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FINAL REPORT BY THE EXPERT

Advice case title: « Cross-border public transport - safety belt. »

Full official name of the advised entity: Eurométropolis Lille-Kortrijk-Tournai

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Date: 30 April 2024

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I - Executive summary.

a) General background. European transport policy has been a "common policy" since the very beginnings of the European Union, with the ambition of giving concrete form to the principle of the free movement of people and goods. While every step forward remains problematic, successive revisions of the EC Treaty show that there is an understanding that transport is a key element in the living environment of citizens and an important factor in the competitiveness of economic and employment areas.

European transport policy must now face up to contemporary issues such as climate change, and to the challenges posed by sustained growth in demand for transport, increasing congestion, pollution and road safety within a transport system that is markedly unbalanced. It therefore calls for the definition of a policy for the citizen by implementing a coherent set of measures to reduce the impact of unorganised transport. European transport policy is therefore currently questioning its ability to meet the needs of citizens in their daily lives: safety and security, sustainability and quality of service.

The daily scourge of road accidents makes safety a central issue in all transport policies. In terms of road safety, European regulations have introduced technical harmonisation based on technical standardisation directives that have enhanced the safety of automotive equipment, including seat belts.

However, the objective of road safety remains primarily a matter for national and local policies and is being resisted by the Member States in the name of subsidiarity. However, this safety objective must now be reconciled with a second objective: ensuring the quality and sustainability of transport services. To this end, according to the old terms of the European Commission's proposal, national or local authorities should ensure that an appropriate public transport service is in place.

b) Specific elements of the political context. In a letter dated 22 April 2022, Mr Peter ROOSE, Mayor of the town of Furnes and Chairman of the transport, region sent Mr Georges-Francois LECLERC, Prefect of the Nord département, a request concerning the Hazebrouck-Poperlinge cross-border link. In it, he mentioned the existence of a legal obstacle hampering the development of cross-border cooperation: the absence of any obligation in Flanders for the Flemish domestic operator De Lijn to fit seatbelts to cover the route.

As a preliminary to this question, we note that two declarations of intent have been issued: one between States in November 2018 and the other involving EGTCs and local authorities. In addition, at the meeting of 5 December 2009 of the Eurometropolis EGTC, the Assembly chaired by Ms Martine Aubry decided to organise specific governance to improve sustainable cross-border mobility¹. This mobility to be built is motivated by numerous observations of deterioration in services, traffic difficulties and mobility overload, deterioration in air quality, increasingly frequent pollution peaks, and the emergency in which this cross-border territory finds itself in terms of congestion and environmental health. At the end of the meeting, a multi-level project governance structure was set up to support these changes. The minutes of the meeting state that "in a European area where borders are disappearing, borders should never mark a break in public policy, as this would be a betrayal of the spirit of the founding fathers". It goes on to say that "mobility without borders is a key issue for the Eurometropolitan catchment area, where urbanisation and rurality are intertwined, where modes of transport differ according to the services on offer, but also according to local cultures".

C) *Potential solutions.* A brief review of the political context highlights the existence of a political motivation that it is essential to mobilise to support the removal of the obstacle in this case.

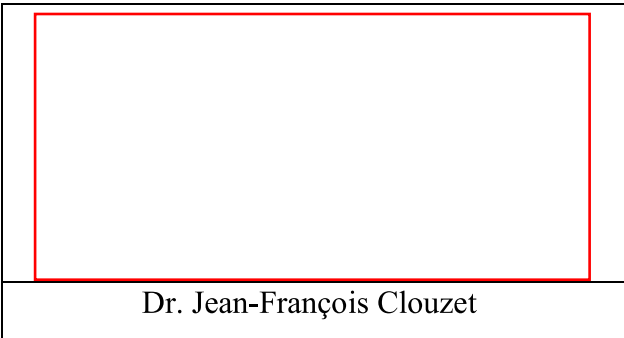
From the legal question specific to seat belts, we can develop the following problem: « Given the general obligation to protect people by wearing seat belts, to what extent is it possible, in the current state of the law, to use the criteria for exceptions to this obligation to test a cross-border mobility operation on French territory by a Flemish operator not subject to the obligation to equip seats with seat belts under its national law ? ».

The protection of people using seatbelts is seen as an overriding objective for which exemptions and exceptions are limited. This need for protection is ultimately shared by the European Union, Belgium and France. It would therefore be pointless to try to derogate from this overriding safety objective. It seems more useful to look for possible solutions from an operational point of view or a political and legal point of view.

