



**PRO/CNMC/003/18 REPORT ON ROYAL
DECREE-LAW 13/2018, OF 28
SEPTEMBER, AMENDING THE ROAD
TRANSPORT ACT WITH REGARD TO
PRIVATE HIRE VEHICLES**

17 January 2019

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AGREEMENT BY WHICH A REPORT IS ISSUED REGARDING THE ROYAL DECREE-LAW 13/2018, OF 28 SEPTEMBER, AMENDING ACT 16/1987, OF 30 JUNE, REGULATING ROAD TRANSPORT WITH REGARD TO PRIVATE HIRE VEHICLES**COUNCIL. COMPETITION COMMITTEE****CHAIRMAN**

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In Madrid, 17 January 2019

Exercising the powers attributed to it by article 5 of Act 3/2013, of 4 June, on the creation of the National Commission on Markets and Competition, the **COMPETITION COMMITTEE** agrees to issue the following report, on the Royal Decree-Law 13/2018, of 28 September, amending Act 16/1987, of 30 July, Regulating Road Transport (LOTT), with regard to private hire vehicles (hereinafter, PHV).

I. BACKGROUND

The transport sector in general, and passenger transport by car in particular, is subject to very extensive regulation. With regard to different aspects of this regulation, the CNMC (and its predecessor, the CNC) has, on numerous occasions, stated that it considers them to introduce unjustified restrictions that are not based on principles of efficient regulation and that diminish citizen's welfare.

These statements have been made in the context of its duty to promote competition, from the perspective of both: **preparing reports**¹ (article 5 of Act 3/2013, of 4 June, on the creation of the CNMC, LCCNMC) and **challenging regulation** before the courts (article 5.4 LCCNMC, article 27 of Act 20/2013, of 9 December, on Guaranteeing Market Unity, LGUM).²

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Additionally, at the **autonomous community level**, the autonomous competition authorities have written reports and studies about existing regulation governing passenger transport by car, and have lodged legal challenges against regulation that restricts competition. The Catalan Competition Authority (ACCO) has published several reports, studies and position papers in which it advocates fostering a regulation review process so that it more effectively fits the principles of efficient economic regulation, including an assessment report on RD-Law 13/2018,³ and more recently, early 2019, a [position paper on regulation of PHV services in the Barcelona Metropolitan Area](#).

- 1 [IPN 08/2009 on the Draft Bill of the Omnibus Act](#); [IPN 35/2010 on the Draft Bill of the Sustainable Economy Act](#); [IPN 41/10 on the Draft Regulations for the Road Transport Act \(ROTT\) to adapt it to the Services Directive](#); [IPN 75/12 Draft Bill amending the LOTT](#); [IPN/DP/002/14 Draft Royal Decree amending the ROTT](#); [IPN/DP/003/14 Draft Order amending Order FOM/36/2008, of 9 January, on hire cars with driver under the ROTT](#); [IPN/CNMC/0012/15 Report on the Draft Royal Decree amending the ROTT, with regard to PHV](#); [IPN/CNMC/0013/15 Report on the Draft Order amending Order FOM/36/2008, of 9 January, implementing hire cars with driver under the ROTT](#); [Draft Royal Decree amending statutory regulations to adapt them to the LOTT](#); [PRO/CNMC/003/17](#) establishing supplementary regulations to the ROTT with regard to PHV. All available on the [CNMC website](#).
- 2 In this regard, the following have been the object of challenges: Royal Decree 1076/2017 which prohibits the sale of PHV authorisations licences within two years of their issue and imposes the obligation to inform a register of each PHV service before it is provided; Royal Decree 1057/2015, of 20 November, amending the ROTT and Order FOM/2799/2015, which establish a quantitative limit on the PHV segment, the obligation to provide the service under a pre-booking scheme, the prohibition against driving on public thoroughfares or remaining parked to be hired directly by customers, the obligation to hire the entire vehicle, geographic restrictions on the free provision of the service within national borders, and the establishment of a minimum number of vehicles and other determining factors regarding vehicle characteristics; the [Regulation for the Barcelona Metropolitan Area](#) – AMB – which requires a second PHV licence to continue operating within the AMB, with a quantitative limit on authorisations, entailing the expulsion of more than 1,000 operators, and which has been suspended by the High Court of Justice (TSJ) of Catalonia in adopting the precautionary measures requested by the CNMC; [Decree 314/2016, of 8 November](#) of the Government of Catalonia, determining the specific conditions for hiring and marketing taxi services; the taxi ordinances of Córdoba, Málaga and Valladolid, as they contain various restrictions applicable to the taxi transport service in those jurisdictions. All available on the CNMC website in [Legal Standing art. 5.4 LCCNMC](#) and in [challenges art. 27 LGUM](#).
- 3 [Procompetitive remarks on the regulatory model for taxis and hire cars with driver](#) (2012), [Regulation report on Decree 314/2016, of 8 November](#) (2016); [Regulation report on the Decree-Law on urgent measures for the regulation of passenger transport services in vehicles with up to nine seats](#) (2017); [Regulation report on the Draft Regulations for urban passenger transport with driver in vehicles with up to nine seats](#) (2018); [Study on the passenger transport sector in vehicles with up to nine seats](#) (2018); [Assessment of Royal Decree-Law 13/2018, of 28 September, from the perspective of competition](#) (2018).

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In 2016, the Andalusian Competition Agency (ADCA) appealed against the local regulation on taxis in the municipality of Coín, which was partially upheld by the High Court of Justice of Andalusia.⁴ In 2017, it published a study in which it analysed taxi activity in Andalusia from the perspective of efficient economic regulation ([Report 1/17](#)). More recently, in December 2018, the ADCA prepared a [Circular on the regulation of on-demand passenger transport by car](#), among other things, warning that local regulation cannot establish disproportionate or discriminatory obstacles to accessing and carrying out the activity of urban passenger transport. Other authorities have also produced several reports analysing the regulation of taxi and PHV services from the perspective of efficient economic regulation. Specifically, the Aragón Defence of Competition Tribunal (among others, [2008](#) and [2018](#) reports), the Valencian Community Tribunal for the Defence of Competition ([2011 Report](#)), the Basque Competition Authority ([2013 Report](#), [2014 enquiry](#), [2018 Report](#)) and the Galician Competition Council ([2012 Report](#)).

The most recent regulatory reforms on passenger transport by car have strengthened elements that have a negative impact on competition in these markets.

Thus, the [Royal Decree-Law 3/2018, of 20 April](#), amending Act 16/1987, Regulating Road Transport (LOTT), gave the status of law to the possibility of establishing a maximum proportion of one private hire vehicles (PHV) authorisation for every thirty taxis in each autonomous community (ratio of 1:30). Moreover, it consolidated the territoriality or regularity rule, under which 80% of PHV services must be provided in the autonomous community where the authorisation is registered (80/20% rule).⁵ In its [4 June 2018 Judgment](#), the Supreme Court declared that these restrictions fulfilled the principles of necessity and proportionality.⁶

⁴ 13 October 2017 Judgment.

⁵ Specifically, RD-Law 3/2018 introduces the 1:30 rule, by means of a new paragraph 3 of article 48 of the LOTT, giving the power to deny PHV authorisations if the number of PHV authorisations in relation to taxis exceeds the ratio of 1 for every 30 taxis in the autonomous community where the authorisation is to be granted. This proportionality rule can be amended by the autonomous communities to make it less restrictive. And with regard to the regularity rule, a paragraph 2 is added to article 91, which stipulates that when 20% or more of the services performed using that vehicle within a three-month period did not go through the authorised territory, even partially, the vehicle is deemed not to have fulfilled the restrictive geographic regularity requirement.

⁶ Legal Basis, Seven and Eight.

More recently, [Royal Decree-Law 13/2018, of 28 September](#) was passed, again amending the LOTT (hereinafter, RD-Law 13/2018). **On 25 October 2018, the Parliament ratified the Royal Decree-Law and agreed on its enactment into law according to the urgent procedure**, so that amendments to its content could be made.

As a result of the ratification process of RD-Law 13/2018, a [Joint Statement of the Working Group between the CNMC and the regional competition authorities of Spain \(dated 29 October 2018\)](#)⁷ was adopted regarding the **new regulatory framework governing taxi and private hire vehicle services**. The aim of this statement was twofold: first, recalling the principles of better regulation to which the rules regulating access to and performance of economic activities must be subject; second, to reinforce mechanisms of cooperation and coordination to provide a consistent approach among competition authorities in exercising their duties to promote competition, which include their advisory role.⁸

Furthermore, the competition advocacy working group (at its 29th October 2018 meeting) requested more guidance from the CNMC to analyse possible restrictions on competition deriving from the exercise of the powers and functions attributed to the autonomous communities and local authorities in the abovementioned RD-Law 13/2018.

The CNMC's advisory functions include promoting and conducting studies and research projects concerning competition (art. 5.1 LCCNMC) and taking part, by means of reports, in the process of drawing up regulations that may have implications for effective competition in the markets. Those reports might be consulted not only by the Government, but also by the legislative chambers, by the autonomous communities, and by local entities, among others (art. 5.2 LCCNMC).

⁷ The Competition Authority Councils Working Group is made up of representatives of the decision-making bodies of the competition authorities of the State and the autonomous communities (CNMC and competition authorities of Andalusia, Aragón, Castile and Leon, Catalonia, Valencian Community, Galicia, Extremadura and the Basque Country).

