Statistics: England 2013/14
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/387397/annual-bus-statistics-year-to-march-2014.pdf

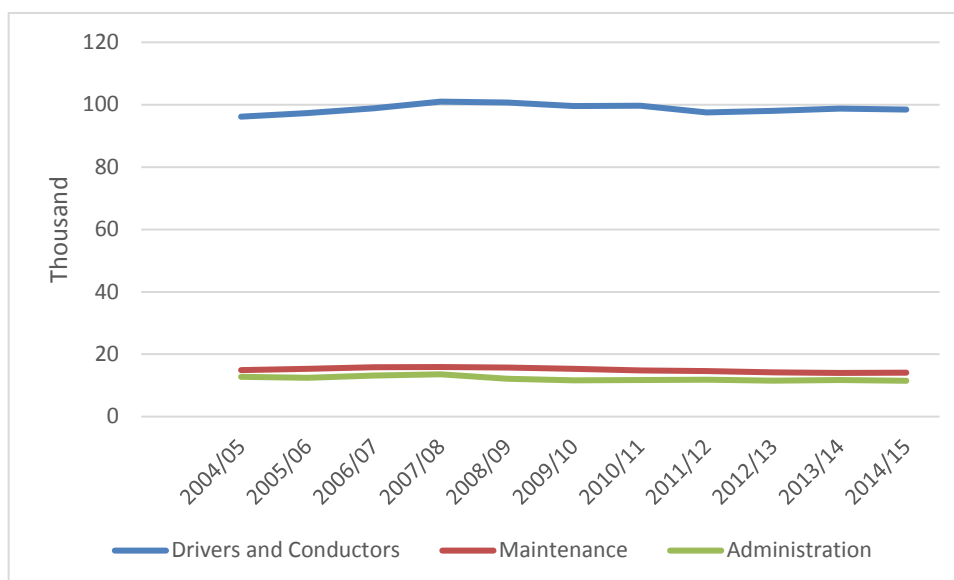
¹²¹ Department for Transport (2014) Annual Bus Statistics: England 2013/14
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/387397/annual-bus-statistics-year-to-march-2014.pdf

1.1.9 Employment in the sector

Employment in the bus sector has been very stable over the last ten years. Employment grew from 124,000 to 130,000 between 2004/05 and 2007/08, but has subsequently fallen back to 124,000. Employment has been stable at 124,000 since 2011/12.

The majority of employment is made up of drivers and conductors which accounted for 79 per cent of employees in 2014/15. The remaining 21 per cent is made up of maintenance and administration staff.

Figure 1.8 Staff employed by local bus operators, Great Britain, 2004/05-2014/15



Source: Department for Transport statistics

1.1.10 Social dialogue

Workers within the urban public transport sector are represented by:

- 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). The CPT does not get involved in collective bargaining negotiations. Its role is focused on forming and communicating a common view from the bus operators to the UK Government/ European Commission and other stakeholders.

The Passenger Transport Executive Group represent the six strategic transport bodies for the six Metropolitan areas and are a wider professional network for urban transport authorities.

UK Tram comprises both the Passenger Transport Executive Group and Confederation of Passenger Transport, as well as Light Rail Transit Forum and London Tramlink.

There is no national sectoral collective agreement in place. Collective agreements are negotiated directly with the operators, often at a branch/ depot level.

1.1.11 Evolution of social conditions

The gross weekly earnings for bus and coach drivers remains lower than the average for all occupations. There has been some convergence in terms of pay but this convergence process has stagnated or declined in recent years.

Pay, terms and conditions tend to reflect local labour market conditions. For example, wages tend to be lower in areas with high levels of immigration and unemployment, whilst the opposite is true for more affluent areas. Generally though, basic pay for new starters tends to lie a little above the national minimum wage. Overtime pay is paid differently across different bus routes and bus operators. Some get a flat rate, whilst others get an increased rate. Some only get an increased rate on Sundays.

Light rail drivers' pay and other benefits tend to lie about halfway between those received by rail drivers and local bus drivers. Such differences are largely reflective of the length of the required training. Notably, in Blackpool a common pool of drivers is used for buses and the tram.

The average hours worked by bus and coach drivers has fallen over the last decade but remains significantly higher than for other occupations. Workers are generally contracted to work around 40 hours but the national legislation allows you to work 13 days in any 14 day period. Most workers have opted out of the restrictions stipulated by the EU working time directive.

