

courtesy translation

Regulatory measures on the definition of the methodology to identify the scope of public service and the most efficient financing arrangements, pursuant to article 37 (3) (a) of decree-law no. 201/2011 and article 37 (1) of decree-law no. 1/2012.

Table of contents

Note to the readers

Measure 1 – Definition of potential demand for mobility

Measure 2 – Criteria for the identification of weak demand

Measure 3 – Criteria for the choice of modes and types of transport services to meet weak demand or weak relations

Measure 4 – Determination of public service obligations and applicable criteria for their financial coverage

Measure 5 – Criteria for the determination and updating of charges

Measure 6 – Criteria for the identification of lots of services to be awarded on an exclusive basis

Definitions

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Note to the readers

The measures described in this paper concern the identification of the scope of public services (hereinafter "Scope" or "Scopes"), the public service obligations pertaining to such services and the methods for their financing. They complement and supplement the measures on the design of tender schemes and model agreements for awarding local public transport services on an exclusive basis as provided for in Authority's Decision no. 49 of 17 June 2015 (hereinafter referred to as ART Decision no. 49/2015).

In particular, on the basis of the measures for planning and scheduling transport services as provided for by existing legislation, with particular reference to articles 14 and 16 of Legislative Decree no. 422 (hereinafter referred to as Legislative decree no. 422/1997)¹, these Measures identify the procedural stages by which the competent authority defines the Scope and include:

¹ In particular, regional transport plan, mobility area plans, minimum service planning document, three-year service plan. These tools are ultimately supplemented by urban mobility plans referred to in Law no. 340 of 24 November 2000.

- definition of weak demand for mobility, i.e. reduced demand in terms of volumes and occurrence which, under certain conditions, does not allow to achieve an appropriate cost coverage ratio (Measure 2);
- identification of the set of services included in the Scope (Measure 3);
- definition of the criteria for determination of the Scope-related public service obligations, set for any services and, in particular, for scheduled services, and identification of the most efficient methods for their financing (Measure 4);
- definition of the criteria for determination and updating of charges whose revenue contribute to financing public service obligations (Measure 5);
- principles for correctly identifying the lots to be awarded (Measure 6).

The role and tasks of the competent authority are defined for each stage of the procedure outlined above. The measures are accompanied by a list of the main definitions used.

In particular, the Scope is defined as a set of scheduled and non-scheduled services, including those carried out with different modes, as identified by the competent authority on a functional basis to meet public service obligations and, in general, the citizens' essential mobility needs pertaining to a specific mobility area.

The mode of transport involved is relevant for the purposes of the application of the Measures. In particular:

- *for rail transport services*, Measures 1, 2, 3 (except 3.1) and 4 shall apply for the purpose of identifying the Scopes of local and regional services and, in medium and long-distance services, where weak relations are in place. The Measures have effect on the acts adopted after their publication and, in particular, on the scheduling of services referred to in Articles 14 and 16 of Legislative Decree no. 422/1997 and on the definition of the scope of the Agreement for passenger rail services of national interest which are subject to public service obligations. They also have effect on the preparatory acts for the awarding of the services;
- *for public services other than rail*, Measures 1, 2, 3 (except 3.2) and 4 are a methodological support made available by the Authority to the competent public authorities for the purpose of identifying the scopes of public service and the most efficient methods for their financing. These Measures concern the planning activities following their entry into force;
- the criteria for determination and updating of charges (Measure 5) and for determination of lots (Measure 6) shall apply to all modes of transport.

Where appropriate, the Measures provide for the adoption of measures aimed at ensuring adequate conditions of transparency and proportionality, including in terms of economic impact,

actions to be taken on the basis of the expected results and in consistency with the tools for control and planning of transport services already provided for by existing legislation.

