

OUTSOURCING AND INDUSTRIAL RELATIONS IN CITY LINES OF TRANSPORTING

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INTRODUCTION

This study aims to examine the impact that outsourcing by local public transport enterprises is having on industrial relations.

For some years, on a European level, outsourcing, along with other issues of corporate change and reorganisation, has been attracting significant attention.

On numerous occasions¹, the European Commission has specified that changes in the structure and organisation of businesses are key to their survival in an internationally competitive field: change is unavoidable when seeking new means of production which, by making use of new technologies, allow for growth. At the same time, change, though entailing short-term consequences which must be dealt with, is ultimately needed to maintain employment levels, which are otherwise put at risk by the selection processes enacted by businesses on the international playing field.

The European Commission proposed² a new approach to labour-related issues in the context of globalisation, an approach which, by balancing protections for employees and flexibility of action for businesses, would enable the very changes being brought about by globalisation to be better faced. Even the social partners agreed on the desirability of an approach to labour problems inspired by a strategy of "flexicurity"³.

The need for processes of change and restructuring is also felt by those enterprises carrying out services of general economic interest (SGEI), which include public transport. It is the opinion of the Centre of Employers and Enterprises providing Public services (CEEP)⁴ that the processes of change in the area of services of general economic interest are "necessary and inevitable" to modernise the sector, increase productivity

1 COM (2002)/341, COM (2004)/557, COM (2005)/24, COM (2005)/120.

2 COM(2007)/359.

3 "Key challenges facing European labour markets: a joint analysis of European social partners", October 2007.



and strike a balance among three opposing trends: a reduction of national resources earmarked for the sector, the ever-increasing demand by users for improved services and the inclination of community institutions to favour liberalisation and competition.

On the other hand, the European Federation of Public Service Unions (EPSU), while backing “modernisation” processes that are firmly rooted in discussion and negotiation between trade unions and enterprises, warned against using it simply as a means of cutting labour costs in violation of workers’ rights, pointing out that modernisation (when assigned this negative meaning) is often implemented by resorting to forms of outsourcing⁵.

Even the European Transport Workers’ Federation (ETF) has shown it believes that actions based exclusively on competition and deregulation can have serious consequences for the workers involved, and has called attention to effectively countering moves geared towards a transport service based on worse conditions for workers⁶: transport is a service of general interest and a key factor for the economy, employment and the creation of new jobs.

The position taken by the Community institutions and social partners involved highlights the many-faceted problems associated with outsourcing, analysed against the complexity of the context created with the advent of globalisation, and the specific situation of public transport. When carrying out an analysis centred on industrial relations and social dialogue, therefore, one has to bear in mind both the economic objectives and evaluations underlying the choices that lead to the use of outsourcing, and the peculiarities of public transport as an economic sector.

This study is structured in four parts.

The first looks at the situation of the various forms of outsourcing in the European transport sector, examining the positions taken by the social partners to include a look at the trends in sector regulation (or rather

4 CEEP.05/AVIS.15.

5 “Outsourcing and collective bargaining”. EPSU survey 2004-05, March 2006.

6 “Restructuring and Developments in the Transport Sector”, October 2007.



deregulation) which are emerging from Community institutions, paying special attention to the change in the public sector's role in managing the service.

Parts two, three and four look at the experiences of three EU Member States: Italy, France and Romania. These countries differ widely in the way they interpret and adopt European directives regulating the sector, the state of industrial relations and the economic and social contexts of reference.

The sections dealing with the national experiences develop along a homogenous line of approach, so as to firstly illustrate the situation of the local public transport sector – with particular reference to national rules – and, secondly, selected case studies from which to evince the impacts of outsourcing on industrial relations and the management approaches adopted by enterprises.

Lastly, the study concludes by offering some final considerations.



REPORT 1 – EUROPEAN FRAMEWORK

European liberalisation of urban transports – trends and constraints

1. The Context

1.1. The transport sector in the sphere of public services in Europe

1.2. Principles and tools for a modern governance of public services within the EU

2. European sector regulations

2.1. Evolution of the legal framework and the position of CEEP

3. Liberalisations: between operating costs and repercussions on workers

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1. The context

1.1 *The transport sector in the sphere of public services in Europe*

In its entirety, the services sector generates some 70% of the European GDP (EU25) and the trend is on the rise as a result of the tertiarization of the economy. In the structure of the service offerings, the Eurostat data does not allow a clear distinction between what belongs to the public or private sector. The EU trade unions tend to overcome the difficulty in making this separation between public and private services by including among the essential public services: health and social work (14%), public administration and education (10%) and transport and communications (9%), thereby calculating the weight that this category has on the total: i.e. one-third.

Consequently, certain working conditions are prevalent compared to the industrial sector: there are more women than men thanks to the initiatives enacted by Public Administrations; reduced wages – also due to the structure of the offering; proliferation of non-standard employment contracts; higher quality of human resources than in the industrial sector, even if the differences between service sub-sectors can be very marked; industrial relations in evolution⁷.

In this context, according to a number of studies, European public transport represents one of the most dynamic sectors in the world.

In the period 1990 - 2003 the number of people who made use of public transport systems in the old world increased by 20%, with increase peaks of over 90% for air travel⁸. In fact, in 2006 the Community transport sector employed 8.2 million people, which underscores the labour intensive nature of the services rendered.

To better understand these figures, it is useful to note that more than 60% of Europe's population live in urban areas with over 10,000

7 From an interpretation of Eurostat data by Kamenkliene G., Connolly H., Keune M., Watt A., Services employment in Europe: now and the future. ETUI-REHS Report 104, 2007, Brussels.

8 Data taken from an interpretation of "Transport and Environment: On the Way to a New Common Transport Policy" published in 2007 by the European Environment Agency.



inhabitants, where over 85% of the Community GDP is produced. In other words, by attracting investments and creating employment, the urban areas represent the engine of the European economy. This obviously has significant impact in terms of environmental pollution, mobility of citizens and, ultimately, directly on the quality of life for a vast majority of the European population and, indirectly, on a global level⁹.

Already in 2001 the White Paper published by the European Commission "European Transport Policy for 2010: Time to Decide" underscored the need to start reshaping European transport policies to advance a system that would be more sustainable overall. In this sense, one of the cardinal principles of the European architecture was forcibly reaffirmed: the right of every authorised Operator in Member States not to be discriminated against outside their own country on the basis of nationality, to promote the process of liberalisation of national markets in a sector where the existence of strong structural barriers to the passage of Operators from one national market to another is widely known. Applying the same logic, the Commission chose to impose that infrastructure be separated from services management – an initiative that, to this day, has had different results in the various Member States.

These themes were picked up and re-launched in the subsequent Green Paper "Towards a new culture for urban mobility", where the desire to follow new public transport policies able to promote economic development, quality of life and environmental protection, was explicitly proposed as a concrete challenge facing local institutions¹⁰.

The few, succinct points cited above are an attempt to convey the scope and complexity of the considerations at the heart of the issues covered in the study, and testify to the key lines of thought being promoted through European policies (with ensuing national and local repercussions), and possibly, above all, to the technical and operational solutions that the individual public transport services Operators can concretely implement to enact such policies.

⁹ Data taken from the interpretation of the Green Paper "Towards a new culture for urban mobility", COM(2007) 551 final, Brussels 25.9.2007.

¹⁰ See Table of contents, Ch. 2 of the above-mentioned Green Paper.



1.2. Principles and tools for a modern governance of public services within the EU

Community legislation interprets a model of governance for local public utilities on a European level that wanders from the fundamental division between regulator and operator to combine some distinctive elements:

- the regulating party has but a *single mission*, so that it does not have to mediate among different interests. On the down side, this single mission makes the regulator's activities judicially accountable, which, otherwise, amidst the myriad of interests to be mediated, would see political considerations exceed the control of the judge.
- Regulation is conditional, i.e. it comes into play to resolve issues when they occur (if... what...).
- Regulations are trilateral or multilateral. The regulator acts as the judge in the settlement of different interests that are not always convergent regarding the service supply methods.
- The authorities are subjected to the principle of fair procedure. In their regulations/mediations they must follow pre-established, formalised behavioural models that govern the legitimacy of intervention.

These elements that deal primarily with administrative law are useful for us to determine the field across which numerous scenarios develop in a multitude of combinations where the active parties try to establish the combinations which maximise their own interests. Who is allowed onto the playing field? Is the result of the game always the valorisation of the public interest?

In an attempt to have public interest prevail within a complex management system, the relationship between the public administrator and the operator who manages a service of general interest, such as urban transport, was reformed.

The key factor behind the development of administrative reforms was the rediscovery, affirmation and spread of liberalism that has revived the market, the enterprise and private law, and has endowed the user with a



certain importance. This last factor strengthens the new nature of customers whose satisfaction must be guaranteed.

In this phase, the problem of financial sustainability becomes immediately apparent. The crisis faced by Public Administrations – both the central administration and local administrations – is one of the key factors that drives social welfare reform and, therefore, also the public authorities' management methods that form an integral part of that welfare. At this juncture, privatisation serves to bring together the dual objectives of savings and efficiency, which should lead to maximum satisfaction of the citizen in his double role as taxpayer and user.

This dual maximisation stems from the theory of New Public Management; the concepts that are helpful in the development of our reasoning are briefly recalled here:

- *agencification*, the tendency to entrust to appropriate organisms (agencies, independent authorities) roles that were previously carried out by specific units within state organisations (the starfish organisation model of the large industrial groups)
- *process re-engineering*, the revision of the internal procedures of public administrations to analyse costs, keep them under control, and increase public services productivity
- *result-oriented partnership*, i.e. different ways for the private sector to collaborate in managing public services, either by merely requiring financial collaboration or entrusting the entire operation to the private sector (contracting out)
- *marketisation*, identifying quality indicators and productivity standards, controlling their compliance and measuring user satisfaction with public services.

It is on this theoretical, administrative and economic basis that Community regulations and actions are based¹¹.

2. European sector regulations

¹¹ For more information see Cassese S., *Lo spazio giuridico globale*, Edizioni Laterza, 2003, pg. 124 and ff.



2.1. Evolution of the legal framework and the position of CEEP

The starting point when tackling this issue is to establish, on a case-by-case basis, what the legislator's goal was with regards to transport within the general framework of services for citizens. No easy task, given the gradual shift in attention from being focused mainly (if not exclusively) on safeguarding competition, to recognising – via an exceedingly slow coming together, not always satisfactorily pursued – the need for Europe to safeguard the general interests covered by public service, with the growing incidence of services on the overall rights of citizenship.

Originally, attention was primarily (and almost exclusively) focused on liberalisation as an indispensable tool for consolidating the large and free Community market. As understanding about the necessity of safeguarding social cohesion increased, a move was made to the undoubtedly more complex and multilayered notion that the essential safeguarding of competition would, at the very least, have to coexist alongside the need of being able to ensure the supply of adequate services.

In this light, the amendments made to Regulation 1191/69 by Regulation 1893/91 were particularly important. By regulating public service obligations and public services contracts in the transport sector, a framework of overall operations for the sector was outlined.

In so doing it was established that public service obligations (meaning the obligations that enterprises would not have shouldered or would have shouldered under different conditions, bearing only their own interests in mind) should have been wholly compensated in the amount of the greater cost imposed by the public authorities.

This objective was fine-tuned in the above-mentioned 1991 Regulation by the introduction of the Public Service Contract which defined the characteristics and price of the service, the regulation of the contractual revisions (*ius variandi*), the sanctions for non-compliance, etc. For local transport (but not only), this gradually highlighted the need for European regulations to ensure the awarding of transparent, non-discriminatory service contracts; such regulations were drafted by the European Parliament and amended at first reading in 2001, and subsequently



underwent a number of integrations, also put forward by Parliament, which were approved by the Commission in 2002.

These regulations were in themselves difficult to introduce, because of strong opposition from numerous Member States, which led to the suspension of the legislative activity. The suspension was also motivated by awaiting the European Court of Justice's pronouncement in the Altmark case, as well as the debate over the White Paper on Services of general interest. The Altmark case decision is important because it established, for the first time, four inescapable conditions:

- enterprises must be explicitly charged with managing services of general economic interest;
- the parameters for calculating compensation must be set in advance in a manner that is objective and transparent;
- compensation must be limited to covering costs for providing services of general economic interest;
- enterprises must be chosen through public tender or, alternatively, compensation must be established on the basis of the costs for providing the services in question by an average, well-managed and equipped business.

A powerful intercession which, however, left two fundamental questions open:

- what is meant by well-managed and equipped business;

and

- what leeway does Public Administration have to consider the suitability of the individual enterprise regarding the Public Service objectives (also bearing in mind eventual ancillary services supplied to users on such occasions).

Although the outlines of the framework were not clearly defined, it had the merit of establishing, for the first time, a core of European regulations which, in one form or another, all the Member States kept in mind when adapting the development of national regulations to the European guidelines as they interpreted them.

The impact was greater on those legal systems which hold that Community Regulations are readily effective and applicable – as is the



case of Italian legislation: what this meant (as was the case in Italy) was the need to pass from a system of automatic mechanisms and standards of fee adjustments (Law 151 of 10/04/81) to the payment of costs effectively sustained even beyond the amounts established by administrative provisions.

To re-trace the level of change in the Commission's position, as was evident at the start of the new millennium, it is worth considering the European Commission's Communication ("Services of General Interest in Europe", COM 2580, of 20/09/00), where the objectives of opening the markets and safeguarding competition were established, and the following were clearly re-affirmed:

- the central role of Services of General Interest to foster social and territorial cohesion in Europe;
- the need for these services to respond with priority and transparency to the changing needs of users and citizens, to include protection of the environment, equality in treatment and the right of access for all, especially people on low incomes and the handicapped;
- the principle of neutrality with regard to the public or private ownership of companies;
- the freedom of Member States to define the Services of General Interest and the proportion of means used to fulfil the mission;
- choosing the missions of general interest to be carried out, bearing in mind the technical and economic characteristics of the services and the cultural and historical specificities of the Member States;
- the progressive approach of the policy for opening-up the markets, founded on the evaluation of functioning, performance, and competitiveness of the services of general economic interest;
- reference to universality of telecommunication service;

with a number of important specifications regarding:

- limits in applying market openness to Services of General Interest which should not affect either services which fall within the competence of the State (such as national education and compulsory basic social security schemes), nor those of a local



nature, in that they do not affect the development of trade among Member States;

- conditions on the basis of which Member States could grant special or exclusive rights or specific financing to one or more operators, especially when it was necessary to entrust a single operator with the mission of satisfying the need of general interest by attributing concession rights;
- the role reserved for users and service providers, in terms of defining the services and evaluating their effectiveness;
- the possibility for Member States to maintain a level of quality for their Services of General Interest in the framework of commitments undertaken with the WTO.

The approach is undoubtedly broader than the traditional one, also because it considered the proposal for a European Charter of Services of General Interest which was jointly drawn up by CEEP and the ETUC, and explicitly brought up by the Commission in the above mentioned Communication (see below).

All told, the overall framework was positive though some oversights remained which were brought to light by such bodies as CEEP in its Avis No. 20/2000 which can be summarised as follows:

- not enough attention paid to the relationship that undoubtedly exists between competition and missions of general interest;
- the need for European regulations regarding Services of General Interest that would at least highlight the increase in coordination on a European level which would enable the results of the regulators and operators to be checked;
- the need to define the establishment of European sectoral regulatory forums (since the regulatory authorities are controlled nationally) to be earmarked for debate and comparison by said national authorities;
- definition of tools to strengthen European coordination and solidarity – all the more necessary because of the explicit attention drawn to them under the Charter of Fundamental Rights and the Social Charter;



- evaluation of the impact of new technologies which, inevitably, will exert growing influence on the way services are provided.

This explicit reference in the Commission documents to some of the results of the CEEP-ETUC Community Social Dialogue is significant, not only because it enables us to trace the evolution of relations between Authorities and Social Partners on a European level (which have always been in place in one way or another, but only in this instance explicitly mentioned in an official text issued by the Commission), but also because it enables us to highlight a fundamental passage in the evolution of the European debate on the issue of Services of General Interest. Starting in 2000, bearing in mind the evolution in case laws at the European Court, the debate following the publication of the White Paper on Services of General Interest and the documents published by authoritative Social Partners (the above-mentioned CEEP-ETUC Service Charter), it would no longer have been possible to ignore, even on a European level, the problems posed by the management of Services of General Economic Interest.

So it was that the problems of distinguishing between Services of General Economic Interest and other Services of General Interest became evident; the slow and often contradictory evolution of the concept of “Universal Service” (whether meaning a minimum all-inclusive group of services accessible to users at a sustainable price, or specific methods of financing and regulation); the progressive increase of sector regulations especially developed in the case of networked services such as communications, postal services, electricity, gas and transport.

Alongside the evolution of sector regulations – also in relation to technological developments and the new context of the internationalization of the markets – the attention to business organisation profiles and the methods of providing the actual services, therefore, became increasingly more relevant.

It is where specific reference is made in the Treaty to the “common values” of the Services of General Interest such as a high standard of quality, safety, accessibility, equality of treatment, promotion of universal access and the rights of users: principles which, from now on, must



comprise the “specific public service obligations” for eligible “users”, with the consequent necessity of distinguishing, case by case, among direct management on the part of Public Administrations, management through businesses so authorised, management through the application of public procurement law and management through concessions, whether exclusive or otherwise.

In this domain, inevitably, the problems relating to management play a key role, not only as regards the formal limitations imposed by national and European regulations (e.g. public-private partnerships [PPP], concession regulations and In-House (regarding which, see below), but also the problems which arose following the evolution of labour organisation in the new economic context brought about by the globalisation of the economy: outsourcing, sale of company divisions, etc.

Dating back to this time is the publication of a paper that has certainly contributed to the Community evolution in making these problems known (the CEEP/CIRIEC study “Services of General Economic Interest in Europe”, Brussels 10 May 2001), in which four study groups examined the following issues closely: regulation of services, their financing, performance evaluation and the eventual best practices that can be extended to service providers.

It is worth recalling some conclusions that, since then, have become part of the common European philosophy on services:

- the impossibility of defining a single European model since the very ability to adapt to the history and needs of each country makes of the SGEI one of the pillars of the European model for common values;
- the consequent necessity of fostering recourse to rules of subsidiarity that promote the coordination of services, the end aim of which is also to guarantee interoperability and transparency;
- the consequent diversity of services financing models, the mission of which depends primarily on the local communities that are responsible for social and territorial cohesion;
- the need to distinguish between regulation and evaluation of services since the latter implies the need of involving communities



in addition to the other stakeholders: workers, industrial clients, citizens, consumers, universities, trade unions, associations of public services providers, etc.;

- the importance of always being aware of the incidence services have on the operation of other economic sectors;
- the necessity of acknowledging the fact that de-regulation has led to a trend in the formation of oligopolies, thereby reducing the local administrators' options in choice, with negative repercussions on the prospects of enduring development and the consolidation of social and territorial cohesion;
- the consequent necessity of ensuring a clear, trans-sectoral legal framework that is not always available since the Commission has instead favoured sector regulations;
- the prospect that the Commission requires candidate countries to draw up regulations that conform to these principles.

From this stemmed the request for a Framework Directive that could consolidate the legal safety of the SGEIs on a European level even in the future, along the line of ideas that have repeatedly been discussed on the subject of Services of General Interest and in which the Commission itself has had the chance to explore such themes more thoroughly.

It was because the Commission needed to bear these discussions in mind that it waited until July 20, 2005 to officially propose a document COM (2005) 569, which, after successive consultations, which included the European Parliament, gave way to the proposal of a Regulation subsequently approved by Parliament definitively in October 2007 and published in the EU Official Journal on December 3, 2007.

The 2005 Communication specifically dealt with issues of Public-Private partnership as well as the Community law on public procurement and concessions, with a number of considerations which, compared to the past, were quite innovative.

Considering the complexity and novelty of the issue, the Commission stated that at that time, it considered it preferable to fall back on an interpretive Communication, in other words an initiative through proposals that were not obligatory, precisely so as not to prejudice the



advancement of innovation.

An altogether preferable attitude in the case of Private-Public partnerships where national experiences were vastly different.

The approach to Concessions was an altogether different affair and consultations undertaken for the Green Paper regarding Private-Public partnerships revealed some preferences for following a legislative option. An approach that CEEP implicitly argued against in its Avis 2006/14, in which CEEP highlighted the risk that following this approach could have in increasing the burden of that which was already required under Art. 16 of the Treaty (Amsterdam 1997), Art. 26 of the Charter of Fundamental rights (Nice 2000) and Art. III-22 of the Constitutional Treaty project.

There was a risk that the distinctions between tasks assigned to services for social purposes rather than for purely economic reasons would be less clear, thereby depriving the competent Public Authorities of significant managerial flexibility due to not being directly bound to the formalities of bureaucratic procedures. The result would make of Public Authorities the guarantors of the services rather than entities that were, in point of fact, responsible of all aspects of service provision.

For CEEP it was therefore essential that national, regional and local authorities should retain their power in choosing how they would manage the SGEI: direct management by the competent Authority (internal service or *régie*); an undertaking assigned to a public or public-private enterprise under the competent Authority; a social economy organism, a profit-making company – be it a cooperative or not; concession to a company (whatever its articles of association) for a set period, or through attribution of exclusive or special rights.

Freedom of choice for Public Administrations, along with the option of reversibility in the event it changed its mind regarding the system of management.

In particular, the rules governing the awarding of public tenders should have been excluded for cases of inter-municipal cooperation (consortiums, etc.) since they have to do with the application of the principle of subsidiarity and self-administration of local authorities. This principle should, likewise, have excluded the application of the rules of



competition in cases where the effectiveness of the services was limited to local territories without the possibility of influencing the market, thereby jeopardising Community interests.

The area of private-public partnerships should have been extended beyond that regulating public tenders and concessions, since they are a tool for optimising cooperation among private capital, technologies and ways of management with the experiences and responsibilities of the public sector.

The attitude of CEEP regarding the prospect of Community concessions regulations is similarly sceptical, as it considers the existing regulations on a national level to be sufficient.

Specifically, CEEP would want the possibility of having a 'reserved domain', also called In-house, to be safeguarded, maintaining the option of attributing concessions in certain cases without having to use public tenders: as far as CEEP is concerned, In-house should not be regarded as an exception to the general rule, but designated as an out-and-out area under Public administration so as to ensure that it be as effective as possible.

The European Court of Justice's judgement of 18 November 1999 (case C-107/98 Teckal, Collection of cases pg. I-1821, point 38), requested that public tender procedures be carried out every time there is the merging of intentions of two separate and autonomous entities, limiting the awarding of an In-House contract only to cases in which the contractor is solely the mean through which another entity, under its full responsibility, executes a certain activity.

From this stems the need (CEEP Avis 15-2007) for a general definition of In-House, as was already provided by Regulation 2007 on public passenger transport services by rail and by road, which specifically introduced a definition for 'internal operator' and the conditions under which it could operate.

"CEEP believes therefore, that it is advisable to propose a definition applicable to all methods of delegation by public authorities, including public procurement, concessions and institutional public-private partnerships".



The fact that, on a Community level, there exist no specific regulation for PPPs should not be underestimated. It is not acceptable that cooperation between a private and a public party justifies failing to respect the rules regarding tenders and/or concessions. With the result that participation of the private entity, albeit a minority holder, in the capital of a public enterprise could exclude the existence of a relation that could be classified as In-House. The public entity has to choose the private partner through a procedure that is fair and transparent, which is very hard to do, with the result that the solution suggested by the Commission is that of choosing the private partner through competitive means provided for in public procurement law for cases of entrusting the tender or concession.

Which is to say In-House could, logically, be excluded for private-public companies with the result, as already mentioned, that the Public Authorities' prerogative is penalised. A trend which – for example in Italy – was very well known to some national Authorities: the draft of the budget law 2009 approved by the Italian Council of Ministers specifically called for an end to In-House management by 31/12/2010, as well as limits and conditions for any new In-House assignments and required full public management of services or, alternatively, management by public-private companies with at least 30% of private capital and, in any event, in line with European regulations.

It is telling that in this case it was also expressly stated that In-House assignments were a departure from the general principles.

A direction fully shared by the Italian Competition Authority (Communication 20 October 2008) that, with regard to Law Decree No. 112/08 converted into Law 133/08 on entrusting Local Public Services of Economic Relevance to In-House entities, reaffirmed what is stated in Art. 23-bis, according to which only if there exist “particular economic, social, environmental and geo-morphological characteristics for the territorial background of interest” that “do not allow for effectively and usefully turning to the market” can “the assigning of local public services through competitive public procedures” be avoided; it being understood that even in such cases “the respect of the principles of Community



regulations" must be guaranteed, with the consequent need to present to the Authorities a documented and motivated request for the Opinion of the Local Authority which intends to make use of In-House contracts.

As can be seen, in the absence of a clear, explicit reference to a European text, many countries could have a tendency to adopt highly restrictive interpretations of the indications that can be drawn from the Community framework (as is certainly the case in Italy). Which leads us to appreciate situations such as the above-mentioned 2007 Transport Regulation, where a Community legislator (Art. 5) has clearly listed the means available for awarding contracts, setting a clear distinction between the following:

- contracts for bus or tram passenger transport services are awarded if they do not assume the form of concession contracts and therefore do not qualify as "service procurements", subject to the procedures under Procurement Directives 2004/17/EC and 2004/18/EC;
- all other contracts which qualify as concessions are awarded according to the procedures provided for by the Regulation.