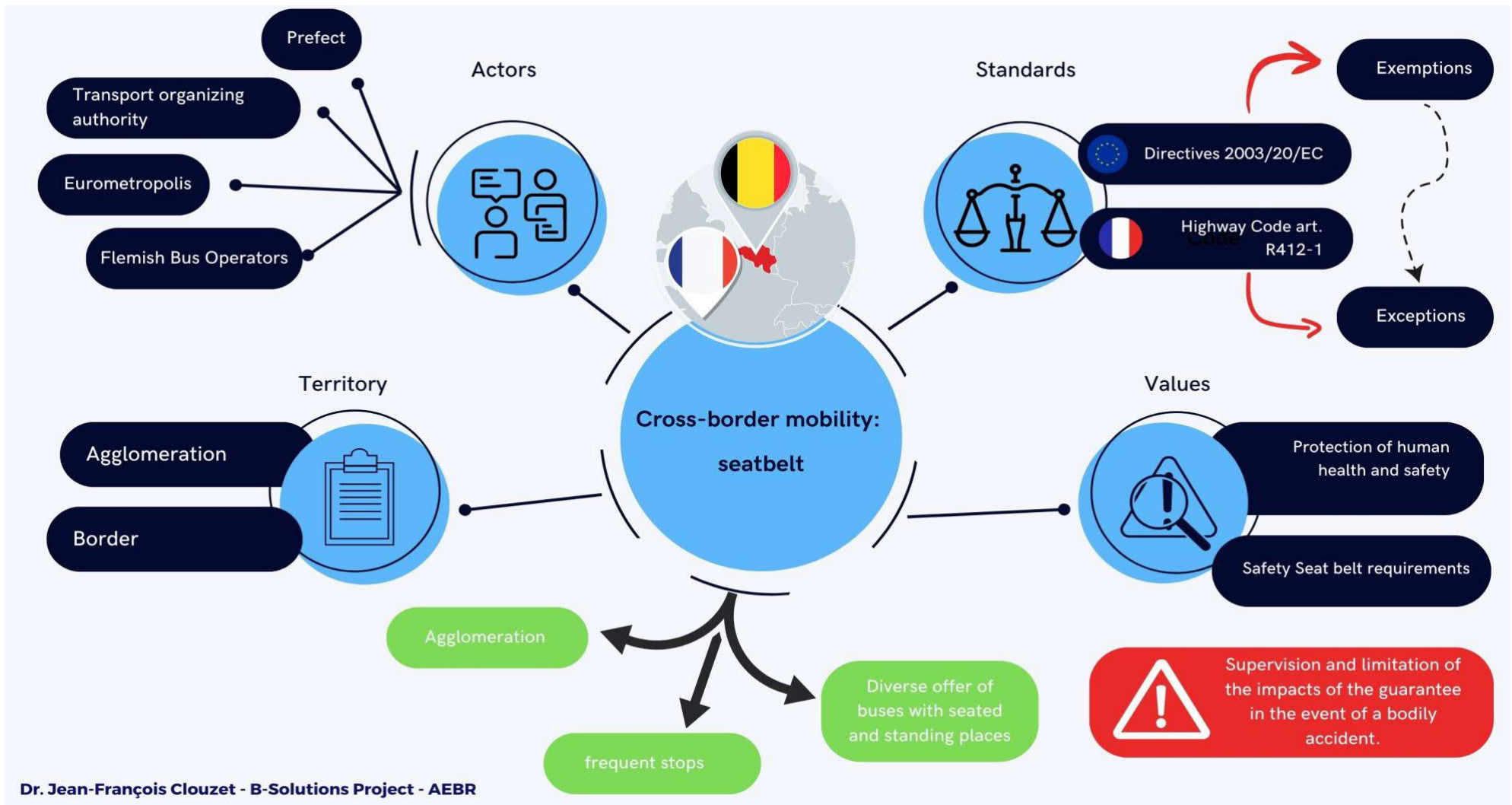
¹ Minutes of the decision "Decision on the governance of sustainable cross-border mobility", Assembly of 05 December 2019 in Lille.

In this case, the EGTC is the ideal player to provide leadership for a project aimed at defining an obstacle removal. It has the political legitimacy to propose an experiment in defining a cross-border conurbation. This leadership position could help to soften the image of a foreign operator coming to operate in France from a competitive perspective. Lastly, it provides a link between the various levels of the French and Belgian administrations and fosters a sense of integration of the approach.

This removal of the obstacle is an interesting opportunity to mobilise this experimental possibility by proposing to the French local authorities involved in the EGTC to coordinate with the Prefect to offer an operational and legal framework "cobbled together" to be fully adapted to local circumstances.



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Picture 1 – Summary of the issue.

Keywords: cross-border cooperation, transport, mobility, local authority, regional authority, institutional operation, cooperation body.
Thematic area: regional policy, cross-border cooperation, implementation of the European Green Deal, sustainable and smart mobility.

II - Description of the obstacle with an indication of the legal/administrative provisions causing the obstacle.

a) The issue of seatbelts. Since the 1970s, the wearing of seatbelts has become an essential means of ensuring personal safety. This objective of personal protection is reflected in the same dynamic and consistent way in European and national law.

Directive 77/541/EEC, as amended, highlights the fact that the use of seat belts "will undoubtedly be an important step forward in improving road safety and thus saving lives", while specifying that "concerning the compulsory fitting of seat belts and/or restraint systems, a distinction should therefore be made between public service buses and other vehicles".²

This distinction creates an exception by giving Member States the option of exempting vehicles intended for the carriage of passengers and comprising more than eight seats in addition to the driver's seat.³

Similarly, Directive 76/115/EEC, as amended, includes this exemption for vehicles intended for the carriage of passengers and comprising more than eight seats in addition to the driver's seat, indicating the possibility of a requirement to anchor safety belts.⁴ European Directive 2003-20 seeks to strike a balance between personal safety and the development of cross-border mobility.⁵

It points out that both Article 153 of the Treaty and the European Parliament's Resolutions of 13 March 1984 and 18 February 1986 make consumer safety a joint priority, in particular through the compulsory wearing of seat belts by all passengers on all roads, in town and country, including for children.

² Directive 2005/40/EC of the European Parliament and of the Council of 7 September 2005 amending Council Directive 77/541/EEC on the approximation of the laws of the Member States relating to safety belts and restraint systems of motor vehicles.

³ Article 2a of Council Directive 77/541/EEC on the approximation of the laws of the Member States relating to safety belts and restraint systems of motor vehicles.

⁴ Directive 2005/41/EC of the European Parliament and of the Council of 7 September 2005 amending Council Directive 76/115/EEC on the approximation of the laws of the Member States relating to anchorages for motor-vehicle safety belts.

⁵ European Directive no. 2003-20 of 8 April 2003 of the European Parliament and of the Council amending Council Directive 91/671/EEC on the approximation of the laws of the Member States relating to the compulsory use of safety belts in vehicles of less than 3.5 tonnes.

However, this balance can only be achieved by allowing certain professional activities to be carried out effectively through exemptions, as provided for in Article 6 of the same directive⁶ and confirmed in Article 6a⁷ for local transport operations.

In Belgian law, the obligation to wear seatbelts is set out in Article 35 of the Highway Code⁸. It states that "the driver and passengers of motor vehicles in circulation must wear seat belts in the seats equipped with them". However, there are exceptions to this general obligation, firstly because some seats may not be fitted with a seatbelt, and secondly, because the carriage of children is conditional in the case of seats not fitted with a seatbelt.

Under French law, occupants of public passenger transport vehicles must wear seatbelts when the seats are fitted with seatbelts. Thus, all coaches are affected by the fitting of belts and the obligation to wear them following the provisions of decree no. 2014-784 of 8 July 2014 relating to the safety of the collective road transport of persons and bearing various provisions relating to road transport.