Measure 1 – Scope of public service, mobility area and definition of potential demand

1. The Scope of public service is the whole range of public passenger transport services, both scheduled and non-scheduled, which are provided in different ways as identified by the competent authority, even in the absence of remuneration of the operators, in order to meet public service obligations and the citizens' essential mobility needs. The territorial area of reference for defining the Scope is the Mobility area, that is determined by the competent authorities through planning and scheduling measures for regional and local public transport as referred to in articles 14 and 16 of Legislative Decree no. 422/1997 on the basis of an analysis of potential demand for mobility, orographic features, degree of urbanisation and branches of production of the reference territory.
2. For the analysis of the potential demand for mobility, reference is made to its socio-economic, demographic and behavioural characteristics, measured through periodic surveys and/or simulations carried out directly by the competent authority or on the basis of data and information made available by third parties. The competent authority outlines the time- and space-related distribution of potential demand and identifies reasons for travelling, willingness to pay by the persons under consideration and, in general, their preferences.
3. In order to take account of actual demand, the competent authority shall use the information deriving from the observation of the time series of transported passengers and of the traffic data pertaining to the routes which are intended to satisfy all or part of the observed demand, including the number of tickets sold and their revenue, and drawing from the sources available at the Observatory referred to in Article 1 (300) of Law no. 244 of 24 December 2007.
4. The choice of the methodology for survey and/or simulation is carried out by the competent authorities after consultation with consumer associations, in accordance with criteria of proportionality compared to the expected results and with the regional and local public transport planning tools referred to in Articles 14 and 16 of Legislative Decree no. 422/1997.

Measure 2 – Criteria for the identification of weak demand

1. Within each Mobility area, the competent authorities establish, on the basis of significant parameters, the territorial, time-related, subjective or socio-economic characteristics pertaining to potential users which are small in number and spatially and timely dispersed, this identifying weak demand.

2. The determination of the territorial characteristics of weak demand includes, but is not limited to, the following parameters:

- a) population density
- b) degree of urbanisation
- c) age of resident population
- d) altitude.

The above indicators are calculated – as a rule and where available – on the basis of the “General census of population and housing” and on the relevant processing of the National Institute of Statistics (ISTAT).

3. The determination of time-related characteristics of weak demand derives from the objective survey of permanent or provisional characteristics which imply significant reductions in the number of journeys in relation to night hours or other times of the day, holidays and days before holidays and/or specified times of the year.

4. The determination of subjective or socio-economic characteristics of weak demand derives from the survey of existing economic distress related to occupational, disability and/or reduced mobility or other conditions which are deemed to deserve public protection and are verified on the basis of appropriate certifications.

5. The determination of the characteristics referred to in the previous paragraphs is carried out transparently and is justified on the basis of the regional and local public transport planning tools referred to in Articles 14 and 16 of Legislative Decree no. 422/1997 by explicitly indicating the parameters used.

Measure 3 - Criteria for the choice of modes and types of services to meet weak demand or weak relations

1. In order to meet the mobility demand observed on the basis of the criteria set out in Measure 1 above and ensure the provision of services in case of weak demand, as referred to in Measure 2 above, within the framework of the regional and local public transport planning tools referred to in Articles 14 and 16 of Legislative Decree no. 422/1997, the competent authorities identify one or more effective modes and types of transport, including combined. In relation to the latter, they identify specific public service obligations, thereby determining the Scope. The effectiveness of the choice of type and mode of transport is ensured by taking into account economic, technical, environmental and context variables, as well as the criteria set out here below.

2. Weak demand or weak relation is generally addressed by ensuring the modal integration of services, while complying with environmental obligations and with the aim of reducing negative externalities, without prejudice to the principle of cost-effectiveness. For this purpose, when scheduling or revising the services, the choice of transport modes takes into account appropriate levels of integration of services and integration and differentiation of charges as set out in Measure 5, by providing for the use of innovative technologies. This choice is made on the basis of the load factor in the off-peak time slots, as well as the degree of crowding in peak hours, as observed by the monitoring systems provided for in the service contracts.

