Consultation response

# Call for Evidence on the Review of EU Balance of Competences on Transport

Department for Transport

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# 1. Introduction

1.1. The Passenger Transport Executive Group or ***pteg*** represents the six Passenger Transport Executives in England which between them serve eleven million people in the conurbations of Tyne and Wear ('Nexus'), West Yorkshire ('Metro'), South Yorkshire (SYPTE), Greater Manchester, Merseyside ('Merseytravel') and the West Midlands ('Centro'). Leicester City Council, Nottingham City Council, Strathclyde Partnership for Transport, Transport for London and Bristol and the West of England are associate members.

# 2. *pteg* response

**Question 1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

2.1. EU action can most obviously help the UK where the transport flows concerned are in themselves trans-national. However, organisation of domestic transport can also benefit from EU action, especially on safety, sustainability and customer-service aspects, through the EU:

- Facilitating mutual learning, meaning that UK transport actors do not have to discover through trial and error lessons that have already been learned by counterparts elsewhere in Europe;
- Providing funding for such mutual learning and other relevant actions, such as research and demonstration projects and infrastructure investment;
- Contributing to a more level playing field for transport operators across Europe for each mode, thereby potentially creating economies of scale, diversification of market players and improvements in the public transport offer;
- Harmonising and improving technical standards for vehicles and infrastructure, leading to direct improvements in environmental performance and safety, as well as indirect improvements, through, for instance, the use of Euro standards as a basis for low-emissions zones;
- More generally, leading debate, reflection and appropriate action on how transport authorities across the EU can improve their performance.

2.2. Disadvantages can include:

- That EU-level rules may not sufficiently take into account the diversity of local transport conditions across Europe, meaning that bespoke solutions cannot always be pursued;
- Conversely, that such diversity may lead to lowest-common-denominator approaches, thereby diluting their efficacy;
- That, given this diversity, some mutual learning may be of limited value and application;
- That organisations may have to devote considerable resources to understanding, following and influencing the EU decision-making process;
- That resources expended on meeting the bureaucratic requirements of certain EU funds may outweigh, or at least significantly undermine, the benefits of receiving the funds.

**Question 2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

2.3. The EU has succeeded in levelling the playing field somewhat across Europe. For instance, the Public Service Obligations Regulation prevents certain operators in a monopoly position in one part of Europe from competing for tendered contracts elsewhere. Existing EU rail legislation has taken measures to facilitate market access for new entrants, and current proposals for further rail reform would extend this access.

2.4. There are many benefits to having large, competent operators in the transport industry, though this may be at the cost of small and medium-sized operators. Furthermore, full privatisation carries significant disadvantages not fully recognised by the Commission, which recently proposed a revision of the Public Service Obligations Regulation that would see compulsory competitive tendering for rail for all but the smallest of contacts. Any EU rules need to continue to offer a range of models for awarding contracts so that member states retain key flexibilities to structure their markets according to their needs.

2.5. Other fields of transport legislation, such as passenger rights and working time, have created a degree of harmonisation of quality standards.

2.6. The Trans-European Transport Network (TEN-T) has helped to plug some of the gaps in the EU transport network and promote some technical harmonisation on key transport infrastructure.

**Question 3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

2.7. The core principle of the EU internal market in free movement of goods, services and people. Clearly, an effective transport system is key to furthering this principle.

2.8. Perhaps the most obvious way in which EU action on transport has supported the internal market has been the designation of the TEN-T and support for the network's development. This has allowed new infrastructure to be developed for areas underserved by long-distance transport relative to their needs in terms of movement of goods and people. It has also improved performance of existing infrastructure and helped with the local impact of long-distance transport flows, for instance by alleviating bottlenecks.

2.9. EU action on market opening has also had an impact on the functioning of each mode by attempting to diversify the number of operators acting in a given transport market. This may, in certain cases, lead to cost efficiencies and improvements in performance. These, in turn, further the free movement of goods and people.

2.10. Finally, Structural Funds support for local transport issues can help to improve residents' access to employment and essential services, thereby boosting the EU economy.

2.11. The EU also fails to give enough consideration to how its policies affect modal share, and the impact this has on the environment. The TEN-T has historically given much support to less sustainable modes and to infrastructure that encourages private transport use. Similarly, though the European Investment Bank's transport-lending policy gives much attention to sustainability, the EIB's own analysis shows that this is not reflected in the modal share of the loans awarded, with a large proportion going to aviation and road-transport projects.