⁸ It should be remembered that the CNMC and the autonomous community competition authorities are advisory bodies available to autonomous community and local public authorities to advise them in exercising the powers and authority attributed to them by the aforementioned Royal Decree-Law. In preparing this document, comments have been gathered from the competition authorities and bodies of the autonomous communities.

Insofar as RD-Law 13/2018 is currently being processed by the Parliament, the CNMC considers it appropriate to produce this report, which may serve to guide both the Parliament in passing the final text, and the autonomous communities and local entities in exercising their powers concerning regulation of passenger transport by car.

II. REGULATION OF PASSANGER TRANSPORT SERVICES (TAXI AND PHV) IN SPAIN

PHVs and taxis are passenger vehicles with up to nine seats that provide on-demand public passenger transport service between different locations within the territory.⁹

The differences between the two services are determined by the regulations applicable to each one, which impose different requirements to access and perform the activity. This matter is also subject to different rules of distribution of powers,¹⁰ with concurrent state, autonomous community and local regulation.¹¹

⁹ According to the LOTT, both taxi services and PHV activity are included in the category of on-demand public passenger transport in vehicles with up to nine seats.

¹⁰ Article 149.1. 21 of the Constitution recognises the exclusive competence of the State in matters of road transport which goes through the territory of more than one autonomous community. For its part, art. 148.1. 5 assigns intra-community transport, that is, transport which is restricted to the geographical area of one autonomous community, to the autonomous communities.

¹¹ The relevant state regulations are made up of the above-mentioned LOTT and its implementing regulation, the ROTT. The Spanish Constitution (CE) attributes to the State exclusive competence regarding road transport that goes through the territory of more than one autonomous community (art. 149.1 CE), but stipulates that the autonomous communities can assume powers in relation to road transport taking place entirely within their territory (art. 148.1 CE). Pursuant to Organic Law 5/1987, of 30 July, on delegation of state powers to the autonomous communities concerning road and cable transport, the State delegated powers relating to on-demand passenger transport in all the autonomous communities, so that the latter are also responsible for its management and regulation. The autonomous communities have regulated taxi services using two models: (i) governing the matter by means of a comprehensive regulation with the status of law; (ii) limiting themselves to regulating certain aspects of taxi services, but without governing this activity completely, so that autonomous community regulations must be supplemented by state regulation. At the same time, it should be remembered that municipal powers to organise and manage taxi services are recognised by Act 7/1985, of 5 April, on the Bases of Local Government (articles 25.2 and 86.2), so that town councils can manage the service previously shaped by the autonomous communities.

In general terms, in the opinion of the CNMC, the current regulatory framework imposes certain restrictions on capacity and incentives to compete for both taxis and PHV operators.¹² Those restrictions have a negative impact on the provision of the service for end users, in terms of higher prices, lower quality and innovation, less available supply and longer wait times than would be found in a more competitive environment.¹³ Below is a description of some of the most important restrictions in the current regulation, due to their connection to the new aspects introduced in RD-Law 13/2018.

II.1 Authorisation requirements and maximum number of authorisations

Both taxis and PHV operators are subject to authorisation in order to obtain access to the market. In addition, their number is regulated: taxis are subject to *numerus clausus* and the proportionality rule is applied to PHV (ratio of 1:30 with regard to taxi licences).¹⁴ In other words, the capacity to determine the optimum number of authorisations of one type or the other to meet demand for these services has been attributed to the government.

In the words of the Spanish Supreme Court, this regulation reflects the conception of taxis as *'a mode of urban transport by car which constitutes a public service and with regard to which the responsible government bodies try to guarantee certain levels of quality, safety and accessibility'* and the *'objective of maintaining a balance between the two modes of urban transport is a way to guarantee that taxi services are preserved as a public service'*.¹⁵

¹² The European Commission published a [Study on passenger transport by taxi, hire car with driver and ridesharing in the EU](#) (2016), with the following conclusions: the Spanish market is heavily regulated with significant barriers to entry. Both activities, taxis and PHV, are heavily regulated at the national and local level, including territorial restrictions.

¹³ In the [Financial Report on the restrictions on competition included in the regulation on on-demand urban passenger transport with driver in vehicles with up to nine seats that travel entirely within the Barcelona metropolitan area](#) (LA/08/18), it is estimated that the loss of welfare due to the limitation on the number of taxi licences in the Barcelona Metropolitan Area (AMB) totals 59.2 million euros a year, with the fact of the number of PHVs being limited accounting for 1.7 million euros a year. According to that report, each taxi licence for the AMB produces additional annual income of 5,083 euros, and each PHV authorisation, 2,041 euros.

¹⁴ The current article 48.3 of the LOTT regulates this entitlement so that the autonomous communities apply the 1:30 proportionality rule.

¹⁵ 4 June 2018 Supreme Court Judgment, Legal Basis Six.

However, several international organisations have criticised this type of regulation. The OECD has stated: *‘Restrictions on entry to the taxi industry constitute an unjustified restriction on competition. Regulatory capture frequently means that these restrictions lead to large transfers from consumers to producers, economic distortions and associated deadweight losses.’*¹⁶ The OECD ruled out that any of the traditional justifications for this type of regulation (preventing excess supply, preventing congestion and pollution, ensuring minimum quality of taxi services, preserving the welfare of taxi drivers) are effective for these objectives.¹⁷

The main problem with this type of regulation is that, for the public sector, being able to determine the optimum allocation of market supply is complex, considering the difficulties and cost of correctly measuring the demand needs for this type of services. As the OECD states: *‘There are no widely accepted models of “optimum” taxi supply to guide regulators’ decision-making.’*¹⁸

In fact, a summary analysis of the development of taxi and PHV supply in Spain calls into doubt whether the public allocation of licences and authorisations meets the needs of consumers.

The number of taxi licences in Spain has hit a plateau, standing at around 70,000 for the past 25 years. For their part, PHV authorisations, created in 1998, were initially of marginal importance. Until 2009, the maximum proportion of 1:30 between PHVs and taxis remained in force, so that the number of PHV authorisations rose from 1,336 in 1998 to 2,665 in 2009 (3.8% of the taxi licences for that year, see Graph 1). In 2009, Act 25/2009, of 22 December, and Royal Decree 919/2010, of 16 July, eliminated this limit, which was brought back in 2015 with Royal Decree 1057/2015, of 20 November. But between 2009 and 2015, there were multiple requests for PHV authorisations, many of which were initially denied and were in effect granted in following years in execution of judgments.¹⁹ This explains the recent increase in PHV authorisations (around 12,000 as at late 2018), significantly above the 1:30 proportion.

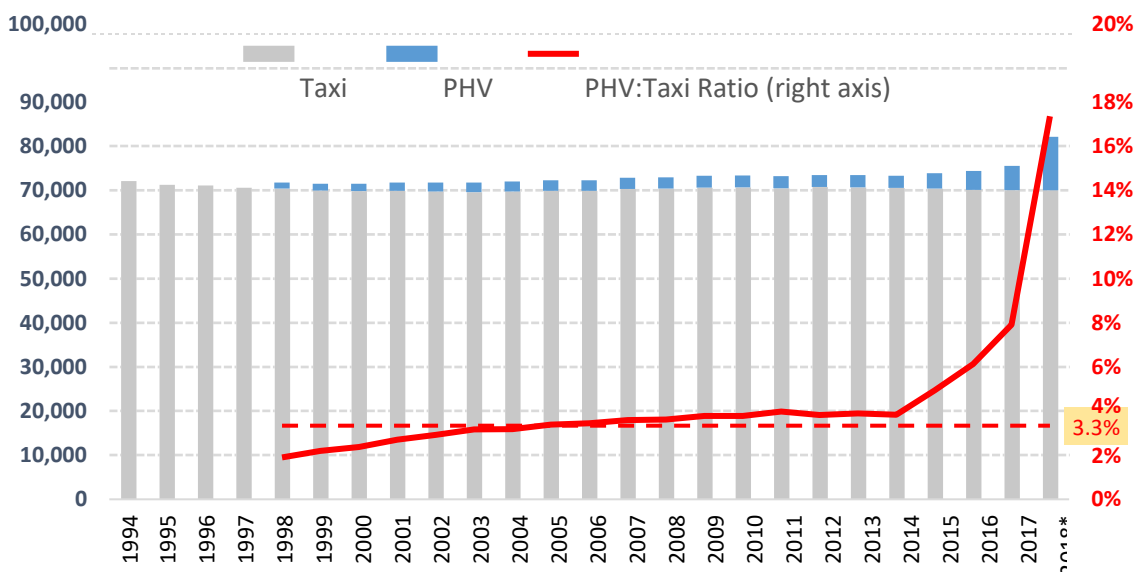
¹⁶ OECD (2007): ‘Taxi Services: Competition and Regulation’, p. 7.

¹⁷ OECD (2018): ‘Taxi, ride-sourcing and ride-sharing services - Background Note by the Secretariat’, p. 11–13.

¹⁸ OECD (2007), p. 7.