Article R. 317-24 of the French Highway Code stipulates that "any vehicle normally or exceptionally used for the carriage of passengers must be fitted out in such a way as to ensure the safety and convenience of passengers"; and article R. 317-24-1 of the same code specifies that "from a date defined by order of the Minister responsible for transport, all carriage by coach shall be through a vehicle fitted with safety belts"⁹. However, there are still some exceptions, as buses are defined as urban public transport vehicles designed mainly for standing passengers and whose seats are not fitted with seatbelts are not affected.

⁶ Article 6 of European Directive No. 2003-20 of 8 April 2003 of the European Parliament and of the Council amending Council Directive 91/671/EEC on the approximation of the laws of the Member States relating to compulsory use of safety belts in vehicles of less than 3.5 tonnes states that "Member States may, for transport on their territory, with the agreement of the Commission, grant exemptions other than those provided for in Article 5 to take account of special physical conditions or special circumstances of limited duration or to allow certain professional activities to be carried out efficiently".

⁷ Article 6a of European Directive 2003-20 of 8 April 2003 of the European Parliament and the Council amending Council Directive 91/671/EEC on the approximation of the laws of the Member States relating to the compulsory use of safety belts in vehicles of less than 3.5 tonnes confirms the possibility of exemptions: "Member States may, with the agreement of the Commission, grant temporary exemptions other than those provided for in Articles 5 and 6, to allow the carriage, in compliance with the regulations of the Member State concerned and for local transport operations, including school transport, in vehicles of categories M2 and M3, of several seated children over the number of available seating places fitted with seat belts".

⁸ Article 35 of the Royal Decree of 1 December 1975 laying down general regulations on road traffic police and the use of public roads

⁹ Notice by email dated 22 April 2024, Préfecture du Nord, Direction départementale des territoires et de la mer, Service Référent mobilité, environnement et risques, Mission Métropole, DDTM du Nord.

The Highway Code also provides for exemptions from the requirement to wear a seatbelt, including for drivers and passengers of public service vehicles in built-up areas who are obliged to stop frequently because of service requirements, and for vehicles making door-to-door deliveries (art. R412-1 of the Highway Code).

Finally, while coach passengers must, as a matter of principle, be transported seated, in exceptional cases the Prefect may authorise standing passengers. In exceptional cases, the Prefect may authorise the carriage of standing passengers under the conditions defined in articles R. 411-23-1 and R. 411-23-2 of the Highway Code.

***Intermediate conclusion:** the protection of people through seat belts is considered to be a higher objective for which exemptions and exceptions are limited. This need for protection is ultimately shared by the European Union, Belgium and France. There would therefore be no point in seeking to derogate by undermining this overriding safety objective. It would be useful to look for possible solutions using all the other elements of exemption.*

b) Specific elements of the mobility context. In the context of the operation covered by this study, the operator finds himself in a position where he may be liable to penalties for failure to wear a seatbelt for drivers or passengers, as the person responsible for organising transport.

Driver	Passenger	Carrier and organiser liability
<ul style="list-style-type: none"> • Loss of 3 points on your licence • A fixed fine of €135 <p>The driver of a coach is not responsible for the fact that a passenger is not strapped in, including children under the age of eighteen. They are therefore not liable for the fine.</p>	<ul style="list-style-type: none"> • A fixed fine of €135 • No points are deducted from your driving licence. 	<p>Increased criminal or administrative liability for the organiser of transport services, particularly for children, in the event of an accident where the consequences are aggravated by the failure to wear a seatbelt.</p>

On the other hand, the cost of fitting seatbelts to Flemish buses to bring them fully into line with French regulations can be a significant burden limiting the mobility operator's ability and willingness to invest. The approximate cost defined by the Flemish operator is :

Number of buses in the fleet	Number of seat belts	Unit cost of a seatbelt
Approximately 500 single-module buses and 117 dual-module buses	Approximately 50 seats per single-module bus and 100 seats per dual-module bus	150 euros
Estimated cost of the charge : Approximately 3,750,000 euros for mono-module buses Around €1,755,000 for dual-module buses		
Option to be assessed by the Flemish operator: cost of subcontracting to a French operator or one with a fleet that complies with French regulations.		

***Intermediate conclusion:** bringing the fleet up to standard can be a significant burden. From an operational point of view, a solution could be found by limiting the increase in journey time and its cost, as well as by adding more stops in proportion to the cost of bringing the bus fleet into compliance.*

III - Description of possible solution(s).

A proposed solution. The question that arises in this case is part of an overall policy of deepening cross-border cooperation, in particular through mobility, to ensure that border crossings are legally secure.

***Issue :** "Given the general obligation to protect people by using seat belts, to what extent is it possible, under constant law, to use the criteria for exceptions to this obligation to test a cross-border mobility operation on French territory by a Flemish operator not subject to the requirement to have seats fitted with seat belts under its national law?"*

This issue invites us to examine the following four dimensions :

- The cross-border area in which this mobility operation takes place, with a border within Europe and the Schengen area ;
- The obligation to protect people with seatbelts ;
- The prospect of defining a cross-border population catchment area that would serve as a basis for defining a cross-border conurbation ;
- Cross-border mobility operations.

To address this issue, we propose a series of different project phases :

- 1^{re} phase: experimentation formalised within the framework of an experimentation protocol comprising a project organisation section and an existing and future legal documents section ;
- 2nd phase: consolidation of the tested solution ;
- 3^e phase: institutionalisation and widespread use of the solution.

A degree of legal certainty could be achieved by reconciling compliance with the obligation to protect people through seat belts with the use of the conditions for exceptions to the wearing of seat belts. This reconciliation will be formalised within the framework of an experimental protocol combining an EGTC decision, an operating agreement and administrative arrangements.

Without being exhaustive, it is proposed to provide a solution based on the following tools :

- Criterion 1: the definition of a cross-border operating area constituting a cross-border conurbation ;
- Criterion 2: the definition of operating procedures that emphasise the frequency of stops.