ARRIVA Merseyside/ North West

Background information

Merseytravel - formerly the Merseyside Passenger Transport Executive (MPTE) - is the executive body of the Liverpool City Region Combined Authority¹²² that coordinates bus services. Until the 1980s, all local bus transport in Liverpool was provided by MPTE. However, in order to comply with the Transport Act 1986, the operating part of the MPTE was separated into a new company - Merseyside Transport Limited (MTL).

MTL was subsequently bought by Arriva in 2000. However, the Monopolies and Mergers Commission required a partial breakup of the company and some routes are now operated by Stagecoach.

As of October 2013, there were 40 bus operators in Merseyside. Arriva, as the main operator, accounted for 54.5 per cent of weekly bus vehicle trips¹²³. Stagecoach being the next most significant operator, with a 19.6 per cent market share, and Huyton Travel, accounting for a further 6 per cent of weekly bus vehicle trips.

Around 10 per cent of the Merseyside bus market is tendered by Merseytravel which subsidise non-profitable but socially necessary transport routes in areas of deprivation or to key locations such as hospitals or schools¹²⁴. Merseytravel is required to operate within constrained budgets for both revenue and capital spend, and in so doing secure value for money.

Criteria are in place in respect of supported bus services, to ensure that resources used to fund this part of the bus network that is not commercially viable, deliver best value for money. These criteria include established patronage criteria, acknowledging that it does not constitute good value for money to fund services that are very poorly used. In addition, a criterion relating to the use of the DfT's "Accession" mapping software system has been included, as a means of calculating the purpose and accessibility of a service, so as to reflect the social importance of a service, not just its cost¹²⁵.

The only service/ function that is outsourced is the cleaning. Arriva have contracted an external company to clean the buses and facilities since 2002/2003 (but outsourced even before then). The contract with the external company is a national contract.

The company and its employees

Arriva's Merseyside expansion in 2000 more than doubled the size of the company. In conjunction with the MTL take over, Arriva also acquired several other small bus companies. Although the company is officially known as Arriva North West, some operations were originally registered under alternative Arriva names, for instance, the former Blue Bus operations were registered as Arriva Liverpool. A large proportion of services in Merseyside remain registered under the separate Arriva Merseyside licence, all other services are registered under the Arriva North West licence.

As already noted above, Arriva account for more than half of the bus market in the Merseyside area (as measured by bus vehicle trips).

Arriva almost exclusively operates commercial services as the smaller operators tend to be more successful at the competitive tendering contracts. This is primarily due to smaller

¹²² The Liverpool City Region also incorporates the local authority districts of Halton (joined 1 April 2014), Knowsley, Sefton, St Helens, and Wirral.

¹²³ A 'bus vehicle trip' is a single vehicle working from the origin to the terminus of a timetabled route. This measure therefore reflects service frequency variations between operators as the more frequent routes will generate a higher number of vehicle trips. <https://www.gov.uk/government/collections/bus-statistics>

¹²⁴ <http://www.merseytravel.gov.uk/about-us/guide-to-Merseytravel/Pages/Buses.aspx>

¹²⁵ <http://www.merseytravel.gov.uk/Site%20Documents/School%20Transport%20Policy.pdf>

operators having lower overheads and costs. Competitive tendering contracts are often awarded on the basis of lowest cost.

In addition to the commercial services, Arriva also operate a number of school bus contracts for Merseytravel.

Arriva North West is also, in association with Stagecoach, working with Merseytravel to improve and integrate services in the Merseyside area. Together they operate six routes as part of a Quality Partnership. For these six routes there are combined and co-ordinated timetables and tickets that can be used across both operators on the agreed routes.

Arriva operates around 650 vehicles in Merseyside with around 2,000 staff.

Working conditions are generally determined at a branch/ depot level and often reflect the working conditions of the previous operator (in the case of acquisitions). Consequently, the depots have very different cultures and working conditions to this day.

Reflecting the responsibilities of the stakeholders consulted, this case study primarily focuses on one the St Helens that was previously operated by MTL. This is one of Arriva's larger depots outside London. The depot runs 120 buses, of which 109 are in use each day with approximately 10 per cent being serviced, repaired or used for training purposes.

The employment composition of the St Helens depot is reflective of the industry as a whole with a predominantly male employee base and high proportion of workers over 50.