Awarding services is done based on the following methods, as adapted from ASSTRA (The Italian Transport Association) "La luce della lanterna – viaggio nella mobilità collettiva" (The light of the lantern – a journey through collective mobility), pgs. 15 and 16.

a) In-House awards

Unless prohibited by national law, any competent local authority, whether or not it is an individual authority or a group of authorities providing integrated public passenger transport services, may decide to provide public passenger transport services itself or to award public service contracts directly to a legally distinct entity (internal operator) over which the competent local Authority, or in the case of a group of authorities at least one competent local authority, exercises control similar to that exercised over its own departments. To that end, factors such as the degree of representation on administrative, management or supervisory bodies, specifications relating thereto in the articles of association,



ownership, effective influence and control over strategic decisions and individual management decisions shall be taken into consideration. 100% ownership by the competent public authority, in particular in the case of public-private partnerships, is not a mandatory requirement, provided that there is a dominant public influence and that control can be established on the basis of other criteria. The internal operator and any entity over which this operator exerts even a minimal influence must perform their public passenger transport activity within the territory of the competent local authority, notwithstanding any outgoing lines or other ancillary elements of that activity which enter the territory of neighbouring competent local authorities, and cannot take part in competitive tenders concerning the provision of public passenger transport services organised outside the territory of the competent local authority. Notwithstanding this an internal operator may participate in fair competitive tenders as from two years before the end of its directly awarded public service contract under the condition that a final decision has been taken to submit the public passenger transport services covered by the internal operator contract to fair competitive tender and that the internal operator has not concluded any other directly awarded public service contract.

b) Awarding to third parties by tendering

The competent authority can award a service contract to third parties who are not “internal operators” by fair competitive tender open to all operators and non-discriminatory. Following the submission of tenders and any pre-selection, the procedure may involve further negotiations.

c) Direct awarding below the threshold values

Unless prohibited by national law, the competent authorities may decide to award public service contracts directly:

-- where their average annual value is estimated at less than €1,000,000 or where they concern the annual provision of less than 300,000 kilometres of public passenger transport services;



-- *in cases of a public service contract directly awarded to a small or medium-sized enterprise operating not more than 23 vehicles, these thresholds may be increased to either an average annual value estimated at less than €2,000,000 or, if the contract concerns the provision of public passenger transport services, less than 600,000 kilometres.*

d) Direct awarding in cases of emergency

In the event of a disruption of services or the immediate risk of such a situation, the competent authority may take an emergency measure. This emergency measure shall take the form of a direct award or a formal agreement to extend a public service contract or a requirement to provide certain public service obligations.

e) Direct awarding of railway services

Unless prohibited by national law, any competent local authority has the faculty to directly award public service contracts for railway transport with the exception of other means of rail transport such as underground or tram services. The duration of such contracts shall not exceed 10 years.

Article 5 of Regulation 1370/2007 is very interesting precisely because it would be hard to deny the overall value of the rules that it establishes even beyond the specific scope of transport, since it deals with the application of what has already been promulgated on a European level for all services.

This is confirmed by an analysis of the “whereases” introduced by European legislators who specifically confirm that the only “*lex specialis*” applicable to this sector is Art. 73 of the Treaty regarding State aids, required by the nature of this public service due to the need for coordination or the respect of taxable public easement, in particular on state property; remaining otherwise inviolable, is the relevance of Articles 16 (SGI as common values of the Union) and 86, section 2 of the Treaty (subjection to the rules of competition when such does not impede to the fulfilment, in fact and in law, of the specific missions entrusted to them),



which also applies to our case.

So it is confirmed that the European regulator's intent in the provision set forth under Article 5 of the 2007 Transport Regulation has a wider scope, which can be more fully appreciated when we see how different interpretations of European laws have supported legislative directions which were nearly opposite in some States of the Union, with the result of bringing together national policies that at times were widely divergent, by legitimising them equally.

In other words, each regulator in the Member States needs to some extent to be forced to acknowledge the fact that there is no such thing as a single European orientation aimed at determining, once and for all, which managerial choice is most in keeping with common tendencies.

If at times this happened during the early stage of the building of Europe, when the Treaties seemed to ratify or sanction a concept of competition and market in which liberalization and privatisation were indissolubly tied and in which deregulation prevailed over any other goal of social cohesion and solidarity, today, in the midst of an international crisis that inevitably implies different economic policies, this can no longer be the case.

Today, more than ever, it would seem reasonable that the tendency implicitly expressed in the 2007 Regulation should be consolidated through an approach that is totally devoid of ideological conditioning, rightly focused on ensuring a safe leeway for management – and therefore choices – for the accountable Administrations, that is to say, ultimately, for the SGEI, requiring specific attention to be given to the uniqueness of each case.

This more mature and realistic concept can be said to stem from the experience of the last decade – a conclusion that is also borne out by the evidence gathered from this study – a period when the need to allow managerial tendencies to be continuously updated has, ultimately, been the only real lesson the operators seem to have learned for averting instability that is otherwise engendered by the rapid internationalization of the economy.

No definitive option therefore as regards outsourcing, In-House or the



sale of company divisions, nor a priori preferences for vertical integration or, when possible, company concentration or, in general, consortial tendencies: rather an invitation to reinforce the knowledge of the territories' needs that are shaped, as is now obvious, by a series of factors each having a different impact on the various local contexts; to then ascertain the different stances of the Public Authorities and, therefore, of the operators, both aiming to meet jointly the needs of efficiency and solidarity.

3. Liberalisations: between operating costs and repercussions on workers

3.1. General Community trends: theoretical profiles

The European Union was one of the driving centres in the diffusion of market criteria for managing public services of general interests, forcing policies of privatisation and innovating methods of liberalization in some markets. A sort of innovative thrust on the basis of which all Member States felt – to varying degrees – that they had to subject the provision of public interest services to market criteria.

An operational model, now considered traditional, is the transformation of the body governed by public law into an entity subject to private law. Often this transformation has had obvious implications on corporate organisation. Specifically we have seen a “vertical” fragmentation of the offer that is therefore fragmented among many bodies which, at least on a formal level, are independent¹².

In the Community logic this is desirable so long as this process of breaking down business allows for the introduction of elements of healthy competition in the markets¹³, where ‘healthy’ should express the correct combination of costs and productivity.

The breaking down of the cycle has therefore permitted business areas in which to force competition to be selected from those in which it was

12 Hermann C. and Atzmüller R., *Liberalisation and privatisation of public services and the impact on employment, working conditions and labour relations*, ETUI.REHS, 2008, pg. 177 and ff.

13 Public companies often incorporate activities that are coherent in term of public property but that are related to different sectors in term of free market.



desirable to preserve a monopolistic regime.

Europe has therefore expressed a clear doctrine as regards a market approach. Nonetheless, the action of the Community institutions was less steadfast than its ideology.

The chief advocates of liberalisation were the European Commission and the European Court of Justice. These institutions have taken on a leading role in placing pressure on Member States and inducing them to do without public funding, setting forth certain rules for tenders and fostering openness to foreign services suppliers.

These aspects have gradually acquired momentum after years of impasse which were due to concerns over the social consequences that a trans-national liberalisation would cause both on the quality of the service being offered and on the quality of the work used to produce/supply the service. Social tensions that actually emerged after the Directive on Services came into force and that will be dealt with later on in this report.

What matters now is that in this stage of privatisation and liberalisation, many have seen an attempt to impose criteria of inexpensiveness on public services management. The optimal ratio between costs and yields should have emerged from common criteria aimed at guaranteeing competition in tenders, favouring outsourcing of service and promoting public-private partnerships. Beside introducing laws and rules pertaining to the general economic theory, Community institutions have also drawn from national practices, analyzing specific national experiences to gauge their compatibility with a common ideological framework. This is the case, for instance, of the private financial initiative in the UK¹⁴.

All this was not without repercussions on industrial relationships. Setting aside the proverbial differences among Member states, we will try to identify common repercussions, in particular, those on collective bargaining.

¹⁴ The Private Finance Initiative is a public-private partnership tool that aims to separate the responsibility of private service management (usually infrastructures) from the responsibility for the overall service which remains public. This operational instrument which stems from the Anglo-Saxon system, was later adopted in France, Holland, Portugal, Ireland, the Czech Republic, Norway and Finland.



The processes described led to a significant decentralisation of collective bargaining with the ensuing fragmentation of representation and contracts.

The breaking down of interests has fuelled conflicts among new and more corporative social forces (a trend shared by the United Kingdom, Germany, Italy and France) especially due to the redefinition of the scope of collective contracts. This appears to be true even if, in countries where a confederate structure is historically rooted, the trade unions boast that they reduced the social impact caused by the transition of some services, which were traditionally managed by public entities or that were run under monopolistic regimes, towards a market economy.

Across Europe trade unions had to face the imperatives brought about by a process of adjusting to the market endured by enterprises that have historically been very generous towards their employees. Even on this point, Europe shared a common experience. The transition, first to the private regime, and then to liberalisation have imposed a reduction of labour costs mainly through working hours, organisation flexibility and wage structure, which is to say: the heart of collective bargaining. This has led to the trade unions becoming against its will, protagonist of these policies. The challenge was that of ensuring that the inevitable individualisation of the relationship between employer and employee did not turn into lower labour protection.

According to European trade unions, lower labour protection in this area is a true risk not only for the worker but also for the users. The impoverishment of human resources would have (and often has) had a negative impact on the quality of the services being supplied.

Human resources became impoverished as a result of the potentially negative effects caused by the combination of two factors: the search for flexible wages (with the introduction of performance-related bonuses) and the proliferation of atypical labour contracts, and fragmentation of the offer with continual recourse to outsourcing and subcontracting which make the production chain and controls over services less transparent. Individually these organisational factors are, in themselves, manageable



but combined, they become worrying in terms of system sustainability¹⁵.

Europe, therefore, provides a homogenous framework as regards trade union challenges: qualification of human resources, safeguarding service quality, combating these inequalities and social conflict even among workers. With regard to the latter, a final common trend in the EU experience is to be noted. That is, the need to manage the divergent interest of workers who are under the same sectoral contract but who enjoy very different remunerations. The workers able to preserve the status of public employee or of employee of the company that steps in for the public operator, are remunerated far more generously than workers who become entangled in the subcontracting chain. This difference seems to emerge more strongly in Italy and France where the “public” seems to impose itself on the privatised version of certain markets more than in other countries.

In this lies a further challenge shared by the European trade unions: many unions that under a monopolistic system served their best interests by being “corporate”, must today re-think and reorganise themselves as sectoral trade unions.

3.2. From theory to practice: two national cases

The first archetype is the Netherlands. Public transport is to be considered taking into account the consequences engendered by the sector’s liberalisation process. By its own tradition, Holland is keen on fostering the execution of market functions increasing the market operators’ social sensibility¹⁶.

In managing public transports in the Netherlands, the government’s action is motivated by the need to balance the distribution of income. Granting access to public transport at a reasonable price is a fundamental requirement especially for younger users, for those who do not have a driving license, for the elderly and for the disabled.

15 Ghinetti P. and Lucifora C. Public sector pay gaps and skill levels: a cross-country comparison, ETUI.REHS, 2008, pg. 233 and ff.

16 See also van der Meer M., Liberalisation, privatisation and employment conditions – evidence of public utilities, public transport and home care in the Netherlands, in Privatisation and liberalisation of public services in Europe, edited by Keune M., Leschke J., Watt A. ETUI-REHS, 2008m Brussels, pg. 150 and ff.



One should also consider that in specific geographical areas public authorities grant companies exclusive rights on transport services.

Until 1988 public transportation was managed by regional organisations, which, in turn belonged to Verenigd Streekvervoer Nederland (VSN-regional transport organisation of the Netherlands), entirely owned by the government. As a general rule, the government backed these organisations financially without however, providing them with any incentive to operate more efficiently.

Competition was introduced through the Public Transport Act (*Wet personenvervoer, 2000*), which came into force in 2001. In this case, competition should not be interpreted so much as the opportunity for travellers to choose among various companies, but rather as the chance for companies to provide public transportation services to certain areas. As of 2001, 19 regional governments organised public tenders to assign concessions in order to cover the transport needs in their own area. In so doing, the monopolistic regime ceased to be. The new system does not rely on a true form of competition as happened in the United Kingdom under Mrs. Thatcher. In the Netherlands some of the largest companies (Arriva, Connexion and BBA-Veolia), together with other regional companies, compete for the right to organise transport service management, which binds them and makes them accountable for a given number of years to fully supply the service. Competition is not absolute, as can be evinced from the fact that the cost of tickets is still set officially by the government. There are negotiations between government and enterprises about all details regarding the number of services, the timetable, punctuality, financial management and the quality of the service. The idea underlying these negotiations is that government guarantees the supply of the service while the companies commit to offering the best quality-price ratio.

Over the last few years in the public transport sector, all major companies have become part of an international holding which is able to offer them various benefits in terms of service shifts, and advantageous prices for purchasing buses. Competition in tenders remains strong. At the same time the three main companies work together in collective



bargaining and in the transfer of human resources, following the provisions set forth under the Public Transport Act, when a public transport concession is not won during a tender.

Let us analyse the case of BBA-Veolia, the regional transport company of the Noord- Brabant (BBA) province, with a staff of 865 employees. In 2001 the company joined a French multinational holding, Veolia. The company has been substantially modifying its internal organisation over the last seven years. Human resources management policies have been decentralised and are no longer set by the headquarters, but by company garage managers. The latter have assumed responsibility for the entire cycle of human resources in recruiting, selection, control of working hours, and compensation for 60 to 120 employees. Worker representatives supported decentralisation, and the Division in charge of personnel recorded a reduction in the number of sick leaves as well as greater satisfaction. Today employees are more open to improvement and are more efficient. About 250 people were made redundant in the reorganisation process and each has benefited from an early retirement scheme or has been employed elsewhere. According to the data supplied by the management, the company is now able to face the challenge of competition (with the help of the international holding), and the eventuality of not winning a contract (as happened in 2006) without major consequences.

But all is not plain sailing. Following the enforcement of the Public Transport Act in 2001 and up to 2006, the Noord-Brabant provincial authorities signed agreements according to which the importance of taking part in tenders in order to ensure greater savings has been recognized. BBA-Veolia has already successfully taken part in several regional tenders although, according to a management statement, the deadlines of the tender procedures were too strict and the commitment concerning the administrative burden was too onerous. Moreover, the tender procedure in 2006 gave birth to a judicial case, which revealed some unexpected consequences of liberalisation. The tender criteria were based 100% on price competition, unlike the previous year when 85% of criteria were based on price and 15% on quality. The winner of the



contract was the Connexion bus company which offered its services for approximately €800 million, some €90 million less than BBA-Veolia. Connexion had underestimated the additional labour cost (a typographical error according to company sources) which led to them underbidding. When the company announced that it wanted to rescind the contract, the public transport sector was immediately thrown into turmoil considering the tight time margins set by the provincial authorities, especially since BBA-Veolia had already taken steps to lay-off its management and administrative staff as established under the Act. The legal dispute that ensued and that gave rise to many workers' protests and caused outrage in the national press, was settled when BBA-Veolia replaced Connexion, after the trade unions stepped in to mediate.

The effects of liberalisation on the workers' conditions, based on the results of this case study, are not easily detectable. Primary and secondary employment conditions for employees at central headquarters, drivers, and maintenance staff remained unchanged in a sector that is constantly growing. The sectoral collective wage agreement was upheld to establish wages and working hours, also reducing the cost of personnel, human resources and training policies, whilst the drivers' work schedules have become more exacting. Moreover, each worker had to settle on compromises compared to the conditions prevailing in the services industry; all benefits and bonuses for overtime were limited for newly hired personnel. This compromise is significant considering that we are talking about an industry where overtime is standard practice. What is more, the changes in benefits and bonus created uncertainty and stress among long-term staff who also saw a freeze placed on their holidays. Furthermore, trade unions expressed their doubts about being able to deduct the value of buses from the yearly accounts and the resulting poor vehicle maintenance this would bring. The trade unions also complained about the low safety levels for bus drivers who used to be supported by several inspectors who would arrive promptly in the event of an accident. They were also concerned about the possibility that the local services drivers could be replaced by workers who were less-qualified but keen on accepting lower compensation (for instance when companies replaced



bus drivers with drivers of taxi or smaller buses whose per-hour cost was lower).

The second case study is Lithuania – a country with vastly different social and economic conditions.

In Lithuania, the privatisation process was massive and affected almost all the production sectors. As far as public transport is concerned, government action was mainly focused on removing the obstacles that prevented access to the market. Urban transportation was of interest to private capital which acted under the authorisation of the municipalities from which they won contracts for supplying and managing a number of services. It should be underlined however that the 46 main urban transport companies are still controlled and managed by municipalities. Privatisation is a slow process in such countries as Lithuania which, especially for this kind of service, suffer from some structural limitations. First of all, the obsolescence of its fleet which would require major investments that private capital cannot guarantee. Furthermore, public rate policies are considered a disincentive for private investment in the industry.

In our archetype example, the situation presents further elements of complexity stemming from the laws on privatisation, that for a decade have accompanied the transition towards a market economy. The Lithuanian legal framework leaves a great deal of discretion in the hands of municipalities as far as determining which services should be privatised¹⁷.

This autonomy in decision-making clashes with the centralisation of cost management. Therefore, many municipalities decided to retain control for commercial purposes, even if it is not yet clear who should bear the financial burden of the management of such services, as many of the costs related to supplying the service end up in the national government's financial statement and are therefore financed by general taxes.

Of note is the fact that access to private capital was guaranteed for large areas of extra-urban transportation without major increases in the

17 See also Darskuvienė V., Implications of privatisation and marketisation in Lithuania – telecommunications and transports, in *Privatisation and liberalisation of public services in Europe*, edited by Keune M., Leschke J., Watt A. ETUI-REHS, 2008m Brussels, pg. 121 and ff.



cost of services and with a wider choice of quality for citizens.

It should be underlined that privatisation adhered to market principles, especially with regards to road haulage transport – a trend originating from the first privatisation steps in the Nineties and that, as of today, records the highest degree of liberalisation in the transport industry.

Nonetheless there are more general considerations that allow us to better appreciate the Lithuanian experience with regards to the supply of services for urban transportation.

Opening up to a market economy also represented an opportunity to begin developing broader strategies on transportation and mobility that permit a more extensive offer, combined with better productivity through correct use of labour.

The National Transportation Plan contemplates the building of a multi-model transportation system based on networks and infrastructures able to make the Lithuanian companies competitive against European standards.

The result is an urban transportation system that experienced a strong turnover as well as growth in added value and employment. Overall, the transportation industry has become the driving industry of the Lithuanian economy, especially after Lithuania joined the EU. Financial data shows the dynamism of the industry which represents 10% of the added value produced in the country. 10% of turnover is balanced by a growth in productivity that is constantly in the double digits (+14% in 2005 and well over the national average). As regards local transportation, the figures show greater debt of private companies (the debt/net worth ratio was 40% in 2005) and profitability in line with other branches of the industry (2% ROE and 1% ROA).

With regard to the structure of the offer, the privatisation of the transportation industry was somewhat controversial. The initial optimism caused by the workers ownership of shares was followed by a decline that engendered social conflicts. The immaturity of company managers and of the system rules brought an end to the participatory experience without it being counterbalanced by a mature collective bargaining system.

The only safeguard defending labour conditions and employment



levels was the law on privatisations that imposed on the purchasing enterprises or concession holders that employment levels be maintained for a certain period of time.

Over the mid-term though, the need for return on private capital imposed major restructuring which was also geared towards utilising manpower differently.

This process was pursued through the valorisation of collective bargaining and was possible thanks also to a more mature national system, with more united trade unions and a more efficient use of collective bargaining.

Today collective bargaining regulates working performance and its compensation. Increasingly more attention is being given to more participatory models stemming from the growing importance of rights to information and consultation on strategic corporate choices.

In a nutshell, the Lithuanian case study tells us that the road towards a market economy is generally problematic but, in the transportation industry, it can produce long-term, positive effects for enterprises and for the country. Labour suffers from considerable turn-over with social consequences related to the exiting of the labour force that is difficult to re-locate, but with positive effects on employment and the distribution of wages.

The level of trust in privatisation see-saws. When the offer rushes too quickly towards liberalisation without effective rules of governance, the result is the proliferation of inefficiencies and non-transparent production chains that engender social conflicts and company bankruptcies, with dire consequences in terms of service availability.

This leads to a slowing down in the withdrawal of public capital from the supply of certain services, particularly those where municipalities were socially more sensitive.

4. European Social Dialogue on Transport

4.1. The confederal level: CEEP and ETUC comparison

The analysis of the relationships between CEEP and the ETUC in relation



to the problems of Services of General Interest is undoubtedly important from any number of viewpoints.

First of all, because both social partners have always been protagonists in Brussels in social dialogue in general, and therefore have always been aware of the overall problems that arise in discussions with the trade unions.

To this should be added that services form a core theme of both partners' mission: CEEP because it is the first representative association of these employers; the ETUC, because trade unions have never passed up an opportunity to note that access to services represents one of the focal points for building a social Europe, a goal that implies the existence of a close relationship between access to services and full enjoyment of citizenship rights.

Taking into consideration only the periods when these themes were attracting the most attention, we believe that a good starting point is the ETUC Charter on Public Services "Public services for European citizens", adopted by the ETUC Executive Committee in December 1998.

The ETUC decided to issue the Charter in order to have a basic paper which could be useful for implementing the changes dealt with in the Intergovernmental Conference in Amsterdam (June 1997) – the conference that had approved the reference to "the importance of the Services of General Economic Interest in the shared values of the Union" through "principles and conditions which enable them to fulfil their missions" without, however, accepting the Confederation's request to include "high quality public services and services of general interest".

To the question "which principles and conditions?" (the formula of the new Article 16 of the Treaty of Amsterdam), ETUC provided an articulated answer requiring a European Charter on Public Services that would:

- guarantee the rights of citizens;
- promote jobs for all;
- sustain competitiveness;
- shape a social market economy;
- extend the social dimension of the countries that were at the time candidates for accession to the EU;



- build a European Public Services system.

Specifically ETUC asked that public services policies could:

- improve cohesion (similarly to social welfare, social housing, education and leisure services);
- modernise social dialogue through the signing of European framework agreements on the conditions of industry workers and the organisation of services.

A paper which in large measure was in line with CEEP's requests, which however (obviously) differed since they focused more directly on the problems of the relationship between service providers and public administrations, and for the continual request for a shared European framework for a regulation regarding general interest. The employer's claim that was most widespread and felt throughout the EU being then, as it is today, the definition of rules able to guarantee legal safety for the operators so that they can plan an enduring organisation of services.

Based on this, in June 2000 CEEP and the ETUC jointly defined a common proposal for a "Charter on Services of General Interest", a document that is certainly interesting on a political level and considering the evolution of social dialogue, precisely because in this case it led to the formalisation of a joint document regarding the level of agreement on a number of common themes crucial to social dialogue, in addition, of course, to a re-launch of services:

- the importance of social dialogue in the services themselves – whatever the activity or the operators;
- the role of quality in training, consultation and participation of workers and their representatives for modern and effective Services of General Interest;
- the importance of the nature and meaning of a social market economy.

This led the two organisations to require that these characteristics be assimilated in a Protocol annexed to the Treaty, with a procedure similar to that carried out for the extension of the previous Social Protocol annexed to the Maastricht Treaty.

It is worth noting how, in this case, the exposé of the reasons was



completely consistent with the 1998 ETUC document mentioned above, with the appearance of new themes that have since taken centre stage in the Community debate such as:

- the need to involve citizens in the evaluations of the Services of General Interest;
- the explicit mention of the goal of durable development, i.e. a development more focused on the basics of the economy rather than on purely financial results;
- the fundamental role played by Public Authorities who, ultimately, are the true decision makers;
- the need for precise rules for a contractual and transparent management.

All of the above should be reached against a general framework able to ensure: universality, safety, fair rates, quality of services to a standard determined by the Public Authorities, democratic control, transparency, public accountability on management decisions, technical and financial results and funding, concertation with employees and their trade unions as well as with users and their representative associations.

All this in a framework in which the general interest was held in as much consideration as was competition; in which the actions of regulating entities controlling the overall funding was granted – regardless of whether they were organised within the Public Administration or as single, collective or independent Authority.

As for the operators, it did not matter if they were branches of Public Administration, or of public, private or public-private enterprises as long as they were all obliged to respect the guidelines issued by higher Authorities in a framework of transparent relationships.

Concrete participation by users and workers was required, entrusting the EU the task to create a European controlling entity able to dialogue and coordinate with the national regulators.

Lastly, the possibility was not ruled out of areas that would be subject to the direct responsibility of the EU, with consequent attribution of relative competences to a specially appointed Commissioner.

In all probability, this was the height of creativity for the Social Partners.



A creativity that was understandably limited given the developments of the following years when attention, inevitably, focused on a series of problems needing to be taken into consideration; problems that at the time – in greater or lesser measure – affected all the EU countries and were made even more complex by the enlargement of the Union. Here as elsewhere, the impact on public opinion of the problems that arose following company relocations had to be taken into account, as fears (no matter how unfounded) about the possible repercussions the broadening of the market would have on employment, spread and intensified.

One has but to remember the discussions that took place in the European Parliament regarding the above-mentioned Directive on Services in the domestic market ("Bolkenstein Directive") which constituted an attempt to support a vast liberalisation of European services which involved subjecting the service enterprises "solely to the domestic requirements of the country of origin": an objective that the ETUC opposed, requesting instead that competition occur in the adoption of wages and labour conditions prevailing in the country where the service was being supplied.

A framework that was however bound to unsettle many of the balances that were taken for granted, thus highlighting conflicts of interest among the social partners in the different countries with the emergence among other things ("new Bolkenstein Directive") of great limitations for the services to be liberalised.

A backdrop which was moreover aggravated by the progressive spread of a protectionist attitude in the different countries, which reached its political climax in the referendums on the adoption of the European Constitution.

One should not therefore be surprised that the European Parliament approved on first reading a compromise that excluded a certain number of public services from the field of application of the Services Directive (for example health-care), while in 2006, the Commission published its Communication on Social Services of general interest, leaving open the possibility for a sectoral Directive in this area. The Rapkai Report was also published on the White Paper on Services of general interest and lastly,



the European Socialist Party re-launched the initiative for a Framework Directive on services of general economic interest.

It is at this point that CEEP published its Avis (n. 20 of 27/9/2006) on "A European Policy for Services of General Interest", bemoaning the lack of legal security on a European level, and defining an 18 article proposal, each setting out specific goals to be reached.

All this whilst works were underway together with ETUC that led in May 2006 to the first "Draft European framework on Services of General Economic Interest", from which the above-mentioned CEEP Avis distanced itself on several points though upholding its overall concept.

This explains the publication in February 2007 of the already-mentioned ETUC and CEEP "Joint statement on a European Framework for Services of General Interest", that somehow illustrated the extent of agreement reached on these issues (those wishing to have an exact reference point regarding the proposals made by each of the Social Partners are referred back to the ETUC paper of 20/09/2006 and the CEEP Avis of 27/09/2006 mentioned above).