In all cases, the question of legal certainty and the legal resistance of the standards produced as part of the experiment to litigation arises. The legal tools produced will be all the more resistant if they meet the criteria for defining legal certainty: on the one hand, they must be drafted using legislative drafting techniques, avoiding legislative neutrons that have no normative impact; and on the other hand, they must ensure the stability of the rule of law that reflects the experimentation over time, allowing the various players to organise themselves around the rule of law without the risk of their situations changing too quickly.

Outside the scope of this analysis are the peripheral obstacles that may arise in the context of supporting the operation of this mobility line: impacts on labour law, secondment of workers, customs, RGPD, etc. However, when drafting the trial protocol, these will have to be taken into account. However, these will have to be taken into account when the experimental protocol is drawn up. They can be highlighted during the implementation phase of the table-top.

What can help me achieve my goal?	What can prevent me from achieving my goal?
<ul style="list-style-type: none"> - EGTC that can define an agglomeration space cross-border. <p style="text-align: right;">FORCES</p>	<ul style="list-style-type: none"> - Limited potential for political support within the EGTC. <p style="text-align: right;">WEAKNESSES</p>
<ul style="list-style-type: none"> - Working across departments. - Develop integrated governance of the EGTC in terms of cross-border mobility. - Consolidate an EGTC policy on cross-border mobility. <p style="text-align: right;">OPPORTUNITIES</p>	<ul style="list-style-type: none"> - Explosion of the Flemish operator's financial burden. - Explosion of the risk of litigation relating to accidental bodily injury cover. <p style="text-align: right;">THREATS</p>
External causes, the environment	

a) Synthesis

Franco-Belgian cross-border cooperation and mobility

Removing obstacles in conjunction with the seat belt

Summary document - working version V1 - April 25, 2024



COMPLEXITY RANKING

IMPORTANCE STRATEGIQUE	Pupil	C	B	A
	AVERAG E	D	C	B
	Weak	AND	D -	C -
		Weak	AVERAGE COMPLEXITE	Pupil

MANDATE AND OBJECTIVES

1. Initial situation: a request is made to the Prefect of the Nord department by the elected official of the city of Furnes in Belgium in order to be able to experiment with the operation of a cross-border mobility line by partially deviating from the regulatory framework relating to the use mandatory seat belt.
2. Objectives: find a legal or practical solution allowing a Flemish operator to operate the cross-border mobility line without being constrained by the obligation to use a seat belt during an initial experimental phase.
3. Exclusion of fields: outside the analysis are the related issues of maintenance, operational support as well as security of the cross-border mobility line, in particular through the use of potential video protection in buses.

PROCEDURES AND APPLICATION

1. Basic conditions: pre-existing cross-border cooperation is institutionalized through an EGTC. This body is positioned as a leading institution for piloting experimentation and then consolidating cross-border mobility.
2. How: Develop a legal tool to justify the mobilization of an exception to the highway code through two criteria: the definition of the territory of a cross-border urban area and the definition of an operation based on frequent stops.
3. Dependency and interfaces: Prefecture / transport organizing authority / EGTC.

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LEGAL TOOLS

1. Legal order: choice of registration of the approach in the French legal order concerning the security criteria and the skills of the AOT; and European via the EGTC.
2. Legal theory: mobilization of network theory of law.
3. Legal tool: to be determined according to the hypothesis adopted.. In the absence of a European tool, study the legal resistance of an EGTC deliberation supplemented by a prefectural decree.
4. Legal security: medium to limited.

IMPACTS ON STRATEGIC ORIENTATIONS



Picture 2 – Summary document.

AOT: transport organising authority

EGTC: European Grouping for Territorial Cooperation

b) Gradation of solutions

The table below summarises the hypotheses for removing the proposed obstacle. The various options can be considered in isolation. However, a scale of solutions from "0 to 3" is proposed according to the political commitment required to implement the solutions.

Thus, the hypotheses at levels "0" and "1" are based on action relying primarily on investment by the Flemish mobility operator. Level 2 solutions are based on mobilising the possibility of experimentation. There are two possible approaches to the same experimental method, depending on the legal instrument used: an administrative arrangement for short-term experimentation; and experimentation in accordance with the provisions of Article 72 of the French Constitution.

The approach proposed by level "3" is part of a European perspective and is based on a strong political commitment to deepening cross-border cooperation around the definition of mobility solutions specific to a catchment area.

Level	Solution	Risk	Measure	Assessment of residual risk
0	Bringing the fleet up to standard by adding seat belts to the Flemish operator's buses.	Significant cost of compliance for the Flemish operator's buses.	Addition of seat belts.	Low for all the institutional players and high for the operator.
	Option for the Flemish operator to subcontract to an operator or one with a fleet that complies with French regulations.	Instability of the contractual relationship.	Subcontracting agreement between the Flemish operator and a mobility operator with buses complying with French standards.	Medium for all the institutional players and high for the operator.
1	1-a) No formalised action*. Tolerance on the part of the French authorities, who do not penalise non-compliance with the obligation to wear seatbelts.	Instability of tolerance. A position of legal uncertainty. In terms of safety, the carrier must result.	-	Strong for all the institutional players and the operator.
	1-b) Formalised experimental action** by the Flemish operator with the French authorities, who do not penalise non-compliance with the obligation to wear seatbelts.	This hypothesis is unlikely because it would create legal uncertainty and would be contrary to the legal tradition which holds that a more restrictive regulation than the national regulation is possible ; but not the opposite. Moreover, this would run counter to the overriding safety objective of compulsory seatbelt use.	An exchange of letters between the flemish operator and the French Prefect authorises this position.	High for all the institutional players and high for the operator.