More specifically the St Helens depot comprises 400-420 employees (of which the majority are drivers). No temporary workers are employed, with this being the result of a regional recruitment policy that discourages the hiring of temporary workers.

Around 350 of the St Helen's employees – predominantly drivers – are members of Unite the Union whereas the depot's engineers part of a separate union.

Evolution of social conditions

Salaries and other employment benefits

Arriva's working conditions vary by depot, but the pay is consistent throughout Merseyside. Irrespective of local arrangements, Arriva are considerably more attractive compared to smaller local bus companies. Arriva drivers' base pay for depots in the North West are close to double the national minimum wage.

Taking the St Helens depot as an example, drivers are among the best paid in the Merseyside area. Moreover, since Arriva's take over, a time and a quarter policy has been introduced which is paid to drivers working on Saturdays after 13.00 and all day Sundays. Differently to some other depots, the drivers are paid from the moment they enter the premises until they leave. Some competitors do not pay workers until they actually start their scheduled route. New hires are subject to a "starter rate" for 12 months that is 85 per cent of the full salary.

The salaries at the St Helens Depot have increased by approximately 2.5 per cent in each of the last 6 years. Arriva and Unite the Union are currently negotiating the pay for the next two years.

Non-salary work benefits are negotiated by Unite with Arriva at a local level. The St Helens depot employees have access to a range of benefits including access to gym facilities, provision of a childcare voucher scheme which allows tax savings on the cost of childcare, and free bus travel.

Pensions

Under national law an employer is required to automatically enrol its employees into a pension scheme, subject to an initial assessment related to an earnings threshold. Arriva's default scheme is a workplace pension plan but it also has a final salary pension scheme available for employees to join should they wish to do so. Under both schemes the employee and employer make contributions.

Working time

Arriva North West offers paid over time to its employees. Almost all employees across the North West have opted out of the Working Time Directive, although there is no contractual obligation to work overtime – employees put their names forward to be considered for any overtime available.

The basic contracted weekly hours that drivers keep consist of four 9 hour and 15 minute shifts or five 7 hour 24 minute shifts. National legislation require Arriva bus drivers to have at least a 30 minute break for every 5.5 hours of driving time.

Arriva have time systems that alert management when employees reach over 60 hours in a given week. Although time is not restricted to 60 hours, the system helps keep track of employees and ensure drivers are not fatigued or overworked. There is national legislation that forces drivers to work no more than 13 consecutive days without taking at least one day off.

Staff turnover and retention policies

Arriva North West's staff turnover has fallen sharply in the last ten years – from 25 per cent to less than 7 per cent for drivers. Additionally, the staff turnover today is very much influenced by age and capabilities and is largely those entering retirement. External factors such as the recession and lack of job opportunities elsewhere have also influenced this trend. A bus driver role is seen to have reasonable job security.

Sick pay is payable after two days of absence, but is only available to employees that have been employed with Arriva North West for a year or more. Sickness pay has increased in recent years from 80 to 90 per cent of basic pay, which is paid for up to 28 weeks (after five years in service).

Across the company (and all employees) sickness and absence has fallen over the past 10 years from approximately 10 to 4 per cent. An ageing workforce is an issue industry-wide, but the company has started working proactively to encourage and contribute to employee health. These activities include:

- developing health plans;
- Provision of fruit and healthy eating days to raise diet awareness;
- Paying for annual staff medicals after the age of 45;
- stroke awareness training;
- access to stress counsellors; and
- return to work interviews after a period of sickness.

Work intensity

Changes to work intensity over the last 10 years is largely related to the route performance monitoring. Keeping to the scheduled timetable is difficult during peak time due to heavy traffic. Measures have been introduced to ease the pressure during these periods such as additional busses. There has been some intensification in work for maintenance staff in the sense that there is more paper work to complete (everything that is done to the vehicles needs to be documented).

Driver requirements and on-the-job training

Bus drivers at the St Helens depot are required to have their Passenger Carrying Vehicle (PCV) licence when they arrive at the company. The Speke depot is currently the only garage where it is common practice to take on employees without a PCV and train them internally.

Recent legislative changes require that newly qualified bus drivers to have Driver Certificate of Professional Competence (Driver CPC) qualification. Existing professional drivers are

deemed to hold the qualification by 'acquired rights', but must complete a mandatory 35 hours of periodic training within the five year introductory period to qualify for renewal.