¹⁹ It should be remembered that due to execution of judgments, the autonomous community governments must grant the authorisations that were requested and denied by them during the period in which

Graph 1. Variation in taxi licences and PHV authorisations



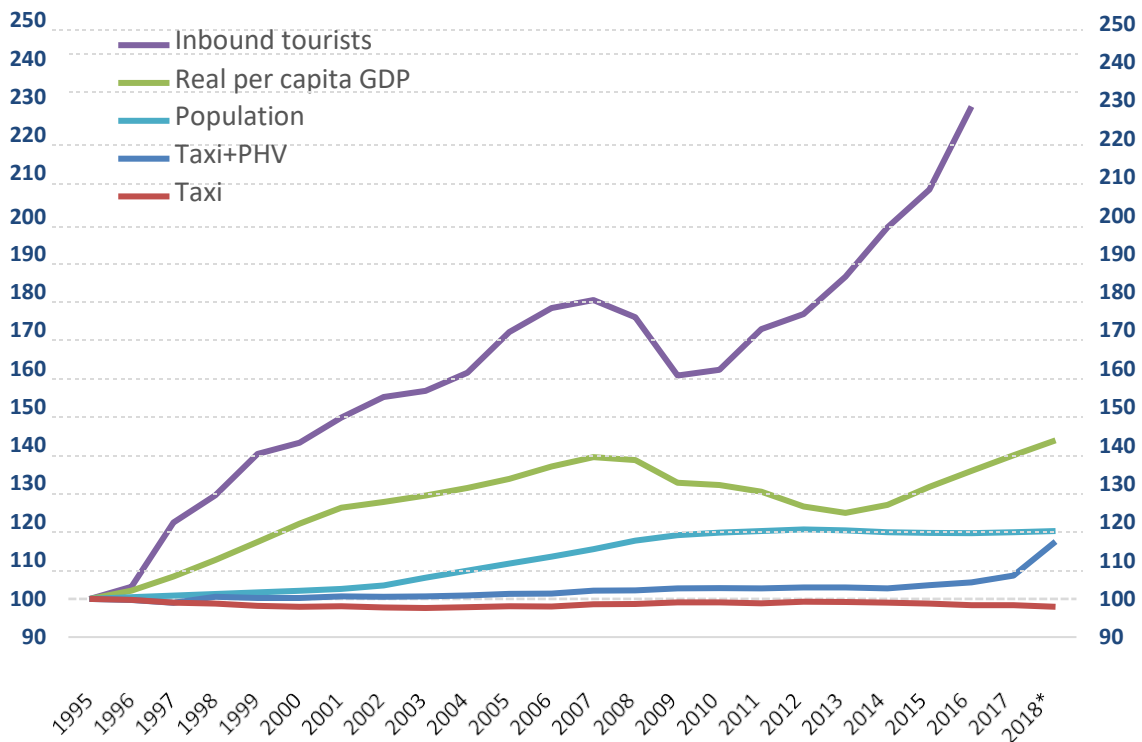
Source: Compiled by authors based on data from the National Statistics Institute (INE) and [Ministry of Development](#)²⁰ (the taxi data for each year are from 31st July and the PHV data are from 1st January, except for 2018, where the 2017 data are used for taxis and the licences as at 10th October 2018 are used for PHVs). The taxi data include total licences (with and without taximeter) and the PHV data, total national and autonomous community authorisations.

The plateau in taxi licences is not very consistent with variation in other variables during the same period. Thus, **while the number of taxi licences declined during the 1994–2018 period in Spain as a whole (from 72,072 to 69,792), the Spanish population increased 18% (from 39.6 million to 46.7 million), Spanish per capita income rose 40% (from €17,890 to €25,291) and the annual entry of foreign tourists has risen 30% (from 33 million to over 75 million).**

there was no quota (1:30 ratio), that is, from 2009 due to the passing of the Omnibus Act (Act 25/2009, of 22 December), amending the LOTT and eliminating that rule, until 2015, with the passing of Royal Decree 1057/2015, of 20 November, which brought back that proportionality rule or quota system. It should be noted that despite the fact that the Services Directive is not directly applicable to the transport industry, the amendment of the LOTT produced by the above-mentioned Omnibus Act is based on the Directive, and procompetitive amendments were introduced in this industry, deriving from the principles established in the Directive, such as eliminating the quantitative limits on granting authorisations. The [5 February 2018 Supreme Court Judgment](#) provides an example, upholding the appeal of an operator to whom the government had denied a PHV authorisation during the ‘liberalised’ period, due to exceeding the 1:30 ratio.

²⁰ The taxi data for each year are from 31st July and the PHV data are from 1st January, except for 2018, where for the 2017 data are used for taxis and the authorisations as of 10th October 2018 are used for PHV. The taxi data include total licences (with and without taximeter) and the PHV data, total national and autonomous community authorisations.

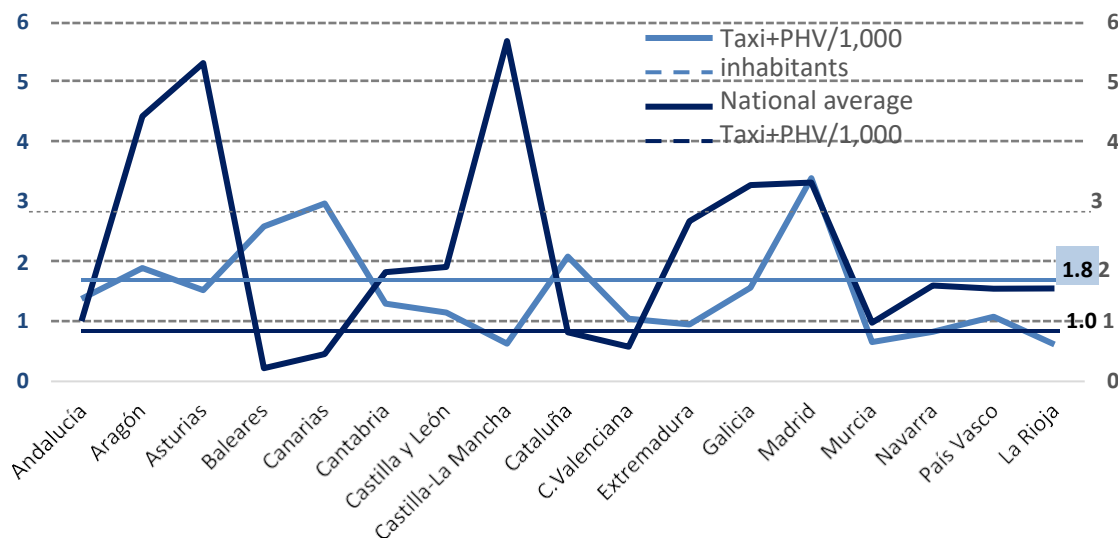
**Graph 2. Taxi and PHV authorisations compared to other variables
(1995=100)**



Source: Compiled by authors based on data from the National Statistics Institute (INE), Ministry of Development, IMF and World Bank.

What is more, the situation is not uniform throughout the country. As we can see from Graph 3, at the national level, there are 1.8 taxis+PHV for every 1,000 inhabitants. There are three autonomous communities that substantially exceed that average: Madrid, Canary Islands and Balearic Islands. The Canary and Balearic Islands are very particular due to their high incidence of tourism: in fact, they are far below the national average in taxis+PHV per tourist (1 taxi+PHV for every 1,000 tourists). Other autonomous communities with a significant share of tourism, such as Catalonia and the Valencian Community, are also lower.

Graph 3. Taxi and PHV authorisations in relation to other variables



Source: Compiled by authors based on data from the INE (National Statistics Institute) and Ministry of Development²¹

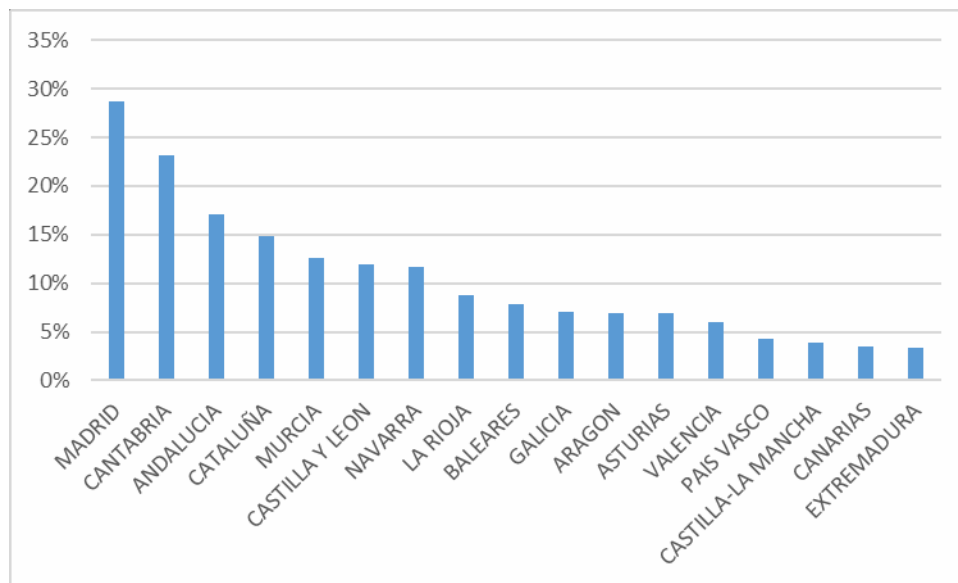
Lastly, it is important to analyse the share of PHV authorisations out of total taxi and PHV authorisations in each autonomous community. As Graph 4 shows, the autonomous communities where PHV operators have the greatest weight are Madrid (29%), Cantabria (23%), Andalusia (17%), Catalonia (15%), Murcia (13%), Castile and Leon (12%) and Navarra (12%). In some autonomous communities, however, PHV authorisations account for only a token share, being in all cases less than 5%: Extremadura (30 authorisations), Canary Islands (30 national and 207 autonomous community authorisations), Castile-La Mancha (45 authorisations) and the Basque Country (94 authorisations).