2	<p>2-a) Formalised experimental action by the Flemish operator at the metropolitan AOT level.</p>	<p>The carrier must comply with the provisions of the contract or agreement signed with the transport organiser or authority. Passenger transport organisers are responsible for the general safety conditions of the transport they organise under arrangements based on constant law or as part of an experiment.</p>	<p>On the basis of an "administrative arrangement***" involving the local decision-making authorities at metropolitan and departmental level and the prefectural authority (Préfet), a solution under constant law is defined on the basis of the exception criteria to provide a functional and operational response within the framework of an experimental protocol without the constraint of an experimental clause in a national law by the French Parliament. The administrative arrangement must allow for a short-term experiment, over a short period of time and for a limited purpose and territory.</p>	<p>Strong for all the institutional players and Medium for the operator.</p>
	<p>2-b) Formalised experimental action by the Flemish operator as part of a regional cross-border mobility cooperation.</p>		<p>On the basis of an experiment under the provisions of Article 72 of the French Constitution involving local decision-making authorities at metropolitan and departmental level and the prefectural authority (Préfet), a solution specific to local circumstances is defined on the basis of exception criteria to provide a functional and operational response within the framework of an experimental protocol with the constraint of an experimentation clause in a national law adopted by the French Parliament. This approach is based on the same project as for the administrative arrangement. It provides greater legal certainty. Nonetheless, the administrative process will be more complex and the time taken to process the application will be longer. The scope of the experiment is more open in terms of time and territory.</p>	<p>Medium for all the institutional players and Medium for the operator.</p>

3	Designation of the EGTC as a cross-border AOT.	Political rivalries and functional instabilities.	Internal promotion by acceptance of the guide defined by the EGTC.	Medium for all the institutional players and Low for the operator.
Global Assessment	Serious personal injury accidents involving public passenger transport vehicles are still very rare during traffic phases.			The risks are considered manageable for the carrier.
	Conflicting standards can be mitigated by coordinating European, Belgian and French standards in a network.			The risks are considered manageable for all stakeholders.

- * no formalised action : public action without the creation of a specific legal tool.
- ** formalised action : public action with the creation of a specific legal tool.
- *** For memory, "administrative arrangement" is the descriptive term used to describe the practice of various State administrations and authorities bypassing the traditional channel of State external relations in order to conclude agreements directly without going through the intermediary of the Ministry of Foreign Affairs for technical or even political reasons. The power to represent the sovereign State is an exception for "authorities that are part of the internal person of a State without being, expressis verbis, vested with jus tractandi".

c) Logic model

Items	Actions	Terms and conditions		Frequency
1- Intervention	Analysis of the obstacle posed by seatbelt regulations. Deliverables: B-Solutions project report	Study of the obstacle to be removed.		In progress - Delivery to 1 ^{er} but 2 024
2 - Immediate effects	Experimentation phase for cross-border mobility by defining the territory of a cross-border conurbation. Deliverables: Experimentation protocol including the decision of the EGTC, decision of the OAT and mobility operator, etc.	Determining a project protocol	Organise a small working group to formalise the technical elements of the solution via a tabletop exercise in three sessions, each two months apart.	1 ^{re} session: Sept 24 - table-top
		Identify the local authority or group of local authorities that will be responsible for submitting the request for experimentation.	Position the EGTC as the leader of the approach by coordinating the various players affected, particularly in the field of transport organisation.	2 ^e session: Nov 24 - feedback and removal of grey areas
		Nature of the experiment	Definition of a set of standards bypassing the constraints of the safety belt to extend the exemption criteria by defining a cross-border conurbation area.	3 ^e meeting: Jan 25 - validation of proposals and various documents.
		Experimental area.	Cross-border line designated for analysis in a Franco-Belgian cross-border area.	
		Duration of the experiment.	Potentially 1 year based on two 6-month phases. To be determined in consultation with the various stakeholders, based on a proposal from the Flemish operator.	
		Details of the experiment.	Bottom-up public policy development. Report every three months.	From Sept 24 to Sept 25.
		Legislative or regulatory provisions may be waived on an experimental basis.	See the legal framework relating to the compulsory use of seat belts.	

Items	Actions	Terms and conditions		Frequency
3 - Intermediate effects	Improving methods and processes for cross-border insurance coverage. Deliverables: experimental monitoring reports	Evaluation of the experiment.	Periodic report Final evaluation report outlining all the experimental proposals.	From Sept 24 to Sept 25.
	Deepening and consolidation of the legal tools consolidating cross-border conurbation mobility.	Consolidation of the legal translation of the experimental phase.		From Sept 24 to Sept 25.

	Deliverables: new standards				
	Improving practices	Improving functional organisation	Optimising resources		From Sept 24 to Dec 25.
	Improving cross-border mobility.		Facilitation of cross-border cabotage.	Generalising the results of the trial phase.	2 025
4 - Ultimate effects	Improving the overall policy of cross-border cooperation on mobility. Deliverables: -			Consolidation of the cross-border mobility policy and generalisation of tools.	From 2026

d) Players and development

Transport organising authority (AOT). In accordance with the provisions of articles L1231-1 et seq. of the French Transport Code, a transport organising authority (AOT) is defined as a public body responsible for organising mobility within its territorial jurisdiction. The State is responsible for national transport links ; the regions for regional rail transport, school transport and inter-urban road transport ; and municipalities and inter-municipalities for urban transport. Its main role is to mobilise all the players in the area to offer mobility services to users within its remit, based on its specific local characteristics; but also to contribute financially to the development of active, shared and mutually supportive mobility. The mobility organising authority can choose to organise the mobility services it finds most suitable, either directly by the organising authority as a public service, or by delegating them to operators under a concession.

The cooperation dynamic offered by the EGTC. The Council of Europe has long and consistently strongly encouraged cross-border cooperation as a means of finding peaceful solutions and forums for discussion. Experience of cross-border cooperation constantly demonstrates the legal difficulties that force project sponsors to confront a legal area situated at the interface between national and international law.

Intending to guarantee a minimum of legal certainty and facilitate trade without denying the sovereignty of States, the Council of Europe began to create a framework for cooperation with the Madrid Framework Convention (1980). This was followed by a succession of different legal arrangements for cross-border cooperation, such as the EEIG (European Economic Interest Grouping), created by regulation 2037/85, and the EGTC (European Grouping of Territorial Cooperation), created by regulations 1082/2006 and 1302/2013. The EGTC offers a legal framework in which a certain number of specific legal rules adapted to its structure and tasks are determined. Regulation 1302/2013 broadens the scope of the EGTC's tasks and objectives, in particular enabling cooperation in the intangible field (without a territory concerned) and aimed at joint development.