The new CPC qualification require perspective bus drivers to:

- Pass the 4 tests that make up Driver CPC to qualify;
- Take 35 hours of periodic training every 5 years to stay qualified;
- Sign a declaration every 5 years until you're 45 to show you still meet the medical standards; and
- Provide a medical report every 5 years after you're 45 to renew your driving licence - you need to do this every year when you reach 65.

Arriva North West offers a training bond scheme where employees are given five weeks training when they are employed and have to pay back a proportion of the training costs if they leave the firm within less than a year. The training is primarily focused on learning the bus routes and how to use the cash registers, but can also include tuition from a driving instructor. The employer encourages refresher training for a day each year but in practice this is not always viable. A mandatory days training is however required for employees that are involved in an accident/ incident on a scheduled service.

Each employee at Arriva has a personal development plan that is reviewed twice a year by line managers. The personal development plans assess employees' job-related skills and sets out essential training needs to equip them for their roles. The plans can result in recommendations ranging from enrolment in transport and customer care National Vocational Qualifications (NVQs) to conflict handling training.

Equality and diversity policies are in place

There are equality and diversity policies in place. The overall responsibility for the promotion, co-ordination and review of equal opportunities policies lies with the regional North West managing director. Specific responsibility for the practical development and assessment of programmes of action rests principally with key personnel i.e. those staff involved in recruitment and selection, training and development and staff management. Arriva has a policy of systematic workplace diversity training, with attention given to gender issues.

Additionally, a support network for women drivers is being initiated at Arriva North West. The 'buddy' system for new female recruits creates a platform to share problems and enables peer-support, and is operated independently from Arriva's management. Childcare voucher schemes or salary sacrifice schemes, also aim to reduce gender discrimination.

An example of how equal opportunities procedures are integrated into the recruitment process are the detachable gender and ethnicity monitoring sheets on application forms. This allows for relevant internal training for anyone involved in a recruitment panel and removes potential discrimination at the initial screening phase. It helps avoid value judgements by individual managers leading to discrimination on gender, ethnicity or other grounds.

The equal opportunity policy is also complimented with an anti-harassment policy procedure as well as a whistle-blowing policy.

London bus network

Background information

The London bus network is one of the largest in the world, with around 8,500 vehicles in the fleet. Every weekday over 7,700 scheduled buses carry over six million passengers on

around 700 different routes. Over 120 of those routes run 24 hours a day, seven days a week. London account for over half of the bus journeys made in England¹²⁶.

Public transport has been high on the Mayor of London's agenda in recent years and this can be seen in some of the developments across the London bus network. For example:

- Bus ridership has grown by 70% per cent between 2000/01 and 2014/15.
- Buses in London now carry the highest number of passengers since 1959.
- In the year to March 2015, there were 2.4 billion passenger trips on the network.
- Bus kilometres in London is higher than at any time since 1957, with 490 million km operated in 2014/15¹²⁷.

Whilst bus services in the rest of the England were deregulated in the 1980s, a high degree of regulation has been retained in London. Competition was introduced through tendering for individual routes in 1985, although the subsidiary operators of the competent authority, London Buses Ltd (LBL) continued to bid for routes, and were not privatised, until the mid-1990s.

Currently, bus operators compete for contracts to provide specified services for five years, with the potential for a two year performance-related extension. There is a continuous programme of tendering, with between 15% and 20% of the network typically tendered each year (circa 90-120 routes, depending on the number of performance-related extensions). Invitations to Tender (ITTs) are typically issued every 2-4 weeks¹²⁸. On average, there are three bids received for each tendered route¹²⁹.

London Buses specifies the minimum requirements for the vehicles within the tender documentation. The operator may choose the vehicle manufacturer as long as the vehicles meet all of the criteria in the vehicle specification. One exception is the New Routemaster buses in London which are owned by TfL and leased to the operators.

Contracts are awarded with the intention of achieving the most economically advantageous outcome within the resources available to London Buses. The criteria used include (in no particular order, and are not limited to)¹³⁰:

- Price
- Ability to deliver quality services - to at least the levels specified in the ITT
- Staffing – ability to recruit, train and retain staff of a suitable calibre
- Premises – status of depot, and/or ability to obtain a suitable depot
- Vehicles – type proposed and any additional features offered. This includes ability to maintain vehicles in an acceptable condition through the life of the contract
- Financial Status – the resources to fund the start-up costs and provide stability over the contract term
- Schedules – compliance with the specifications
- Health and Safety Policy and records
- Sustaining competition for tendered routes

¹²⁶ Department for Transport (2014), Annual Bus Statistics: England 2013/14
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/387397/annual-bus-statistics-year-to-march-2014.pdf

¹²⁷ Transport for London (2015), London's Bus Contracting and Tendering Process

¹²⁸ Ibid.