3. With regard to specific cases, the weak demand or weak relation is usually addressed as follows:

3.1 in urban areas or for short journeys within a mobility area, by means of Demand Responsive Transport (DRT), including shared mobility services, such as car sharing and collective taxi services, which are connected, where needed, to scheduled services. In these cases, it is necessary to provide also for the integration of scheduled services and DRT services with school transport services, as well as with those dedicated to the transport of elderly and disabled persons and with other solutions offered by municipalities, subject to the provisions of Article 14 (4) of Legislative Decree no. 422/1997;

3.2 in order to serve medium-long distance relations, through:

(a) railway service, where demand is equally distributed between all origins and all destinations, including by time slot ("many-to-many"), or where there are no prevailing generators or attractors such that "one-to-one" services are preferred;

(b) bus service, whether or not integrated with rail or air services, in cases where demand is distributed over one or more origins, but to one or few destinations ("one-to-one" or "many-to-one");

(c) bus service, where this mode allows to minimize the number of transshipments, which is typical of railways, from one mode to another or between services.

In all the above-mentioned cases, transport services fall within the scope of service contracts between the competent authority and the operator, to be awarded taking into account the criteria set out in Measure 6 below. In particular, the contracts awarding rail or road transport services shall justify any inclusion of relations which are already served by medium-long distance scheduled bus services that do not receive any public contributions and are comparable as for travelling time, time slots of departure and arrival, destinations, at a sustainable price level, for the purpose of containing public expenditure and with the same degree of protection while complying with the relevant interests.

3.3 where the weak demand or relation is concentrated in limited periods of the year or of the week, or at certain times, by means of non-continuous periodic services or DRT services, including where they involve only certain parts of the territory concerned.

3.4 where it pertains to subjective characteristics of reduced mobility or ability, so as to ensure an appropriate fulfilment of the related requirements and, as a rule, by using specific transport systems and equipment, e.g. low-floor, suitable spaces for wheelchairs, audio announcement of upcoming stops.

Measure 4 - Determination of public service obligations and applicable criteria for their financial coverage

1. Regarding the modes of transport identified in Measure 3 above, public service obligations are defined in detail so as to ensure at least the minimum service quality and the minimum content of user rights as defined pursuant to Article 37 (2) (d) and (e) of Decree-Law no. 201 of 6 December 2011, as well as the compliance with passenger rights as referred to in the relevant EU Regulations and national implementing provisions.²

2. The minimum quality of the services referred to in paragraph 1 above include an adequate provision of services in the time slots when users move for reasons of work or study, such as peak time slots of non-holiday periods.

3. For all types and modes of transport, obligations may also be provided for the application of charges which do not exceed pre-determined maximum levels or cheaper charges compared to the maximum levels, or for granting exemptions for certain user categories, according to the criteria provided for in Measure 5 below.

4. With regard to scheduled services, public service obligations are defined in terms of services to be provided, frequency, timetables, periodicity and seat availability for selected user categories.

5. For the purpose of financial coverage, the costs of public transport services falling within the Scope, including those related to negative externalities, are calculated by reference to efficient cost assumptions, as provided for by Decision no. 49/2015 ART under Measures 12, 13 and 14 for the services referred to in Legislative Decree no. 422/1997, thereby ensuring consistency with the provisions of Article 17 (1) of the same Legislative Decree, where applicable. Costs are subject to a

² a) for rail passengers, (EC) Regulation n. 1371/2007 and Legislative Decree no. 70/2014;

b) for passengers in bus transport, (EU) Regulation n. 181/2011 and Legislative Decree no. 169/2014;

c) for passengers when travelling by sea and inland waterway, (EU) Regulation n. 1177/2010 and Legislative Decree no. 129/2015;

d) for air passengers, Regulation (EC) n. 261/2004 and Legislative Decree no. 69/2006.

system of progressive efficiency recovery to achieve quantitative targets identified *ex ante* based on appropriate parameters or national or international benchmarks.