The Eurometropole Lille-Kortrijk-Tournais EGTC, focused on coherent development, offers an opportunity to get involved in the different levels of competence sharing and to explore the opportunity offered by the French government to use experimentation within the EGTC framework. What emerges is a toolbox conducive to the determination of ad hoc regimes adapted to the

particular situation while being fed by two legal systems at the outset. State borders are blurred to enable projects with a certain territorial and economic logic to be implemented.

Regulation (EC) N° 1082/2006¹⁰ states that "measures are needed to reduce the significant difficulties encountered by Member States, in particular regions and local authorities, in implementing and managing territorial cooperation actions under different national laws and procedures".

The EGTC may be mobilised to carry out territorial cooperation actions at the sole initiative of the Member States and their regions and local authorities, with or without a financial contribution from the Community, following the principle of subsidiarity enshrined in Article 5 of the Treaty. It should be noted that the powers that a regional or local authority exercises as a public authority, in particular police and regulatory powers, cannot be the subject of an agreement.

Following the provisions of Article 2 on the applicable law of the same regulation, "When it is necessary, under Community law or private international law, to define the law governing the acts of an EGTC, the EGTC is treated as an entity of the Member State in which it has its seat".

According to the provisions of Article 7 on the tasks of the EGTC, the EGTC acts within the framework of the tasks entrusted to it, which are limited to facilitating and promoting territorial cooperation to strengthen economic and social cohesion, and which are determined by its members, it being understood that they must all fall within the competence of each of them under its national law. EGTCs may carry out other specific actions of territorial cooperation between their members and within the framework of the objective referred to in Article 1^{er} paragraph 2, with or without a Community financial contribution.

Intermediate conclusion: *in this case, the EGTC is the perfect player to provide leadership for a project to define obstacle removal. It has the political legitimacy to propose an experiment in defining a cross-border conurbation. This leadership position could help to soften the image of a foreign operator coming to operate in France from a competitive perspective. Lastly, it provides a link between the various levels of the French and Belgian administrations and encourages a sense of integration of the approach.*

¹⁰ Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC).

The possibility of experimentation under French law. Territorial experimentation is a right that has been enshrined in the French Constitution since 2003. There are 2 legislative tools for experimentation: experimentation under Article 37-1 and local legislative experimentation specific to territorial authorities under Article 72-4. Initially recognised by constitutional case law¹¹, the right to experimentation is doubly enshrined in the Constitution¹² with article 37-1, which states that laws and regulations may include experimental provisions for a limited purpose and duration; article 72, paragraph 4, which provides for experimentation, enabling local authorities and their groupings to derogate, for a limited purpose and period, from the legislative or regulatory standards governing the exercise of their powers. These two systems of experimentation are different in purpose and scope.

Several distinguishing criteria can be identified. While experiments under article 72 of the Constitution are subject to the legal framework set out in articles LO. 1 113-1 et seq. of the CGCT, resulting from Organic Law no. 2003-704 of ¹ August 2003 and amended by Organic Law no. 2021-467 of 19 April 2021, experiments under article 37-1 of the Constitution are directly applicable, with no organic law governing their implementation.

The specific framework for local experiments is explained by the guarantees that must be provided to citizens, particularly concerning the constitutional principle of equality, if local authorities intervene to derogate from the legislative or regulatory provisions of ordinary law.

The experiments provided for in Article 72 of the Constitution systematically involve local and regional authorities, unlike the experiments provided for in Article 37-1, which do not necessarily involve local and regional authorities. Under the experimental arrangements provided for in Article 72 of the Constitution, local and regional authorities are authorised to derogate themselves from a legislative or regulatory standard assigned to them by law. The experiments provided for in Article 72 enable local and regional authorities to free themselves from the national rules governing the exercise of their powers and to draw up their standards adapted to their specific characteristics, even though they do not have the power to set standards in this area.

In the case of experiments under Article 37-1, it is only the legislative or regulatory provisions

¹¹ (CC, 28 July 1993, no. 93-322 DC) and administrative (CE opinion, 24 June 1993, TGV Nord Europe, no. 353605; CE, 18 December 2002, Conseil national des professions de l'automobile, no. 234950).

¹² Constitutional Act no. 2003-276 of 28 March 2003 on the decentralised organisation of the Republic.

providing for the experiment that derogate from a standard. The experiments provided for in Article 37-1 fall within the State's normative remit, even though they may be implemented both by the State and by local and regional authorities (for example in the case of a transfer of powers).

The territorial experiment to remove this obstacle relating to seat belts could be based on Article 72. The French territorial authorities of the cross-border conurbation could coordinate to apply to benefit from the experiment enabling them to organise a cross-border transport organising authority on a defined cross-border conurbation territory from a French level to a cross-border level.

The general interest may also justify the decision to experiment. This general interest may be based as much on the pillar of taking climate change into account as on road safety, the development of mobility and the economy, or the well-being of the population on both sides of the border.

Since the State controls the entire experimentation process, whether it is conducted based on Article 37-1 or Article 72, paragraph 4 of the Constitution, it will be appropriate to propose to the competent prefect that he support an experimentation project organised based on a potential for greater transparency going beyond the legal obligations. The challenge will be to demonstrate to the French authorities in particular the willingness and good faith of all the players involved in this project.

This approach may be structured around four main stages :

- **Formulation of the request for experimentation.** The local authorities coordinate to consolidate a joint decision to take part in the experiment through a reasoned decision. They formulate a single application for experimentation and submit it to the competent prefect.
- **Organisation of project management and implementation of the experiment.** The experiment is implemented once the publicity formalities have been completed and the decision allowing the local authority to implement the experiment has come into force.

- **Monitoring the experiment.** Analysis of the operating data for the mobility offered as part of the experiment. The decision-making authorities decide whether to extend or modify the experiment for a period that may not exceed three years, or whether to abandon it.
- **Maintenance or not of the measures** taken on an experimental basis in the local authorities that have taken part in the experiment, or some of them, and their extension to other local authorities, in compliance with the principle of equality.