¹²⁹ Transport for London Finance and Policy Committee (2013) Achieving Value for Money in the Delivery of London's Bus Service <http://content.tfl.gov.uk/FPC-20131127-Part-1-Item09-Achieving-VfM-in-the-Delivery-of-Londons-Bus-Service.pdf>

¹³⁰ Transport for London (2015), London's Bus Contracting and Tendering Process

The evaluation criteria do not, however, include social criteria (except those specified by national/ EU legislation).

Services range from routes which require only one bus, through low frequency midibus routes up to high frequency 24-hour double deck routes. There are also dedicated school bus routes. Rail replacement services are secured on behalf of London Underground, London Overground, the DLR and Crossrail.

Operators only tend to bid if they have or can access a depot/ garage that is located in close proximity to the route to be serviced. There will be too much 'dead time' if the depot/garage is located several miles from the serviced route. The depot/ garage capacity is currently sufficient and has enough spare capacity to pick up some additional growth.

Initially, gross cost contracts were used (net cost contracts were also used between 1995 and 1998), however due to unsatisfactory performance across a number of routes quality incentive contracts were introduced in 2001. These contracts are based on gross cost contracts but also contain incentive provisions in the form of performance payment bonuses and deductions, as well as the option of a two year contract extension.

The privately operated bus services are under contract to London Bus Services Ltd (London Buses), a subsidiary of TfL. As well as managing bus service, planning routes, specifying service levels and ensuring service quality, London Buses is also responsible for bus stations, bus stops and other support services.

TfL owns around 10 depots/ garages and lease them to bus operators (generally on 20 year contract – penalties for ending contract early). These depots are not linked to specific routes/ contracts.

The bus services are operated by privately owned operating companies, which work under contract to London Buses. The division of responsibilities for London Buses and the operators is set out in the table below:

London Buses, or its third party contractors	Operators
<ul style="list-style-type: none"> ■ Determines and runs the tendering programme ■ Determines the route ■ Specifies the frequency ■ Sets and monitors quality and safety standards ■ Sets vehicle capacities and minimum standards ■ Agrees the schedule prepared by the operator ■ Sets fares and retains the revenue ■ Supplies and maintains ticket machines ■ Provides revenue protection (on-bus revenue protection inspectors) ■ Supplies and maintains radio and vehicle tracking equipment ■ Provides and maintains bus network infrastructure (bus stops, stands and bus stations) ■ Provides an emergency communication facility (CentreComm) 24 hours a day ■ Provides roadside staff to deal with diversions and major incidents 24 hours a day ■ Markets the bus services to the public ■ Manages liaison with local authorities and other stakeholders ■ Coordinates public customer service contacts – complaints, comments and compliments 	<ul style="list-style-type: none"> ■ Develop and submit bids ■ Develop timetables, schedules and staff rotas – timetables must be agreed with London Buses ■ Provide and maintain premises and vehicles ■ Recruit, train and manage sufficient staff of a suitable calibre ■ Manage the day to day operation of routes ■ Provide day to day supervision of routes, to maintain quality and deal with disruption ■ Control the use of passes and collect any cash revenue on buses ■ Comply with UK statutory and regulatory regimes, including Operating Licenses ■ Provide data that is reasonably required by London Buses.