²¹ The taxi data are from 31st July 2017 and the PHV data are from 10th October 2018. The taxi data include total licences (with and without taximeter) and the PHV data, total national and autonomous community authorisations. The tourist data are for 2017 and the population data are from 1st January 2018.

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Graph 4. PHV authorisations out of taxi and PHV authorisations as a whole



Source: Compiled by authors based on data from the INE (National Statistics Institute) and Ministry of Development²²

II.2 Geographic compartmentalisation of markets

The regulation limits the ability of operators to provide PHV service within national borders. The criteria of regularity in the autonomous community where the authorisation was issued²³ hinders the entry of operators in any market within national borders, the markets being limited, by means of the maximum trip quota, to the intra-autonomous community level. In short, geographic compartmentalisation acts as a quantitative limit and helps prevent the existence of an efficient fit between supply and demand for users of these services at the national level and prevents operators from being able to generate economies of scope and scale, and increase their efficiency, which in a competitive environment, would translate into better prices for users.

Although PHV services can serve urban and interurban journeys, their area of action is primarily urban/metropolitan. The operator data for the Barcelona Metropolitan Area (AMB) confirm this supposition,

²² The taxi data are from 31st July 2017 and the PHV data are from 10th October 2018. The taxi data include total licences (with and without taximeter) and the PHV data, total national and autonomous community authorisations.

²³ The obligation to begin the service in the community where the authorisation is registered. The aforementioned RD-Law 3/2018 incorporates the territoriality rule (80/20) into art. 91.2 of the LOTT as an exception applicable solely to PHV. As we will see below, this rule is again amended with the approval of RD-Law 13/2018.

as almost 90% of turnover²⁴ for PHV authorisations registered in the province of Barcelona comes from journeys within the AMB. It is likely that in other areas where PHVs provide service, the share of urban journeys is similar.

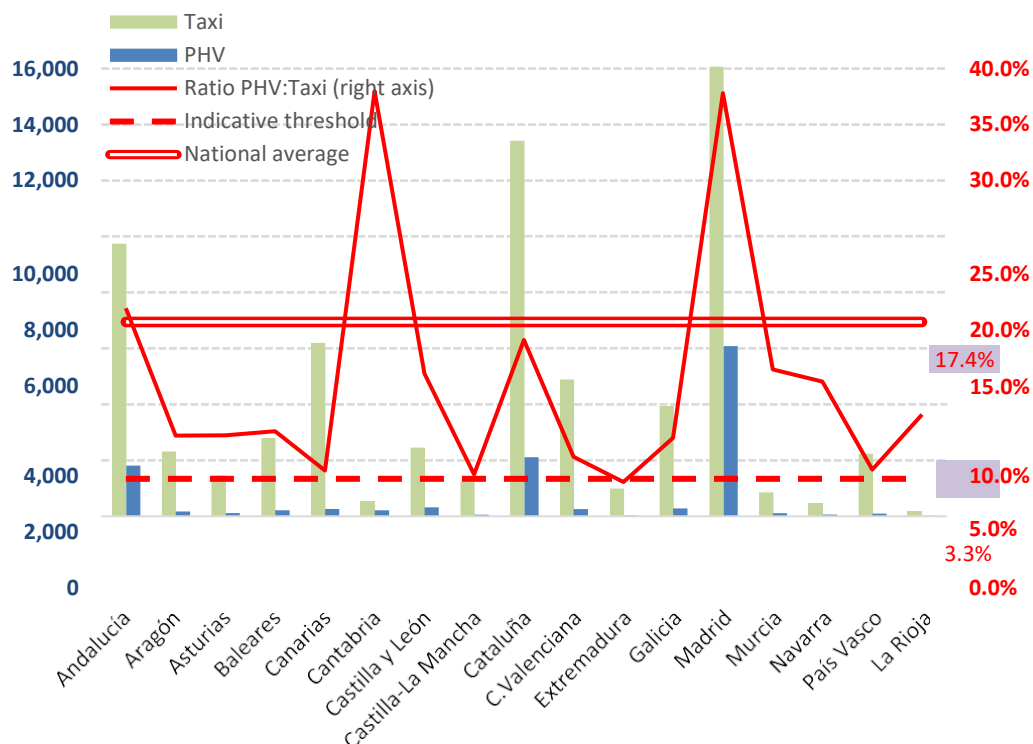
Given that, as we will analyse in the following sections of this report, RD-Law 13/2018 entitles the autonomous communities to amend the operating conditions of the PHV service, it is interesting to look at what the situation is at this level.

In Graph 5 it is possible to see significant differences. Only Madrid and Cantabria²⁵ amply exceed the national average, while Catalonia and Andalusia are close to this average. The rest are considerably below the national average and many of them are even around the 1:30 proportion (indicative threshold of 3.3%).

²⁴ For 2017, data have been obtained for 412 of the 771 authorisations registered in Barcelona, which had turnover of almost €12 million euros, of which over 10.5 million were within the AMB, representing 88%. The share of the AMB measured in number of journeys and kilometres travelled is also similar to that figure.

²⁵ Cantabria and the Canary Islands are the only communities that have autonomous community PHV authorisations.

Graph 5. PHV/Taxi proportion by autonomous community



Source: Compiled by authors based on data from the INE (National Statistics Institute) and Ministry of Development²⁶

II.3 Price and other terms of service provision

Taxis must apply fares fixed by the government, whether it be fixed or maximum pricing, while PHV are subject to free-trade pricing. This difference prevents taxis from being able to compete in such an important factor as prices.

Despite the fact that some autonomous community laws and municipal ordinances have provided for a maximum fare system for the taxi service, the use of discounts is limited or prohibited at the same time,²⁷ meaning that, de facto, the fare acts as a fixed price or even a focal price which facilitates coordination among operators. In short, a fare system of this type disincentives operators (taxis) from competing by offering different price and quality combinations, even in the cases where the regulations permit it. In addition, it prevents the setting of efficient market rates which serve to adjust supply and demand at different points in time.

²⁶ The taxi data are from 31st July 2017 and the PHV data are from 10th October 2018. The taxi data include total licences (with and without taximeter) and PHV data, total national and autonomous community authorisations.

²⁷ One example is the challenge [LA/01/2015, TAXIS MÁLAGA](#). (PHV)

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Additionally, while the regulation allows taxis to be hired at stands, directly on the street or by pre-booking via telephone or other communication technologies, it only allows PHVs to provide service via pre-booking (art. 182.1 Regulations for the Road Transport Act, ROTT).²⁸

III. CONTENT OF RD-LAW 13/2018

RD-Law 13/2018 amends the legal framework for ride-sharing services and consists of one Article, four additional provisions and one transitional provision.

The sole Article amends article 91 of the LOTT in two major areas: (i) it determines that the scope of PHV authorisations shall become interurban²⁹ rather than national; (ii) it requires the service to begin – passenger pick-up – within the territory of the autonomous community where the PHV authorisation is registered. For this latter obligation, it provides for two operational exceptions under certain conditions: (1) for the case of passenger pick-up at ports and airports located in an autonomous community other than that in which the authorisation is registered and (2) to handle a short-term increase in demand in a certain territory on a temporary basis.

Additional Provision One entitles the autonomous communities to, by delegation of the State, be competent to grant national PHV authorisations to amend the conditions of operation set forth in art. 182.1 of the LOTT regulations.³⁰ The following limitations are placed on this entitlement:

²⁸ In fact, due to innovation and technological development, the division between pre-booking and direct hire becomes blurred as due to technological innovation through smartphone apps, it is possible to hire the service (PHV and taxi) almost immediately.

²⁹ It should be added that article 91.1 of the LOTT states: *'For these purposes, a transport shall be considered interurban when its route goes beyond the territory of a single municipal area or zone of joint provision of urban public transport services so defined by the body competent to do so.'*

³⁰ Said article 182.1 of the ROTT stipulates: *'When the vehicles attached to the hire car with driver authorisations are occupied by persons who do not belong to the company holding the authorisation, they may only travel if it can be demonstrated that a pre-booked service is being provided. To that end, the contract for hire cars with driver must have been completed prior to the start of provision of the service hired, it being required to carry documents certifying this hiring on board the vehicle, as determined by the Minister of Development. The vehicles attached to the hire car with driver authorisations may not, under no circumstances, drive on the public thoroughfares in search of customers or attract travellers who have not previously booked the service by remaining parked for said purpose.'*

- The amendment in question will only affect the services carried out entirely within their territory;
- It must refer to the following subjects: pre-booking, requesting services, attracting customers, minimum and maximum journeys, mandatory services or hours, and technical specifications of the vehicle.
- The amendment must be aimed at improving management of domestic mobility of travellers and guarantee oversight of the conditions for provision of the service, observing, in all circumstances, the principle of proportionality.
- All of the above without prejudice to the powers appertaining to the local authorities in relation to the services that remain entirely within their geographical area.