Intermediate conclusion: this removal of the obstacle provides an interesting opportunity to mobilise this possibility of experimentation by offering the French local authorities involved in the EGTC to coordinate with the Prefect to provide an operational and legal framework "cobbled together"¹³ to be fully adapted to local

¹³ Clouzet, Jean-François. Le Léman Express : ou la sécurité du Grand Genève. Editions L'Harmattan, 2022.

IV - List of legal provisions relevant to the case.

In addition to European law, the law applicable to this obstacle is French law. This applies in particular to standards relating to transport, mobility and safety, in particular seatbelts.

a) Specific legal framework.

European law

Regulation (EU) No 1302/2013 of the European Parliament and of the Council of 17 December 2013 amending Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC) as regards clarifying, simplifying and improving the establishment and operation of such groupings, Official Journal of the European Union, L 347, 20 December 2013, p.303-319.

Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC), Official Journal of the European Union, L 210, 31 July 2006, p.19-24.

Safety belts

European Union :

Directive (EU) 2003/20 of 8 April 2003 of the European Parliament and of the Council amending Council Directive 91/671/EEC on the approximation of the laws of the Member States relating to the compulsory use of safety belts in vehicles of less than 3.5 tonnes, Official Journal, L 115, 09 May 2003, p.0063-0067.

Directive (EU) 2005/40/EC of the European Parliament and of the Council of 7 September 2005 amending Council Directive 77/541/EEC on the approximation of the laws of the Member States relating to safety belts and restraint systems of motor vehicles, Official Journal of the European Union, L 255, 30 September 2005, p.146-148.

Directive (EU) 2005/41/EC of the European Parliament and of the Council of 7 September 2005 amending Council Directive 76/115/EEC on the approximation of the laws of the Member States relating to anchorages for motor-vehicle safety belts, Official Journal of the European Union, L 255, 30 September 2005, p.149-151.

Belgium :

Royal Decree of 1^{er} December 1975 contains general regulations on road traffic police and the use of public roads; in particular, article 35.

Ministerial Decree of 23 January 2022 on the exemption from compulsory use of seat belts or child restraint systems.

France :

Decree no. 2003-637 of 9 July 2003 on the extension of the compulsory wearing of seatbelts to occupants of buses and coaches and amending the Highway Code, JORF n° 0158, 10 July 2003, text n° 25.

Decree no. 2014-784 of 8 July 2014 on the safety of public road passenger transport and various provisions relating to road transport, JORF n° 0158, 10 July 2014, text n°2.

The Highway Code; in particular, articles R411-23-1 and R412-1.

Transport law

European Union :

Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) No 1191/69 and (EEC) No 1107/70., Official Journal of the European Union, L 315, 03 December 2007, p.1-13.

Belgium :

Royal Decree of 1^{er} December 1975 contains general regulations on road traffic police and the use of public roads, A.R. 27-04-1976 - M.B. 01-05-1976; in particular article 35.

Arrêté Loi of 30 December 1946 relating to the remunerated carriage of passengers by road in buses and coaches, A.R. 31-12-1983 - M.B. 13-01-1984.

Law of 15 July 2013 on road passenger transport, published 18 February 2014.

Law of 18 February 1969 on measures to implement international treaties and acts relating to transport by sea, road, rail or inland waterway, Loi 06-05-1985, M.B. 13-08-1985.

Ministerial Decree of 23 May 2014 in implementation of the Royal Decree of 22 May 2014 on road passenger transport, published 15 July 2014.

Decree of the Flemish Government of 19 July 2002 on regular transport, certain special regular services, own-account transport and irregular transport, and in particular its section II on cross-border transport, Flemish Government order, 31 May 2002.

Decree of 20 April 2001 on the organisation of passenger transport by road, (M.B. 29-03-2004).

France :

The Transport and Environment Code.

Law No. 2019-1 428 of 24 December 2019 on the orientation of mobility, JORF n° 0299, 26 December 2019, text n°1.

Law No 2015-991 of 7 August 2015 on the new territorial organisation of the Republic, known as the "NOTRe" law, JORF n° 0182, 8 August 2015, text n°1.

Law No 2000-1 208 of 13 December 2000 on urban solidarity and renewal (SRU), JORF n° 0289, 14 December 2000, text n°2.

Decree No. 2015-1 755 of 24 December 2015 on determining the minimum proportion of accessible rolling stock assigned to regular and on-demand public road passenger transport services, JORF n° 0300, 27 December 2015, text n°4.

Decree No. 85-891 of 16 August 1985 on urban passenger transport and non-urban passenger transport by road, JORF, 23 August 1985, p.9744-9748.

Order of 2 July 1982 on public passenger transport, as amended by the order of July 2013, the order of 18 December 2015 and the order of 29 December 2015, JORF, 5 September 1982, complementary text.

b) Relevant legal provisions.

Safety belts

Belgium :

Royal Decree of 1^{er} December 1975 contains general regulations on road traffic police and the use of public roads and in particular article 35 :

« **35.1.1.** Drivers and passengers of motor vehicles in use must wear seat belts in the seats equipped with them.

Children under 18 years of age and less than 135 cm tall must be transported in a child restraint system suitable for them.

Children under 3 years of age must not be transported in seats not fitted with seat belts. Children under the age of 18 and less than 135 cm tall must not be transported in front seats that are not equipped with seat belts.

Paragraphs 2 and 3 do not apply to vehicles intended for the carriage of passengers comprising more than eight seats in addition to the driver's seat, in taxis and in vehicles intended for regular and special regular passenger services, as referred to in Article 2, first paragraph, A and B, of the Decree-Law of 30 December 1946 relating to the paid carriage of passengers by road by bus and coach. In taxis that are not equipped with a child restraint system, children under the age of 18 and whose height is less than 135 cm are transported in a seat other than the seats at the front of the vehicle.

Children under the age of 18 must not be transported in a rear-facing child restraint system on a passenger seat protected by a frontal safety cushion unless this cushion has been deactivated or is automatically deactivated satisfactorily.

Drivers and passengers of motor vehicles in circulation, other than motor vehicles, must wear seat belts in seats equipped with them. Children under the age of 3 must be transported in a child restraint system that is suitable for them. Children aged 3 or over and under 8 must be transported in a child restraint system adapted to them, or wear a seat belt.