**Question 4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

2.12. Local variations, for example in relation to emissions standards, could undermine the achievement of wider objectives and lead to imbalances in the internal market. Having single standards across the EU is, in certain circumstances, more efficient for government, manufacturers, operators and public authorities than a multitude of separate national standards and can create useful economies of scale. In order for them to confer these advantages, however, they have to be set at an appropriate level - neither too high nor too low.

2.13. EU social standards pertaining to transport include the suite of passenger rights legislation (separate legislation for each mode) and working time rules (both cross-sectoral and transport-specific). These help to ensure a minimum level of quality across Europe for each mode on aspects such as: access for people with disabilities; delays and cancellations; safety, accidents and injury; loss of and damage to luggage. This provides a degree of certainty for passengers and may improve uptake of collective transport. It also encourages operators to improve their performance and goes some way toward providing a more level playing field for them.

2.14. Passenger rights legislation has been developed recognising the difference between different modes: high-frequency, short-distance, turn-up-and-go bus services cannot possibly have the same compensation regime for delays and cancellations as pre-booked, long-distance, low-frequency air services. This is welcome. Furthermore the establishment of core principles common to all modes for people with reduced mobility has provided a minimum level of protection for the most vulnerable of users. The European Commission's attempts to promote multi-modal journey planning, particularly via open data, are an important step in creating seamless travel information across all modes and are preferable to attempts to legislate in this area.

2.15. EU environmental standards also have an important function in terms of the internal transport market: for instance, environmental improvements in vehicles enhance the image of public transport. Furthermore, such standards can be used as the basis for low emissions zones and other access-restriction and charging schemes, and allow for compliance of foreign vehicles.

2.16. EU environmental and social standards are desirable in their own right; in other words, for the environmental and social benefits they confer. They should not be evaluated just in terms of their benefits for the proper functioning of the internal transport market. Vehicle emissions standards and air quality legislation reduce populations' exposure to harmful pollutants and improve health. Standards on infrastructure safety, vehicle safety and driving time and rest periods reduce injuries and fatalities. Standards on passenger rights may improve customer satisfaction and help to ensure passengers with disabilities are not discriminated against. If it were left to member states alone to legislate, many of these standards might not exist.

**Question 5. What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

2.17. The EU tries to make its transport policy work for both consumers and operators. For the benefit of consumers, it has, for instance, imposed basic passenger rights in all modes and allowed for public service obligations to be taken into account in transport contract tendering. For operators, it has tried to ensure greater equality of access to the transport market. However, the complexity of the rules can lead to lack of uptake of their rights by passengers and considerable administrative burden for authorities and operators.

2.18. Sometime the failure to balance different stakeholders' interests is the fault of how member states choose to apply EU rules, rather than the rules themselves. For instance, with reference to local buses, the UK would be well served by taking action at national level to seek competition for the market, as in London, rather than in the market, which is what we have in the rest of the country; this is permitted under EU rules but UK government has chosen to apply a different model.

**Question 6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

2.19. This has largely worked well. There have historically been attempts by the European Commission to over-extend the EU competence on transport; but these have reliably been checked by the European Parliament and Council of Ministers, either by throwing out the proposed legislation in its entirety (port services, for instance) or imposing fundamental changes to its final form (rail packages, public service obligations, passenger rights), notably the exemptions that apply. This, together with the case law, means the Commission has demonstrated in recent years a much better understanding of where it can initiate proposals for new transport legislation, and how far it should go in those proposals. Sometimes, however, the initial Commission proposal can still be alarming, requiring much time and effort to be taken to follow and influence the subsequent legislative process, even though the final outcome is usually workable. The Commission also has a tendency to issue new proposals where it is unsatisfied with the final form of existing legislation; a case in point is the Public Service Obligations Regulation: the current version of this only took effect in 2009 and yet earlier this year the Commission already proposed a revision on the aspects pertaining to rail. This does not foster the legal stability necessary for the proper functioning of the rail market. There is also an argument that the Commission should take greater steps to ensure implementation of existing legislation before proposing new legislation.

2.20. The EU decision-making process on transport is mostly the "normal legislative procedure" (formerly known as the "co-decision"). This is largely an accessible, transparent and consistent process: basically, the Commission initiates proposals and the Council and Parliament amend and agree together the final form. Of all the legislative procedures, this is the one that allows the most opportunity for input by UK organisations: the Commission will generally hold consultations prior to initiating proposals and approaches can be made to the Council (via UK government) and Parliament (via UK MEPs and other MEPs) during the amendment stage.