In that Paper, both partners reciprocally credit each other for the above-mentioned documents having the following main points in common:

1. the principle of subsidiarity and responsibility of Public Authorities at all levels (national, regional and local) to determine how to safeguard Services of General Interest;
2. in case of conflict between laws on competition and domestic market laws against the objectives of general interest, the latter shall prevail;
3. a collection of fundamental principles shall be applied to specific rules concerning services of general economic interest, such as accessibility, availability, continuity, solidarity, price sustainability, stability, transparency, democratic control as well as non-discrimination and equality of treatment. Respect for the Charter of Fundamental Rights should fall within these principles;



4. freedom of choice for service suppliers, including the option of supplying services In-House or through multi-municipality services should be granted by all Authorities;
5. authorities must have the right to financially back Services of General Economic Interest and clear rules must be set regarding compensation granted to the suppliers of Services of General Economic Interest;
6. the evaluation procedures on all levels could be appropriate tools for allowing Authorities to evaluate the performance of Services of General Interest ensuring and on-going improvement of these services in the interest of the public.

Furthermore the ETUC and CEEP agree that good governance and good social dialogue – i.e. the involvement of workers and/or their representatives as well as other Partners – are important. They also invite the European Commission, Council and Parliament to accept their offer of collaboration, accelerating the legislative works in course.

4.2. European sectoral social dialogue: general characteristics

In the face of the challenges posed by European integration, globalisation, the new role of Europe in the world, Union enlargement and population trends, employment and the acceleration of innovation and technical change, industrial relations that in the past were a balancing and successful factor in the European model are called on to modernise and to adapt to a faster pace.¹⁸

Social dialogue represents the appropriate field of discussion for many points related to employment, labour conditions, professional training, industrial changes, the knowledge society, demographic change, enlargement, globalisation, and so on.¹⁹

In the face of such ambitious goals, industrial relations in the transport sector seem to be focused on a double process: a) “building” and b)

¹⁸ European Commission, Restructuring and employment. Anticipating and accompanying restructuring in order to develop employment: the role of the European Union, COM(2005) 120 final, Brussels, 2005.

¹⁹ European Commission, European social dialogue, a force for modernisation and change, COM(2002) 0136 final, 26 June 2002.



“transition”.

The first aspires to the creation from scratch of a system of industrial relations through the refinement of players, tools and operational mechanisms: the reference being to a working ensemble that in the Community philosophy translates into the ability of the two sides of the industry to regulate their relationships autonomously through contracts and participation practices. Transition, on the other hand, refers to the change from an existing situation to a new one which is an evolution of the previous situation. In this case the European level of industrial relations could be the natural evolution from the national to the European level through the development of trans-national solidarity (by trade unions) or of shared goals (by the other partners), that allows social dialogue to express itself through actions and projects with broader scopes than national ones.

The European trade union federations and the employers share the responsibility of arming themselves with sufficient resources and tools. The establishment of Social Dialogue Committees in each economic sector was carried out in an attempt to meet such a need.

Such committees were formed through Council Decision 98/500/CE²⁰, replacing the old joint committees and in order to enforce sectoral social dialogue “since the impact of regulation and/or deregulation on employment in the economic sectors can best be assessed within the sectoral dialogue” (IV whereas). The Commission underlined the link between the effectiveness of social dialogue and the effectiveness of community laws asserting that the situation in various Member States clearly demonstrates the need for the two sides of industry to actively participate in discussions on the improvement of living and working conditions in their sector, and that a sectoral dialogue committee attached to the Commission is the most appropriate means of ensuring such participation, by creating at Community level a representative forum for the socio-economic interests involved (VI and VII whereases).

20 Commission decision of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting dialogue between social partners at European level (Text with EEA relevance).



The Committees are formed by the social partners in order to take part in a social dialogue, by joint request. The requesting social partners must possess the requisites of representation necessary to take part in social dialogue (Art. 1.1.) and therefore they must:

a) be related to specific sectors or categories and be organised on a European level; b) consist of organisations which are themselves an integral and recognised part of the social partners structures of the respective Member States, have the capacity to negotiate agreements, and are representative of several Member States; c) have adequate structures to ensure their effective participation in the work of the Committees (Art. 2.2).

These criteria, far from representing a constraint on the right of self determination of the collective entities, represent a key to access some prerogatives or benefits offered by the Commission for the development of social dialogue.

The parties who carry out social dialogue on a sectoral level have in past years, undergone an important evolution matched by a re-organisation of the associations in their quest for the best system to carry out effective social dialogue.

Such best practices for the trade unions include searching for the most appropriate structure so as not to scatter financial resources or actions and representative abilities amongst multiple organisations, reproducing on a community level a process of amalgamation among close sectors that is already underway in many countries.

The contracts that establish the Social Dialogue Committees take care of the mutual recognition and formalise the relationships between the signing parties²¹.

21 Some authors trace the birth of social dialogue committees back to the pioneering experiences launched in the sectors of mining in 1952, agriculture in 1964 (informally, and officially in 1974), inland waterway transport in 1967, fisheries in 1974 and railways in 1972. The invasiveness of the institutional presence was such that it was up to the Commission to appoint the members of the Commissions. The eighties was the time of the work-groups, supported by the European Commission: the HORECA sector in 1983, commerce in 1985, insurance in 1987 and banks in 1990, to which were added the Social Dialogue Committees of the maritime transport sector in 1987, civil aviation in 1990, telecommunications in 1990 and postal services 1994 (Pochet P., Sectoral committees: some background information, in Transfer, European review of Labour and Research, ETUI-



In the agreements that establish Social Dialogue Committees, the mandate to negotiate is never explicit, neither on general issues and even less so on specific matters. Similarly, in the list of examples of the tasks of social dialogue, the conclusion of the agreement never appears with the sole exception of the procedures of institutional social dialogue.

Sectoral social dialogue is manifested through bilateral actions that can unfold (or not) in the sectoral committees and do not necessarily need to aim towards a contractual agreement. Where a contractual agreement is reached, this could find application domestically according to practices and procedures specific to each country regardless of the compliance with the criteria of representation set out in Decision 98/500.

Sectoral social dialogue has produced many joint texts (over 500) that represent a significant milestone in the process of cooperation and negotiation among social partners. This relational activity was expressed in joint documents, declarations, resolutions, recommendations, proposals, guidelines, codes of conducts, memoranda of understanding and collective contracts proper.

Sectoral social dialogue has nearly doubled in the last decade, due also to the establishment of new Committees in new sectors.²²

The most productive sectors were telecommunications with some 35 joint texts, postal services with little more than 20 joint texts, transportation which, in its different areas, gave birth to some 40 joint texts and agriculture with 27 texts.

The fact that for the most part European social dialogue makes use of different and less binding tools than do collective agreements does not necessarily represent a minimalist approach to European industrial relations if we consider that in some sectors, a staid approach based on research is wholly preliminary to initiating more effective industrial relations

REHS, Volume 11, n.3 Autumn 2005).

²² The sectors which in 1999 had Social Dialogue Committees under the terms of Decision 98/500 were: agriculture, insurance, banks, footwear, woodworking, railway transport, commerce, culture, catering, inland shipping, cleaning, fishing, postal services, private safety, personal services, sugar, tanning, textiles and clothing, maritime transport, road transport, temporary work, telecommunications, civil aviation and electricity. The European Commission regularly publishes the result of its monitoring of sectoral social dialogue on its website: www.europa.eu.int/comm/employment_social/social_dialogue/index_en.htm.



that can then result in contractual agreements. The European level looks, above all, to create positions to be spent in institutional social dialogue in consultations with the European Commission, or to take social needs to those institutions where, increasingly, market and trade regulations are created. Furthermore, European social dialogue sets itself tasks which are intended to eliminate the social "unsightliness" that a global market brings, such as child labour, racial discrimination and social exclusion.

The intense activity which was brought about by Decision 98/500 expressed the potential of sectoral social dialogue and also met the social and institutional needs expressed in the past. It is not difficult to believe that further efforts will be made to overcome those obstacles that today stand in the way of reaching contractual understandings based on on-going and differentiated grounds.

4.3. European social dialogue on urban transport

The European Transport Federation (ETF) is among the youngest of the European federations. It was established in 1999 following the merging of the Federation of Transport Workers' Unions in the European Union and the European unions members of the ITF (International Transport Federation). On a European level, the ETF organises workers associated with the national unions of railroads, road and maritime transport, ports, inland navigation, civil aviation, fishing and tourism services. The ETF represents about 2.5 million workers through its 223 affiliates in some 40 countries²³.

The ETF's activity in the urban public transport industry began in 2000 following the publication of the draft regulation on the restrictions on public passenger transport service, which, as already mentioned, introduced the obligation to carry out tenders open to all providers for all publicly funded passenger transport services or services that benefit from a contractual relationship with the purchaser. Through its dedicated bodies, the ETF adopted certain principles that have guided its actions from the beginning: public authorities must be able to independently decide how to organise public transport; when the service is subject to competitive tenders, authorities must adopt quality criteria including social



criteria; workers must be protected in the event of a change of operator in the service management.

The International Road Transport Union (IRU) has been the global association of enterprises for road transport since 1948. It represents entrepreneurs active in the different sectors of road transport on a world-wide level, and its goal is promoting the category's interests to international entities and organizations where rules and policies affecting the industry are established. It manages to be present in all interested areas through several commissions that formulate approaches and determine policies.

On a European level the IRU is engaged in social dialogue with the ETF on issues affecting road transport. The European negotiating table has roots that date back to 1965 when formal relationships began with the transport trade unions that were present in Europe at that time²⁴.

The Social Dialogue Committee was formalised and acknowledged on a European level in 1999 (see above).

The Committee has the following economic and representative structure.

Social dialogue is a governance tool that should involve social partners in the achievement of community objectives of improved efficiency in the services of road transport of passengers and goods, to create the right conditions for competition, foster and harmonise safety measures in line with current technological standards, ensure a minimum level of social and tax harmonization to ensure a fair and non-discriminatory application of the rules on transportation.

Existing legislation on road transport services establishes common rules for accessing the market and the profession, fixes standards for driving hours and breaks, establishes common rules for taxes and tolls as well as a

²³ See also www.itfglobal.org/etf/.

²⁴ See also www.iru.org/index/en_iru_organisation; for example the recommendations of the participating European social partners in Naples on 13 November 2003 were signed by: Comité "Union Européenne" de l'Union Internationale des Transports Publics (Comité "UE" de l'UITP); Comité de Liaison Transport de Passagers de l'International Road Transport Union (IRU); European Transport Workers' Federation (ETF); Centre européen des entreprises à participation publique et des entreprises d'intérêt économique général (Ceep); Communauté Européenne du Rail (CER).



tariff structure.

In the field of local public transport, the social partners adopted a recommendation in 2003 concerning insecurity and the feeling of insecurity. The signatories deem social dialogue to be the appropriate tool to reinstate in companies an environment of collaboration based on mutual trust, converging interests and transparency.

Regarding the common position on insecurity, the Social Dialogue Committee consulted urban passenger transport enterprises from the main European cities and the relevant trade unions. Some recommendations for ensuring the safety of users and staff in carrying out the service, based on actions by public authorities and information campaigns, were adopted.

With regards to the above-mentioned Green Paper: Towards a new culture for urban mobility (COM(2007)551), the ETF formulated an independent position that is critical of some of the passages in the European Commission's document.

Specifically, the ETF holds that European institutions were wrong in excluding workers from being relevant stakeholders in the supply of urban transport services. The sectoral European trade unions have taken a highly critical stance on this exclusion because:

- workers are users and make use of transport services to reach their workplace;
- workers are citizens who suffer the negative effects on health caused by pollution, traffic jams, etc.;
- workers are fundamental actors in the quality of service, but they are also exposed to various hazards to their health and safety on a daily basis.²⁵

The agenda of European social dialogue on road transport is influenced by most topical issues. Aside from the consequences of the economic crisis on the transport services market and unemployment, the industry is affected by the recent evolutions in Community laws

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www.itfglobal.org/files/extranet/75/7923/ETF%20position%20Paper%20on%20Green%20Paper.pdf



concerning public tenders and the elimination of the barriers to free movement of services of which more will be said in the next section²⁶.

4.4. *The liberalisation of services and the risks associated to labour mobility*

We have already mentioned how some priorities related to services liberalisation generated social tensions.

We referred to the fragmentation and unbundling, that is, the attribution of portions of service to suppliers competing through tenders, the setting up of common rules for tenders to grant a proper liberalisation of the market and above all to favour the opening of the tenders to European operators.

The laws on tenders and on the free supply of services complete these policies.

The combination of these elements has actually favoured the movement of enterprises on the European market in all sectors of service provision. The relationship between service provision and social protection is a matter of debate and dispute but the definition lies in juridical concepts and social values that are bound to evolve further. Some of the Court of Justice's judgements analysed in this document have forced institutions and economic and social actors to reconsider the enterprise and market model that Europe wishes for itself in the field of service provision.

Equality of treatment of the enterprises on the market must be based on equal opportunities of jobs for all. The full force of this problem-fraught statement is fully brought home in this historic moment when a high-level of unemployment is affecting less mobile workers. A dramatic example was the protest of the British workers who, even though they had the first Global Union (Unite), adopted the slogan "British jobs for British workers".²⁷

In any event, the ETUC adopted a non-committal stance that confirms the need to reconcile the free movement of enterprises and services with

26 Sectoral social dialogue activities can be consulted at circa.europa.eu/Public/irc/empl/sectoral_social_dialogue/library?l=/road_transport&vm=detailed&sb=Title

27 Cilento M., Lauria F., The Irem case and the trans-national role of the trade unions in protecting posted and migrant workers. Some thoughts, in *Adapt Bulletin*, 24 March 2009, no. 102



the safeguard of social standards.

The IREM case is just the tip of the iceberg of many similar situations throughout Europe. The boundary between freedom of settlement for enterprises and social dumping is subtle and controversial as was proven by the judgements of the European Court of Justice in the Viking, Laval, Ruffert and Luxemburg cases which moreover, were decidedly more problematic than the Lincolnshire contract, and which have seen the European justice back down as regards the safeguarding of social protections.

This is but one tale of the possible antinomies between the Europe of opportunities and the Europe of protections. The law cannot always provide a timely answer to social changes. The Court of Justice compensated for the gaps left by institutions and social entities (albeit in a controversial and highly criticisable manner), to strengthen the needs of mobility that derive not only from citizens/entrepreneurs, but also from citizens/workers (the judgements of the European Court of Justice on balancing fundamental social rights against the equally fundamental freedom of the EU are well known). But social partners cannot limit themselves to engaging institutions for a better legal framework and, at the same time, uphold opposing viewpoints. They must also imagine organisational evolutions and less formal, though autonomous, relationships that pave the way to new forms of solidarity. Trade unions cannot surrender parts of sovereignty to institutions and even less so to the community judge. There is a need to safeguard the individual as there is a need for the European unions to shape their future and their role.

'Trans-nationalisation' – not only of production but of the labour market, clearly results in changes which are at the same time social and legal: the workers' social rights and the rights to free movement of enterprises must go hand in hand without conflicting with each other; enclosing the political and trade unions' debate within the national boundaries risks becoming fanciful and misleading. Undoubtedly, building a trans-national trade union protection to support workers' mobility is no easy task: at stake is the nature and protection of a European social model. If the trade unions give up on providing answers, they shirk their responsibilities and,



above all, delegate this role to the wrong entity. The consequences could be very grave, also in view of the enlargement of the European Union, and the redefinition of the role of the Court of Justice in Europe, whose past contribution to the establishment of social Europe now seems a distant memory.

Already at the beginning of the Nineties, Massimo D'Antona warned that the harmonisation of the progress of social systems ran the risk of remaining a dream mortified by history.^{28 29}

It is up to the European social partners, specifically European trade unions, to demonstrate that the fight against illegal employment, precarious jobs and trans-national contract dumping are true goals that can be achieved and be effective if the social partners become actively involved in identifying the phenomena and devising strategies of intervention without leaving loopholes that no abstract law can, or will, be able to fill.

5. Final considerations

It is certainly to be hoped that documents (like those by CEEP-ETUC, cited) which are testaments to the degree of consensus that some managerial practices can find with various stakeholders and, more broadly, with public opinion, will be picked up and developed further.

The path towards reasonableness that can be extended to all entities involved to some degrees in the problems of services, is therefore reinforced:

reasonableness of political decision makers who must not give in to the temptation of relieving themselves of the responsibilities that arise from the choices they have made: local administrations must certainly take responsibility on such matters, but it is clear that central administrations (each Member State as well as the European Union) should refrain from making an instrumental use of subsidiarity to shun responsibilities that weigh down, directly or indirectly, on all.

²⁸ See M. D'Antona, Mercato unico europeo ed aree regionali deboli: le conseguenze giuridiche, in LD, 1992, 54.

²⁹ See note 20.



reasonableness of each Member State which must not give in to the temptation of gaining a competitive edge from those interpretative loopholes that are inevitably inherent in the European texts;

reasonableness of the European Court of Justice which, with the progressive consolidation of the Union, must be able to renounce carrying out merely legislative functions, as almost inevitably it has been doing since the beginning of this decade;

reasonableness of the Social Partners who must abandon approaches that are excessively, if not solely, conditioned by ideological references, acknowledging that the protection of workers cannot mean disregarding safeguards in the efficiency of services, and that each evaluation in this area must protect the frail balance of the Public Authorities' competences at the various levels (European, national and local) primarily responsible for the services.



REPORT 2 – ITALY

1. Introduction: scope of the study

2. The regulatory framework:

a. general outsourcing regulations and employment relations

- i. *Outsourcing and regulations supporting trade union actions*
- ii. *Outsourcing and employment relations: key points of the legislative discipline*
- iii. *Discipline regarding information and consultation*

b. discipline for LPT enterprises

c. outsourcing and the employment relations of public transport workers

- i. *Contents of the special discipline regarding public transport workers employment*
- ii. *Sectoral collective bargaining*

3. Case studies:

- a. **ACTV Venice**
- b. **ANM Naples**
- c. **APM Perugia**
- d. **ATM Milan**
- e. **GTT Turin**
- f. **TRAMBUS Rome**

4. Some conclusions



1. Introduction: scope of the study

The study seeks to analyse the management of industrial relations on the occasion of outsourcing operations carried out in companies operating in the urban transport sector (or, more correctly, local public transport, hereafter LPT).

Let it be said from the outset that here outsourcing will only be considered under the umbrella of a company pursuing economic efficiency, therefore only as an externalisation of activities which are not part of the core business of the company.

Therefore we will not be looking at the sale of transport service quotas, for whatever reason, from one operator to another, though this type of activity can also create tensions in industrial relations and social contrast³⁰.

The first part of this report (Section 2) attempts to summarise the regulatory framework (deriving from law and national collective bargaining) which surrounds the relations between company management and trade unions in matters of outsourcing. Part two (Section 3) details outsourcing experiences as enacted by six leading LPT enterprises. In addition to documentation (laws, law cases and national collective contracts), the method used for analysing business experiences included direct collaboration with those in charge of industrial relations who made themselves available for fruitful discussions and explorations by sharing useful documents (in particular corporate contracts).

The following should also be noted.

Section 2, as mentioned, analyses the key points of the regulatory framework which surrounds the relations between LPT company management and trade unions in matters of outsourcing. This framework is especially composite due to a number of factors which will be looked at more closely later on, but are summarised here. Firstly, the subject matter is a complex one from any number of viewpoints: even the term

³⁰ See the reports on France and Romania. Moreover, later we will highlight the long-standing laws in the Italian legal system which were enacted to ensure the rights of workers in the event of transfer of transport lines.



'outsourcing' is in practice used to refer to a series of business operations implemented via different juridical institutes and that attribute greater or lesser weight to the trade unions, on a case-by-case basis, in safeguarding the interests of workers. Secondly, it must be remembered that regulations for the LPT sector have been undergoing an intense transformation (not yet over) with many legislative interventions which are difficult to navigate, interpret and coordinate. Lastly for a complete picture of the situation we must consider that the employment relation of those working in LPT companies – the public transport workers – has for a long time been disciplined by specific regulations; so much so that it has traditionally been considered a 'special' employment relation.

In the face of such a jagged regulatory backdrop, Section 2 has been divided into three sub-sections for ease of reference.

Sub-section 2.a summarises the so-called general regulations governing relations between companies and trade unions when dealing with outsourcing, more specifically, legislative regulations in the Italian Civil Code and associated laws which are applicable to common employment relations for employees of private companies. Following an introduction on the debate regarding the concept of outsourcing and the repercussions in terms of legal institutions safeguarding the interests of workers, we will briefly look at the legal institutions that act to limit the actions of a company by recognising trade union rights when the company intends to outsource. In this regard the sale of a company division in connection with a tender stands out: these are in fact the two prime examples most frequently encountered (as is confirmed by the two case studies examined).

Sub-section 2.b traces the main breakthroughs in the complex evolution of LPT regulation. As has been mentioned, profound changes have been underway for some ten years in the liberalisation process of the sector, in an attempt to establish a competitive market and, therefore, the access of private entities. Outlining the key points of the regulatory framework (which, moreover, seems not to have stabilised) is useful not only to make it easier to understand the dynamics laid out in the case studies, but also in so much as legislation for the liberalisation of the sector impacted



heavily on outsourcing and ended up essentially making it obligatory (reference is to the rule that imposed the obligation of entrusting management of the 'networks' to a specifically created entity).

Sub-section 2.c deals with the legal and contractual sides of the employment relation specific to the LPT sector, which, in light of the case studies, have to some extent, influenced the choices of companies when dealing with outsourcing practices.

The second part of the report (Section 3) looks at the concrete experiences of six companies. These are local public transport companies of major importance operating in Naples, Rome, Perugia, Turin, Milan and Venice. All of them are members of Asstra, the Association of local public transport companies and entities owned by the local authorities, the regions and private enterprises. Among Asstra's responsibilities is that of drawing up the National collective labour agreement. The six companies differ among themselves not only in the type of activity they carry out (type of transport, by road, shipping, automated pedestrian throughways etc.; extent of the territory of reference; etc.), but also in their geographic location, background and so on.

2.a. The regulatory framework: general outsourcing regulations and employment relations

To begin with, field investigations highlighted the fact that operators attribute a much broader scope to the term outsourcing. They attributed to the term operations essentially lumped together by the fact that they impact on the organisational setup and/or company parameters.

On the other hand, even in the studies on this issue that analysed its consequences on employment relations, the variety of content embraced under the term 'outsourcing' is evident. The term is more or less used as a synonym for externalisation which in turn would seem to indicate a trend that is basically characterised by at least two, core aspects³¹: a) the unfolding of two stages, the first to transfer a part of the

31 R. De Luca Tamajo, "Le esternalizzazioni tra cessione di ramo d'azienda e rapporti di fornitura", in Id. (by), "I processi di esternalizzazione. Opportunità e vincoli giuridici", Naples, 2002, pg. 10 and ff. The bibliography on the subject of outsourcing and the rights of workers



company (with related transfer of the means of production) or to shut it down, the second aimed at reacquiring the production resulting from the part that was shut down or transferred via a tender contract or other commercial contract; b) the trend for companies to only keep those activities related to their core business.

On the other hand, since the issue is particularly complex and fraught with overtones and variables, the ways of interpreting the concept of externalisation are many³², as, consequently, are the options for differentiation and categorization. For example there is a suggestion to distinguish between externalisation "in the strict sense" when a company transfers a function or activity externally along with the means necessary to carry it out, to then create a contractual relationship with the transferee which supplies said function or activity, and externalisation "in a broader sense" when there is no transfer of the aforesaid structures and means. Alternatively there is a suggestion to valorise the topographic data, meaning that, once the transfer of the organisational entity has taken place – which is an inescapable element – one could then distinguish between "externalisation" and "internal tertiarization" (or "externalisation *intra moenia*"). Internal tertiarization means a specific situation in which a company has transferred its production capacity to another company that carries out its activity within the boundaries of the company that transferred the division, but which is both operationally and organisationally autonomous.

Even the term outsourcing is the subject of much debate³³. For some, outsourcing could be used to indicate only cases where there is no sale of any company division, but the company merely decides to procure from outside goods or services that previously it had never produced itself and that have become necessary, or goods or services that it used to produce

is vast; see, for example, among the most recent: Pessi A., "Le esternalizzazioni e lo statuto protettivo del lavoro: dalla riforma Biagi alla 'Legge sul welfare'", in *Argomenti di diritto del lavoro*, 2008, pg. 403 and ff.; Speciale V., "Le esternalizzazioni dei processi produttivi dopo il d.lgs. n. 276 del 2003: proposte di riforma", in *Rivista giuridica del lavoro e della previdenza sociale*, 2006, p. 3 and ff.

³² See, for example, M.L. Vallauri, "Outsourcing e rapporti di lavoro", in *Digesto delle discipline privatistiche – sezione commerciale*, Utet, 2003, p. 722 and ff.

³³ *Ibidem*.



but at a certain point decided not to produce any longer. One could then distinguish between outsourcing and other phenomena such as the above-mentioned tertiarization, or spin off - meaning a process through which a new enterprise is created to which the parent company transfers the resources required to operate.

1. Outsourcing and regulations supporting trade union actions

Outsourcing in the broad sense of the term meant as an act of breaking down, disaggregation (but sometimes also reaggregation) of a company's organisational structure, can, each time when it leads to employment, depending on the complexity, pass through the networks of different juridical institutes disciplined by the general reference regulation found in the Italian Civil Code and associated laws. In other words outsourcing can come to integrate juridical cases in point where the legislator has explicitly attributed rights to the trade unions (e.g. company transfer, collective dismissals, staff leasing), that is institutes with no collective dimension in which the legislator intervenes to safeguard workers but without calling in the trade unions (calls for tender, individual dismissal for just cause, posting of workers) or institutes that consider the employer and employee on an equal footing (individual transfer of an employment contract).

What is more, in practice, as already mentioned and as will be detailed in the case studies in the second part of this study, outsourcing is managed mainly through the sale of company divisions and subsequent tender. Indeed it could be said that in recent years this scheme has become widespread and has been formalised by legislators when they specifically disciplined cases in which the sale of a company division is tied to a tender contract "whose execution is carried out using the company division which is the subject of the sale"³⁴.

On the other hand, it should be underlined how the sale of a company division, along with dismissals, constitutes one of the two fundamental normative pillars in the general debate regarding outsourcing. In effect,

³⁴ As found in Art. (5) Italian Civil Code introduced by Legislative Decree No. 276/2003. Regarding the systematic and practical value of the rule see A. Maresca, "Art. 32", in



the corporate operations being looked at can, from a juridical point of view regarding the protection of the workers' rights, be traced back to two basic situations³⁵: shutting down or transferring one part of a company's activity.