Additional Provision Two on cooperation within the framework of the Directors-General for Transport Committee. A working subgroup is created, reporting to the Directors-General for Transport Committee, to share good regulatory practices and successful experiences.

Additional Provision Three on adaptation of the penalty scheme. A six-month period is established for the Government to approve a bill regulating the penalty scheme applicable to holders of PHV authorisations in the event of non-compliance with the measures approved by RD-Law 13/2018 and to be able to increase the penalties provided for.³¹ In addition, with the aim of guaranteeing oversight of the conditions of operation of the service, the Directorate-General for Road Transport will entitle the competent bodies in matters of transport of the autonomous communities and those local authorities that so request, to access the communications register for the PHV services regulated in article 2 of the Royal Decree 1076/2017, of 29 December, establishing supplementary regulations to the ROTT.

Additional Provision Four relating to the Ministry of Development report. This is an annual report detailing changes in the regulation of PHV activity in the country's main population centres and their impact on mobility.

Sole Transitional Provision, which regulates PHV authorisations that were current at the entry into force of RD-Law 13/2018 or whose applications were pending a decision. The amendments of the RD-Law itself are expected to take effect in four years (which may be extended in particular cases). During this transitional period, the following scheme will apply:

³¹ Specifically, when said services are provided in a geographical area other than that to which they are assigned or in non-compliance of the limitation regarding the regular provision of the service in the territory in which the authorisation is registered, or electronic transmission of the data relating to the record of the services or picking up customers who did not previously book the service.

- The PHV authorisations that are current at the entry into force of RD-Law 13/2018 will continue to be entitled to provide urban services.
- The regularity or territoriality rule will remain in force. Therefore, 80% of the services must be provided in the autonomous community in which the PHV authorisation is registered, and the remaining 20% may be provided in another, different community.
- To enable the competent government bodies to oversee compliance with these conditions, authorisation holders must transmit the data relating to each service to the same, as stipulated in Royal Decree 1076/2017, of 29 December, establishing supplementary regulations to the ROTT.
- The services provided by PHVs in urban areas will be subject to all the decisions and limitations established by the competent bodies in matters of urban transport (generally, local authorities) in exercising their powers relating to the public thoroughfare; management of urban traffic; environmental protection; and especially, in matters of parking, hours and schedules of service or travel restrictions for reasons of atmospheric pollution.

The regulation states that this interim scheme is compensatory for affected parties. However, for those holders of PHV authorisations who consider that the temporary entitlement is not sufficient to compensate them, a specific procedure is established to request additional compensation.³² To calculate this, it will include (taking into account the Royal Decree 55/2017, of 3 February, implementing the act on the de-indexation of the Spanish economy), cash flows from investment activities, although only the expenses resulting from acquisition of the vehicle, and if applicable, the PHV licence. Certain items are excluded from this calculation.³³

³² The appendix contains the request for this additional compensation and the documentation which must be submitted for this purpose to the Directorate-General for Road Transport, which must issue its decision within six months, although it does provide for negative administrative silence. If the request is successful, the additional compensation shall be given in the form of an extension of the temporary entitlement, with extensions longer than two years being the exception.

³³ i) Acquisition of authorisations granted to the current holder by the transport body; ii). Acquisition of authorisations for valuable consideration four or more years before the entry into force of this Royal Decree-Law; iii). Acquisition of the vehicle attached to the authorisation when its holder holds it under a lease, financial leasing or renting; iv). Acquisition of the vehicle attached to the authorisation four or more years before the entry into force of this Royal Decree-law.

It is also stipulated that for all those authorisations which are granted as a result of judicial decisions (or applications pending a decision) subsequent to the entry into force of RD-Law 13/2018, the four-year period is calculated from the effective date of the granting. Lastly, it is established that, once the respective period of the additional compensation has elapsed, the authorisation holder will continue to be entitled to provide service within the interurban area, as stipulated in the LOTT and implementing regulations.

IV. ASSESSMENT

IV.1 General remarks

The main effect of RD-Law 13/2018 is to restrict the geographical area of provision for national PHV authorisations, which until now was made up of interurban and urban areas, limiting it solely to interurban journeys. As indicated above, for national PHV authorisations in force, this effect will take place once the four-year transitional period is over. For new authorisations,³⁴ it will take immediate effect, but given that it is unlikely that new authorisations will be granted in the next four years due to the 1:30 proportionality threshold being in force, it can be assumed that this effect will in fact take place in four years. Therefore, **national PHV authorisations will no longer entitle holders to carry out the activity of PHV in urban areas in four years.**

Additionally, the RD-Law changes the geographical area for provision of the PHV services. **Following the four-year transitional period**, the 80/20 rule, which allows PHVs authorised in one autonomous community to perform part (up to 20%) of their activity in other autonomous communities, will disappear and **national PHV authorisations will only entitle holders to provide service which begins in the autonomous community of origin.**³⁵

These measures will have a negative impact on competition in on-demand passenger transport, by reducing the number of operators available to provide on-demand urban and interurban transport services, and their capacity and incentives to compete. **End users will be negatively affected, likely in the form of higher prices, longer wait times, lower quality and less innovation in transport.**

³⁴ Authorisations requested after the entry into force of RD-Law 13/2018.

³⁵ With the exceptions of passenger pick-up at a port or airport, and any exceptions implemented in response to spikes in demand.

However, **autonomous communities and local regulation could mitigate some of these potential impacts, as long as they take into consideration the benefits which competition generates for citizens and introduce measures to foster it.** After all, the RD-Law refers expressly to the possibility of the autonomous communities and local authorities being able to determine *‘the conditions under which the passenger transport services carried out entirely within their geographical area will be able to be authorised and provided, including those performed as hire cars with driver’.*

Regulation of all economic activity must take account of the perspective of effective competition in markets and the principles of efficient economic regulation. These principles must inform the actions of public administrations as a whole and are included in our legal system from both a general perspective³⁶ and for the transport sector.³⁷

In this regard, it should be noted that there are three fundamental pillars of any regulatory approach: the principle of **non-discrimination**, which proscribes different treatment among operators without sufficient justification; the principle of **necessity**, which means that regulations should be designed for their consistent and systematic attainment³⁸; and the principle of **proportionality** – by virtue of which limitations on economic activity must be adapted to ensure the achievement of the aim pursued and not go beyond what is strictly necessary to achieve it.

Additionally, although Directive 2006/123/EC on Services³⁹ does not apply to transport, regulation cannot compromise the exercise of any of the fundamental freedoms of EU law (for example, freedom of establishment), unless there is an overriding reason in the public interest, which cannot include those of a merely economic nature.⁴⁰

³⁶ Art. 129 of Act 39/2015, of 1 October, on Common Administrative Procedures of Public Administrations, refers to the principles of good regulation, which include necessity and proportionality in the exercise of regulatory powers; and art. 4.1 of Act 40/2015, of 1 October, on the Legal Framework for the Public Sector, stipulates that the intervention of public authorities in the carrying out of an activity must be justified in the protection of the public interest and be proportionate, in addition to not committing discrimination.

³⁷ This is particularly evidenced by, for example, paragraphs d) and g) of article 43.1 of the LOTT.

³⁸ Among others, see the 23 December 2015 Judgment, Gebhart Hiebler, C-239/14, paragraph 65.

³⁹ The validity of EU law for this activity, despite being excluded from [Directive 2006/123/EC](#) was confirmed by the Spanish Supreme Court in its 4 June 2018 Judgment (Legal Basis 4: *‘Thus, the legislator, not only in the LGUM, but also in the actual amendment to the LOTT brought about in 2013, expresses the generic validity of community regulations in this matter, despite the Services Directive not being applicable to the same.’*

⁴⁰ See, among others, the following CJEU judgments: 24 March 2011, Case C-400/08, ECLI:EU:C:2011:172, and 15 April 2010, CIBA, Case C-96/08, ECLI:EU:C:2010:185.

See, for example, Judgment (16 April 2015) Commission/Germany, C- 591/13, paragraph 63: ‘According to settled case-law, the freedom of establishment may be restricted by national legislation only if the restriction at issue is justified by overriding reasons in the public interest. It is further necessary, in such a case, that that restriction should be appropriate to ensuring the attainment of the objective in question and not go beyond what is necessary to attain that objective (see judgment in *DI. VI. Finanziaria di Diego della Valle & C.*, EU:C:2012:552, paragraph 41 and the case-law cited.’⁴¹

IV.2 Specific remarks

IV.2.1 Negative impact on competition

Firstly, RD-Law 13/2018 restricts the geographical area for provision of national PHV authorisations **at the end of the four-year transitional period, no longer entitling transport services to be provided in urban areas with these authorisations.**

This measure means that within four years there will be a drastic reduction in the number of operators in the on-demand passenger transport segment in urban areas. This, *ceteris paribus*, will have **a negative impact on urban mobility and for citizens who receive the service**: less competition will tend to cause transport prices to rise, wait times for users to increase, vehicle availability to decline, service quality to deteriorate, and there to be fewer innovations in the service.