2.21. There are areas where more transparency is needed, however. The detail of EU legislation is increasingly being done through 'non-legislative acts' decided by a less open process. It is also often unclear what lobbying the EU legislators are subject to on a given proposal.

**Question 7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

**and**

**Question 8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

2.22. This is a very complex area. Our comments are therefore restricted to a few general observations.

2.23. The potential advantages in the EU having a greater say are as follows:

- Negotiating international agreements as an EU bloc can give us more influence than we would have by acting alone.
- Ratification as a bloc is more efficient than having each of the 28 member states ratify independently and also helps to ensure a level playing field within the EU.
- The EU as a whole has important areas of influence (single-market issues) and geographic links (for instance with areas neighbouring the EU, such as the Mediterranean or Eastern Europe) it can bring to bear in international negotiations.

2.24. The potential disadvantages are:

- The EU position may end up being a lowest-common-denominator one, with the result that any UK-specific angle is not taken into account.
- The EU's potential power as a bloc is not always exploited and agreements can still end up being one-sided to our disadvantage. A notable example in the transport field, for instance, is the EU-US agreement on aviation passenger name records, which is perceived as conferring few advantages to the EU and not offering EU citizens the same levels of data protection concerning the transferred data as they would enjoy at home. In this particular case, whether individual member states could have negotiated a better deal is doubtful, however.

**Question 9. What challenges or opportunities are there for the UK in further EU action on transport?**

2.25. There is potential for further action in the field of urban mobility. For instance, the Commission could more proactively encourage cities to adopt Sustainable Urban Mobility Plans which could help to raise everyone's level and allow us more usefully to learn from each other; the content of such plans should remain discretionary, however. The EU has had a policy on urban mobility since 2009; this policy will be refreshed later in 2013, yet the existence of an urban mobility policy has not been matched by proposals for improved EU funding opportunities on urban mobility under the next EU budget for 2014-2020.

2.26. Indeed, there has been a general failure of EU funding to keep pace with the growing EU policy competence on transport. There remains no dedicated, general-purpose EU trans-national fund for local transport. Instead, transport projects have to be funded under

programmes for other, related sectors, such as research and innovation, clean energy, the environment or inter-regional cooperation.

2.27. These other sectoral funds should optimise their support for transport. For instance, Horizon 2020, the new EU research and innovation fund, is likely to dedicate a substantial part of its budget to transport. This will only be of use to passenger transport authorities, however, if the new fund is made more predictable, has a greater focus on large scale demonstration projects and is less bureaucratic and more accessible to new entrants than the fund it replaces, the Seventh Framework Programme.

2.28. Structural Funds (ERDF and ESF) for 2014-2020 should remove the restrictions on transport infrastructure investment that have hampered passenger transport authorities' use of the current funds. Furthermore, the proposals to make transport one of the priority themes for ERDF should be retained.

2.29. There is also a need for better read-through between transport and other EU sectoral policies. For instance, affordable, accessible public transport can play a major role in furthering social inclusion by offering improved access to services and jobs for disadvantaged communities, and the UK is a leader in this area, yet transport barely features in EU social and employment policy and funding.

**Question 10. If there are any general points that you wish to make that are not captured by the questions above then please write them here.**

2.30. The EU competence on transport is, broadly speaking, correctly applied, though it can sometimes require considerable effort from UK and other stakeholders to ensure it remains so. The legislative process on transport is an open one, allowing opportunities for UK actors to make their voice heard at most stages.

2.31. The EU policy plans on transport (such as the Common Transport Policies, renewed every ten years), the use of seven year multi-annual budgets (the next one running from 2014-2020) and the clear rationale under which certain key EU funds operate (TEN-T for pre-identified transport infrastructure of European significance, the Structural Funds for regions that are lagging economically) create a relatively stable and fair EU policy and funding backdrop, which can provide a useful foil to changing national political priorities.

2.32. It is not for us to debate the merits or otherwise of the EU as a whole but, given that it exists and has transport policies that affect the UK, we believe the importance of local transport should be recognised within these policies and that the EU funding streams and policies should support the development of sustainable urban transport systems, although not in a way that is burdensome or restricts the freedom of urban transport authorities to develop solutions that fit local circumstances.