6. In the case of public passenger services, where the revenue obtained by applying the charges determined in accordance with the criteria of Measure 5 below or where other sources of revenue deriving from activities which are compatible with public transport, in addition to those arising from the exploitation of positive network effects, do not ensure the full coverage of the efficient costs referred to the combined modes as referred to in Measure 3 above plus a reasonable profit margin, the service operator receives financial compensation as calculated on the basis of EU legislation and under the provisions of Measures 12, 13 and 14 of ART Decision no. 49/2015. In this case, the service contract shall provide that at least the minimum cost coverage ratio is achieved as referred to in Article 19 (5) of Legislative Decree no. 422/1997.

7. The financial compensation in the service contracts awarded in accordance with the methods provided for by law, calculated as per paragraph 6 above, may be provided directly through the public financing of the operator on the basis of the profitability of the set of services included in the service contract, or indirectly through the financing of the services that do not recover the costs incurred with those that guarantee higher revenues than the relevant costs.

8. As an alternative to the methods for covering the compensation referred to in paragraph 7 above, the cost of services, plus a reasonable profit margin, calculated as indicated in paragraph 6, may be covered by financial income resulting from the application of:

- (a) specifically targeted levies³
- (b) levies or increased charges payable by the operator of transport services or authorised complementary services which operate under a free market system, such levies being especially provided for transferring the positive financial network effects to the services subject to public service obligations.

9. The citizens' essential mobility needs can be met even outside service contracts, through services that do not imply any compensation or assignment of exclusive rights, or even through direct compensation of users, which may fully replace the direct compensation of the operator or be complementary thereto. The beneficiaries of the compensation are identified by the competent authority, according to its own criteria and based on verifiable subjective or objective conditions.

10. Service contracts may include profitable transport services which may be operated in a free market, including direct connections ("point to point") between a metropolitan city as referred to in Law no. 56 of 7 April 2014 or a regional capital and one or more transport infrastructures

³ e.g. *congestion charge, road pricing, etc.*

connected to or belonging to a nationally relevant network (port authorities, national airports and *platinum, gold* and *silver* railway stations) only if such inclusion is adequately justified, with particular reference to the impossibility to apply the funding arrangements set out under 8 and 9 above. In municipal and inter-municipal areas, municipalities may allow scheduled services to be provided on a non-exclusive basis, throughout the whole territory or on specified sections and for pre-determined schedules, by persons holding the necessary technical and professional requirements and without prejudice to the prohibition to grant any funding, in accordance with Article 12 (1) of Decree-Law no. 223 of 4 July 2006.

11. The options for funding and compensation and the choice including the relevant reasons therefor are set out in a report published on the competent authority's website and prepared before adoption of the administrative act that identifies the lots to be awarded and, in any case, before initiation of the awarding procedures. In the case of rail passenger services, such report shall be forwarded in advance to the Authority for the purpose of obtaining its opinion to be issued within 45 days, after which, in case no opinion is delivered, the process may be continued.

12. The consultation referred to in Measure 2 (6) of ART Decision no. 49/2015 is used by the awarding authorities also to choose the methods for financing public service obligations and to identify the extension of the lot to be awarded, that in any case shall ensure the contestability of the procedure, as defined in Measure 6. Similar assessments of the market contestability are carried out in case of awarding either by direct or in-house procedures.

Misura 5 - Criteria for the determination and updating of charges

1. For the purpose of determining the charges for the use of transport services subject to public service obligations, the competent authority considers the results of the surveys of potential demand for mobility as outlined in Measure 1, as appropriately integrated, where such surveys are not available, with the data from the observation of the time series of transported passengers or tickets sold and the relevant revenues on the routes intended to meet all or part of the demand referred to under paragraph 3 of the above Measure.