The effects are likely to be significant throughout the country, although with a **more appreciable impact in those regions, which have a greater share of the current PHV authorisations.** As Graph 4 above shows, the autonomous communities where the impact of the departure of PHV operators will be most heavily noticed are Madrid (where PHVs account for 29% of total taxi+PHV authorisations), Cantabria (23%), Andalusia (17%), Catalonia (15%), Murcia (13%), Castile and Leon (12%) and Navarre (12%). However, the effects of the departure of PHV operators will also be noticed in the rest of the autonomous communities, as competition from PHVs from other autonomous communities will no longer be possible. (Under the territoriality rule, PHVs can provide up to 20% of their services in autonomous communities other than the community of origin.)

⁴¹ Also of interest in this respect, the 15 October 2015 Judgment, C-168/14, ITEVELESA; the 22 December 2010 Judgment, C-338/09, Yellow Cab; and the 10 March 2009 C-169/07 Judgment, Hartlauer.

In addition, limiting authorisations in the area of urban transport could **also have a negative impact on competition in interurban areas**. Urban areas are the most important submarket for PHV operators. For example, as indicated earlier, in the case of PHV operators in the AMB, almost 90% of their turnover comes from journeys within the AMB. This means that the inability to continue providing services in urban areas will severely limit the profitability of this type of authorisation, possibly leading to the demise of many of these operators, with the resulting reduction in supply and accompanying negative consequences in interurban areas.

Furthermore, although the suspension of national PHV authorisations for urban areas is expected to take effect for current PHV authorisations following a four-year transitional period, **its effects may be expected to manifest themselves before these four years are up**. The barrier to entry for new operators has removed the risk of new entrants who generate competitive tension, with the resulting incentive to improve. In addition, in a context of regulatory uncertainty and as the end of the transitional period approaches, PHV operators will lack incentives to innovate and compete in response to the possible loss of validity of their authorisations.

Secondly, the RD-Law requires that, once the four-year transitional period is over, interurban service for PHV authorisations have to begin within the territory of the autonomous community where the PHV authorisation is registered, with two limited exceptions. Those exceptions are passenger pick-up at ports and airports with a destination in the autonomous community of origin and a short-term increase in demand, which must still be regulated. This means the **repeal within four years of the territoriality rule (80/20), according to which PHV operators could provide up to 20% of their services in other autonomous communities**.

This change **will reduce competition in all autonomous communities, as the repealed rule made it possible for PHV operators to travel wherever there were better conditions for the provision of the service, increasing benefits for users. The measure also served to deal with foreseeable and asymmetrical increases in demand** by region. Thus, for example, PHV operators from autonomous communities with less tourism could travel to autonomous communities with more tourism to deal with substantial increases in demand in places where tourism is seasonal or there could be movement depending on seasonal demand. Moving vehicles could also deal with temporary and significant increases in demand for transport due to local festivities or tourist conferences from some autonomous communities to others. The regulatory change will have a negative impact on competition in both urban areas and interurban areas.

This reduction in competition **will have a negative impact on end users**, giving rise to higher transport prices, longer wait times and less vehicle availability, lower quality of service and fewer innovations. The effects are likely to be significant throughout the country, although it is possible that they will be greater in those areas where demand is more seasonal and more changeable, because the shortfall in supply will be most heavily noticed during periods of peak demand.

IV.2.2 Analysis of the possible fit between the RD-Law and the principles of good economic regulation

According to its preamble,⁴² the RD-Law is founded on three reasons of general interest: mobility and traffic congestion problems, environmental reasons, and supply and demand imbalances in transport by car.

Regarding the environmental and mobility externalities, RD-Law 13/2018 does not contain any data or study which evaluates the impact of PHV authorisations on the environment or congestion. Therefore, it has not been demonstrated that the measures are necessary for the ends sought.

Furthermore, there are other measures that are less restrictive to competition to combat congestion and environmental problems, such as promoting lower-emissions vehicles, setting tolls or taxes, or establishing mobility restrictions.

In addition, together with the approximately 12,000 PHV authorisations in existence throughout Spain, there are 70,000 taxi licences on which the RD-Law has no effect. Between the two of them, they represent a very limited number of vehicles compared to the fleet of private passenger vehicles in Spain, with regard to which no actions are being considered either.⁴³

⁴² *'In the months that have passed since the entry into force of the Royal Decree-Law 3/2018, of 20 April, it has become clear that the measures it provided for were not sufficient to deal with the mobility, traffic congestion and environmental problems which the considerable increase in the supply of urban transport by car is causing in the main population centres in our country. Likewise, rapid growth of this mode of transport may give rise to an imbalance between supply and demand for transport by car which causes an overall worsening of services, to the detriment of travellers'*

⁴³ For example, in the city of Madrid alone, in 2012 the vehicle fleet totalled 1.72 million vehicles. In 2012, it was estimated that there were 2.5 million private vehicle trips each weekday ([Sustainable Urban Mobility Plan for the City of Madrid](#). Analytical Overview, 2014).

Lastly, the analysis of the contribution of taxis and PHVs to congestion and the environment must be contrasted with the fact that these services may contribute to reducing the use of private vehicles.

With regard to maintaining the balance between supply and demand, this cannot be considered an imperative reason of overriding public interest as, according to article 18.2.g) of the LGUM,⁴⁴ in relation to article 10.e) of Act 17/2009,⁴⁵ economic motivations do not constitute overriding reasons in the public interest.⁴⁶

Furthermore, if it were a matter of adjusting supply and demand, from the data reflected in *section 1.2 Characteristics of the market*, it is possible to conclude that demand for these services has progressively increased without supply growing in an equivalent manner. In other words, if it were necessary to make an adjustment on the supply side, this would not be to reduce it, but to increase it.

The 4 June 2018 Judgment of the Spanish Supreme Court stated that *'the aim of maintaining a balance between the two types of urban transport emerges as a way of guaranteeing that taxi services are preserved as a public service'*. However, the possible existence of a reason of public interest that protects limitation on PHV does not constitute unconditional entitlement for any measure intended to be adopted, as the Spanish Supreme Court warned in the same judgment that the 'specific' measures adopted must be necessary and proportionate:

⁴⁴ '2. The following shall be considered actions which limit free establishment and free movement due to not fulfilling the principles included in Section II of this law, the actions, provisions and means of intervention of the competent authorities which contain or apply: ... g) Requirements of an economic nature ... under the terms established in letters e) and f) of article 10 of Act 17/2009, of 23 November, on free access to service activities and their exercise.'

⁴⁵ Under no circumstances shall access to a service activity in Spain or its performance be dependent on the following: ... e) Requirements of an economic nature which make the granting of the authorisation dependent on proof of the existence of an economic need or demand in the marketplace, on an evaluation of the economic effects, possible or real, of the activity, or on doing an assessment of whether the activity meets the economic programming targets set by the competent authority, or on marketing products or services of a given type or origin. The overriding reasons in the public interest invoked may not conceal economic planning requirements.

⁴⁶ For example, see 24 March 2011 Judgment, Commission/Spain, C-400/08, paragraph 74: 'purely economic objectives cannot constitute an overriding reason in the public interest'.

‘Maintaining a similar urban transport service is a legitimate objective of the public authorities, whose assurance can be considered an overriding reason in the public interest which justifies regulatory measures with regard to similar services in the same segment of the market, despite the fact that such measures may affect competition and freedom of establishment, provided that the specific measures adopted are necessary and proportionate.’⁴⁷

The judgment itself confirms that the principles of the LGUM are perfectly applicable to the industry, and therefore, that the overriding reasons in the public interest (art. 5 LGUM) deriving from the reference regulatory framework (included in art. 3.11 of Act 17/2009⁴⁸) do not under any circumstances provide for said supposed balance between potential competitors.

In this regard, there is CJEU case law, analysing domestic law of the member states, which has extended the solutions of EU law to other cases in addition to those expressly included by EU rules. The same court has expressly pronounced, indicating the need for the concepts in Union law to be treated uniformly, in order to forestall differences of interpretation,⁴⁹ particularly with the aim of avoiding discrimination against own nationals or any distortion of competition, or to provide for a single procedure in comparable situations.

⁴⁷ 4 June 2018 Supreme Court Judgement, Legal Basis Six.

⁴⁸ The concept of ORPI is established in recital 40 of the Services Directive, as well as article 4 paragraph 8. Also by express reference by the LGUM to article 3.11 of Act 17/2009: *“Overriding reason in the public interest”: reason defined and recognised as such in the case law of the Court of Justice of the European Union, limited to the following: public policy; public security; public safety; public health; preserving the financial equilibrium of the social security system; the protection of the rights, safety and health of consumers; recipients of services and workers; fairness of trade transactions; combating fraud; the protection of the environment and the urban environment; the health of animals; intellectual and industrial property; the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives.’*

⁴⁹ See, for example, the CJEU judgment in Case C-338/14, Quenon, paragraph 17: *‘However, it follows from settled case-law that where domestic legislation adopts the same solutions as those adopted in EU law in order, in particular, to avoid discrimination against foreign nationals or any distortion of competition, it is clearly in the European Union’s interest that, in order to forestall future differences of interpretation, provisions or concepts taken from EU law should be interpreted uniformly, irrespective of the circumstances in which they are to apply (see, in particular, judgments in Poseidon Chartering, C-3/04, EU:C:2006:176, paragraphs 15 and 16; Volvo Car Germany, C-203/09, EU:C:2010:647, paragraphs 24 and 25, and in Unamar, C-184/12, EU:C:2013:663, paragraphs 30 and 31).’*

The above consideration also reveals the problems resulting from tackling general problems by means of regulations focused on only part of the industry. **Any regulatory action carried out in the sector must be based on a holistic approach to the activity of transport by car, so that the regulation applicable to one type of operator or the other (taxi and PHV) – and even to some extent all other passenger vehicles – is uniform.**

It should be remembered that important restrictions remain in effect⁵⁰ in the regulations applicable to both PHV and taxis. The CNMC has analysed these on previous occasions, it in fact being statutory regulations on taxi service in two Spanish cities, the first to be subject to challenge before the courts from the perspective of active legal standing.