These two situations give rise to opposing consequences as regards the affected employment relationships. In cases where the activities are not stopped, but are transferred to another entrepreneur who continues the business, we find ourselves facing a sale of a company division, for which the law (Art. 2112 Italian Civil Code) grants workers the right to employment continuity. In cases where the activity is effectively shut down (i.e. it is not transferred to another entrepreneur) employees can be dismissed. In other words, the nature of the operation, should it mean shutting down or transferring the activity, determines the possibility for the employer to cut existing jobs, or, on the contrary, the right of workers to continuity of employment.

That said, we can move on to a summary of the institutional regulations that most often come into play in matters of outsourcing.

II. Outsourcing and employment relations: key points of the legislative discipline

Schematically and in a very summarised manner, we can take a closer look at the general juridical institutions of reference, beginning with an example where a company decides to cease its activity, to then procure externally those goods or services which it formerly produced itself. In the face of the transfer of the specific activity, the company can then proceed to dismiss its employees. This would then lead to a situation of collective dismissal or, possibly, to some cases of individual dismissal.

More specifically **collective dismissal** is when the company (with more than 15 employees) plans to dismiss at least five employees in a period of 120 days. In this case the law (Law No. 223 of 1991) provides trade unions with specific rights. First of all, the company must inform the trade union representatives at the workplace (that is the territorial trade union

Various Authors, "Il nuovo mercato del lavoro", Turin, 2004, pg. 383 and ff.

³⁵ For details and legal references see A. Maresca, 2004, cited in the previous note, pg.



representatives) of the unavoidable reasons that have led to a situation of redundancy; the number of affected employees and the jobs they were carrying out; the timing of the dismissals and the appropriate measures to be taken to mitigate the resulting negative social consequences. The trade unions can request a joint examination of the situation and there is a possibility of arriving at a set of measures mitigating the workers' situation, formalised in a joint agreement³⁶. If an agreement is not reached, the administrative authority intervenes in an attempt to find an accord³⁷. At the end of the process of trade union consultation, the employer can carry out the dismissals after informing the affected workers in writing³⁸. The penalty for failing to respect this procedure is to reintegrate the workers who were unlawfully dismissed³⁹.

Should the pre-requisites for collective dismissal not exist, the company can make recourse to lawful **individual dismissal for just cause**. In this case the law (No. 604 of 1966) requires first and foremost that certain formalities (common to dismissals for non-fulfilment) be respected: for example, communicating the dismissal in writing, the possibility for a worker to request (in writing) to be informed of the reasons for his dismissal and that the period of notice (established by collective bargaining) be respected. Essentially the possibility of dismissing a worker is only permitted should "reasons pertaining to the production activity, organisation of work and the regular operations of such" exist. By law, for individual dismissal for the cancellation of a job position (as in the case of outsourcing) to be legitimate: the choice of the company must be necessary and not specious; a link must exist between the entrepreneurial choice and the

377 and ff.

36 Indeed the law allows this agreement to implement measures that are contrary to other legal rules, e.g. under the agreement workers can be assigned to alternative jobs, even to tasks that are inferior to those they were previously carrying out; also, flexible working hours can be decided.

37 What is more, the law encourages reaching an agreement with trade unions, considerably reducing (by 2/3) the amount that the employer must pay for every worker dismissed.

38 Moreover, where a choice must be made on which of the workers are to be dismissed, such a choice must respect criteria agreed with the trade unions during the negotiations, or, as an alternative, those specified by law (length of service, family dependants, etc.).

39 If the violation is failure to respect criteria of choice though, the employer can proceed with the dismissals respecting those criteria, without having to repeat the procedure over again.



dismissal of the worker; the dismissal must be a measure of last resort, it not being possible to adapt the worker to a different, vacant job (but which would have entailed carrying out similar tasks to those of the cancelled job) within the company⁴⁰.

The other fundamental hypothesis according to which the activity is not cancelled but simply transferred to another entrepreneur is as briefly mentioned, the sale of a company division. Currently the law (Art. 2112, Italian Civil Code – a provision that has undergone numerous amendments over the years) establishes the application of job safeguards even when the transfer only concerns “a part of the company, intended to mean a functionally autonomous articulation of an organised economic entity identified as such by both transferor and transferee at the time of the transfer”. More specifically, the safeguards involved are: continuation of the employment relation with the transferee with all the ensuing rights; joint and several liability of transferor and transferee for the amounts the worker was entitled to at the time of the transfer; obligation for the transferee to apply economic and legal conditions established by national, territorial and company-level collective agreements in force at the time of the transfer, unless they are replaced by analogous agreements applied by the transferee.

Regarding company transfers, we will draw attention to two laws. The first (Art. 47, l. 428 of 1990) establishes that transferor and transferee must inform the representatives of the employees beforehand, when the transfer concerns more than 15 workers. The information must include: the date (whether already decided or planned) for the transfer; the reasons for the planned transfer; the legal, economic and social consequences for the workers; the measures to be taken, if any, towards the affected

40 Where the judge confirms the unlawfulness of the dismissals, the consequences can differ, depending on the size of the company. If the workers were employed in a production unit with more than 15 employees (or if there were more than 15 employees working in the company production units in the municipality, or if, totally, the company employed more than 60 staff on a national level), they shall have the right to payment of a claim settlement commensurate with the salaries they would have earned from the time of the unlawful dismissal up until the time of the judge's verdict and, additionally, they can choose whether to return to the company or receive 15 months' wages in pay. In the other cases, instead, the employer that has unlawfully dismissed a worker can choose whether to take him back or immediately pay the claim.



workers. Upon request by the trade unions, a joint analysis with the enterprise can also take place.

The second law (Art. 2112 Italian Civil Code, last paragraph) explicitly refers to the case where, as briefly outlined, the vendor enters into a **tender agreement** with the purchaser, the fulfilment of which is carried out through the division being transferred. In this case the legislator established the use of the solidarity system contained in the rules on procurement (Art. 29, par. 2 Legislative Decree 276/2003), according to which the purchasing entrepreneur or employer (together with each of any additional sub-contracting parties, within a two-year time frame from the end of the contract) shall pay the workers their due wages and social welfare contributions⁴¹.

Regarding tender contracts, the legislator is primarily focused on distinguishing this type of contract from that of staff leasing (Art. 29, par. 1): the distinguishing feature lies in the fact that the tender contract is characterised by the "organisation of the required means by the contractor which, regarding the needs of the work or service falling under the contract, can also be the expression of organisational and managerial power over the workers used to carry out the contract, as well as the same contractor assuming the entrepreneurial risk".

This provision introduces another institution that could be used by the enterprise in terms of outsourcing: **staff leasing**. Under a staff leasing contract, the law allows companies to make use of personnel that it has not hired and who belong to another company (the supply company), by exercising its powers as an employer⁴². At the present time, the law only permits temporary staff leasing⁴³.

On the subject of outsourcing, it seems worthwhile to briefly touch on

41 The law further specifies that acquiring personnel "already employed under the tender contract following a new sub-contracting, by law, under national collective labour agreement or under a clause in the tender contract, does not constitute a company transfer or transfer of a company division": Art. 29, par. 3.

42 Up until 1997, this type of contract, which is based on a third party presence between the company and the workers that it uses, was not allowed. Subsequently, Law 196/1997 introduced the so-called temporary work, which was then replaced by staff leasing (Legislative Decree 276/2003).

43 Until 2003, the law only allowed temporary use of workers made available by the supply agency. Later the Biagi Law also permitted the use of open-ended contracts (staff



staff leasing as a tool that allows enterprises to externalise the management of personnel in charge of a specific production line, albeit under special circumstances, for a limited period of time and at a higher cost (the company making use of this type of leasing contract bears the cost of personnel compensation and payment to the leasing agency). This type of contract is not very pertinent to our discourse and so we will only touch upon it briefly. Suffice it to say that the law establishes a series of precautions for this type of contract beginning with the fact that only authorised companies can engage in staff leasing⁴⁴. The law also imposes that a series of obligations be respected both by the agency supplying the workers and the company who employs them, the intent being to safeguard the health and safety of workers under the leasing contract and to guarantee that their overall treatment is no worse than that applied to workers in similar levels of employment working for the company⁴⁵. Above all, it is worth highlighting that legislation establishes clear company obligations towards the trade unions: the company making use of this type of leasing contract is required to inform the trade union representatives about the number and the reasons for resorting to this type of contract before it is signed with the agency. Furthermore, every twelve months, the company must inform the trade union representatives on the number of such contracts and the reasons for their signing, their duration and the number and the qualifications of the workers involved.

A tool which, like staff leasing, could allow companies to temporarily outsource, is the **posting of workers** from one company to another. The posting of workers – which has long been debated on a legal plane – has recently been regulated (Art. 30 Legislative Decree 276/2003). The posting

leasing), but a law then abolished this in 2007 (Law No. 247).

44 The authorisation is subject to the possession of specific requirements by the requesting party, such as a proved economic stability and being widely present on the territory.

45 For example, the obligation of the supplying agency to pay compensation that must not be lower than that of analogous workers, grant holidays, etc., or the obligation for the employer enterprise to provide all its workers with all information related to safety devices used in its work places, etc.. The law furthermore recognises the right for leased workers to exploit all trade union prerogatives established by the workers' statute (Law 300/1970) within the enterprises that make use of them, as well as a specific right to hold meetings for the workers working for different user.



of workers occurs when an employer temporarily places one or more workers at the disposal of another entity to carry out a set job, without this altering his responsibility on the economic or legal status of the worker. If the posting implies a change of assignments, the agreement of the worker is required, whilst, lastly, if it involves a transfer to a production unit located over 50 kilometres from where the workers is employed, technical, production and organisational reasons must be provided.

Lastly, it should be remembered that the consequences on employment following the changes in the productive organisation brought about by outsourcing could also be managed simply through a **transfer of the employment contract**. This occurs when the worker agrees to having the original employer replaced by a new one. The regulation is the general rule in the Italian Civil Code on the transfer of contracts (Articles 1406 and following). Hence the law in this case does not establish explicit protections for workers, nor does it recognise specific rights for trade unions.

III. Discipline regarding information and consultation

To conclude this short analysis of the general legal framework of reference for outsourcing and employment relations, it should be remembered that recently, in transposing a Community directive, Italian legislators introduced a new regulation on information and consultation of workers. The reference is to Italian Legislative Decree No. 25 of 6.2.2007 which came into full effect for all companies with at least 50 employees, from 24 March 2008.

Specifically, as mentioned, a company with at least 50 employees shall inform and consult with the workers' representatives beforehand (they also have the right to being given motivated replies to opinions they might have expressed) on a number of issues, such as: the progress of the activity and the company's economic situation, the foreseeable employment trend (and the measures to counter the reduction in personnel where jobs might be at risk), company decisions likely to bring about significant changes in corporate organisation and employment contracts. Among other things, the enterprise is not bound to



communicate (nor even consult the employees' representatives) information that, for reasons which can be proven, might create considerable problems in the enterprise's operation if disclosed, or indeed even damage the company. Furthermore the enterprise may classify some information as "confidential": in such cases, the information cannot be disclosed by the workers representatives who come to know it (or it can only be disclosed under certain conditions). The law under discussion expressly upholds the laws (examined above) on trade union information and consultation in case of collective dismissal and sale of a company division.

This law delegated to collective bargaining tasks of primary importance, first among which, establishing the forums (locations, subjects, times and content) for fulfilling the obligations on information and consultation (it also falls to collective bargaining, for instance, to set up settlement commissions for disputes regarding the 'confidential' classification of information, that is determining the reasons that lead to identifying information that cannot be disclosed by the company).

As can be guessed, the discipline on information and consultation is undoubtedly able to improve the protection of workers' interests even in case of outsourcing, as proven by the early collective bargaining experiences. For instance the last renewal of the metalworking industry agreement (which traditionally represents an important reference point for collective agreements in other production industries and sectors) signed on 20 January 2008, in fulfilling the provisions of the regulation on information and consultation, specifically established (Art. 7, section one) that the management of companies with at least 50 employees shall supply the representatives of the employees "with information on those decisions which are likely to bring about significant changes in the organisation of labour and employment contracts with reference to: (...) the operations of unbundling and permanent externalization outside of the factory, of important phases of the ongoing production activity if they should impact on the overall employment level".

2.b. The regulatory framework: discipline for LPT enterprises



In Italy, LPT service, like other local public services, has traditionally been managed by the so-called *municipalised enterprises*⁴⁶. Italian law No. 142 of 1990⁴⁷ marked the beginning of a profound change in the regulatory framework of all local public services, driven above all by the community rules aimed at fostering competition.

As a matter of fact, legislators had already tried to ignite a change in the local transport system with a law in 1981 (Law No. 151)⁴⁸, but the lack of effectiveness of that action along with the “Tangentopoli” (Bribesville) scandal marked the beginning of a revolution in the industry which resulted in Italian Legislative Decree No. 422 of 1997 (the Burlando Decree), which represents the main law of reference.

Decree No. 422 of 1997 first of all ratified assigning to regions and local authorities important tasks and functions regarding public transport services on a regional and local level, such as the implementation through regional laws of the principles set forth in the framework law, as well as the programming and planning, including in particular, the identification of minimum services – that is those services qualitatively and quantitatively sufficient to meet the need for citizens mobility⁴⁹.

Secondly, it affirmed the principle of distinction between regulatory functions (by the institutional players) and managerial functions (by the

46 This followed the setting up of the system already established under the first “Giolitti Law” in 1903: see G. Tosatti, “L’applicazione della legge per la municipalizzazione dei pubblici servizi”, in V. Termini (edited by), “Dai municipi all’Europa. La trasformazione dei servizi pubblici locali”, Bologna, il Mulino, 2004, pgs. 71-94.

47 Specifically, Art. 22 of Law 142/1990 established that local public services could be supplied by Municipalities and Provinces through five different tools: direct management with one’s own means; management through concession to third parties; management via institutions; management via a municipalised company; management via a private-public company. The possibility of management through private-public companies was a significant addition because, prior to 1990, local public service management through partnerships was not allowed. Initially, in cases of partnership management, the use of mainly public capital was compulsory but later, legislators changed direction and allowed (Law 428/1992) the setting up of private-public companies with a majority of private capital. The only limitation faced by these companies was that they could not manage services outside their territory (so-called *extra moenia*).

48 Law 151/1981 assigned transport services programming and planning tasks to the regions and founded the “National Transport Fund” through which the Government assumed part of the financial expense of the LPT companies. Company contributions were established on the basis of the “standardised cost” of transport service: such a system however, proved to be inadequate in covering running costs.

49 Limited competencies were recognised for the Government in terms of trans-national services, safety (with the exception of those related to the authorisation to exercise transport service by road) and pollution reduction.



enterprises). From this point of view the decree imposed on regions and local authorities *to transform municipalised companies and consortiums by and not later than 31 December 2000, into stock corporations with prevalent or majority public capital, or in limited liability cooperatives even among employees or execute unbundling procedures in line with functional or managerial needs.*

Furthermore, in line with European legislation, the obligation to select the service managers (on the basis of the provision established in the related "service contract" prepared by the administration and containing the regulation of the relationship with the service managers) was introduced through tendering procedures to be enacted by 31.12.2003⁵⁰.

The deadline (31.12.2003) has been extended several times: the LPT reform has become entwined with a more general reform related to all public services (also giving rise to considerable uncertainties about the regulatory framework, in particular regarding the identification of the relationship between the laws specific to the industry and general legislation). **Art. 35 of Law 448/2001** profoundly modified the 'general' discipline expressed in Art. 113 of Italian Legislative Decree 267/2000 – Consolidated text of the local authorities (TUEL) – and introduced "public services of industrial importance"⁵¹ (which were deemed to include LPT):

- the unbundling of the ownership of the networks that should be transferred from the transport companies to the local authorities either directly or through stock corporations in which the authority has a majority holding⁵²;

50 There was the exclusion from calls for tenders of companies that, in Italy or abroad, managed services directly assigned or assigned following non-public tendering procedures, and of the companies controlled by or connected to them, of their controlling companies and of companies managing the networks, plants and other patrimonial assets.

51 For services not industrially relevant, a separate discipline, set forth in Art. 113bis of TUEL, was introduced.

52 Specifically, the law established:

- the obligation for local authorities which, at the time the law came into force held the majority interest in the capital stock of companies in charge of managing local public services and owners of networks, plants and other patrimonial assets, to carry out, within one year from the coming into force of the law and, irrespective of the provisions established by sectoral regulations, the unbundling of the network with contextual conferral of the ownership of the networks or of the entire company division, to a stock corporation of which the interested local authorities were the majority holders;
- the possibility for local authorities not falling within the cases listed in the previous



- the possibility for industry regulations to separate the service supply from the management of the networks: in such cases the management of the networks would be directly assigned to entities specifically set up as stock corporations in which the local authorities held a majority stake, or they could be assigned to private companies selected through public procedures;

- the supply of the service in a competitive system according to industry regulations with the title of the service being awarded to stock corporations selected through public procedures;

- the exclusion from the calls for tender of trustee companies in charge of local public services in Italy or abroad, in whatever capacity as a result of being directly assigned a non-public call for tender, or related renewals – a prohibition that also extends to the affiliated or subsidiary companies, their parent companies, as well as the latter's subsidiaries or affiliates and the entities entrusted with the management of the networks.

Art. 35 of Law 448/2001 is particularly relevant to this issue (as will be seen in the analysis of the case studies) as it resulted in imposing on companies the outsourcing of a segment of their structure – that of managing the “networks, plants and other patrimonial assets”.

Just two years later, legislators (**Legislative Decree 269/2003 converted into law 326/2003**), intervened again on “economically relevant local public services” (a definition that, in line with European directives, replaced that of “public services of industrial importance”). These amendments can be summarised as follows:

- entrusting the management of the networks to private companies appointed through public procedures (as it was the case in the past) or (and this was the novelty) directly to specifically established publicly owned stock corporations, and “on condition that the public bodies owning the stock capital control the companies in the same manner they control their own services, and providing that the company carries out the most significant area of its activity with the public body or bodies that

paragraph to confer ownership of the networks to stock corporations of which the local authorities held the majority interest, qualified as not-transferable. In any event, the companies owning the networks were under the obligation of making



control it";

- the supply of the service in accordance with industry disciplines, in line with European legislation; the title of the service must be assigned to: a) stock corporations selected through public procedures; b) public/private corporations where the private partner is selected through public calls for tenders in full respect of national and community laws on competition following the guidelines issued by the authorities in charge, through specific measures or circulars; c) wholly publicly owned stock corporations provided that the public bodies owning the stock capital control the companies in the same manner they control their own services, and providing that the company carries out the most significant area of its activity with the public body or bodies that control it (In-House assignment).

This law had a significant impact on the LPT industry, in which many bodies have assigned the management of the transport services In-House⁵³.

However, one year later **Law 308 of 2004**⁵⁴ fully brought the LPT industry back under the regulation of the provisions in Legislative Decree 422/1997, establishing that the "general" legislation contained in Legislative Decree 267/2000 did not apply to the local transport industry.

Yet another year later, the 2006 Budget Law (**Law No 266/2005**) modified the 1997 decree and established⁵⁵ the obligation for the In-House company awarded the service to **award at least 20% of the services to private entities or companies through public procedures**, provided they were not holdings of the same regional or local authorities that awarded the services. Furthermore this law introduced the possibility for the Regions to extend already existing assignments to concessionaries and to the entities born from the transformation of the municipalised

them available to the entities in charge of service management.

⁵³ See ASSTRA, "La luce della lanterna. Viaggio nella mobilità collettiva", Rome, 2008, pg. 24.

⁵⁴ Specifically, Art. 1, par. 48(a) of Law 308/2004 added the following paragraph to Art. 113 of TUEL "1-bis. The provisions of this article do not apply to the local public transport sector which remains governed by Legislative Decree No. 422, November 19, 1997, and subsequent amendments."

⁵⁵ Paragraph 3-sexies of Art. 19, Legislative Decree 422/1997, added by paragraph 393 of



companies and consortiums, providing that by 31.12.2006 **the transfer of 20% of capital or 20% of services** took place, or that at least two companies that were awarded the services merged⁵⁶.

Following several extensions, the obligation for the call for tender has become effective from 1.1.2008 (regions were granted the possibility of extending this deadline for a further two years⁵⁷). Fully enforced, the law establishes that the call for tender shall: 1) guarantee that the networks and the plants, "regardless of whomever has use of them, in whatever capacity, be made available to the operator who was awarded the service following a public call for tender"; 2) include a description of the type of transfer, in case of transfer of the service, from the previous operator to the new entrant, of the essential assets needed to carry out the service, and of the employees with regards to the provisions of Article 26 Royal Decree No. 148 dated 8 January 1931.

To complete the picture (in chronological order), a final reformation step which was implemented through Article **23bis of Legislative Decree**

Art. 1, Law No. 266 December 23, 2005.

56 Companies whose assignments were extended were forbidden from taking part in public tendering procedures for awarding services in the remainder of the Italian territory (paragraph 3-septies Art. 19, Legislative Decree 422/1997, paragraph 393 Art. 1, Law No. 266 of December 23, 2005). Irrespective of the provisions set forth by this article, see Art. 57, par. 4, Legislative Decree No. 112 of June 25, 2008: "Irrespective of that which is established by Articles 10, 17 and 18 of Legislative Decree 422 of 1997, and there being proven social, economic and environmental needs, also with the aim of ensuring the respect of the principle of territorial continuity and the demand for mobility by citizens, Regions can assign cabotage services to stock corporations entirely owned by the same Regions according to that which is established under Community law".

57 Article 19, Legislative Decree 422/1997, par. 3-ter [added by paragraph 393 of Art. 1, Law No. 266 of December 23, 2005]:

"With the exception of public tendering procedures already underway or concluded, Regions can eventually avail themselves of an extension of the assignment, for a maximum period of two years, in favour of entities which, within the transitory period of which in paragraph 3-bis, satisfy one of the following conditions [paragraph thus modified by paragraph 2-bis Art. 3, Legislative Decree No. 273 of December 30, 2005 in the integrated text of the conversion law]: a) for companies participated by regions or local authorities, the transfer, through public tendering procedures, of at least 20% of social capital or at least 20% of services supplied to stock corporations, even in form of consortiums, as well as to cooperatives and consortiums, provided they are not participated by regions or local authorities, be carried out;

b) a new company be set up through the merging of at least two companies in charge of local public transport on the national territory or the setting up of a consortium, with the preparation of a joint industrial plan, of which at least two companies in charge of local public transport on the national territory are partners. The companies interested in the merging or setting up of consortiums shall be active within the same region or in traffic basins characterised by territorial contiguity in such a way as to have a new unified entity in charge of a higher level of local public transport, on the basis of congruity parameters



No. 112/2008 (converted in Law 133/2008), which established a single and unique discipline for all economically relevant local public services, should be mentioned. The main new additions can be summarised as follows:

- assignment of the management of services generally through a call for tender;

- limited possibility, though respecting a series of limitations, of assigning the service In-House⁵⁸;

- prohibition, for service operators not awarded through calls for tenders (where the management of the networks is separate from that of the services) and for network operators to acquire the management of further services, or in different geographical areas, or to carry out services or activities for public or private bodies either directly or through their parent companies or other companies that are under their control or holding, or to take part in calls for tenders. Such prohibition does not apply to companies listed on regulated markets. Furthermore, entities directly awarded local public services can participate in the first public procedure for the awarding of the specific service already awarded to them, though in any event, for the awarding of services, a public tender will have to be called by 31 December 2010;

- the Government is entrusted with establishing that the entities directly awarded local public services are subject to the domestic stability pact, and that In-House companies and public and private capital companies implement public procedures when purchasing goods and services and hiring personnel. The obligation for companies wholly owned by public entities managing local public services to adopt criteria and ways for recruiting personnel and assigning jobs in compliance with the principles expressed by the consolidated law on public assignments (Legislative Decree 165/2001) is already in force.

This brief overview of the laws highlights how the process of change in

established by the regions".

⁵⁸ See specifically paragraph 3 of the article being discussed: "Excepting ordinary assignment methods of which in paragraph 2, in cases that, due to special economic, social, environmental and geo-morphological characteristics of the territory of reference, do not allow for an effective and useful use of competition, assignment can take place in compliance to the principles established by Community discipline".



the regulatory framework has, until now, been everything but linear, indeed it has been winding and has been the forerunner of interpretational doubts. As for any concrete effects produced by the change, it can be stated that⁵⁹: Italy is divided in two, with Regions that have embarked on liberalisation and Regions that have not; where calls for tenders to award the service have been carried out, the calls have highlighted problems in the transfer of the goods needed to carry out the service and the personnel; lastly a trend to pursue efficiency of the service through cutting costs rather than applying an industrial policy, emerges.

With regards to our topic, it should be noted that legislators have, on more than one occasion, imposed obligations to modify the company through the transfer of the "networks" or quotas of the transport services.

2.c. The regulatory framework: outsourcing and the employment relations of public transport workers

The working conditions of the local public transport companies personnel are still mainly regulated by Royal Decree No. 148 of 1931 and related Annex A⁶⁰. The regulation is "founded on provisions that are mandatory for reasons of public interest"⁶¹, the existence of which pushed interpreters of the law to include the employment relation of public transport workers among the so-called 'special working relationships' and to consider it as a form of *tertium genus* (third type), midway between public and private labour⁶².

These laws are for the most part built around the concept of the status

59 See ASSTRA, work cited, pgs. 35-36.

60 The area of application for this discipline has been progressively expanded. See: Law No. 628/1952 "Expansion of provisions set forth by Royal Decree No. 148 of January 8, 1931, to the personnel of urban and extra-urban trolley-buses and of urban bus routes"; Law No. 1054/1960 "Expansion of provisions set forth by Royal Decree No. 148 of January 8, 1931 to the personnel of extra-urban buses". For the sake of exhaustiveness, apart from Law 270/1988 mentioned below in the text, see Legislative Decree No. 501/1995 "Interventions for the auto-transport sector of goods on behalf of third parties as well as for the personnel in charge of public transport services" converted by Law No. 11/2006.

61 In this sense: see the Court of Cassation, Labour Section, 26.04.2004, No. 7882. Previously Court of Cassation, United Sections 20.12.1993, No. 12600 which established that such a law was justified by the "predominant public interest in connection with the regular supply of the service".

62 See Pellettieri G., "Rilevanza del rapporto speciale di lavoro. Contributo allo studio del rapporto di lavoro degli autoferrotranvieri", Naples, 1982, pg. 229 and ff.



of a public employee as interpreted in the traditional sense, that is acknowledging specific guarantees and safeguards against obligations and duties aimed at better satisfying the objective needs of public transport service⁶³. On a practical level this translated, on the one hand, in recognising powerful safeguards for the stability of the employment relationships (for instance keeping one's job, even if unable to carry out originally assigned tasks, has always been guaranteed), on the other in the imposition of obligations and prohibitions, functional (at least from a traditional viewpoint), to a better supply of the service (for instance the prohibition of carrying out any other job unless authorised in writing by the company).