2. For categories of users who move regularly for reasons of study or work, as well as for those characterized by disadvantaged socio-economic conditions, disability or reduced mobility or for other categories identified as deserving of protection, where it is not possible to apply any direct compensation, as referred to in Measure 4 (9), the competent authority applies reduced charges to eligible travel tickets, including in the form of season tickets or exemptions. For the aforementioned categories of users, charges and season ticket prices are determined on the basis of

kilometres travelled and guaranteed travel times, pursuing the progressive reduction of travel times and the charging integration of travel tickets relating to different services and operators.

3. Without prejudice to the principles of universality and charge accessibility of the services subject to public service obligations, for the categories of users other than those referred to in the preceding paragraph that use the aforesaid services, in order to reduce financial compensation, charges are determined on the basis of the user willingness to pay, the guaranteed service quality standards above those established by the Authority in the exercise of its functions referred to in Article 37 (2) (d) of Decree-Law no. 201 of 6 December 2011, and other compatible factors, including the charging integration with different services and operators, time slot of use of transport means, purchasing quantity and methods, type of on-board services, distribution channels and other parameters chosen by users, as evidenced by the surveys referred to under paragraph 1.

4. The loss of income resulting from the application of the reduced charges or exemptions referred to in paragraph 2 above is calculated on the basis of the revenues that would be achieved by applying preferential charges and season tickets, without prejudice to the provisions of Measure 4 (6) on financial compensation. For the purpose of calculating the loss of revenue, reference should be made to the final number of tickets falling within the types of users subject to preferential or exempted regime at the end of each year, on the basis of specific verification procedures defined in the service contract.

5. Quality standards of service above the minimum standards set by the Authority in the exercise of its functions, referred to in Article 37 (2) (d) of Decree-Law no. 201 of 6 December 2011, and/or minimum user rights above the minimum rights set by the Authority in accordance with subparagraph (e) of a.m. paragraph (2) may correspond to higher charges.

6. The level of cost coverage, ensured by the revenue arising from the charging of transport services falling within the scope of Legislative Decree no. 422/1997 and included in a Scope, shall cover at least the minimum threshold provided for by the law referred to in Article 19 (5) of the same decree.

7. The charges for scheduled services subject to public service obligations are updated on the basis of the price cap mechanism provided for in Measure 19 of ART Decision no. 49/2015.

Measure 6 - Criteria for the identification of lots of transport services to be awarded on an exclusive basis

1. In order to encourage the widest participation of operators, under conditions of efficiency, the lot of services to be awarded on an exclusive basis is identified by analysing the minimum optimal size of the service, which results in economies of scale and density for operators, and the number of competitors who may participate in the awarding procedures.
2. The number of potential participants in the afore-mentioned awarding procedures is verified on the basis of a prior market analysis which establishes, including on the basis of specific expression of interest, the number of undertakings that meet the requirements for the performance of the services and are in a position to submit a tender, with particular reference to the ownership and availability of rolling stock and the necessary infrastructures for the service provision. For this purpose, even in case of direct or in-house awarding, a consultation of the stakeholders is carried out, as provided for in Measure 2 (6) of ART Decision no. 49/2015, which results in the drafting of a report in which the competent authority describes and justifies *inter alia* both the options for financing the public service obligations set out in Measure 4 (7) and (8) and the market factors considered for sizing the lots to be awarded. In this case, a single report shall be drawn up before the tender notice is published or the invitation letter is sent or before the act for direct or in-house awarding is adopted. The report shall be forwarded in advance to the Authority for the purpose of obtaining its opinion to be issued within 45 days of receipt of the report, after which, in case no opinion is delivered, the process may be continued.
3. In order to improve the conditions for contestability, if meeting essential mobility needs of the population within a Scope requires the provision of multiple modes of scheduled services that can be awarded on an exclusive basis, a number of lots are identified.
4. Likewise, in the case of a valid single tender or expression of interest, the announcement or letter of invitation provide that the competent authority re-evaluates the choice on the lot definition. In such cases, any exercise of the administration's power to withdraw, suspend or modify its own measures may take place within and no later than the opening of tenders.
5. With reference to the investments required for participation in the awarding procedure, the lot shall allow the participation of a number of operators meeting the minimum requirements needed. The scheme for the geographic and/or modal service of the lot to be awarded shall also include all instrumental goods, which are essential or necessary for performing the service, or the locations

which are appropriate for their position as identified on the basis of the criteria in Measures 2 and 4 of ART Decision no. 49/2015, respectively.