On a two-wheeled moped or motorbike with a maximum cylinder capacity of 125 cm³, children aged three or more and under eight years must be transported in a child restraint system adapted to them.

Notwithstanding the second and third sentences of the sixth paragraph, children under three years of age may not be transported on a two-wheeled moped or motorbike; children aged three or more and under eight years may not be transported on a motorbike with a cubic capacity of more than 125 cm³.

As an exception to the previous paragraph, children under the age of eight may be carried in a child restraint system adapted to them and placed in the sidecar of a motorbike.

35.1.2. Notwithstanding article 35.1. According to Article 1, paragraph 2, in vehicles used for the carriage of passengers with a maximum of eight seats in addition to the driver's seat, and in vehicles used for the carriage of goods with a maximum authorised weight of 3.5 tonnes, it is permitted to

carry a third child aged 3 or over and less than 135 cm tall, if wearing a seat belt, in seating positions other than the front seats of the vehicle, if it is impossible, after the installation of two child restraint systems, to install a third child restraint system and if these systems are used.

As an exception to Article 35.1.1, paragraph 2, it is permitted, in the case of occasional short-distance transport, in vehicles intended for the transport of passengers comprising, in addition to the driver's seat, a maximum of eight seats and in vehicles used for the transport of goods with a maximum authorised mass of 3.5 tonnes, where no child restraint system is available or not in sufficient number, to transport, in seats other than the seats at the front of the vehicle, children aged 3 or over and whose height is less than 135 cm, if they are wearing a seat belt. This does not apply to children whose parent is driving the vehicle.

35.1.3. Safety belts and child restraint systems must be used in such a way that their specific protective function is not or cannot be adversely affected. 35.2.1. However, the following are exempt from the compulsory use of seat belts and child restraint systems: 1° drivers who are reversing; 2° taxi drivers, when they are transporting a customer; 3° the driver of a priority vehicle, as referred to in article 37, when he is transporting persons who constitute a potential threat or in the immediate vicinity of the place of intervention.

Passengers in a priority vehicle, as referred to in Article 37, when a person who constitutes a potential threat is being transported or in the immediate vicinity of the scene of the intervention or when they are giving care to the person being transported.

4° persons who are in possession of an exemption issued, on the grounds of serious medical contraindications, by the Minister responsible for road safety or his delegate, or, if they are domiciled in a foreign country, by the competent authorities of that country.

The fee for requesting an exemption is 20 euros. Each year on 1 January, this amount is adjusted to the health index according to the following formula: the basic amount multiplied by the new index and divided by the initial index. The new index is the health index for the month of November of the year preceding the year in which the amount will be adjusted. The starting index is the health index for November 2021. The result obtained is rounded up to the nearest euro if the decimal part is greater than or equal to fifty cents. It is reduced to the nearest euro if this amount is less than fifty cents.

The Minister responsible for road safety shall determine the conditions for granting the exemption, the conditions for payment of the fee, the period of validity and the model of the exemption. »

France :

Article R. 317-24 of the Highway Code.

« Any vehicle normally or exceptionally used for the carriage of passengers must be fitted out in such a way as to ensure the safety and convenience of passengers.

The Minister responsible for transport shall determine the special conditions to be met, in addition to those already prescribed by this chapter, by the various categories of vehicles used for the carriage of passengers.

Any person who contravenes the provisions of this article or those adopted for its application relating to the solidity of vehicles, their weight, their method of loading, the number and safety of passengers, the indication, inside the carriages, of the seats they contain and the price of the seats, and the indication, outside, of the name of the owner, shall be punished by the fine laid down for fourth class offences.

The immobilisation of the public transport vehicle may be ordered under the conditions set out in articles L. 325-1, L. 325-2 and L. 325-3. »

Article R411-23-1 of the Highway Code.

« I.- Without prejudice to the provisions of article R. 411-23-2, buses, coaches, urban shuttles and urban trains whose layout so provides may travel with standing passengers within built-up areas.

However, vehicles providing occasional public transport services or private services may be subject to conditions of use laid down by order of the Minister of Transport.

II - When these vehicles are assigned to public transport services, they are also authorised to travel within the territorial jurisdiction of a mobility organising authority defined in article L. 1231-1 of the Transport Code or Ile-de-France Mobilités.

Outside built-up areas, the competent transport organising authority defines the routes taken without prejudice to the power of the competent police authority. The conditions relating to the

extension of these routes beyond built-up areas or the territorial jurisdiction of an organising authority are set by order of the Minister for Transport.

III - Outside built-up areas, within the territorial jurisdiction of a mobility organising authority defined in article L. 1231-1 of the Transport Code or Ile-de-France Mobilités, the Prefect may, by way of derogation, authorise private services to run with standing passengers using the vehicles mentioned in I, over a maximum distance of 5 kilometres. This authorisation sets out the conditions and limits for traffic, in particular the route taken and the maximum speed at which vehicles are authorised to travel. The application for authorisation sent to the Prefect includes all the information required for its examination.»

Article R412-1 of the Highway Code.

« I. - In traffic, all drivers and passengers of motor vehicles must wear an approved safety belt if the seat they occupy is fitted with one by the provisions of Book III.

II. - However, it is not compulsory to wear a seatbelt: 1° for any person whose body type is unsuited to wearing one; 2° for any person in possession of a medical certificate of exemption, issued by an approved doctor consulting outside the medical commission responsible for assessing the physical fitness of driving licence applicants and drivers or by the competent authorities of a Member State of the European Community or the European Economic Area. This medical certificate must state its period of validity and bear the symbol provided for in Article 5 of Council Directive 91/671/EEC of 16 December 1991; 3° In an emergency, for any driver or passenger of a priority general interest vehicle or ambulance;

4° For any taxi driver on duty; 5° In built-up areas, for any driver or passenger of a public service vehicle obliged by the need for service to stop frequently; 6° In built-up areas, for any driver or passenger of a vehicle making door-to-door deliveries.

III. - Any driver or passenger contravening the provisions of this article is liable to a fourth-class fine.

IV. - When this offence is committed by the driver, it automatically results in a reduction of three points on the driving licence. »

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