The special discipline has, moreover, become "deregulated" by Law No. 270 of 1988 which allowed sectoral national collective bargaining to depart from the provisions expressed in the above-mentioned Annex A, "as well as in the clauses which modified and/or replaced said regulation, or in the ones that were subsequently added to it". As of today, it does not appear that collective bargaining has made use of regulatory power as broadly as could have been expected.

The situation is in any event, undergoing a change, mainly as a result of jurisprudential action. Judges have long held that special discipline, being apt to constitute a complete and organic corpus⁶⁴, should leave no leeway for the legislation which had traditionally regulated the employment relationship and which had always been superseded by the special discipline. However, recently the law has begun to hold that the "specialty" of the public transport workers' relationship has been overcome, due to the overall evolution of the regulation, and specifically of the surmounting of the traditional distinction between public and private employment (for instance see below the Italian Supreme Court's

63 See Treu T., Tiraboschi M., "Modernizzazione del quadro legale in materia di disciplina dei rapporti di lavoro nell'ambito del trasporto pubblico locale. Studio di fattibilità", research presented at the ASSTRA summit "Regime speciale degli autoferrottranvieri. Luci ed ombre", Rome, December 18, 2002, pgs. 15-16.

64 According to the Court of Cassation, 6.5.1995, No. 4953, the labour relationships of LPT enterprises is an "intermediate form between public and private employment and is subject to special laws (integrating a complete and organic corpus) set forth by Royal Decree No. 148 of January 8, 1931, the related regulation annex A) and the related



judgement regarding the jurisdiction of the administrative judge on the imposition of disciplinary sanctions).

The Constitutional Court has repeatedly affirmed that the differentiation of the discipline for the labour relationships of LPT companies is the consequence of a reasonable and not irrational legislative choice⁶⁵.

Nevertheless the same Court⁶⁶ also specified that the existence of this special discipline cannot, in itself, be an insurmountable obstacle to the application of "wholly general" regulations (such as those regarding the trade unions' right to information in cases of collective dismissals, Law 223 of 1991), also because the specialty features should be deemed "weakened" in light of the deregulation which was begun by Law 270 in 1988.

Moreover, one should consider that the 2002 Budget law (see above), established the transformation of municipalized companies and consortiums managing local public service companies into public stock corporations. The new, private nature of the LPT companies should constitute a further element in support of the interpretation according to which the laws regulating the common private labour relationship, are applicable⁶⁷.

1. Contents of the special discipline regarding public transport workers employment

As pointed out, the special laws concern a variety of rules that differ noticeably from the general laws governing the private employment relation. One representative example is the exercising of disciplinary power: Annex A contains detailed regulation (Articles 37-58) of the types of infringements and their detection, as well as the procedures for imposing sanctions by a specific authority – the "Discipline Council" – as well as the recourse to the administrative judge as the sole means to oppose the decisions made by the afore-said Council (although this sole jurisdiction of the administrative judge was deemed overcome by the

amending and integrating laws".

65 Constitutional Court, 7.5.2002, No. 164.

66 Constitutional Court, 13.6.2000, No. 190.

67 Treu T., Tiraboschi M., op. cit., pg. 18.



Court of Cassation⁶⁸).

Among the special laws within the scope of the matter at hand, Article 26 of Annex A seems to be of some relevance. The Article establishes special rules for cases of change in the service provider, or in the latter's management system. Specifically it establishes that in cases where lines are transferred to another company or where there has been a merging of companies, in arranging the transfer of the permanent personnel to the new company the governmental authority shall ("as far as possible") try to preserve conditions that shall not be worse than those previously enjoyed, and shall guarantee the established rights. In case of change in management, the company shall, as far as possible, employ the personnel in charge of the various services. Lastly, following any change in the corporate organisation, should there be a surplus of personnel, the company can dismiss the employees "unless they are assigned, in so far as is possible, to other tasks, in the next job rung down". Moreover, within five years, during the hiring process, the company shall prefer "subjects previously dismissed" who so request, as positions for which these subjects might be suitable become available".

Since its origin, therefore, this special legislation regulating the employment relation of public transport workers has considered the situation of workers caught up in the processes of change of corporate organisations, and specifically in the transfer of transport lines from one company to the other. Legislators granted these workers specific protections also drawing on the measures set by the political authorities affecting the articulation of the public transport service. As will be illustrated further on, collective bargaining enlarged the scope of application of this law and resolved the doubts on its effective dominance over the general discipline (originating from the Community) established

68 The Court of Cassation, united sections, 13.01.2005, No. 460 (published in "Il diritto del lavoro", II, 2005, pg. 238 and ff.), stated that, in consideration of the legal framework which came into being following the privatisation of public employment and with the regulation of public transport workers labour relations being assigned to collective bargaining, the speciality of said relation must be considered terminated. As a consequence, the Supreme Court deemed implicitly abrogated Art. 58 Annex A, Royal Decree 148/1931 which attributed exclusive jurisdiction to the administrative judge with regard to the imposition of disciplinary sanctions deeming it to be incompatible with the overall system.



in Article 2112 Italian Civil Code.

Articles 27 and 3 of Annex A grant employees who have become unfit for a job the right to remain employed with assignments that are compatible with their changed conditions and aptitude, though inferior to their original assignments, and to the preservation of the level of compensation previously enjoyed. On this point, even the voice of collective bargaining was heard: the National collective labour agreement dated 27 June 1986 further clarified that the companies must assign the company workers who have become unsuitable for a job to new tasks compatible with their conditions, "preserving, where possible, the same level of professionalism and compensation"⁶⁹.

Over time, this provision (as has emerged in the case studies) led to a significant increase in the labour force of the LPT companies: the numerous workers who have become unsuited for their job (e.g. those suffering from problems associated with driving buses) were relocated mainly as cleaning staff, at considerable costs to the companies. Moreover, this induced legislators to intervene several times with facilitation measures regarding the departure of unsuitable employees (through early retirement: e.g. Article 3 of Law 270/1988 and Article 4 of Legislative Decree 205/1995).

Also to be highlighted is the fact that Article 7 of Royal Decree 148/1931 exempts from the application of the discipline set forth by the Decree, employees in charge of services, which, according to the company structure and with the Government's approval, are assigned to private contractors, as well as employees in charge of services that are merely auxiliary to the transport services. Also to be considered under this point is what was subsequently established by collective bargaining (see below).

⁶⁹ Moreover, in case of assignment of tasks inferior to those carried out previously (assignments that – for what has just been stated – are considered necessary in cases where the assignment to an analogous tasks is not possible), the provision seems to have intended to reduce the scope of the principle of conservation of the previous compensation. In fact, it established that if the worker has less than 10-year experience in the category, he shall have the right to the compensation related to the new category, of which the worker will also follow the dynamics. On the other hand, in the event the workers' experience is longer than 10 years, the difference in compensation shall be maintained as an *ad-personam* pay-check, which could be partially reabsorbed in case of increases in salaries.



II. Sectoral collective bargaining

The companies participating in the National sectoral collective bargaining table applicable to all LPTs are ASSTRA and ANAV.

As mentioned, all the companies forming part of this study are affiliated to ASSTRA. This association groups all the companies providing urban transport, over 70% of companies providing extra-urban transportation, all local railways (not owned by Ferrovie dello Stato), as well as the lagoon and lake shipping companies. Overall the companies associated to ASSTRA have approx. 100,000 employees, a fleet of some 35,000 public means of transport and a turnover of over €5.5 billion. Among ASSTRA's responsibilities is that of drawing up the National collective labour agreement. ASSTRA is in turn affiliated to Confservizi, a confederation representing 8 sectoral national federations (in addition to AASTRA these are: Assofarm, Federambiente, Federcasa, Federculture, FederUtility, Fenasap and FIASO). It also represents 17 regional Associations for a total of over 1,600 local and regional public service providers (who are active both in "industrially important" sectors such as water, gas, electricity, environmental health and local transport, and in areas more directly pertaining to social works and personal services such as healthcare, pharmacies, culture, public housing (data as of 31.01.2003); it employs over 159,000 employees (excluding employees of associated health and hospital units and employees of cultural associations evaluated respectively at 530,000 and 5,400 units – data as of 2000) and has an overall turnover in excess of €18.74 billion (not including healthcare and culture).

Regarding regulations as provided for in the contracts, a provision contained in the National collective labour agreement of 2000 (of 27.11.2000, Art. 1) should be pointed out, which establishes corporate bodies to discuss issues "should changes occur in the organisation resulting in appreciable changes in the company structure, such as to greatly affect the quality and quantity of employment levels". In such cases, the agreement also establishes the start of discussions on a national level if the discussion carried out within the company does not lead to shared solutions within 30 days of its being initiated.



Under the same agreement, a new professional classification (structured in professional areas) was introduced to replace the previous one. Moreover, the social partners, aware of the innovative processes affecting the sector, have established the possibility (Art. 2, A (7) of the National agreement 27.11.2000) to create new professional profiles on a corporate level needed to fulfil corporate needs and that are not available in those profiles belonging to the personal classification established by the National collective labour agreement. Companies can therefore hire staff for new, temporary, professional profiles, at the same time delegating the matter to a national level, where, within five months, the final classification of these profiles must be identified.

The National agreement of 2000 (Annex A) introduced a different economic and legal status for the personnel in charge of "ancillary mobility services". Specifically, the Annex is applied to personnel in charge of ancillary mobility services classified according to the "new classification of personnel in charge of public transport and mobility" introduced in 2000⁷⁰. This personnel who, for instance, comprise the employees in charge of surveillance and custody of corporate offices, as well as manual labourers and/or cleaning staff, shall, as established by the social partners, be subject to the public transport workers' agreement with the exception of those institutions specifically disciplined under Annex A.

The introduction of this Annex opened up new room for human resources management, contributing to the decisions aimed at re-

⁷⁰ The agreement traditionally concerns the "generic ancillary worker" profile (e.g. workers in charge of surveillance and custody of company offices as well as manual labourers and/or cleaners). The novelty of the national collective labour agreement of 2000 is the job profiles related to mobility ancillary services, among which, for instance: mobility coordinator (workers who autonomously coordinate and/or supervise other workers' activity and take part in the control of products and services supplied by third parties); customer service assistant (with knowledge of at least one foreign language, as well as taking care of the coordination of lower categories of workers, supplying information on the services supplied by the company and selling and/or controlling travel and parking tickets); mobility qualified operator (workers operating autonomously under directives received, also carrying out inspection duties beside ancillary activities such as: carrying out the forced removal of vehicles, controlling travel tickets, etc.); mobility operator (workers who, within directives received, autonomously carry out duties of a technical-professional nature with limited complexity or requiring the knowledge of administrative and/or technical procedures, such as: parking and transport or integrated tickets sales, information to customers; not purely standard maintenance of parking meters and of parking devices in complex and highly automated structures).



evaluating outsourcing choices made previously (for instance in the case of ATM Milano, the canteen service).

Of note among the specific provisions of the Annex, is Article 15 which states: "The transfer or transformation in whatsoever form of a Company does not constitute the termination of the employment relation, and the Company's employees shall retain their rights with the new employer".

Lastly, mention should be made of the introduction of a 'social clause', under the agreement dated 14 December, 2004 (Art. 7 of the aforementioned agreement), where, essentially, enterprises and trade unions decided to apply to cases where one transport company takes over from another, even following an awarding through call for tender of LPT services, the discipline of the aforementioned Article 26 Annex A, Royal Decree No. 148/1931, which contributed to eliminating doubts regarding the dominance of the special law over the general law with regards to the corporate transfer (Art. 2112 Italian Civil Code). The social clause also established a range of specific protections for workers affected by the takeover, more specifically: maintaining the economic and legal status for the affected personnel and the class of employment as established by the National collective labour agreement; maintaining seniority of service status gained in the company of provenance; application of agreements in force in the company being taken over; the harmonisation of any differences in economic conditions through company-level bargaining.

3.a. Case studies: ACTV Venezia*

Company profile

Public transport in Venice has a long, historic tradition (a regular transport system with a fleet of 8 small steamboats was started back in 1881). Initially limited to the city itself, the service was then extended, first to include the areas of the lagoons which were outside the city, then to other lagoon areas, to nearby towns and then expanded to take in

* With thanks to Mario Bassini for his kind collaboration.



terrestrial transport lines (i.e. the trolley bus to Lido island). So it was that the Azienda del Consorzio Trasporti Veneziano (ACTV) was established in 1978.

From January 1, 2001 ACTV was transformed into a stock corporation in application of the provisions set down under Legislative Decree 422/97 (see paragraph 2.b) and to related Regional implementation law (Regional Law No. 25 of 1998). The capital stock was fixed in the old Italian currency Lire at 90,546,181,264 (equal to €46,763,200). The majority of the company capital is contributed by local public bodies pursuant to Article 22(3) (E) Law 142/90 and the capital shall be owned by the founding partners, for the entire life of the company, in a percentage not less than 51%.

Each year, ACTV S.p.A. carries some 180 million passengers with over 500,000 navigation hours and 31.5 million kilometres on roads. As of 31 December 2005, it employed 2,942 people.

The company therefore provides both road and water transport. It owns a naval fleet of some 152 mobile units to which must be added one hundred fixed floating stations (barges) which, over time, have been assigned to another company (see below). The bus fleet comprises some 600 vehicles, with the addition of some 60 new vehicles purchased in 2006. The company focused on renewing its fleet, paying particular attention to the environmental protection (for instance all new urban vehicles run on methane).

Outsourcing experiences

The company experienced several forms of outsourcing, among which two, that occurred over the last ten years, are worthy of note.

Setting up the VELA ticket-issuing company

The first outsourcing operation took place between 1999 and 2000, and concerned ticket-issuing and involved approximately 120 workers who were posted to a new company, VELA, totally owned by ACTV: in short, a sort of ACTV Business Management Division was set up, focused on commercial company activities.

This operation saw the definition of a series of agreements between the company and the industry trade unions (Filt-Cgil, Fit-Cisl and Uiltrasporti).



Under the first agreement dated 26.1.1999, the Company and the trade unions agreed on ACTV temporarily making 76 employees available to VELA. The agreement established that: the personnel would have been selected on a voluntary basis; the social security, compensation and legal conditions in force would be preserved for the affected personnel; furthermore, the affected workers would have the possibility to renounce their new position at VELA and return to ACTV within 6 months from the start of the posting period – a deadline that was later changed to the advantage of the workers, by a subsequent agreement that set the date at 30/6/2000. Lastly, the agreement established the implementation of a joint Committee with the role of intervening in case of disputes regarding: the selection of workers to be posted to the new company; workers requesting to return to ACTV; relocation of ticket office personnel made redundant on the basis of the staff needs of the newly formed company.

Under yet another agreement drawn up slightly later (signed on 19/3/1999), the experiment, which got underway with the first agreement and which was limited to only two ticket offices, was enlarged to cover all ACTV ticket offices. The selection of workers on a voluntary basis was confirmed and the deadline for renouncing the posting to VELA as has been stated, was extended to 30/6/2000.

Lastly, an agreement signed on 11/9/2000 stabilised the situation thereby ending the experimental period. This agreement was also signed by VELA. The agreement underlines the guarantees regarding social security, compensation and legal conditions already being enjoyed by the workers involved. It also promotes a very close relationship between ACTV and VELA in the management of the human resources involved. In fact, according to the agreement "ACTV retains responsibility over the administrative management (establishment of compensation, social security and taxes) and the disciplinary activities pursuant to Royal Decree 148/1931, on the basis of the indications and reports drawn up by VELA". Furthermore, in guaranteeing the compensation, social security and legal conditions in force, the agreement specifies that such a right also refers to: the application of the public transport workers' National Collective Labour Agreement and related integrative agreements but with "the exception



of performance-related bonuses which would be established upon agreement between Vela S.p.A. and ACTV"; "professional development in ACTV"; canteen service; "participation in internal human resources recruitment"; and the "relocation of specific cases of unsuitable workers, upon agreement with Vela".

The new company also hired new personnel under the public utilities National collective labour agreement (Ausitra, now Fise).

Setting up the PMV (Patrimonio Mobilità Venezia) company for network management

A few years after the setting up of VELA, another operation took place: a new company was established named PMV S.p.A. (Società del Patrimonio per la Mobilità Veneziana), in charge of managing the "network", that is the structure supporting the supply of the transport service.

Therefore the operation consisted in setting up a totally autonomous company owned by the Venice Municipality, and external to the ACTV Group to which ACTV transferred the network: landing stages, barges, quays for navigation, bus shelters, sign posts and bus stops for road transport, company premises and lastly, the new tramline, the building of which was already underway and was continued by PMV.

In this case, unlike the VELA operation, the decision wasn't made autonomously by the company but by legislators who established (Art. 35, par. 9, Law. 448/2001, Budget Law 2002: see above paragraph 2.b) that local authorities holding a majority of the capital stock of companies managing local public services and who were also owners of the networks, should (within one year) transfer the networks by handing ownership over to a stock corporation of which the same local authorities were the majority holders. The same law also obligated the owning companies to make the networks, installations and other patrimonial assets available to the entities in charge of the management of the service.

As regards trade union relations, this operation was executed by ACTV in adherence to the information obligations as provided for by law on the subject of sales of company divisions (Law No. 428/1990: see above,



paragraph 2.a), formalised in the minutes of a meeting of 19/11/2003 (signed by the following trade unions: FILT, FIT, UILT and UGL). In these minutes ACTV expressly pointed out that: the new company would have applied the public transport workers' National collective labour agreement; "as regards the economic, legal and social status of the workers affected by the unbundling, as well as any dynamics of the same, the workers shall not be subjected to any changes in relation to their situation as of the date of these minutes and will preserve their individual statuses".

The operation affected 10 employees and the capital of the new entity was entirely owned by the Municipality of Venice.

Other outsourcing experiences

Besides the two operations described above, the company was involved in other cases of outsourcing.

Specifically, part of the maintenance of the naval fleet has been assigned to external companies, over 50%. Currently though, this percentage is constantly decreasing, and not only nor so much due to the drive by the trade unions, but because industrial activities are disappearing from Venice, therefore leaving fewer feasible options.

Similar cases regard vehicle maintenance covering such areas as bodywork, tyres and refuelling.

Cases of subcontracting of services should also be mentioned: some of the road lines and sea routes are now traditionally assigned to third parties, as a consequence of regional legislation which makes it obligatory to assign at least 5% of the service to third parties. Something which the trade unions, strongly oppose.

Corporate management evaluations

With reference to both mentioned operations (Vela and PMV), the initial reaction of the trade unions was extremely negative: notwithstanding company assurances that the existing conditions for the affected workers would be preserved, and regardless of the fact that later agreements were made, trade unions have always emphasised the potential risks and the negative aspects of the transactions.



The reason behind the trade unions' pessimistic reaction should be looked for in a number of reasons. First among which, the fact that 8 years after their transfer the so-called "posted staff" working in VELA were still complaining about the choice that detached them from "their parent", ACTV, which is now, and has always been considered to be more generous in the treatment of its employees.

The laws in force are viewed positively: they constitute a valid support because they merely impose deadlines, but do not hamper any decisions. In other words where there is a strong political will, the operation is carried out, even against the objections of the trade unions.

Overall, corporate managers believe that there has been a worsening in trade union relations over the last few years: supposedly, there has been an intensification in bargaining attitudes, even on issues that should not require negotiation, often to the point of turning into real forms of boycott. This is linked to the more general situation of the sector which, purportedly, suffers from an excessive presence of social and political parties, which leads to saying that it would be an important step forward if the sector could pass from concertation to consultation.

In November 2004, the definition of a protocol on industrial relations was reached, ratifying specific obligations in terms of information and trade union participation in corporate positions (there are no specific provisions on outsourcing).

With regards to the more managerial aspects, the evaluation is somewhat negative. Following the setting up of the two companies (VELA and PMV), activities have been partly duplicated, possibly due to inadequate coordination. In other words, as is confirmed by the fact that 9 years later the posting of the ACTV workers persists (with the consequent application of the public transport workers National collective labour agreement), there is a problem: the operation that led up to the establishment of VELA has become halted midway. The expected potential offered by the management of a group was not exploited. In point of fact, VELA only makes use of ACTV for certain administrative tasks such as payrolls. For everything else, the new company operates in total autonomy, even though ACTV owns the vast majority of VELA's shares (the



few not owned by ACTV are in the hands of the Venice Municipality); for the time being, no entry of private entities in the stock capital is expected. In short, currently there is a separation of tasks that is rather irrational and ineffective. Furthermore, some sales operations are still managed by ACTV whilst some reporting operations are still assigned to VELA. Reorganising the relationships between the two companies in a more coherent and rational manner regarding staff functions, and providing a better structuring of productive functions is the goal that is being pursued.

In the case of PMV, the new structure is not able to accomplish all that it should and, what is more, ACTV has reverted to carrying out tasks on its own, such as, for example, the management of the landing stages.

Even from an economic point of view, there is no significant reduction in costs, which remained somewhat stationary.

All this obviously indicates some failures in the operation, and reinforces the opposition by the trade unions.

Lastly, for the other mentioned cases of outsourcing, they were operations mainly based on cost parameters. On the other hand, if we consider that the cost of personnel accounts for over 60% of ACTV's turnover, it is fairly clear that many external entities are able to be more efficient. Nevertheless, one should always be very careful in the evaluation of the quality of services supplied by such entities. The trade unions firmly oppose even these cases of outsourcing, which would be even more distasteful, since the workers at the external company would be exploited though working side by side with those from ACTV.

3.b. Case studies: ANM (Azienda Napoletana Mobilità s.p.a.) Naples*

Company profile

The company's origins date back to 1875, with the building of a tram line by a Belgian firm. In 1918 the Naples Municipality took over the direct management of urban tramlines and, in 1927, of the extra-urban service as well. In the following years, the Azienda Tranviaria del Comune di

* With thanks to Renato Muratore, Sabato Carotenuto and Busco.



Napoli (A.T.C.N.) incorporated suburban lines of the Northern and Vesuvian Municipalities.

In more recent times, in 1995, it transformed into a Municipalised company (pursuant to Art. 22, Law 142 of 1990) and then on 30/3/2001, the transformation into a stock corporation under the name of Azienda Napoletana Mobilità SpA (A.N.M.) took place.

The company has some 3,000 employees, transports approximately 175 million passengers (2008 estimate) and in addition to the city it serves another 19 municipalities in the surrounding area for a total of some 600 km (414 km of urban network and 152 extra-urban networks) and 4 million runs. The catchment area covers around 440 sq km and is inhabited by some 2 million people. The fleet comprises over 1,000 vehicles of various types. A.N.M. also manages 5 interchange parking lots strategically located in terms of city accessibility, and some public lifts.

Outsourcing experience and evaluation of company management

At the heart of the discussion a few general considerations regarding the LPT sector are pertinent. Ten years after the Burlando Decree came into force which gave the go ahead to the privatisation of the sector, some confusion still remains. The doubts mainly concern the distinction of competences between the public and private domain in which the latter should be clearly characterised by an economically effective management and therefore professionally executed.

Before privatisation, the political institutions had ownership. However, the top positions in the municipalised companies were filled by people having technical knowledge specifically related to the company's transport activities. On this point, privatisation seems – at least in certain cases – to have produced an aberrant effect because although the intention was completely different, it enabled the political parties to wield even greater influence, even over those areas that should have been reserved for technically competent operators, with repercussions that were even felt by the sector associations and representatives.

The difficulty in outlining a clear boundary among the spheres is also to be found in trade union relations where there is by now a certain



confusion, if not an exchange of roles, between trade unions wanting to interfere in entrepreneurial choices and the highest level of companies who find themselves safeguarding the workers' interests.

The discussion on the need to investigate the true effects of "privatisation" also reflects on the issue of outsourcing. In fact, it seems justified to question the true economic effectiveness of outsourcing policies: one has but to think that a leading company in the sector (not only on a national level) such as ATM of Milan used outsourcing very little, opting rather for the development of significant "economies of scale" internal to the company. In short, one should avoid adopting fashionable ideas without their being supported by scientific assessment and best economics.

At any rate, some events concerning ANM outsourcing can be referred to broadly.

The first reference is to the **ticket-issuing activity** and ticket management. In 1993, with the urban transport integration, the "Napoli Pass" consortium was set up, under which the involved transport companies (all those on the Naples territory) were to jointly manage rates policy, ticket sale and distribution, as well as control activities.

The economies of scale that would ensue from this project should have brought savings. Unfortunately, the consortium was later set up as an autonomous company with all the ensuing consequences of Management Boards and problems related to the divisions between political and private management (driven by technical knowledge) which we have already discussed.

In any event, the territorial scope of the ticket-issuing management consortium was soon enlarged (yet again due to input from political parties), first to the Naples metropolitan and provincial area and later to the whole region through the "Unico Campania" project. Undoubtedly it was an operation which enjoyed positive political results. Not so positive though in terms of company management, given that, with the same public contributions, the cost of the rate integration and therefore, savings for the end users, was felt on the company's accounts.

There were also practical problems. The main one being: how to break



down the incomes among all the companies belonging to the consortium? Notwithstanding the introduction of an extremely sophisticated system of ticket-dating machines (each worth a few thousand euro) on the transport vehicles, the distribution of the incomes has, for some years, been the source of numerous conflicts and further costs: sensor tools, external consultancy services and censuses were needed in order to collect further data in addition to those being supplied by the already purchased equipment.

As for the personnel, the consortium employs workers hired and classified under the National collective labour agreement for traders and the workers posted from the participant companies. In particular, with the agreement dated 1/9/2003, the enterprises belonging to the consortium, the trade unions (FILT, FIT, UIL, UGL) and the Unico Campania consortium have set up the "Servizio Sperimentale di Controlleria Consortile" (Consortium Experimental Ticket-inspection Service). This Ticket-inspection Consortium would, within four months, have flanked the controller service of each transport company belonging to the consortium. With regard to personnel, the agreement established that it would have been chosen on a voluntary basis among the agents belonging to the administrative police force belonging to each company. The affected personnel would have been transferred to the consortium and "from a contractual standpoint" would have maintained "its dependency on the original company" while from an organisational and functional standpoint "it would have been dependent on the consortium". With regards to the economic side, the agreement established the keeping of the compensation and the economic levels and conditions of the company of origin. Moreover, a specific consortium lump-sum bonus replacing the corporate daily allowance was introduced.