Based on this comprehensive approach, the regulation adopted must derive from a review of current regulation to eliminate all those restrictions which are not considered to adapt to the aforementioned principles. This regulatory framework must be predictable, transparent and procompetitive.⁵¹

IV.2.3 Possible measures to mitigate the reduction in competition

It is necessary to review the regulation based on a global approach, so that the regulations applicable to taxis and PHV are not discriminatory. However, the fact that the RD-Law has provided for a four-year transitional period makes it possible to analyse potential regulatory alternatives to mitigate the negative impact on competition of the change in national legislation, some of which are indicated in the RD-Law itself.

⁵⁰ Other requirements which affect free enterprise and the self-organising power of the business owner are the requirement that the licence holder should be a natural person or worker cooperative; limitation on the number of authorisations or licences to one per natural person, or in the case of worker cooperatives, one per each one of the members; limitation on the possibility of drivers other than the licence holder; the licence holder being employed full-time in the occupation of taxi service; prohibition from leasing, transferring or assigning the operation or the vehicle. Making transfer of the licence *inter vivos* or *mortis causa* subject to administrative authorisation and the pre-emption rights of the municipality in the case of *inter vivos* transfer; requirement for authorisation to place advertising in the taxi; and matters related to quality and safety, such as the requirement that the vehicle should be no more than two years old.

⁵¹ Art. 5.2 of Act 3/2013 expressly entitles the Spanish parliament to request a report from the CNMC on all those matters that affect maintaining effective competition in the marketplace.

IV.2.3.1 Implementing an autonomous community or local PHV authorisation

It should be emphasised that **holders of PHV authorisations would be able to continue providing urban transport services if they had an additional autonomous community or local licence or authorisation for urban areas**.⁵²

Pursuant to art. 148.1 of the Spanish Constitution, all autonomous communities have taken on exclusive competences in matters of transport on intra-autonomous community roads. **However, the majority of the autonomous communities have not developed legislation concerning PHV** (with the exception of the Canary Islands and Cantabria⁵³). Therefore, state legislation has been used supplementarily, including for intraregional services.

There is nothing to prevent autonomous communities from adopting a specific legal framework for PHV hire in urban areas within their territories. Therefore, it would be advisable for them to regulate this matter to lessen the impact of the disappearance of national PHVs, provided that the following considerations are taken into account:

- Pursuant to the principles of the LGUM, requiring an authorisation for PHV transport must be justified by an overriding reason in the public interest and be proportionate to the same. Otherwise, authorities must adopt a less restrictive means of intervention.
- Limitation of the number of authorisations must be justified by an overriding reason in the public interest and be proportionate to the same. As explained in section I.2.1 above, limiting the number of authorisations is not a good means of intervention according to the principles of efficient economic regulation.
- Limiting the number of operators is less negative if the maximum number of authorisations is determined by objective, appropriate, proportionate variables established in advance, so that authorisations cannot be denied for unjustified or unrestricted reasons.

⁵² Article 22.2 of the LOTT stipulates: ‘As a general rule, road passenger transport services can be hired and billed by anyone who is a holder of a public transport licence or authorisation which qualifies them to carry out this type of transport...’ Article 22.3 of the LOTT provides for the possibility of there being modes of transport ‘whose performance is legally or statutorily exempt from obtaining a public transport licence or authorisation.’

⁵³ [Decree 148/1994, of 15 July](#), regulating the activity and system of authorisations for ride-sharing services in the Canary Islands. Cantabria also has autonomous community legislation concerning PHV, but is limited to specific cases of transport of persons with reduced mobility, high mountain transport and transport for active tourism (5 July 2004 Order and Order IND/2/2009, of 26 January).

- Establishing a limited number of authorisations entails granting regulatory rent to the holder of the authorisation and poses the problem of operator selection and a competition deficit once the authorisations are granted. Should this be maintained, it would be necessary to adopt a competitive mechanism for operator selection and stipulate a time duration for the same, so that there can be periodic competition to obtain them, and to prevent competition in the marketplace from stagnating and monopolistic rents from being generated in the transfer of authorisations.
- Replacement of a national authorisation by another autonomous community or local one for urban areas is not neutral for competition, given that a PHV operator will need to obtain two authorisations when previously they only had to obtain one. It is advisable to consider one-stop service schemes, avoiding unnecessarily duplication of formalities to obtain both authorisations.

IV.2.3.2 Efficient regulation of conditions for PHV activity by autonomous communities and local authorities

The RD-Law attributes the power to regulate the conditions of operation for the national PHV authorisation service (deriving from art. 182.1 of the ROTT) to the autonomous communities and local authorities in different terms.

Firstly, the autonomous communities and local authorities are entitled to amend the terms of article 182.1, but solely being able to affect the services that are performed entirely within their territory. The amendment must also refer to matters of pre-booking, service requests, attracting customers, minimum and maximum journeys, mandatory services and hours and technical specifications of the vehicle. Furthermore, the amendment must be intended to improve management of domestic mobility for travellers and guarantee oversight of the terms for provision of the service, observing, in all circumstances, the principle of proportionality.

Secondly, during the transitional period, it stipulates that local authorities (the competent body in urban transport matters), in exercising their powers concerning use of the public thoroughfare, management of urban traffic, environmental protection and prevention of atmospheric pollution, can establish limitations, particular as regards parking, service or driving hours and schedules for reasons of atmospheric pollution.

It should be recalled that, as a general principle, both regulation of the restricted aspects relating to national PHV authorisations and the potential regulation of autonomous community PHVs must observe the principle that an economic activity can only be limited for the purpose of safeguarding an overriding reason in the public interest (which do not include the protection of certain business models or others of an economic nature). Settled case-law⁵⁴ has indicated that in such cases a restrictive measure, in addition to being necessary and non-discriminatory, must be suited to the objective it seeks to achieve and not go beyond what is necessary to do so.⁵⁵

Below we specify how these principles apply to the forms of intervention provided for in the RD-Law.

- **Number of PHV authorisations:** Firstly, it should be clarified that the interpretation of the 1:30 rule given in the 4 June 2018 Supreme Court Judgment **does not in any way cover that the new powers granted to the autonomous communities and local authorities allow the expulsion of operators** with vested rights. Neither does it cover the exclusion of those who obtain the proper authorisation through legal action. It should be remembered that the CNMC has challenged, in the context of active legal standing, certain local actions,⁵⁶ specifically the Regulation of the Barcelona Metropolitan Area (AMB), whose main restriction consisted of the requirement to have an authorisation in addition to the national one (art. 91 LOTT) to operate in that area.⁵⁷
- **Pre-booking:** **The obligation to provide the service subject to pre-booking represents an unjustified obstacle for PHVs.** It is advisable for autonomous community and local regulation to eliminate this limitation, which applies to PHVs but not taxis. Likewise, the requirements relating to **documentation evidencing** the pre-booking, as well as the obligation to **supply information**

⁵⁴ Among others, 24 March 2011 Judgment, Commission/Spain, C-400/08, paragraph 74, concerning the declaration of the Spanish State's failure to fulfil its obligations due to a regulation hindering the establishment of large retail establishments. The judgment stated that '*purely economic objectives cannot constitute an overriding reason in the public interest (see, in this regard, the 15 April 2010 Judgment, CIBA, C96/08, Rec. p. I-0000, paragraph 48 and case law cited).*'

⁵⁵ In addition to Case C-591/13, we may also cite the judgments of 22 January 2002, Canal Satélite, C-390/99, paragraph 33; 25 July 1991, Säger, C-76/90, paragraph 15; 23 November 1999, Arblade and Others, joined cases C-369/96 and C-376/96, paragraph 35; and Corsten, paragraph 39, among many others.

⁵⁶ In addition to the above-mentioned taxi statute for Málaga and Córdoba.

⁵⁷ To this end, we may cite the economic report that accompanied by action lodged by the CNMC against the AMB Regulation in question. This report includes a quantification of the damages caused by the restrictions included in said regulation, to both competition and the consumer.

on the part of users and to retain information on the part of service providers, in addition to increasing the administrative burden, raise transaction costs and the cost of operating PHVs, reducing their capacity to compete in the marketplace, to the detriment of end users. Therefore, it is advisable to review these unjustified restrictions.