<ul style="list-style-type: none"> ■ Invests in major network and infrastructure projects 	
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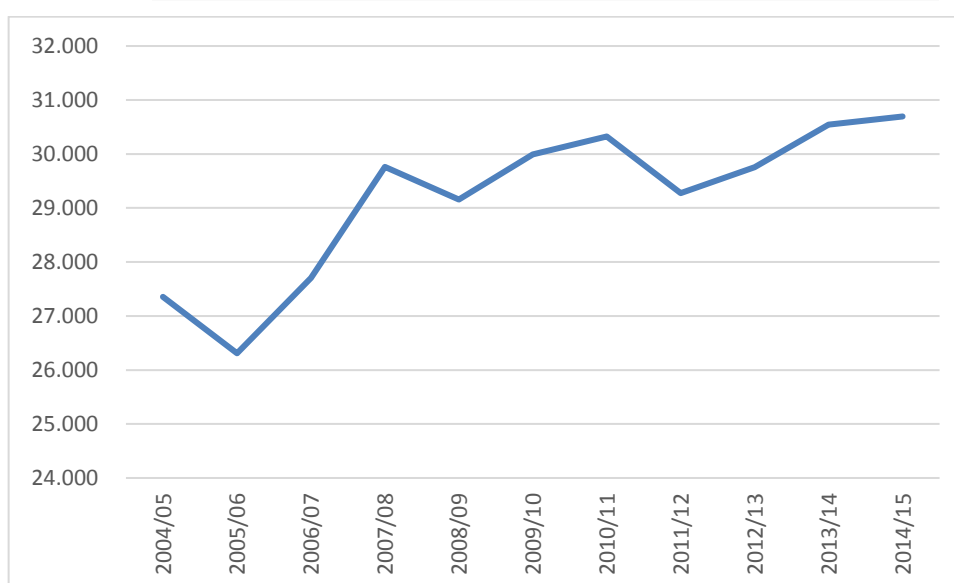
Source: Transport for London (2015), London's Bus Contracting and Tendering Process

Main operators and employment trends

According to data from the Department for Transport, there were 31 bus operators in London in October 2013¹³¹. The main operator was the Go Ahead Group, followed by Arriva and Metroline Travel. Together these three operators account for 61.7 per cent of weekly bus vehicle trips¹³². Other operators with a relatively high market share (i.e. more than 5 per cent) in London are Stagecoach, RATP (London United) and Abellio¹³³. Notably though, there has been a trend of consolidation in the ownership of bus companies in London, as well as the rest of the UK. For example, smaller companies have been acquired by larger groups. Moreover, the First Group sold all of its bus operations in London in 2013 (five depots along with 494 vehicles and 1,700 staff were transfer to Metroline; three depots along with 400 vehicles and 1,500 staff transferred to Australian operator Transit Systems Group).

Employment in the London bus market has increased by more than 3,300 (or 12 per cent) since 2004/05 and currently stands at 30,695. It is estimated that there are around 27,000 bus drivers in London. The employment trajectory in London is in stark contrast with trends in the rest of Great Britain where employment has at best remained stable. In broad terms, employment reflects trends in terms of passenger numbers.

Table 1.19 Staff employed by local bus operators in London, 2004/05 and 2014/15



Source: Department for Transport, 2015

¹³¹ Department for Transport statistics Table BUS1002 Operator market share of weekly bus vehicle trips by local authority: England, October 2013 <https://www.gov.uk/government/statistical-data-sets/bus10-number-of-trips-and-information-systems#history>

This counts all operators with Timetabled services as recorded by Traveline. This can include services provided by Community Transport operators and others not licensed as PSV-operators. Operating subsidiaries of a larger parent company are considered as one operator, where they can be identified as such. A small number of operators were unlinked.

¹³² A 'bus vehicle trip' is a single vehicle working from the origin to the terminus of a timetabled route. This measure therefore reflects service frequency variations between operators as the more frequent routes will generate a higher number of vehicle trips.

¹³³ Transport for London Finance and Policy Committee (2013) Achieving Value for Money in the Delivery of London's Bus Service <http://content.tfl.gov.uk/FPC-20131127-Part-1-Item09-Achieving-VfM-in-the-Delivery-of-Londons-Bus-Service.pdf>

Subcontracting is normally not used for contracted services. Subcontracting is more commonly used for additional services during tube disruption/ closures.

Evolution of social conditions

Salaries

Collective bargaining in London is relatively fragmented with Unite the Union (Unite) currently holding 18 separate pay negotiations with 18 separate bus companies¹³⁴. This has resulted in the pay and conditions for drivers and other staff varying significantly across the London bus network. Pay, terms and conditions may even vary for drivers on the same bus route working for the same bus company. According to Unite, London's bus drivers are covered by 80 different pay rates leading to significant pay differentials. For example, for new starters the pay differential is more than £3 per hour, with pay varying from £9.30 to £12.34 an hour depending on the company¹³⁵. Such differences can largely be explained by the fact that staff have been taken over as a result of successful tendering or acquisition of other operators. TUPE stipulates that their employment terms and conditions should be transferred where applicable.