Another outsourcing experience concerned the **cleaning service**, which traditionally represented the place where to relocate transport workers who, over time, had become unsuitable (for example from physical deterioration resulting from driving buses). At a certain point it was decided to outsource the cleaning services. This undoubtedly allowed for a qualitatively improved service, and above all, it made it



possible to conclude an innovative agreement with the trade unions on the relocation of unsuitable personnel (the agreement dates back to 1999). It was established that the company could offer workers who had become unsuitable, an alternative position not only within the company but also elsewhere if a position was not available within the company: in case of refusal, the worker could be legitimately dismissed. This agreement rapidly cut down on the number of false 'unsuitable workers' although there were also cases of falsely suitable workers – that is workers who would hide the deterioration of their health to avoid being relocated to companies other than the transport company.

In a broader sense, we can refer to outsourcing also when it comes to **purchasing transport vehicles**, i.e. bus procurement. For a year the Campania Region centralised the procurement of buses for all the transport companies by setting up the Voltumo Consortium, which in turn rents them out (maintenance still falls to the manufacturer who must guarantee their good working order). The basic idea is to generate a constant cash flow for the purchase of buses. There are, though, a series of drawbacks: less customisation for the vehicles according to the specific needs of the transport company, if not the outright purchasing of vehicles other than those needed; reduction of the patrimonial items in the financial statements of the transport companies that were often already in crisis; political appointments to the Consortium's key positions.

In 2000 a major operation was undertaken with the **unbundling of the cable railways** transferred by ANM to MetroNapoli, the company running the underground service. The impetus came from the public partner (the municipality of Naples) and pursued a goal of involving the Ferrovie dello Stato in the management of MetroNapoli. For ANM this operation resulted in missing an opportunity to build synergies and economies of scale, and specifically with regards to human resources management, the company also missed a significant opportunity to relocate personnel who had become unsuitable. Moreover, the operation elicited considerable pressures from the workers in charge of the cable railways (who were affected by the transfer to MetroNapoli), who requested the application of the railway transport sector Collective agreement – which was more



favourable than that applied to road transport, endorsed by ANM. In any event, as of today, the operation seems not to have produced the anticipated economic benefits.

Also the management of some **above-ground parking lots** was assigned to a new company, Napoli Park, external to ANM. The parking spaces were few because at the time, the management of such structures did not offer a significant return, especially because the rates were quite low. Over time, Napoli Park broadened its scope of activities: for instance taking on the management of metered street parking spaces (the so-called blue-stripes- *[NdT as opposed to spaces delineated by white stripes which are free]*). The expansion of the activity conforms to the basic concept (shared by the trade unions), which was originally that of assigning the management of the ancillary services (i.e. in addition to parking, the flow of information to end users on the traffic situation, breakdown vans, blue stripes, etc) to the new company. Achieving this concept also requires close collaboration between ANM and the new company: let us consider for instance, the importance of collaborating with ANM in deciding where to place the blue stripes in such a way as to ensure that the flow of public transport vehicles is disrupted as little as possible by users availing themselves of these parking spaces.

Lastly, a brief mention of the service of **vehicular movement** in depots. Traditionally, this service was entrusted to some 140 drivers employed by the company. Currently, it is handled by 70 workers employed by an external company with obvious savings in resources. On the other hand, even other activities (among which for instance, fuel management) not pertaining to the service supply activity and therefore not directly tied to the chain value, have been outsourced. There is still an area which could be dealt with – that of maintenance: the repair of breakdowns (i.e. non-scheduled maintenance required after a breakdown) accounts for 80% of maintenance carried out, with scheduled maintenance accounting for only 20%. This kind of organisation implies a significant use of internal corporate resources which could be otherwise employed were it decided to make use of external companies.



3.c. Case studies: APM (Azienda Perugina della Mobilità) Perugia*

Company profile

Azienda Perugina della Mobilità (APM S.p.A) was set up in 1996 from the merging of Auto Servizi Perugia ASP S.p.A. and ATAM, Azienda Trasporti Autofilotranviari Municipalizzata di Perugia. APM is the most important urban and extra-urban transport organisation in the Umbria Region. Since 1997, the company has also been in charge of navigation on the Trasimeno lake (8 motor vessels covering some 270,000 km p.a., and over 330,000 passengers transported in 2004). It also manages the fixed installations, escalators and elevators connecting Perugia to the main parking lots close to the historical centre (in 2004 the automated pedestrian walkways and the elevators transported 11.5 million people in over 30,000 hours of service).

The Authorities owning APM are the Province of Perugia and the Municipality of Perugia. APM employs 549 workers. Its fleet consists of 342 buses. From April 2003, APM Esercizi S.p.A. is the APM S.p.A group company directly in charge of managing the local public transport service in most of the Province of Perugia.

Perugia's urban service comprises 19 primary lines, 11 secondary lines, 19 special lines and 3 lines reserved for the disabled with a total length of 936.5 km and a total annual run of 6,900,000 km. In 2004, some 12,370,000 passengers were transported. Perugia's urban service is flanked by those of Assisi, Città di Castello, Gualdo Tadino, Gubbio and Todi, with a yearly run of 1,140,000 km. The extra-urban service in 2004 had a total run of 5 million km covering the entire area of grid No. 1, comprising the entire province of Perugia (except the Spoleto-Norcia area) covering a surface of 4,133 km. The APM buses reach over 50 towns and 100 smaller centres. In 2004 approximately 5,300,000 passengers were transported on the extra-urban network.

APM is also active in bus rental and agency services through a directly owned company.

* With thanks to Giuseppe Fermani and Stefano Lollini for their kind collaboration.



Outsourcing experiences and evaluation of company management

APM is the result of the merging in 1996 of Auto Servizi Perugia ASP S.p.A. (Perugia Province extra-urban transport and urban transport of Città di Castello, Todi, Gualdo Tadino, Gubbio and Assisi) and ATAM, Azienda Trasporti Autofilotranviari Municipalizzata, in Perugia. Since 1997 APM has also been in charge of the navigation service on the Trasimeno lake.

It is the most important transport company in Umbria. What is more, shortly a unique regional transport company is expected to be set up.

APM is active in many innovative projects among which the European project Civitas, and that of methane/diesel retrofitting.

Even the *minimetro*, which has recently become operative, is a highly innovative concept based on the technology of ski-lift installations. Among other things, the building of the *minimetro* involved revising the urban mobility plan with certain inevitable upheaval in the service to integrate the new transport installation in an integrated network with the Ferrovie dello Stato and FCU – a regional transport company.

On a general level, relations with the trade unions are standard with occasional conflicts which the company tries to face adopting a conciliatory attitude. In view of and within the modification of Perugia's mobility urban plan, linked to the building of the *minimetro*, a specific agreement was reached beforehand with the trade unions (more or less unspoken but in fact, fully honoured by both parties). The agreement established a freeze on turn-over for the two years prior to the coming into effect of the new plan, and the hiring of personnel under fixed-term contracts in preparation of the reduction of some 600,000 km of the runs following the start of the *minimetro* service.

This has allowed the new transport system to be activated without having to cut down on personnel.

For the *minimetro*, the company's action plan opted for assigning maintenance duties to the manufacturer.

On a more general level, the company is engaged in trying to free internal resources where deemed useful and economically viable, through a broader involvement of external companies. The above within this scope of constructive dialogue with the trade unions with whom the



company has always endeavoured not to clash or sever ties whilst preserving its corporate right to make its strategic decisions wholly autonomously.

There are numerous examples of this practice. As regards tyres, a contract was signed with an external company which: 1) is the sole proprietor of the tyres; 2) is wholly responsible for the maintenance of said tyres; 3) shares liability with APM for any damages the tyres might eventually cause. The tender was carried out in 2001 and fixed conditions were established which allowed significant savings to be obtained, because with the same level of expenditure, it was possible to save work equivalent to 1.5 human resources. Initially the trade unions opposed the entry of external enterprises into the company.

Another example regards the minimetro: all maintenance of the line is carried out by the manufacturer (Leitner), while accessories maintenance (e.g. the passengers entry turnstiles), was assigned to a firm through tender. Therefore, APM's personnel only manages the installation. This is APM internal personnel (20 people) who have been specifically trained to carry out the new functions (it should be noted that the company already had the know-how needed for the use of the installation due to the fact that in the '90s the complex system of escalators and elevators managed by the company connecting to the higher part of the town, became operational).

Still from this viewpoint favouring the involvement of external enterprises with consequent savings in resources for the company, it should be said that the company always applies full-risk, full-service, etc. insurance policies. For instance: the last two calls for tender for the purchase of inter-urban buses (approx. 40 vehicles) imposed on the contractor to offer a seven-year, full service warranty; the tender for building the escalators and elevators included a four-year, full-service, all-risk warranty.

Lastly, though this is the most important point as far as outsourcing is concerned, it should be considered that APM is a holding of two operating companies: APM Servizi e APM Esercizi. The latter deals in LPT, elevators, lake navigation (on lake Trasimeno) and the minimetro including their maintenance (with the exception of the minimetro as



mentioned above).

APM Servizi manages the drivers, the operators and generic workers for the less economically important services (fringe services) including cleaning and refuelling for 2,300,000 km p.a. of the 12.5 in total. APM Servizi's timetable structure offers the company 54 more minutes than that of APM Esercizi.

The setting up of APM Servizi dates back to 1999 and the operation was carried out with the approval of the trade unions. The founding of the company gave rise to many problems in terms of operations and management (one has only to think of the fact that the two companies operate out of the same location which prompted many reports to the Labour Inspectorate, notwithstanding which, the operation was concluded with no damages and with full recognition of the legitimacy of the procedures adopted by the company).

In April 2008, an agreement was reached on the recruitment and hiring of human resources which will be jointly carried out by the two operational companies (basically, to fulfil its personnel requirements, APM Esercizi will first have to ascertain whether any personnel is available from APM Servizi). Systematically, the service operators of APM Esercizi are hired from APM Servizi personnel.

3.d. Case studies: ATM (Azienda Trasporti Milanese S.p.A.) Milano*

Company profile

Established in 1931 (though the first LPT experience in Milan began in the 1840s), ATM today manages the LPT service in Milan and the hinterlands through four types of transport: underground, buses, trams and trolleybuses. It also manages many other activities among which, for example, parking, rest areas, car-sharing, the Como-Brunate cable railway and the Copenhagen underground. As for the number of transport activities, overall the company vehicles cover about 60 million km p.a., use around 32 million litres of diesel fuel, 220,000 kg of lubricant oil

*With thanks to Alessandro Mio and Elio Mairani for their kind collaboration.



and replace 5,500 tyres. In 2005, the company's income exceeded €58 million.

Outsourcing experiences

During the last few years, ATM outsourced some service activities, among which catering and surveillance, and has concluded the outsourcing process of its cleaning services. In some cases there has been a total transfer of the services, as is the case of catering whilst in others, for instance surveillance, a "mixed" situation was created where external entities integrate or complete the services directly supplied through ATM's employees.

Canteen service

The canteen service was totally outsourced through the sale of a company division pursuant to Article 2112 Italian Civil Code, to specialised companies that also manage the kitchens and canteens, carrying out the necessary restructuring and making them compliant with regulations.

By means of this procedure, 50 ATM workers were hired by two leading companies in the industry that won the tender. The call for tender, which was also in line with the provisions established under the tourism and public enterprises National collective labour agreement which ATM applied to the canteen workers, specifically provides for: the obligation of the service provider to hire ATM canteen personnel pursuant to Art. 19 Legislative Decree 80/98⁷¹ and therefore with due regard to the rules regulating the sale of company divisions applicable to private enterprises; the obligation of the supplier to guarantee the employment, professionalism and compensation of the personnel transferred under its employment, for the entire duration of the contract; the obligation of the supplier to employ such personnel within the city or neighbouring areas.

Following the awarding of the contract, a specific agreement signed

71 This article replaced Article 34 of Legislative Decree No. 29 of February 3, 1993, with the following new text: "Art. 34 (Transfer of employees resulting from transfer of activity). 1. Special provisions remaining unchanged, in the case of activity transfer or conferral, carried out by public administrations, public authorities or their companies or structures, to other entities, public or private, to the personnel that is transferred under such entities, Art. 2112 of Italian civil code is applied, and the information and consultation procedures of which in Art. 47, paragraphs 1 to 4, of Law No. 428 of December 29, 1990 remain



on 31/3/1999 by ATM and Filcams, Fisascat and Uiltucs trade unions established that: all transfers of personnel to new work places could only take place within the city boundaries "unless otherwise agreed to directly between the worker and the company"; ATM would give lump sums (Lire 2.5 million) to the transferred workers who would also be entitled to free passes on all company transport; lastly ATM committed to "informing the contractor companies of the content" of the agreement.

It is worth noting, finally, that as stated in the introduction of the agreement minutes, the trade union requests were in fact far more weighty and consisted in: ATM retaining all canteen staff and applying the public transport workers' National collective labour agreement, whereas until then ATM had applied the tourism and public enterprises agreement; as an alternative, the employment of transferred personnel for the entire duration of the contract in former ATM canteens only, and in the event of an excess of staff for any objective reasons, a commitment by ATM to retain the affected personnel under the public transport workers labour agreement.

Custodianship services

Custodianship service went through step-by-step outsourcing based on an agreement with the Secretariats of the FILT, FIT and UILT local trade union organisations which allowed the use of outsourcing to be progressively increased. By so doing, the service was nearly totally outsourced by 2000.

Some innovations introduced by the National Collective Labour Agreement of 27/11/2000 brought about a re-think. The 2000 agreement entirely reformed the regulations of the professional classification and introduced a specific discipline for personnel in charge of public transport ancillary and auxiliary activities (e.g. parking). Based on the changes introduced in the national collective bargaining therefore, the company-level agreement dated 27/4/2001 established: a commitment by the parties to consider the prospect of ATM directly managing auxiliary or ancillary activities and the possible return of other activities to the

applicable".



company; conversely, the possibility of experimenting with shared processes of internal personnel mobility for the provision of some services (e.g. caretaker, surveillance, and vehicle movement) provided that the company did not have to bear costs higher than those incurred by outsourcing the same services.

The definition of a specific company-level agreement (dated 16/5/2001) was thus reached, under which the parties (the company and the Filt, Cisl and Uilt trade unions, supported by the unitary trade union representative body) decided to initiate a process of internal personnel mobility for providing the surveillance service of company entrances (or other comparable professional activities such as representation and accompaniment, parking assistance, control and prevention of damage and soiling of corporate properties etc.).

Based on this agreement, personnel would first have been selected from among those who had become unsuitable for other tasks and, for the entire duration of the experimentation, in addition to the professional qualifications and related compensation, they would have maintained the right to access all professional development opportunities established by national and company-level bargaining, as well as the right to the performance-related bonus. With the aim of containing costs, the personnel would have been subject to the "new" working schedule discipline introduced in the aforementioned regulation on mobility for ancillary services as per the agreement of 2000.

The accord also included the joint management of the conclusion of the experimental stage: the classification of the personnel at the end of the experimental stage and the stabilisation of their compensation.

The service was partly re-absorbed by the company and today, the caretaker and custodianship activities are supplied in two ways: partly directly, partly through specialised firms that are mainly in charge of night shifts.

Cleaning

Lastly it is worth recalling the evolution of the cleaning activities (although this service cannot correctly be defined as outsourced).

In the '80s, internal personnel (cleaners) were employed for the



execution of this service; mainly they were employees who had, over time, become unsuited to executing their tasks (e.g. personnel who, during periodical medical check-ups had been diagnosed as having health problems which made them incompatible with the execution of the tasks assigned to them), who were relocated by the company to different areas among which, that of cleaning (pursuant to special law under Royal Decree 148/1931: see paragraph 2.c).

Though safeguarding employment levels, given the contractual discipline then in force, ATM bore particularly high costs, especially because the personnel would maintain the legal and economic status pertaining to their higher job classification of origin for which they had been deemed unsuitable. There were also significant costs in terms of organisation, since the working shifts of the cleaning staff mostly coincided with those of the office working hours.

On the basis of a company-level agreement, cleaners were chosen to benefit from the early retirement scheme recognised by Article 4, Legislative Decree No. 205 of 1995 (converted into Law No. 11 of 1996), which allocated public resources (a part of which were borne by the requesting companies) to this purpose.

This is how the use of tendering procedures aimed at contracting the cleaning services to outside firms was made possible.

Corporate management evaluations

Overall, the canteen service outsourcing operation is positively evaluated in consideration of the cut in costs, the quality of the supplied service and the settlement (without particular difficulties) of the few individual protests which followed outsourcing.

According to the company management, the success of the operation could also be traced back to the positive discussions with the service sector trade unions (Filcams, Fisascat and Uiltucs: as anticipated the ATM canteen workers were subject to the tourism and public enterprises National collective labour agreement) which, unlike LPT trade unions, had already faced similar experiences and therefore did not adopt a pre-set, disruptive attitude.



Currently, service outsourcing is done mainly through a freeze on staff turnover in the affected sector so as to avoid needing to transfer personnel (for example, in the building sector, no hiring took place – instead progressive use was made of facility management contracts).

Notwithstanding which, the cost of labour is a thorny issue in the company's budget. The problem lies not so much in the application of the National collective labour agreement, but rather in the integrated benefits established over the years by company-level agreements. In this area, a climax was reached with the supplementary agreement of 1990. Subsequently, the need to contain labour costs at a more sustainable level in order to ensure economic compatibility, became inexorable.

Since 1995 a trend reversal was initiated through company-level agreements that established a twofold system based on less onerous conditions for newly hired personnel. The various National collective labour agreements that were signed over the years also followed suit, introducing (albeit late compared to others) less onerous types of agreements in this sector (e.g. work/training contracts).

From 2000 on, though, relations with the trade unions became more tense: the unions began to push for a raise in compensations for newly-hired personnel (for the first 18 months of work, a driver is entitled to lower compensation than other drivers). The company rejected the trade union requests, underlining the need to ensure economic sustainability and the fact that it was hiring new people, and that labour costs that were not in line with corporate policies and strategies would ultimately jeopardise the possibility of new hirings.

3.e. Case studies: GTT (Gruppo Torinese Trasporti s.p.a.) Torino*

Company profile

GTT, Gruppo Torinese Trasporti, a stock corporation owned by the Turin Municipality was established from the merging of ATM (Azienda Torinese Mobilità) and SATTI (Società Torinese Trasporti Intercomunali) on January 1,

*With thanks to Giovanni Godino for his kind collaboration.



2003.

In 2005 the Group transported 640,000 passengers a day, employed 5,500 people of whom 2,900 were drivers, had an annual turnover of €403 million and an overall turnover of €770 million. The group manages the following networks: the Turin urban and suburban network (1 underground line, 8 tram lines, some 100 bus routes); extra-urban network (covering 220 municipalities, with 70 bus routes for 3,600 km); railways (covering 33 municipalities, 2 lines in concession for 80 km of owned lines). GTT also manages 50,000 car park spaces in central Turin as well as 19 toll car parks or car parks in buildings. It is also active in the building of line 1 of Turin's automatic underground and is the leader of the consortium for the manufacturing of hydrogen buses (4,500 km run). The company also manages some tourist services among which the Sassi-Superga rack-tramway, the Mole Antonelliana elevator, the Ristocolor tram restaurant, the Turismo Bus Torino line and the tourist navigation along the River Po.

The group management and the holding division are in charge of ensuring the consistency of company strategies. The holding is also in charge of managing joint services and oversees human and financial resources. To effectively fulfil the growing needs in urban and extra-urban mobility, GTT cooperates with other companies. Some of these are controlled companies, others are holding companies.

Outsourcing experiences and evaluation of company management

Outsourcing, which began some ten years ago, was initially purely and simply aimed at interventions on the value chain, that is to produce an increase in the capital return or yield, in its extreme version through financial operations, or in its standard form through the contraction of the corporate scope by doing away with non-core business activities. Moreover, over the last few years a clear trend reversal has become apparent, initiated by Mercedes.

The concept in the factories was that of emulating the airports: a main production process into which many ancillary processes flowed. In some cases, outsourcing reached the point of affecting segments that belonged to the core business. Obviously the other side of the coin is that



there are at least two risks: 1) outsourcing valuable company professionals who should be kept within the firm; 2) being held to ransom by a company who detains the core production process and can therefore thwart the entire production process even if it employs a negligible number of workers (from which stems the necessity, concretely put into practice, of signing "warranty agreements". Or it gave life to the creation of a sort of condominium within the company, whereby each floor corresponds to a new company, separate from the parent company employing workers who used to be colleagues and who now enjoy different legal and economic status.

In the beginning, malicious financial trickery was indeed used to increase the return on invested capital. In the mid-term though the underlying concept has always been "specialisation" both for the parent company and ultimately, also for the outsourced activity which should have been able to stand on its own in the market, be competitive and autonomous and therefore, be able to attract other business besides that guaranteed by the parent company (even if that meant facing an increase in costs in the new company's very early years, which would be compensated by an increase in efficiency after the first two or three years of operation). In short, when undertaken seriously, outsourcing aims to create true players in place of branches, which as long as they remain within the parent company, will always experience non-optimised, below-standard production processes. For the parent company, the drive was that of outsourcing whatever was not part of the core business.

The main risk is certainly that of outsourcing valuable parts of corporate know-how. More than ever, before deciding whether to outsource or not, a general analysis of the company organisation, which lucidly and knowingly decides whether to make or buy, must be undertaken.

It should also be said that, in this domain, reality often already presents some form of unofficial outsourcing, frequently the result of not very informed choices, on the basis of which, for instance, the company has 100 IT personnel working as manual labourers and then avails itself of 1000 external advisers as its thinking head. Such a situation would be unthinkable were it the result of a formalised choice.



This area has obvious cross-over points with that of in-house staff training.

Certainly the urban public transport trade unions are quite corporative.

Undoubtedly there are consequences to opening up the sector to the market, meaning that, above all, it should involve the adoption of a more corporate-like logic, the goal of which should be to increase competitiveness. Just think, hypothetically, of a merging of the Milan and Turin companies. Obviously, in such a scenario, the idea of outsourcing would make sense, because the competitive side of the company would acquire impact and, from being the ninth European player in its field, it could aspire to conquering a larger share of the market.

To put it another way, the objective is to guarantee the provision of the services as required under the service contract with the Public Administration rather than having a healthy budget. Indeed, the budget is even more of secondary importance, if we consider that the company is often asked to take on disadvantaged workers. Political power fosters a 'containment box' role with appreciable social interests that are however incompatible with corporate and profit logic.

It can then be understood how, in some cases, the company is asked to 'make', rather than 'buy'. A similar case was that of the maintenance service on the locomotives of underground trains.

Therefore: budget in the red, political pressures (though geared towards appreciable and shareable social objectives: the urban waste company initially had to hire convicts) and a certain degree of confusion and occasional mixture between make and buy.

It will be interesting to follow the outcome after the evolution of some sectors, such as IT.

In the case of GTT, other sectors, such as the vehicle removal service from no-parking areas, or the internal protocol service (there are no less than two offices employing 50 workers!) are clearly operating at a loss, notwithstanding which, the possibility of 'outsourcing' cannot even remotely be contemplated. Also because these areas that are ancillary to the core business are used to park disadvantaged workers.

In short, outsourcing cannot even be taken into consideration in these



contexts. At any rate, outsourcing must be based on lucid and explicit drivers. There also exists such a thing as hidden outsourcing, which is not declared, and is the result of ad-hoc changes in the corporate scope.

3.f. Case-studies: TRAMBUS s.p.a. Rome*

Company profile

Trambus is Rome's surface public transport stock corporation. It was established in December 2000 from the transformation of the municipalised company, ATAC.

Trambus has 8,662 employees (drivers, manual labourers, white-collar workers and managers), a turnover of over €534 million, a production which in 2007 reached 133 million km (over 900 million passengers) and is the largest surface public transport company in Italy. It serves 5,290 sq km of territory, and is the largest network in Italy: 2,580 kilometres covered by bus service with 238 lines served by 2,289 buses; plus 50 kilometres of tramways with 170 trams on 6 lines. 6,473 drivers among whom the number of female drivers assigned to all type of vehicles is on the rise.

To the Group also belong:

- Trambus Engineering S.r.l., a company specialised in the drafting and production of projects aimed at improving the technical and safety features of public and private means of transport used for passengers and goods;
- Trambus Electric S.r.l., wholly owned by Trambus S.p.A., whose mission is developing sustainable transport according to the Kyoto Protocol; Trambus Electric was also set up with the aim of developing and managing electrical, hybrid and hydrogen systems, as well as other systems with low environmental impact which represent the new challenge in attaining public transport service with 'zero emissions', especially in historical centres;
- Trambus Open S.p.A., the company in charge of managing tourist transport services through: 110open and Archeobus.

* With thanks to Luca Masciola and Saverio Lopes for their kind collaboration.



Outsourcing experiences and evaluation of company management

Trambus employs about 6,500 drivers, in charge of 2,200 vehicles, and 700 maintenance staff. The vehicles used by Trambus belong to ATAC, with the exception of the buses used for tourist city sightseeing with the Trambus Open service, which belong to Trambus.

Other entities are also active in the area served by Trambus. Some stretches are in fact managed by entities other than Trambus, which is also due to the fact that a regional law imposes the assignment of a set percentage of the service to private entities (e.g. the Tevere line). As well as Trambus Open, other private entities are active in the open-top tourist bus service, in whose regard, furthermore, the Municipality committed to reconsider the transport licenses to better clarify the characteristics of the assigned service.

Trambus counts at least two important outsourcing experiences related to the electric and engineering sectors. These experiences took place some years ago through the setting up of two autonomous companies.

The choice to outsource stemmed from the analysis of the specificity of the sectors and also from the evolution of regulations, increasingly focused on eco-compatibility. It was also believed that the internal divisions in charge of these two activities were very competitive, and could therefore be competitive players on the market.

Aside from these two outsourcing cases, Trambus obviously has many connections with external entities. The ticket-issuing service is a prime example of such connections (it being managed, under a specific contract, by ATAC), as well as building maintenance, cleaning service and bus operations in depots (which is supplied by enterprises that have lower labour costs since they employ specialised labourers, not drivers who hold driving licences for transporting passengers, as is the case for Trambus' employees).

The two activities that have been outsourced will be returned to the company again through an operation that also modifies Trambus' by-laws. Once the operation is concluded, the Electric division will also be allowed to provide assistance to fleet vehicles belonging to entities other than Trambus (which uses the largest fleet in Europe). As for engineering, it



was recognised that in reality the reference market was smaller than expected (the main client being the same Trambus).