- Hours, schedules and minimum journeys: these are limitations on the economic activity, which in theory are not justified by any overriding reason in the public interest. It is questionable that imposing hours or schedules is the most suitable measure to guarantee coverage of the service, especially for certain time slots or geographic areas. It is advisable to **avoid limiting operations according to hours or schedules for both taxis and PHVs**, as this type of intervention generates market inefficiencies.
- Vehicle and fleet requirements: Specific requirements regarding vehicles (age, engine capacity, length, among others) entails an increase in entry and operating costs, for both taxis and PHVs. Imposing technical specifications must solve a market failure or an objective of public interest. For example, aspects such as vehicle maintenance and upkeep and compliance with current safety regulations are more effective and less restrictive measures than imposing an age limit. There, **it is advisable to review these requirements and eliminate those that are unnecessary or disproportionate**. Additionally, it should be recalled that the Spanish Supreme Court has eliminated the requirements to have a minimum vehicle fleet in order to be able to operate in the marketplace (4 June 2018 Supreme Court Judgment). Establishing a minimum number of vehicles increases the costs of entry for the sector, negatively affecting competition and the general welfare.
- Restrictions on the use of the public thoroughfare, driving, parking: The CNMC has already stated its views against certain local provisions which facilitate the carrying out the activity of taxi service by means of access to restricted lanes (bus lanes) or travel zones and the lack of limitations on parking durations, which are either not available to PHVs or are allowed to a different extent.⁵⁸ In theory, according to the principles of efficient economic regulation, travel restrictions which treat taxi and PHV operators differently are also not justified (for example, allowing access to certain streets to only one type of operator). **It is therefore advisable to avoid distinguishing between taxis and PHVs in these areas**, given that they entail giving an unjustified advantage to one type of operator and do not appear to fulfil the principles of good regulation.

⁵⁸ 17 January 2018 report on barriers to carrying out the activity of hire car with driver due to restrictions imposed in certain places ([UM/145/17](#)).

IV.2.3.3 Reconsidering the 1:30 proportionality rule

Taking into account the new geographical area of the national PHV authorisations, **it is advisable to reconsider the validity of the 1:30 proportionality rule.**

As the Spanish Supreme Court indicated in its 4 June 2018 Judgment, *'it being the case that the taxi and PHV services constitute two forms of urban transport which today compete directly in the same market and provide a similar service, the objective of maintaining a balance between the two modes of urban transport emerges as a way to guarantee the preservation of taxi service as a public service, and therefore, covered by the overriding reason in the public interest of ensuring the aforementioned model of urban transport'*.⁵⁹

In other words, **with the disappearance of the capacity of national PHV authorisations to compete with taxis in urban areas, the reason that, according to the Supreme Court, might justify the introduction of this type of limitations also disappears.** Therefore, it is advisable to eliminate the 1:30 proportionality rule from the state regulations governing transport.

IV.2.3.4 Establishing a flexible scheme to temporarily meet demand

The RD-Law eliminates the 80/20 territorially rule at the end of the four-year transitional period, but stipulates that *'the competent body in matters of interurban transport may establish, subject to a report from the affected municipalities, a specific scheme which allows vehicles covered by hire with driver authorisations registered in other autonomous communities to temporarily provide services originating in its entire territory or certain parts of the same'*.

Therefore, it is advisable to establish a flexible scheme to regulate the possibility of operators with national PHV authorisations operating in autonomous communities other than those of their authorisation, in response to short-term increases in demand or other circumstances that make this appropriate. In this regard, issues that must be taken into account include the following:

⁵⁹ 4 June 2018 Supreme Court Judgement, Legal Basis Six.

- It is advisable for it to be PHV operators that have the ability to determine when to temporarily operate in other autonomous communities, rather than predetermining the times when the temporary operation can take place in a restrictive manner.
- Temporary provision of services should not be subject to any type of prior authorisation or control, not even in less intrusive forms of entitlement such as a statutory declaration. Insofar as operators with national PHV authorisations are required to report their trips, it is possible to conduct ex-post oversight of the temporary practice, and if applicable, establish a mechanism of communication between autonomous communities for carrying out this oversight.

IV.2.3.5 Creating a more flexible taxi system

The departure of PHV operators from urban areas will be more serious the more intrusive the regulation of the alternative service, taxis. **Therefore, it is highly advisable for the autonomous communities and local authorities to review their regulations governing entry and operation of taxi service**, avoiding restrictions on competition that are not necessary and proportionate to an overriding reason in the public interest. In this regard, issues that must be taken into account include the following:

- Requiring a licence for taxi service and limiting the number of taxi licences is not an essential regulatory solution and must be justified and proportionate to an overriding reason in the public interest. As explained in section I.2.1 above, limiting the number of authorisations is not a good means of intervention according to the principles of efficient economic regulation.
- The limitation on the number of operators is less negative if the number of licences is determined by objective, appropriate, proportionate variables established in advance, if there is a competitive mechanism for allocating licences and if they have a time duration, so that there can be periodic competition to obtain them, and to prevent competition in the marketplace from stagnating.
- One way to reduce the negative impact of the departure of national PHV authorisations from urban areas for end users is to increase the number of taxi licences compared to current levels.
- Improving the capacity and incentives for taxi operators to determine and differentiate their services. This would mean allowing them greater freedom in different areas such as: setting their fares; supply and advertising for other products and services; determining the vehicles with which they provide the service; choosing what days to operate, and the amount of insurance policies. This can help to lessen the negative impact of the demise of national PHV authorisations in urban areas for end users.

(PHV)

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IV.2.3.6 Reducing regulatory compartmentalisation

The measures set out above entail the participation of public administrations at all levels, which increases the risk that significant differences may emerge between regulations in the different territories that have a negative impact on the efficiency of the provision of transport services by car.⁶⁰

Therefore, it is essential to maximise coordination among public administrations, making use of the mechanisms provided for in the LOTT and the RD-Law.

In addition, it should be recalled that both the autonomous communities and local councils could request technical assistance from the CNMC and the competition authorities in their territories to minimise the negative impact of their regulations on competition.

V. CONCLUSIONS AND RECOMMENDATIONS

The aim of this report is to analyse the recent reform of regulations applicable to PHV activity in the light of effective competition and the principles of efficient economic regulation, as well as to provide guidance for autonomous communities and local authorities regarding the impact of potential regulation on operators with state and/or autonomous community PHV authorisations.

The adoption of RD-Law 13/2018 has two main consequences for competition in the sector. First, at the end of the four-year transitional period, current national PHV authorisations will no longer be able to provide services for urban journeys and will only be able to provide interurban services. Second, national PHV authorisations will no longer be able to carry out part of their activity in autonomous communities other than that of their origin.

⁶⁰ The CNMC recently stated its views on the situation with regard to regulation of tourist properties in similar terms: *'the analysis reveals great disparity between different regulations for TPs in cities and Autonomous Communities across Spain, which, on not respecting the principles of necessity and proportionality, do not reflect the real problems specific to the region and therefore increase market fragmentation and the lack of legal certainty for the public, users and operators, hindering tourist rentals and harming general welfare'*.

These new restrictions on competition will have a negative impact on the service provided to end users, raising the prices of urban and interurban transport, reducing their availability and increasing wait times for users, reducing the quality of the service provided, and disincentivising innovation in taxi and PHV services.

These restrictions have not been suitably justified from the perspective of the principles of necessity and proportionality, which cannot include economic motivations. **It should be remembered that regulatory activity that does not respect these principles does unnecessary damage to end users and the society as a whole.**

For this reason, the CNMC recommends reconsidering the limitation on the area of national PHV authorisations and the repeal of the regularity rule set forth in the RD-Law. Instead, authorities should opt for regulatory action that, with the aim of improving the service for end users and for the citizenry as a whole, is based on a global approach to the activity of transport in passenger vehicles. This will guarantee that the regulation applicable to taxis and PHV respects the principles of efficient economic regulation, to the benefit of consumers and users.

Additionally, the RD-Law establishes a four-year transitional period before its provisions take full effect on competition and stipulates that autonomous communities and local authorities can exercise their regulatory powers concerning PHV services. Therefore, the CNMC offers a **set of recommendations, intended for both -regional and local authorities and the legislative power- to mitigate the potential negative impact of the measures stipulated in the RD-Law.** The main recommendations are as follows:

- **Develop, as early as possible, autonomous community regulations respectful of the principles of necessity and proportionality, so urban PHV services can be provided** (avoiding the establishment of requirements that are unnecessarily harmful to end users).
- **Review the conditions for PHV services for both national and potential autonomous community authorisations, avoiding unjustified discrimination in regulation** at the autonomous community and local levels between taxi and PHV authorisations in matters of booking, hours and schedules, vehicle characteristics, driving and parking.
- **For at least as long as the scope of national PHV authorisations is limited to interurban services, abolish the 1:30 proportionality rule** in granting national PHV authorisations, as its justification no longer makes sense in light of the opinions of the Spanish Supreme Court.
- **Establish a flexible scheme with regard to the possibility of temporary provision of PHV services** in autonomous communities other than that of origin, to the benefit of end users.

(PHV)

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- **Increase the flexibility of the regulatory scheme for taxi service**, reviewing the regulation and eliminating numerous restrictions that impede or hinder greater efficiency and improvement of the quality of service, making it possible to be a larger number of operators.
- Lastly, it is advisable for the above regulatory reform to be carried out with the **utmost coordination among different Administrations**, with the aim of preventing greater compartmentalisation of these activities by territory. It should be recalled that both the autonomous communities and local authorities might request **technical assistance from the CNMC and the regional competition authorities** to minimise the negative impact of their regulations on competition.