Unite has been calling on the bus companies to get round the negotiating table and work out a single agreement that covers all bus drivers' pay and terms and conditions. However, to date, such negotiations have not taken place and indeed may not be desirable by the bus operators and the competent authority. It has been argued that a single collective agreement would reduce the scope for competition between bus operators.

Pay negotiations are, according to the bus operators, to a considerable extent, dependent on the contractual conditions set by the competent authority. Bus operators generally need to meet the performance targets and secure the associated bonuses in order to make a profit and thus offer pay increases. Pay negotiations are also influenced by the pay, terms and conditions at competitor firms. Drivers' pay negotiations are generally concluded before pay negotiations start with other staff. This is because drivers account for the largest share of the workforce and thus have the greatest impact on the budget.

Notably in this regard, bus operators report that it has become much harder to meet or exceed the contracted performance targets. This is because the bus services performance (for example, in terms of excess wait time) has improved significantly in the last decade and each new round of tendering is based on improving the most recent performance. Many companies are already heavily streamlined to reduce costs and provide a competitive price.

Working time

Compensation for overtime has fallen in recent years. According to the bus operators, it used to be double time but is currently no more than 1 2/3 time. There are generally, two types of overtime – overtime on the day (paid at 1.5 time) and overtime on free days (paid at overtime rate specified with that particular company/ depot).

There are big variations in the use of overtime. Some workers want to have a substantial amount of overtime to complement their basic salary. According to national legislation, drivers are allowed to work for 13 consecutive days but need to rest on the 14th day. Most drivers have opted out of the EU working time directive.

Pensions

Final salary pension schemes have been gradually phased out, although staff are generally automatically enrolled onto a workplace pension schemes (which is additional to the state pension).

¹³⁴ The 18 bus companies who serve Greater London are: Arriva North, Arriva South, Selkent, London General, Metroliner, Metroliner West, Metrobus, CT Plus, London United, Abellio South, Abellio West, London Sovereign, Stagecoach, Blue Triangle, Northumberland Park, Tower Transit, Docklands and London Central.

¹³⁵ <http://www.uniteunion.org/news/londons-bus-workers-strike-over-unfair-pay-disparities/>

Staff turnover and retention policies

Staff turnover has fallen dramatically over the last decade. In 2000, it was around 35-40%. In 2004 it was around 20-25%. Following the global economic crisis, staff turnover has fallen sharply and has until recently stayed below 10%. Increased slightly in last couple of years as the economy slowly recovers – currently around 12-13%.

Staff turnover is due to a number of factors, including retirements, medical conditions, reallocation away from London, disciplinary actions, staff moving back to their country of origin (multi-cultural staff).

Transfer of staff

TUPE applies in all cases where there is a change of operator. TUPE is employee led legislation but there have been some suggestions that employees do not always consider it as such.

Employees are entitled to transfer but not obliged. Often staff want to stay with their current employer, but some operators force staff out. Some operators give staff opportunities to stay (on certain conditions e.g. different location/ route or change of terms and conditions). The approach adopted by operators depend on a number of factors, including contracts won and lost, the general economic climate, etc.

During the last 12 months there have been significantly fewer TUPE transfers. During the period 2009 to 2013 almost everyone transferred due to high unemployment rates and and job market uncertainties.

When a new operator takes over staff, following a TUPE process, they have to pay the affected employees a disturbance allowance for up to two years. The disturbance allowance amounts to around £40-50 per week.

Under the TUPE Regulations, existing terms and conditions transfer with staff to the incoming employer and they remain the same as they were with the outgoing employer. However, there are circumstances in which altering the terms and conditions are valid. For example, if the sole or principal reason is an “Economic, Technical or Organisational reason entailing changes in the workforce” and provided the employer and employee agree the change¹³⁶.

According to the bus operators and other stakeholders, the TUPE regulation generally works well and has created more churn in the industry. However, there are some challenges with its implementation, particularly when it involves a change of location. Generally, the workplace must be within 1 hour (around 10 miles in London), otherwise it can be viewed as material detriment to worker. There have been at least three cases concerning constructive dismissal following a change of location. These cases are open to further challenge, particularly as a change of workplace location may be considered a fair ETO reason under the new TUPE regulations.

¹³⁶ ACAS (2014) 2014 changes to TUPE http://www.acas.org.uk/media/pdf/tr/9908-2901767-TSO-ACAS-TUPE_is_changing-ACCESSIBLE.pdf