Moreover, the decision to bring the two services that had been outsourced back in the company, stemmed not only from organisational considerations, but also from pressures from many sides. More to the point, it seems clear that the choices regarding the size of the company and the compacting – in greater or lesser measure – of activities on to those relative to the core business are inevitably influenced by the management's cultural approach to the issue, beyond the general economic context (and the current one does not seem to greatly favour decentralisation).

As for relations with trade unions, generally speaking, outsourcing operations are rarely looked on favourably by the workers' representatives. The basic concept is that a company outsources activities that do not form part of its core business: in order to better carry out its main activity, a company outsources its ancillary activities in an (inevitable) attempt to cut costs.

Therefore, outsourcing as practiced by particular enterprises, such as those in charge of LPT (that have always being characterised by political interferences and also by a "social" function), requires firstly, that management be aware of the economic motivations resulting from carefully considering the many options available, secondly that there be a strong political commitment behind the operations and, lastly, that management is able to clearly inform the trade unions about the reasons behind the operations. Clearly, all this is easier in companies where a progressive improvement in the level of relations with the trade unions has started: outsourcing is a sophisticated tool requiring a high level of quality and maturity in company industrial relations.

In any event, relations between trade unions and Trambus cannot be readily defined, since, over time, they have greatly fluctuated, at times being very collaborative, at others, highly confrontational.

Lastly, it must be said that the convenience for Trambus in opting for outsourcing solutions greatly diminished, especially following the signing of a company-level agreement on July 11, 2000 that introduced numerous



and key additions that converged and led to the normalisation of the labour costs borne by the company. Specifically, a twofold compensation system was introduced (with the definition of a customised wage package to the employees) as well as the hiring of approximately 600 horizontal part-time drivers. To which should be added a good turnover rate in workers and a recruitment policy aimed at favouring apprenticeships and part-time contracts.

4. Some conclusions

From a general point of view, the testimonies given by the sector operators highlight first of all the existence of a gap in the operating methods employed by the LPT and those of private companies. This would derive mainly from the traditional interference (greater or lesser depending on the case in point) by local public institutions, not always keen on respecting their "boundaries", in areas that should be reserved for technical management, notwithstanding the 'privatisation' of the former municipalised companies. More explicitly, some complain about the lingering of a logic and a cultural attitude that are typical of the public sector as traditionally defined, in terms of confusion between the role of politicians and that of managers.

The logic of the public sector would still imply (sometimes strongly) relations with trade unions and would be a noticeably sticky point when companies are called on to face the new conditions of the operators in a market that is increasingly exposed to competition. Nonetheless, there are signs of improvement in a situation characterised by company weakness, which, following the spread of generous collective treatments (national and mainly corporate), has determined a labour cost that is sometimes noticeably higher than that borne by private enterprises.

In this context, the outsourcing operations analysed, highlight a large range of differential factors, not only regarding the implementation tools and methods, but also the pursued end-goals. In other words, the following can be succinctly outlined: operations essentially imposed on companies either by legislators or by choices made by the political institutions of reference; operations that are merely efficient on an



economic front by making use of cuts in labour cost to bring it closer to market levels; operations inspired by controlled companies conquering markets segments.

Even in cases of mere economic efficiency, the case studies have highlighted that companies acknowledge the need for precautions and measures to protect the workers' rights to be added to those already established by laws and national bargaining. In the absolute majority of cases, operations have been handled while constantly seeking dialogue and agreement with trade unions, formalised in written agreements.



REPORT 3 – FRANCE

INTRODUCTION

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INTRODUCTION

The aim of this analysis is to evaluate the effects of outsourcing on industrial relations in the urban transport sector.

In France, urban transport is still mainly an *in-house* activity, both for private operators and for large public enterprises, such as RATP of Paris and RTM of Marseille. Outsourcing is not particularly developed, except in few activities pertaining mainly to the cleaning sector. In the large enterprises, such as RATP of Paris and RTM of Marseille, all other potentially outsourceable activities, such as maintenance, tickets sales, accounting, IT and so on, are always carried out within the company. Some attempts at outsourcing have resulted in technical mishaps and have been interrupted. Nonetheless, recently, a new phenomenon has been spreading among the main groups of operators: the setting-up of specialised affiliates to whom are entrusted, among other things, accounting and administrative centers. The features of this phenomenon are such as to place it in the realm of outsourcing.

Our analysis will examine the different types of shift from public to private, the alternation of private operators on an integrated network level and the related impact on industrial relations, as well as attempts to divide services based on the model offered by other European countries.

FIRST PART: GENERAL FRAMEWORK

CHAPTER ONE – GENERAL FRENCH URBAN TRANSPORT FRAMEWORK, EVOLUTION OF THE LEGAL STATUS OF ENTERPRISES

1. Historical background of urban transport in France

Balance between public and private

The first urban transports in France developed under private initiatives;



public institutions only entered the field later and only when private initiative proved to be unable to adjust to the new goals. Since its origin, therefore, a twofold system has been in place: public and private. Today, urban transport, with the exception of Paris and Marseille joined, more recently, by Toulouse, are essentially assigned to private operators.

Private initiative formed the basis for the creation and expansion of public urban transport in France although it soon showed its limitations – e.g. profitability problems – which led to companies going bankrupt, problems in adjusting to technological innovation or discharging the obligations related to a public service. Public institutions sometimes reached the point of replacing the private management, for instance during the period in the decline of railway and public transports, which occurred at the same time as an increase in the use of private means of transport. The 1983 *Loi d'Orientation des Transports Intérieurs* (Law Governing Domestic Transport – LOTI), clearly outlined the roles of public and private. With the exception of the large networks (Paris and Marseille), the public authority organises the management of the whole territory assigning it to a private or public-private operator. This model developed in combination with a renewed impetus in urban public transport overlapping a phase of technological innovation.

The birth of urban transport in France

The principles of modern urban public transport were laid down in Paris by the scientist and philosopher Blaise Pascal between 1662 and 1677 and form the functional basis for the first five regular lines. These were later abandoned to be picked up again in 1828 through a private initiative with the creation of the *Compagnie Générale des Omnibus* (General Omnibus Company – CGO) which managed ten lines of animal-driven vehicles (hyppomobiles). Their immediate success triggered a proliferation of private companies and the subsequent intervention by public institutions: Prefect Haussmann imposed a grouping within CGO, to which he granted the monopoly of the activity in 1856. In the other cities (Nantes, Bordeaux and Lyon in 1828), transport was organised through the setting up of private companies with the first tram-cars in Le Havre, Lille and Nancy in



1874. Nonetheless, management by private companies proved to be chaotic. Various companies went bankrupt or proved to be unresponsive to new technologies. Public institutions were forced into becoming progressively more involved.

In 1877, under German administration, a private company, the Compagnie des Transports de Strasbourg (Strasbourg Transport Company – CTS), was established. In 1912, the city of Strasbourg became the majority stakeholder in CTS which, to this day, remains a public-private company delegating the management of its network to a private operator.

Technological evolution

Following a phase of uncertainties, Paris inaugurated its electricity-driven underground in 1900, whilst the electric tram-cars ruled until the 1914-1918 world war. Nonetheless, the war disrupted the networks and destroyed parts of the infrastructures. The investments required to repair the damages caused by the war were heavy and resources were scarce. Tram-cars were on the decline and were initially replaced by trolleybuses, though buses would progressively gain the upper hand in the urban transport networks, especially at the end of WWII. The decline of rail transport was accompanied by reorganisation under the watchful eye of the public institutions: SNCF was established in 1937, RATP in 1948 and the Marseille Autonomous Transport Company in 1950, companies that benefited from the status of Public Companies.

The victory of buses over tram-cars and trolley-cars, which were blamed for hampering the flow of vehicular traffic, contributed in the Seventies to marking the decline of public transport, which witnessed a decline in its quality with buses stuck in traffic at a time when cities were greatly expanding their boundaries. Since 1969, in the Ile-de-France, the Réseau Express Régional (Regional Express Network – RER) represented the first solution to urban expansion.

A new impulse

The 1973 oil crisis pushed public institutions into an awareness of the need to reinvest, especially in underground systems (Marseille 1977 and



Lyon 1978), then in automatic light vehicles (VAL): Lille 1982, Toulouse 1993, Rennes 2002 and, lastly, in the development of tram-cars and transport systems based on preferential routes and lanes. Outside urban centres, peri-urban expansion gave rise to innovative projects following the example of the tram-train project (Aulnay sous Bois-Bondy 2006).

This unprecedented renewal in public transport was facilitated by the Law Governing Domestic Transport, which defined the roles of Organising Authorities and of operators, and which was followed by the setting up and concentration of groups of operators. This issue is dealt with in section 2.2.

2. THE LOTI LAW

Starting from 1982, a general national legal framework for urban transport was finalised. This was the Law Governing Domestic Transport. The grand principle of this law was to establish the division between operators and Organising Authorities (that is the local authorities).

1. Main provisions of the LOTI law

The Law Governing Domestic Transport (LOTI)⁷² is part of the global decentralisation⁷³ framework which was started in 1982. It applies to all forms of domestic transport, except transport by air and water.

It being an orientation law, LOTI establishes the general background, that is the source and the base from and on which to develop the transport sector. It establishes the basic principles and defines the procedures related to a new line of intervention to be adopted by the Organising Authorities (AO – Territorial and Local Authorities and Enterprises) in determining the transport policy falling under the umbrella of each authority. The law establishes the development of collective transport as a priority for citizens.

Such a law and the regulations that complete it aim to develop different and complementary ways of transport within the development of

⁷² Law December 30, 1982.

⁷³ The transfer of power and competencies from the central Government to local authorities: regional and provincial Councils (of the Département). Bodies elected through



European transport.

2. Guiding principles of the LOTI law

2.1 Right to transport

Just like the right to housing or healthcare, the right to transport makes practicing the basic freedom of movement concrete, with standard access conditions, quality and price for the users and cost for the community.

2.2 Global policy for transport development

Based on a joint action by the central Government and the Local Authorities, it involves the elaboration and implementation of a global policy concerning all transport methods, organising, without exclusivity, the conditions of the related complementarity and cooperation, bearing in mind actual economic costs (social, monetary and non-monetary, Art. 3). Art. 5 concerns the missions of the central Government and the Local Authorities:

- infrastructure (bus stations, bus shelters, etc.) realisation and management
- development of information on transport systems for users
- research, studies and statistics
- transport organisation
- offer definition
- network management
- transport services control and management

2.3 Executive competencies

Transport services can be activated through two executive methods:

- service supplied by the Government or by a local authority working within an industrial or commercial public service (autonomous transport enterprise);
- service supplied through a public or private company within a contract agreement.

The contract agreement regulates relations between the Organising

universal suffrage.



Authority and the service manager. It establishes:

- the nature of the agreement
- the technical specifications, fixing obligations of the service manager towards users and third parties, rates display, ticket office and so on.

2.4 Financing

Financing of regular passengers public transport is guaranteed by users, possibly by the public authorities⁷⁴, as well as by other public or private beneficiaries who, although they are not users, have a vested interest whether direct or indirect.

3. Urban transport provisions contained in the LOTI law

3.1 Urban transport organising authority (AOTU)

The Urban Transport Organising Authority is the municipality possessing all the competencies that are bestowed by law. In agreement with the other surrounding municipalities, the municipality can decide to enlarge the coverage of its own transport network.

3.2 *Plan de Déplacement Urbain* (Urban Mobility Plan – PDU)

The Urban Mobility Plan defines the general principles of organisation for transport, circulation, parking lots and rational usage of private transport vehicles. The programme, backed up by means of financing for the required infrastructures and management costs, undergoes what in France is called “public enquiry” (presentation of the plan to the public affected by the project). When the plan affects only one City, it is ratified by the City Council, or by the City Councils of the group of cities that fall within the so-called Urban transport perimeter (PTU), as well as by the local authority's deliberative body, upon resolution issued by the City Councils.

4. Evolutions

This provision which is still in force, was completed in 1993⁷⁵ by a text specifying the details of tendering for the management of urban public transport networks. In 1996, a new law⁷⁶ established the duty for

74 Government and Local Bodies.

75 Law January 29, 1993.

76 Law December 30, 1996 “Law on the rational use of air and energy”.



cities with over 100,000 citizens to implement the Urban Mobility Plan (PDU) aimed at reducing the use of cars within the PTU in favour of public transport and the use of bicycles and pedestrian pathways. In 2000, the PDU was transformed into a planning tool servicing the urban mobility policy⁷⁷.

5. The reactions of the Social partners to LOTI

The local representatives interviewed consider this law useful and necessary although some deem that it does not impose sufficient limits on network managers.

6. The four co-existing network management methods in France

a) **Direct management of urban public transport by the local authority**

This can take the form of an Autonomous Transport Company, as in Toulouse. Nonetheless, the definition of an Autonomous Transport Company does not apply to RATP or RTM. Their legal status is that of public industrial or commercial authority (EPIC in the French acronym) which allows them to be financially autonomous. RATP's legal status gives it full monopoly over transport in Paris and the neighbouring areas, making it possible therefore to avoid tendering procedures; nonetheless, RATP cannot directly take part in tenders called by another organising authority. Unlike RTM, whose personnel is covered by the urban transport collective agreement, RATP's personnel enjoys a specific status.

b) **Private-public company (SEM in the French acronym)**

These are stock corporations whose majority holding belongs to the Government or Local authorities. Use of SEMs guarantees to the shareholder and co-contracting local authority that the general interest will form part of the company goals, and allows for flexibility that characterises companies governed by private law. When the network is managed by a SEM, the management can be awarded through an invitation to tender, which does not prevent the SEM from invariably being almost always re-appointed. Grenoble is such a case.

⁷⁷ Law December 13, 2000, the so-called "Urban renewal and solidarity – SRU" law.



c) Public Service Delegation (DSP in the French acronym)

DSP is all “agreements through which a body governed by public law entrusts the management of the public service which falls under its responsibility to a public or private delegate whose compensation is essentially linked to the returns gained by the service”. Investments for materials and infrastructure fall onto the Organising Authority. DSP is awarded by tender generally every five years. Sometimes this translates into fierce competition among groups leading to changes in operators (e.g. Bordeaux has just seen the changeover from Veolia to Keolis). The types of agreements and compensation methods can vary, making industrial and commercial risks more (or less) onerous on operators or the Organising authorities.

d) Public-private partnership: concession

This is a very recent type of agreement which authorises a local authority to award a company the global mission for a public service, such as an entire urban transport network (including the financing of material and infrastructures). Risks are shared among all the partners (public institutions, banks, operators and others) during the negotiations that precede the signing of the agreement. Investments are borne by the private company. The first public-private partnership was signed at Reims in January 2008 with TRANSDEV for the building and management of a tram-car route. The agreement lasts 30 years. According to the trade unions the risk of this procedure is that it might entail an increase in costs for users.

It should therefore be noted that, for networks not managed directly or through a SEM, there are two more possibilities that regulate the sharing of responsibilities between municipalities and transport companies:

- public service delegation: in which case the public authority takes on the investments
- public-private partnership: in which case the company takes on the investments.

Distribution among the different management methods

Two of the very large networks are publicly managed, that is those that



in France are defined by the acronym EPIC (*Etablissement public à caractère industriel ou commercial* – Public Authority for Industry and Trade): RATP (42,000 employees) and RTM (3,000 employees) since 1986.

In 90% of cases, network management is awarded to private operators through tendering procedures with public service delegation. Nonetheless, there are also 23 SEMs.

In some cities, there have been shifts between the different management methods. For instance, in 2004 the Toulouse network, managed since 1984 by a SEM – SEMWVAT passed over to the public service delegation method assigned to Connex (Veolia Transport); later, in 2005, following a political battle within the organising authority, an autonomous transport company was set up and the appointed operator was rejected.

A project having some difficulties becoming concrete: unbundling

Unbundling recommended by the Philip report in December 2003 is the awarding not so much of the management of a whole network, but rather of network segments with the aim of reducing the Organising Authority's running costs by attracting the highest number of candidates. This system, which in some countries has already yielded excellent results (Scandinavia, the United Kingdom, Australia and Italy), aims to cut down on management costs – Stockholm saw a reduction of 20-25%. Notwithstanding which, unbundling presupposes that the Organising Authorities give proof of excellent skills in coordination, consulting and management, which is not necessarily always the case.

It is, moreover, a sensitive topic for trade unions which see the risk of questioning the role of public service for the less remunerative routes, while also pointing out an attempt to cut back on salaries and modify working conditions. The first attempt at unbundling of a new tram-car route in Marseille dates back to 2005 and resulted in a 45 day strike with such legal repercussions as to force the Organising Authority to backtrack.

To reduce management costs, the operators sometimes sub-contract segments of their own urban lines to interurban affiliates belonging to their group, which apply an interurban collective agreement that offers their



employees fewer guarantees. This practice is often found in medium-sized cities. It is, however, important to point out that it only applies to the running of new line tracts and to the new personnel hired for the purpose with new, less favourable statuses. Personnel already in service are never transferred: being transferred could only happen under the obligation of guaranteeing them their old status.

3. Current organisation

Currently there are 232 urban transport Organising Authorities, whilst, following the phase of concentrations that has unfolded over the last thirty years, three large groups of operators (the operators having been delegated with public service) share the French market (with the exception of Ile-de-France managed by RATP):

- Keolis, the result of a grouping of companies, established in 2001 and controlled by SNCF, has 32,000 employees of which 25,600 in France, and controls 40% of French urban transport market. It is an international group specialised in the transport of passengers.
- Veolia Transport, a wholly owned affiliate of Veolia Environnement (former Compagnie Générale des Eaux Vivendi) has 72,000 employees worldwide, of which over 30,000 in France (urban, interurban, rail and sea transport); it controls 16% of the French market. It is an international group specialised in the transport of passengers and goods.
- Transdev, affiliate of the Deposits and loans bank (C3D), associated to RATP in international tendering, has 42,000 employees of which 13,000 in France and covers 15% of the market.

These three operators generate a large portion of their turnover outside France, in the case of Connex (Veolia) – the first private group in the sector in the world – reaching 63%. This strong French presence can be explained by different factors: foreign competitors do not always have the know-how to manage integration of complex networks, nor the experience in procedures of public service delegation. Furthermore, the



French market offers minimum margins, 2-4%, whereas British groups, often listed on the stock exchange, reach up to 10% (see the failed attempt in 2000 by the British pension fund 3i to purchase Keolis).

Of these three private operators sharing 81% of the urban transport market (not including Ile-de-France) and 66% of the French territory, two are controlled by public capital (SNCF, C3D) whilst the third – Veolia – is a private group which started supplying services to local authorities working in the supply of water.

Currently some attempts at reconciling the three large operators are underway. Transdev has been placed on the market and could be purchased by Veolia, but Keolis has also shown its interest, as has a foreign group. Shortly, only two French large operators could remain.

Some foreign operators have won tendering contracts:

- a Spanish company in Perpignan (1998) and in Narbonne
- a Swiss company in Dôle.

Competition is the rule and the delegation of public service is subject to renewal at fixed intervals through tendering. Nonetheless, taking part in a tender procedure for the management of an unknown network is very complicated, beside being expensive, and there are many risks. Very often the only participant in the tender is the former contract winner. As proved by the Toulouse case, the alternation is all but simple.

Tendering procedures

Generally, the Organising Authorities call for a tender for the management of the network establishing the related technical specifications every five years. Often, the trade unions have had access to the technical specifications and have added social clauses. In case of a change in operators, all employees must be hired by the new operator under the same working and compensation conditions. This procedure is ensured by the collective agreement. The employer can reject the company-level agreements, as it is currently occurring in Lyon. In this case, the labour laws impose that such agreements be renegotiated. In actual fact, it is not at the time of the tenders that such rejection procedures are used: in the Lyon case, the procedure was used two years prior to the next



tender.

Urban transport in France represents 86,000 workers

To be precise, 42,000 workers from the province networks and 44,000 RATP workers.

90% of the network is managed by private operators; nonetheless:

- o over half the private operators are controlled by public companies (SNCF, Deposits and loans bank)
- o the 2 (or 3) networks managed through EPIC, employ over half of the sector's 86,000 workers.

Urban transports financing

Users finance 18-25% of management and investment costs; the contribution by employers is between 35 to 44%, local authorities and the Government 1-9%, and 7-18% is represented by other financing and loans. The sale of transport tickets only covers management costs – on average 34%, a percentage which, for the local authorities in 2004, represented a yearly contribution for the network operator equal to €77 per inhabitant of the area covered by the urban transport service.

4. Impact of European rules

The LOTI law is in force in most Provincial cities; it regulates competition among urban transport operators through tender. Organising Authorities therefore have to verify that the respective operation rules are in line with such regulation. This topic is more sensitive for Autonomous Companies, especially RATP, which, because of its status as a national company, cannot benefit from the "principle of despecialisation". The problem also exists for future lines which will be added to the existing network.

CHAPTER TWO – LEGAL FRAMEWORK AND STATUS OF SOCIAL RELATIONS

2.1 Urban transport sector legal framework



Article L122-12 of the Labour law specifies the conditions for the employees when a change in operators occurs. It calls for the transfer of employees to a new operator who becomes the new employer. Furthermore, the Transport Ministry has the responsibility of controlling compliance with the provisions of the collective agreement.

Methods of resolving disputes: an agreement signed in 2007 establishes that the collective agreement include a chapter on “*prevention of disputes and continuity of public service*”. It establishes two levels and different frames of intervention to improve social dialogue and prevent disputes:

- first level: professional sector within joint national committees
- second level: local, within enterprises and local bodies

The sector is considered an element of fundamental importance for the social policy of urban transport.

A joint observatory on collective bargaining and social dialogue has the specific task of ensuring control over social dialogue and sector disputes, as well as over negotiations within the companies working in the sector. Without wishing to limit the right to strike endorsed in the constitution and the laws that govern it, the sectoral social partners confirm that the use of strikes means nothing more than a mere acknowledgment that social dialogue has failed, thereby confirming the need to promote reinforced social dialogue to implement the appropriate settlements of the disputes, both on a sector and corporate level.

2.2 Status of social relations

Urban transport is a confrontational sector; its union membership rate is higher than the French average.

There are three trade unions:

- the first, CGT, represents 30-35% of workers (in the provinces), although it is overwhelmingly dominant in Paris, at RATP;
- the second, CFDT, represents 27% of workers and is mainly present in small and medium-sized urban centres;
- the third, FO, represents 16% of workers.



The trade union density in the urban transport sector is higher than the national average (especially among drivers), a fact that is mainly explained by the possibility of developing a noticeably strong position because of the strategic role played by transport in the economy. It is the aspect which, though never openly declared, has driven the promotion of unbundling processes.

2.3 Personnel classification and qualification

The collective agreement system of the urban transport sector includes:

- a National collective agreement (CCN) of urban transport that applies to all companies, except RATP;
- different network collective agreements that cover the urban area – as in the case of SEMITAG that covers Grenoble and its conurbation – integrating the national collective agreement;
- different specific collective company-level agreements for the three large groups: RATP, RTM, RTL.

RATP has a unique legal status, with a specific pension plan that was reformed in 2008 and became part of the general plan, although still enjoying unique conditions. All other companies, including those that are public, fall under the urban transport national collective agreement, whose compensation levels bear very little resemblance to those actually paid out in the networks.

National collective bargaining is carried out under the Ministry of Transport that calls and governs meetings.

The parties taking part in bargaining:

- for the trade unions – the transport trade union federations;
- for employers – UTP that gathers the sector companies (the three groups and the independent networks).

The issues that are subject to bargaining are salaries, working hours, professional training, professional categories, dispute prevention and pensions.

The salaries established by the sectoral National collective agreement affect a comparatively limited number of workers. The salaries that are negotiated at network/company level are higher, but, recently, some



company-level agreements have been rejected, as is the case of Lyon.

The operators have the duty to apply on a network level the salaries established in the collective agreement negotiated on a company level.

2.4 Dispute levels: the great social conflicts

The main disputes in the urban transport sector concern salaries, labour conditions, aggressions and pensions.

The 45-day strike against the unbundling of the new tram-car line which affected the RTM workers in 2005 was one of the major conflicts in these last years. The failure of the claims was transformed into a legal success because, due to a formal error, the Organising Authority abandoned the project of awarding the public service management to Veolia, back-tracking over its decision and assigning the management to the Marseille public operator – RTM. The integrity of the network was preserved – contrary to what happened in London or Rome – and in France no unbundling has yet taken place.

With the exception of this example, no serious conflicts regarding corporate organisation have occurred; notwithstanding which, the trade unions believe that the public or private-public management system is to be preferred over private management.

SECOND PART: CASE-STUDIES - Grenoble, Marseille, Toulouse, Bordeaux, Reims, Lyon, Paris

Grenoble: transition from private to public

Historical background on the legal structure of urban transports in GRENOBLE

1. Initial situation

In the second half of the Sixties, Grenoble's newly appointed City Council set up some intermunicipal panels of experts in urban planning and development⁷⁸ to address three urgent problems:

⁷⁸ Organised on a voluntary basis.



- establish relations of cooperation between the city centre⁷⁹ and the suburbs
- provide a solution, within a limited territory⁸⁰, to the rapid population growth in the city and adjoining towns⁸¹
- lastly, a truly strong political desire to control the urban evolution of the city centre strongly focused on urban solidarity. This last point concerns the issue of passenger transport methods within the city and between city and neighbouring areas.

At the time, cars were the main means of transport in the city. In Grenoble there was an old-fashioned private urban transport company, which was not very efficient and was increasingly hard-pushed to keep pace with the city's development. It was therefore a context that was in no way favourable to the development of urban public transports.

2. Implementation stages of the urban transports network

2.1 In 1973, the *Syndicat Mixte des Transports en Communs* (SMTC – the Joint Public Transport Syndicate) was established.

This is a local public body made up of representatives of municipalities belonging to the urban conurbation⁸² and the County Council⁸³. At the same time, the Grenoble municipality purchased the private urban transport company.

SMTC's mission was that of finalizing and organising transport throughout the territory of the urban conurbation surrounding Grenoble. It was chiefly financed by the local authorities which were a part of it, and the remainder was financed through the so-

79 The conurbation was made up of the town and some twenty municipalities belonging to the suburban area. Aside from the political differences, there was a strong rejection of the omnipotence of the town over the entire conurbation.