6. The lot to be awarded may coincide with a part of the services included in the Scope or, if it only includes a set of scheduled public services which may be awarded on an exclusive basis for a financial compensation to cover public service obligations, with all services included in the Scope. The lot to be awarded should not coincide with an entire Mobility area.

7. With reference to paragraph 6 above, including for the purpose of reaching the minimum legal threshold of the cost coverage ratio referred to in Article 19 (5) of Legislative Decree no. 422/1997, the financial coverage of public service obligations in the service contract is ensured through the options referred to in Measures 4 (7) and (8).

Definitions

Scope of public service: a comprehensive system of public passenger services, including different modes (road, light rail, subway, railway, cable, lake, lagoon, river and regional maritime) and types (scheduled, non-scheduled), which is suitable for meeting public service obligations (PSOs) and, in general, the citizens' essential mobility needs, even without direct compensation of the operators.

Mobility area: a seamless territorial area, as determined by the competent authorities, within the planning of regional and local public transport on the basis of demand analyses that take into account socio-economic, demographic and behavioural characteristics of potential users, orographic structure, degree of urbanisation (cf. below) and branches of production of the reference territory.

Coverage ratio: ratio of traffic revenues to operating costs, net of infrastructure costs, as defined in Article 19 (5) of Legislative Decree no. 422/1997

Willingness to pay: maximum amount a consumer (passenger) is willing to pay for a good or a service which is not in its availability.

Weak demand: demand for limited services which, under certain circumstances, does not allow to reach a value of the cost coverage ratio which is at least equal to the minimum ratio as defined by the law. Consequently, **weak-demand relations** (or weak relations) are defined as origin/destination relations which are characterized by a "weak demand" for mobility (cf. below); the Measures always refer to "medium-long distance relations" (cf. medium-long distance journeys), which are understood as the north-south and east-west links; when such links are served by rail, reference is made to "medium-long distance services of national interest".

Network effects: increase in revenues (or decrease in costs) generated by the joint and co-ordinated management of parts of the same network which are differentiated both by service category (i.e. high speed, intercity, regional, urban, extra-urban) and in contractual terms (under PSOs or "market" regime), and vice versa.

Negative externalities: adverse spill-over effects of decisions pertaining to consumption or production on third parties related thereto (climate change, traffic or circulation congestion, noise or number of accidents).

Load factor: degree of loading of transport means in relation to a capacity serving measure, which is determined as a percentage of transported passengers (passengers*km) and seats available on board (seats*km).

Degree of urbanisation: parameter that can be derived from ISTAT statistical classifications of Municipalities based on population density and number of inhabitants assessed in regular 1-km grid cells.

Quality indicators: quantitative variables or qualitative parameters capable of adequately representing, for each quality factor (significant feature for the perception of the service quality by users), the performance levels of the service provided.

Lot to be awarded (or award lot): specific definition of a transport service network based on geographic and/or modal criteria that enable maximum participation in the awarding procedure, and ensures service efficiency and effectiveness in relation to existing economies of scale and density.

Short-distance journeys: journeys that may be completed in a day, including return trips, typically within 50 km (short distances), depending on the accessibility characteristics of the areas travelled and on the networks and services that may be used.

Medium- and long-distance journeys: journeys covering more than 50 km, depending on the accessibility characteristics of the areas travelled and the networks and services that may be used. Long-distance journeys cannot be completed in a day, considering the entire return trip.

Quality standards: value to be set in advance for each quality indicator (cf. above), based on the users' expectations and the provider's potential.