80 Surface 18 sq km, a plain enclosed by mountains where two rivers converge: the Isère and the Drac.

81 Of 60% in 30 years. In 1946 102,000 inhabitants, in 1975 166,000 inhabitants, whilst in the same period, the conurbation went from 170,000 to 445,000 inhabitants.

82 SIEPARG (Syndicat intercommunal d'Etudes de Programmation et d'Aménagement de la Région Grenobloise – intermunicipality trade union for programming and planning of the Grenoble Region), established under the initiative of intermunicipal expert pools set up since 1965. It encompasses 23 municipalities.

83 Political institution managing the Isère département.



called “transport payment”⁸⁴. In 1974, the network operator of which SMTC was the main holder, was set up.

2.2 In 1975, SEMITAG – a network management company – was founded.

On January 1, 1975, the managing entity set up in 1974 was transformed in *Société d’Economie Mixte des Transports de l’Agglomération Grenobloise* (SEMITAG – a private-public company managing transports in the urban Grenoble conurbation) under a concession agreement⁸⁵. The company mission was commercially managing the network on behalf of SMTC which ensured its financing. Subsequently, SEMITAG would have become associated to a private technical partner.

3. The position of the trade unions regarding the above-mentioned developments

These developments were favourably viewed by the trade unions.

3.1 The structured presence of trade unions within private companies

The employees salaries, which took their cue from those in private companies, were tied to the old *Voies Ferrées d’Intérêt Local* (VFIL⁸⁶ - Local interest railways) collective agreement, integrated by company-level agreements, especially with regards to the compensation level. Such agreements represented relevant strongholds in the eye of the workers. Questioning rights that had been acquired was the origin of the fierce opposition put forward by the trade unions present (CGT and CGT-FO) to the change in

84 Established by law July 11, 1973, such payment is due by companies with over ten employees within an urban transports perimeter exceeding 10,000 inhabitants. The percentage on salaries varies from 0.5% to 1.75% according to the Organising Authorities (OA).

85 Agreement in which the contractor commits to manage a public service taking on all risks against a compensation paid by users.

86 Coverage of the old secondary SNCF network.



the company's legal status.

3.2 Change in the company's legal status and re-affirmation of acquired rights

The change in the legal status started wide-reaching concertation between local authorities and trade unions organisations. The change was finally implemented maintaining the collective agreement and the rights which had already been established and were in place under previous company-level agreements.

3.3 Trade unions and the profound change in the Grenoble conurbation urban transport

Since its founding, SMTC clearly expressed its desire to offer a different public transport service from which the highest possible number of users could benefit (network enlargement) at the best conditions (evolution of transport methods). Such intentions were very clearly indicated in SEMITAG's technical specifications.

At the same time as the setting up of the operator, the personnel representatives were also established. Notwithstanding the development of intense concertation, a certain level of conflict remained, especially with regards to the possible directions future collective agreements could take⁸⁷; the goal was that of not impeding any company-level agreements. It was not until the Eighties that a new national collective agreement on transport arrived.

Trade unions were soon faced with new problems such as safety, with the move to having only a single worker on each bus, the introduction of new transport methods and the emergence of new qualifications and skills. Furthermore, starting from the Eighties, the percentage of women employed on buses started to grow. These

87 For instance, following decrees issued during the war, collective agreement established that public transports could be mobilised at any time. After all, at the end of the Seventies, there were still few very structured urban networks.



aspects forced trade unions to change their demands to account for the context which was that of a company in full evolution. This led to the restructuring of trade unions with the disappearance of CGT-FO and the creation of CFDT, which became the most representative trade union within the company. Such expression of the power relationship in this stage of the company's transformation, even with due regard for some conflicts which had remained opened, allowed the company to enjoy a phase of economic and social development⁸⁸.

4. The various evolutions

As established by the LOTI⁸⁹ law, SMTC becomes the transport Organising Authority for the Grenoble urban conurbation and has the following tasks:

- elaborate and implement transport policy for the Grenoble urban conurbation getting the investments under way (material infrastructures)
- define a rate policy and adjustment of the transport service.

Within it, SIEPARG is replaced by Métro (municipalities consortium) which sets up a PDU⁹⁰ enlarging the PTU⁹¹ to 26 municipalities serving 620,000 inhabitants. The concession contract with SEMITAG becomes a Public Service Delegation with an average life-span of six years renewable through tender. Collaboration with the various regional Organising Authorities in terms of network complementarity becomes operational.

Marseille: a failed attempt at unbundling

Marseille's political context is a very complicated one. For a long time a socialist city, Marseille passed to the Popular Movement Union (UMP) with the election of Jean-Claude Gaudin; following the 2008 elections,

⁸⁸ Innovative means of transport (trams), buses running on less polluting fuel, network expansion, bearing in mind social solidarity when hiring, effective personnel training systems: all this in the mid-Eighties.

⁸⁹ Domestic transport governing law, December 1982.

⁹⁰ Plan de Déplacement Urbain (Urban Mobility Plan – PDU).

⁹¹ Périmètre de Transports Urbains (Urban transport perimeter – PTU).



Marseille *Communauté urbaine* (the Organising Authority) came under a socialist presidency.

The urban transport management in Marseille is assured by a public operator – RTM – set up in 1950 as a public company. In 2005, Marseille decided to build a new tram-car route. The Regulation Authority MPM (Marseille Provence Métropole) attempted an unbundling operation of the route, consisting in assigning the management of the tram segment of the Marseille network to a private entity. A tender was therefore prepared for the delegation of the public service which ended with the selection of Veolia. The tram-car route was opened in 2007, but, after a legal dispute, this first attempt at unbundling ended with its return under the public domain. RTM, the Marseille autonomous transport company, took the management of the segment back in hand, to the full satisfaction of the company and the trade unions. At the time of the unbundling attempt, the trade unions had been staging a strike for 45 days.

Toulouse: back and forth, from a public service delegation to an autonomous company

Since 1984, the Toulouse network had been managed by SEMVAT – a private-public company. Nevertheless, in 2004, the abandonment of SEMVAT, to which was preferred the delegation of public service granted to Connex (Veolia Transport), gave rise to a political battle within the Organising Authority. In 2005, the appointed operator was rejected and an autonomous company was chosen instead. Connex, pre-selected in November 2003 at the end of a tender which saw the participation of Transdev, the competing SEM (the former tender winner), was rejected by the local administrators, notwithstanding the fact that it enjoyed the endorsement of the President of the private-public consortium.

Bordeaux: change in operators

The long-standing operator, Veolia Transport, which had built the tram-car route, was replaced by a new operator, Keolis, which won the call for tender issued in March 2009 by the Organising Authority, *Communauté*



Urbaine de Bordeaux, for the management of its three tram-car routes, with an agreement amounting to €750 million over five years. The personnel on duty are 1,600 public transport workers hired by Veolia who should be re-hired by Keolis without any modification to their category or compensation.

Reims: the first case of public-private partnership

Following the transition in management to Keolis in 1990, there was a new change in 2008: Transdev, the operator that won the tender contract, was appointed with building and managing the tramcars line, through a public-private partnership. The project was interrupted in 2008.

Lyon: the operator rejects the Collective agreement

In Lyon, the regulating authority SYTRAL comprises the urban community known as Grand Lyon – a collection of 57 municipalities – and is participated in by the County Council. The long-standing operator is Keolis which had tried several times in the past to outsource the mechanical maintenance of buses. These attempts ended with technical failures that resulted in an increase in cost for the company. During the last call for tender, Keolis was competing against Veolia. In order to be more competitive against its rival, which was initially cheaper, Keolis dropped its price by €150 million, setting up a company named *Kéolis Lyon*, for the management of the network and staff. The latter rejected the local agreements (collective agreement) a year ago, that is two years before the concession expired (that is the agreement signed with SYTRAL for the management of the network). According to the trade unions, the aim pursued by the operator was not to cut salaries, but rather to modify the labour organisation of workers. Currently, negotiations are underway with the trade unions.

RATP Paris

RATP, set up in 1948, is a public industrial or commercial service public body (EPIC). Such legal status grants the company the monopoly over



transport in Paris and the surrounding neighbourhood, which releases the company from having to take part in tenders, at least for the time being, given that, in the near future, the issue of applying the European regulation will arise again. RATP cannot directly take part in tenders called by Organising Authorities in other cities. Unlike RTM, whose personnel is covered by the urban transport collective agreement, RATP's personnel enjoys a specific status.

In Paris, outsourcing affects two types of service: cleaning – outsourced from the beginning and currently handled by Comatec – and engineering, transferred to a wholly owned affiliate of RATP. An attempt to outsource road signs was quickly stopped for technical reasons as a result of the noticeable delays it provoked.

Conclusions – recommendations

In the over twenty years that it has been in force, the LOTI law has enabled a progressive development of the competence level of Organising Authorities. It is evident that the Organising Authorities, pushed into exercising a role of controlling the operators' management, can today carry out this task with a considerable mastery of the management systems. Thus, in Lyon, the Organising Authority, SYTRAL employs some hundred people who monitor the activities of the operator. This makes the network trade unions believe that SYTRAL itself could be the operator, rather than Keolis.

This analysis proves how, in order to have an efficient public service delegation system, three key conditions must be in place:

1) the Organising Authorities must maintain and improve their technical know-how on networks and system.

2) Article 12 – Law of August 21, 2007 governing the minimum level of services establishes the obligation whereby in tender procedures environmental criteria, as well as social (labour conditions) criteria and the quality of the supplied service, must be adequately considered. The Organising Authority must define these criteria in the technical



specifications in order to avoid the risk of social cuts. All the same, the application decrees for the implementation of such criteria have not yet been published by the competent Ministry. For their part, the CGT and CFDT trade unions have worked out a detailed list of criteria and presented it to the Authorities. The social chapter can be summarised as follows:

- respect for collective agreements and classification of workers
- respect of labour regulations in the service production organisation scheme
- guaranteeing compulsory yearly negotiations on salaries
- commitment to re-hire workers in case of change in operator with extension of local agreements
- prohibition for the operator to sub-contract, with the exception of cases of force majeure; respect for identical social requirements for sub-contractors.

3) To best capture the essence of the social criteria that must be included in the technical specifications of tenders, the Organising Authorities should involve trade unions when drawing them up.



REPORT 4 – ROMANIA

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Definition of the national Romanian context and scope of the study

Public transport in Romania

In Romania, the transport of passengers and goods within an urban area, an urban conurbation, a zone or region, is subject to two complementary levels of regulation:

- the specific regulation regarding "**local public transport**" managed and governed by the Public Authorities with competence strictly limited to the administrative fringes of the municipalities or counties;



- regulation relative to "**individual transport companies**", primarily comprising people and private companies, which should cover other forms of transport.

Under the definition of Law 92/2007, local public transport includes public transport of people and goods. Even within the different categories of local public transport, this study will concentrate exclusively on the regular lines of transport services, which basically represents the 'public' transport.

Though transport as exercised by companies that have been classified above as 'individual transport companies' - along with 'local public' services different than those of the regular lines – increasingly interferes in a parasitical manner with the 'regular lines of public transport', our study essentially focuses on the latter since it is the only transport means directly controlled by local public authorities and, therefore, the only one entitled to receive public funding to ensure it is properly carried out.

It is therefore in this context that we will firstly try to define up to what point the concept of outsourcing is or could be institutionally/legally and financially relevant and thereby establish up to what point a more 'defined' explanation of the concept – a sort of inventory and description of outsourcing models – can provide support for the Public Authorities, the local public transport players and, implicitly, the users, to make the service more suited to the needs and obligations assumed and, obviously, to make it more efficient.

Institutional/legislative context

Romanian legislation regarding the so-called SGI (*Services of General Interest*), SGEI (*Services of General Economic Interest*) and, eventually, those services defined as 'public', transposes and respects the key lines and principles defined by European directives and the jurisprudence of the Court of Justice of the European Communities regarding the responsibility of the public authorities, transparency and non-discrimination towards service providers, balancing the costs of the service, rules of



public procurement and so on.

That being said, **some imprecision, confusion and oversights, if not outright contradictions, remain in texts** and in their harmonisation, even if, basically, the public authorities and transport service operators have at their disposal **a legal framework – even though it could still be improved – sufficiently coherent** to manage a proper service befitting local conditions.

In this context, the many malfunctions and negligible detectable success should, in the first place, be placed in relation to the **managerial ability or inability and political competence and intelligence** of the local administrations and, secondly, to **the precarious economic and financial conditions** of small and medium-sized towns or, in the case of large cities, to the greater resources at their disposal.

The legislative corpus

The legislative corpus* applicable to public transport affects various levels. The most significant documents are:

Law 215/2001 on local public administration (“territorial entities code”)

Law 31/1990 on commercial companies

Law 51/2006 known as Community Services of Public Utility (please note the improper use of the term *community* instead of *communal* meaning a service which is under the responsibility of the local public authorities, the “municipality”)

Law 92/2007 known as Local Public Transport Services

Decree **OUG 109/2005** or **Road Transport** modified and approved by **Law 102/2006**

Decree **OG 97/1999** or **Subsidised internal road services**

Decree **OUG 34/2006** or **Acquisitions/public calls for tenders**

Decree **OUG 195/2002, The Highway Code**

(OG – Government Decree)

(OUG – Urgent Government Decree)

* The laws are cited with the date when they were first adopted, but should be intended to include all the subsequent modifications and revisions.



To which should be added the interventions of the two regulating authorities/agencies:

ARR – The Romanian Road Agency

and

ANRSC – The National Public Services Regulating Authority.

The mission of these bodies consists mainly in proposing framework documents – regulations for operations, concession contract models, production indicator schemes and so on – as well as carrying out controls on the proper functioning of relations between the service partners and controlling that the legal and contractual requirements are being respected.

The following presentation of the national legal framework only takes into consideration elements that are relevant to **outsourcing operations**.

As laid out in Law 215/2001, local Public Authorities are responsible for the service and have the right to provide it directly as the operator or indirectly by delegating it to a third party operator (*concession contract*) (Art.38.2 g). The same Law allows the Public Authority to create an 'internal' public service (not being a legal entity) or to set up an 'autonomous company' or a company governed by private law, or to have a holding in a company governed by private law whose scope is the supply of a public service (Art. 15 / Art.19 / Art. 32.2.i) and j)). As a legal entity, the Public authority can have any type of contractual relations with third-party clients and suppliers being, therefore, able to **buy and sell** services, works and goods.

As laid down in Law 31/1990 (pertaining to commercial companies):

- any natural or legal entity [therefore including the local authorities] can join with other persons to create a commercial enterprise (Art.1);
- all economic operators (companies – autonomous firms) have the same rights and obligations regardless of the nature of their stock composition (public, mixed, private) including, therefore, the right to enter



into partnership with and merge, to sell or buy shares, sign contracts with third parties, supply and purchase goods, services and works and so on.

As established by Law 51/2006 (pertaining to public services) **local public transport** falls under the umbrella of “public utilities community services”, in Romanian: “*servicii comunitare de utilitati publice*”.

The term *utility (utilitati)* is a barbarism in Romanian. The mistake stems from the analogy with the word “utilities”.

The formula is doubly inappropriate in that:

- the term **community** is used incorrectly in place of the word “communal” which stands for that which falls under the competence of the municipal administration or municipality;
- the noun clause **public utilities** lends itself to being confused with the adjective clause public utility that is something which is of public use. With the term ‘utility’, the law obviously intended a specific type of service that makes use of a networked – or similar – public infrastructure.

In an attempt to transpose EU rules and concepts, Law 51/2006 includes such services under the category of SGI (Services of General Interest) an the sub-category of SGEI (Services of General **Economic** Interest). This context recalls the obligations of the local authorities to respect the principles of “**economy and efficiency**” (Art.1./2/i) and the principle according to which “**the user pays**” (Art.1./2/k).

The law defines the competent national regulators, in this case **A.R.R.** (Autoritatea Rutiera Româna), for *passenger transport* and local public transport, including the licenses. As things currently stand, inaccuracies and interference in defining **local public transport** and **passenger transport** lead to malfunctions that are often serious. These malfunctions essentially consist in the presence of ‘pirate’ carriers of people along tracts of the regular lines of “local public” transport.

The specialised services of the municipal administrations are defined as local regulating authorities for *local public transport* and issue *line licenses* (“*licentele de traseu*”- *local tracts*). On a regional level, *joint commissions* with the ARR and the County councils are set up. These commissions regulate *passenger transport*.



Being appointed a **public transport operator** and having the right to conduct such an activity is only possible after obtaining an **operating license** from the competent regulating authority.

Law 92/2007

As established under Law 92/2007, **local transport** involves two distinct types of transport depending on what is being transported: [local] transport **of people** and [local] transport **of goods**. The law provides for an additional distinction between **public transport** (of people or goods) and **transport by an individual road-transport company**. (Art.1.(3)).

Furthermore, the law sets a clear distinction between **subsidised public transport** and non-subsidised public transport.

A further and important distinction is that between **local public transport** [of people] and **regional public transport** [of people] (Art. 3. (1)). This distinction, reinforced by the explicit right/obligation of the local authorities to manage public transport exclusively within their own administrative perimeter, leads to conflicting situations and to interferences between the municipalities and counties since two neighbouring municipalities, even if they form a single conurbation, cannot jointly manage local public transport, but must leave that up to the county which, by law, is the only entity empowered to handle public transport "among two or more areas that depend on distinct territorial administrative units".

Law 92/2007 distinguishes (Art. (3)) local public transport [of people] in transport by:

- **regular lines**
- special regular lines
- cars - taxis
- car rentals

In their entirety, the analysis and observations of this report look on the problems of **outsourcing in the local public transport of persons by regular lines**. This is the most important sector in public transport for the number of operators and passengers, the other types of transport having only drawn



our attention for the degree in which they interfere with the issue of our analysis.

The impact of the city's economic situation on outsourcing ("well off" city/"poor" city).

The general economic context has various repercussions on the perceptions, practices and "dynamics" of outsourcing in Romania.

In the first place, purchasing power is very low: according to statistics, (source INSEE France) compared to the average of the EU (27) on an index of 100, Romania barely reaches 40. It is the lowest index, after Bulgaria (38). As an example, the Netherlands has an index of 130, France 111, Italy 101 and Poland 53.

The differences in financial flows between the capital and the counties' administrative centres are around 19 to 1. This difference becomes 100 to 1 or more for small towns and rural municipalities. At the same time, the general and local fiscal mechanisms do not yet appear to be well regulated; it follows that, as regards public transport, some small and medium-sized towns **are not able to subsidise** public transport, others do so in **too small a measure** while still others, not very many, have the **means available to properly support** local public transport.

Observed consequences and situations

The majority of small and medium-sized towns (as well as local Public Authorities) are not able to organise, nor financially support public transport. In these situations, at the best of times, private entities – under the definition of being *carriers of people* – are permitted to operate along routes that guarantee a minimum number of passengers per vehicle.

Medium-sized towns (between 30,000 and 150,000 inhabitants) can allocate a small quota of their budget to subsidising public transport, even if, generally, this proves to be insufficient, usually covering no more than 20% of the management costs, and an even smaller quota for purchasing and renewing their fleet.

Large cities (over 150,000 inhabitants) can allocate greater resources -



between 20% and 40% of management costs, for subsidising public transport and associated infrastructures.

In all cases, yet again, the few metropolises are the exception. Operators seem to be literally obsessed by the problem of cutting down on management costs, while they pay much less attention to the transport quality, safety, social dialogue and so on. Reducing costs can make the difference between survival or the complete interruption of the service. In this context, making use of outsourcing is rare. Sometimes, to gain a minimum of resources to ensure the company's survival, the operators' policies consist in developing internally related activities (for example: checking and fixing vehicles, etc.) for third parties other than "urban travellers". This phenomenon is a type of "counter-outsourcing", a "diversification" that goes beyond public service.

The public service mission is often only partially accomplished and public authorities have great difficulty leveraging public transport for territorial development even though the law specifically calls on them to do so.

The Romanian context

In the current situation, the use of outsourcing in Romania

- (1) is very rare
- (2) always concerns associated activities (ticket control, repairs, cleaning, etc.)
- (3) essentially depends on local choices specifically made by the management seeking solutions to cut on operating costs and so, therefore, is a far cry from being a true "policy", a "strategy" for developing the service or a "concertation" with the social partners;
- (4) frequently bears witness to the inability to solve certain internal problems (organisational, technical or related to the dialogue with trade unions or political institutions).

Apparently the generally low economic level, the lack of resources



available to Public Authorities, operators and clients, as well as a lack of a "managerial philosophy" or of a philosophy for dialoguing with the Social Partners, stand in the way of considering outsourcing as a vital tool for improving or resolving issues associated with the efficiency of the public transport service or taking part in implementing a global, integrated transport policy within the boundaries of a large urban perimeter in a complex context.

Prospects and conclusions

Institutionalising outsourcing or compiling a practical guide to outsourcing?

The underlying question regarding outsourcing lies in knowing if this managerial or governance "tool" should be "institutionalised", that is if specific regulations should be provided for it. An argument in favour of this could lie in the fact that sometimes outsourcing involves transfers or mass dismissals of employees. Such situations are not, however, specific to outsourcing, and also involve reduction/ceasing of activities, company relocations, etc., i.e. procedures governed by a well defined legal framework.

The argument against institutionalisation appears to be stronger: all administrative and juridical paths that lead to outsourcing are already covered by a general and specific legal framework (entities code, public services code, company law, labour law, sectoral framework contract, trade union agreements, etc.). This argument becomes even more powerful considering that the extent of the outsourcing phenomenon and the number of subjects directly affected vary considerably from one local or national context to the next.

A tool that fosters the decision-making process

On the other hand, **it could be especially useful to compile an outsourcing guide (success stories) accompanied by a dossier (documentation) on the "best practices" as well as the "worst practices"**.



A sort of collection/archive on outsourcing operations on a European level covering a variety of local conditions and objectives that could represent a key reference point when making decisions, but also a tool for evaluating beforehand, on a case-by-case basis, the advisability in a national or local context of undertaking a (successful) outsourcing operation.

In fact, **outsourcing remains a complex and delicate procedure**, so much so that some administrators could desist from making use of it – even though it could represent a good solution; furthermore, insufficient familiarity of the conditions and mid and long-term effects of outsourcing have led to mediocre or negative effects.

To conclude, making use of outsourcing can be considered a managerial option; ultimately its success or failure depends on the ability and intelligence of administrations being able to correctly evaluate context, resources and whether the operation is opportune. This project could be considered a first step towards the creation of a decision-making help tool, a well-documented European “guide” on outsourcing as a managerial tool.



CONCLUSIONS

The survey that has been carried out provides some summary conclusions that are useful starting points for drawing up suggestions and recommendations.

For the Italian situation, the most interesting data is the emergence of company behaviour that is inspired more by the logic of the public than the private sector. In the last ten years, Italy has been intent on proceeding with the creation of a liberalised market where local public transport services are awarded to entities that have been selected through public calls for tender carried out by territorial public administrations. It is still an ongoing process (in many Italian regions the obligation to proceed through calls for tender has not yet been enforced), within which former LPT public companies have been transformed in private companies, but this "privatisation" has remained mainly formal: basically, political power has kept (and possibly reinforced) its influence on the managerial decisions taken by the public transport enterprises (which today are formally private enterprises). Political power often also strongly conditions the choice in the use of outsourcing operations and in the implementation of such choices. This translates into inefficiencies and end results that are anything but satisfying.

The case studies have shown a wide variety of outsourcing operations including, for example: outsourcing of ticket sale through the setting up of a new company totally controlled by the transport company to operate on the market and acquire new quotas; global service contracts with which the company wins the call for tender for the supply of new transport vehicles taking on their maintenance as well; outsourcing of ancillary services such as



canteen service, surveillance, etc. Perhaps also as a result of the afore-mentioned “public administration” logic, all the outsourcing instances looked at – that vary greatly in terms of approach and legal frameworks employed – have been conducted by the company management through a continual and constant dialogue with trade unions and the drawing up of specific written agreements.

In France, in the majority of cases, the LPT service is carried out by enterprises selected through competitive bidding procedures. Generally, every five years, the Organising Authority in charge of a certain territory (there are currently 232 such Authorities in France) selects the company to which to assign the service on the basis of a public call for tender. Moreover, a common scenario is that where the company already managing the service is the only one to participate in the call: a reliable evaluation of the profit margins to be derived from managing transport lines that are up for offer is an expensive and complicated operation, which is often off-putting for new potential candidates. At any rate, trade unions are often successful in having social clauses included in the economic specifications contained in the calls; in cases where a new operator steps in, this obliges it to maintain the former operator’s employees under the same contractual conditions, without damaging the new operator’s power to enter into negotiations to finally sign a new collective agreement.

Outsourcing is rarely practiced (with the exception of cleaning services). Moreover, a recent phenomenon is worth mentioning: the setting up of specialised affiliates by the main groups of enterprises active in the sector, wherein the execution of specific functions is concentrated (for example, administration or accounting operations) to the advantage of all enterprises belonging to the group.

In Romania, the issue of outsourcing is heavily conditioned by the economic context. Public authorities face some serious problems in leveraging the public transport service for territorial development as



is established by law.

On the other hand, even the enterprises face great economic problems. With the exception of some large urban centres, the sector operators are obsessed with reducing the operating costs of transport activities, also because in many cases the very survival of the company rests on a tangible reduction of costs. Therefore, outsourcing operations are rather rare, in that the "survival" policy of the companies is to develop their own internal services (related to ancillary activities, among which mainly maintenance) with the aim of offering them to external customers. A sort of specialisation of some internal functions that are then sold on the market.

The situation in the three countries that have been looked at is very different (also on a regional level within each country). A common factor seems to be the scarce use of outsourcing. Depending on the country under examination, either there is a lack of suitable managerial skills required to set up outsourcing operations that are *per se* very complex (Romania), or there are many obstacles standing in the way of the use of approaches that could concretely be assimilated to those of the private sector (Italy).

At any rate, the rights of workers seem to benefit from solid safeguards (this holds true especially in Italy and France), also thanks to a legal environment that recognises information and consultation rights to trade unions.

The most interesting data is the current need to focus the efforts of all interested players to achieve a shared definition of the role (and therefore the related discipline) of the public transport service and, more broadly, of all services of general economic interest. This requires a call for reasonableness by: political decision-makers to appropriately apply the principle of subsidiarity, without giving in to the temptation of using it as a means of shirking away from their responsibilities; each EU Member State to share common lines of interpretation and implementation of European laws, which, inevitably, offer margins that could be used to gain undue



competitive edges; social partners that are called upon to strike a delicate balance between the reasons of workers, users and public money.