

# The concept of 'public interest' in EU law

## Further Study – How to support a new culture of mobility?

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## INTRODUCTION

The aim of this Work Package (WP) 5.1 (WP 5 "Politics and Poetry"; Task 5.1: How to make use of the concept of "public interest" in EU law to support a new culture of mobility), as stated in the proposal is to make use of the concept of '*public interest*' in EU law to support a shift toward a new culture of mobility for the more effective ponderation of emerging social values not yet fully considered in transport policymaking, and a better alignment with the SDGs and the mounting concerns about climate change. In particular, the REBALANCE project aims at using the fluidity and multi-sidedness of this concept to propose the inclusion of subjective concepts, such as conviviality, tranquillity (quietness, peacefulness), family-friendliness, health, aesthetics and value of life (hereinafter also referred to "REBALANCE values"<sup>1</sup>) into the formal appraisal of transport-related policy and projects.

Following the analysis conducted in WP 3.3.2 (WP 3 "The Language Of The Present", Task 3.3 "Current Values behind the politics of Mobility: Critical Review", Subtask 3.3.2: "Investigation on the concept of "public interest") of the definition of the public interest (of which we provide a summary in Section 1) this task will further study the concept under EU law and will determine whether a new definition of public interest is feasible (Section 2). In addition, the role of public interest in economic appraisals will be discussed (Section 3). Finally, the results of this WP 5.1 will be discussed during a Focus Group (Section 4).

## 1 SUMMARY OF PREVIOUS FINDINGS (WP 3.3.2)

In WP 3.3.2, we have analysed the concept of public interest under EU law and its use under EU transport policy.

In that research we have already observed that, under EU law, the notion of public interest is difficult to define in an abstract and objective manner, since one may find this notion in various areas of EU law where it may have different meanings. Also, there seems to be no consistent and uniform definition of public interest in the jurisprudence of the Court of Justice of the European Union (CJEU).

We have also underlined that the specific interest of protecting the environment is enshrined in Articles 11 and 191 to 193 Treaty on the Functioning of the European Union (TFEU), where Article 191 explicitly mentions combating climate change as an objective of EU environmental policy. This means that environmental protection and

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<sup>1</sup> The choice of these values lies at the very heart of the REBALANCE project. As indicated in the REBALANCE proposal, under point 1.3.1 "The Concept": *Questioning "speed", for instance, does not necessarily entail that future transport policies must consistently aim at slowing down any movement, it is rather intended to shed light on the relative value of increasing the speed of physical movement and on the need to reconsider our appraisal methods to better account for the social value of speed in relation to other values such reliability, safety, conviviality, or public health. The political and legal concept of "public interest" needs to be further defined in norms affecting transport policies*



combating climate change are part of EU public policy and represent some of the EU's most fundamental objectives. Therefore, any public interest arising within the EU should (in theory) be assessed taking into account these (and other) fundamental objectives.

Even though there is no all-encompassing definition of the concept of public interest, the concept is of course reflected in EU legislation and jurisprudence in the context of mobility in a number of ways. Moreover, it is at the base of certain pieces of legislation or at the base of reforms, such as:

- Air transport: safeguarding security and defence needs, smooth operation of the air transport system, sustainable aviation, air passengers' rights;
- Road transport: efficiency, safety and environmental friendliness;
- Rail transport: strengthening rail transport market, opening the rail transport market to competition, improving the interoperability and safety of national networks, and developing rail transport infrastructure;
- Inland waterway: promoting and strengthening the competitive position of inland waterways in the transport system and facilitating its integration into the intermodal logistics chain.

As indicated in our research, in order to define transport policies, authorities have to take into account the free movement of goods, persons and services, as laid down in the EU internal market rules. However, in some cases a transport policy may have the effect of restricting these freedoms, rather than enhancing them. To be justified, such restrictions need to be based on public interest considerations (the so-called public interest exception). However, as the fundamental freedoms enshrined in the TFEU are, as the definition says, fundamental, the CJEU will only accept restrictions of these freedoms if the measure in question is appropriate to attain the underlying objective and does not go beyond what is necessary to attain that objective.<sup>2</sup> As such, the public interest exception is a very flexible instrument which can have a significant impact on the functioning of the EU market rules.

## 2 FURTHER STUDY OF THE CONCEPT OF THE PUBLIC INTEREST

### 2.1 Overriding reasons in the public interest

As already reported in WP 3.3.2, the concept of '*overriding reasons relating to the public interest*' has been developed by the CJEU in its case law in to the context of the fundamental freedoms provided by the TFEU<sup>3</sup> and may continue to evolve. The CJEU has recognised this concept to cover a number of grounds, including, among others: the protection of the (urban) environment, including town and country planning; road safety; cultural policy objectives; and the freedom of expression, including social, cultural, religious and philosophical values of society.<sup>4</sup>

<sup>2</sup> Case C-384/08 *Atanasio Group Srl v Comune di Carbognano*, paragraph 51.

<sup>3</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, paragraph 40.

<sup>4</sup> *Inter alia*, Case C-338/09 *Yellow Cab Verkehrsbetriebs GmbH v Landeshauptmann von Wien*, paragraph 51. See also below para 2.1.1.



Below we will report several cases relating to the domain of transport adding to our research under WP 3.3.2, by analysing on which grounds the public interest exception can or cannot be invoked, in particular: for reasons of purely economic nature (2.1.1.1), for the prevention of the authorisation of an already authorised transport service (2.1.1.2), in the context of road safety (2.1.1.3), and in the context of safety in port areas (2.1.1.4).

## 2.1.1 CASE-LAW OF THE CJEU

### *2.1.1.1 Reason of purely economic nature*

The CJEU has consistently held that reasons of purely economic nature cannot constitute overriding reasons in the public interest. Specifically in the domain of transport, ensuring the profitability of a competing bus service as a reason of a purely economic nature was not considered to be an overriding reason in the public interest.<sup>5</sup>

The CJEU has also held that rules on minimum distances between roadside service stations could be an appropriate means to enhance road safety and to protect health and the environment.<sup>6</sup> As such, the CJEU determined that if an objective could be considered to fall within the scope of consumer protection (i.e. it is not a reason of purely economic nature), the objective could be regarded as an overriding reason because of the public interest. However, the legislation in question has to be appropriate to protect consumers or be beneficial to them. In this specific case, the legislation hindered the market access of new operators and therefore would not bring any benefit to consumers.<sup>7</sup>

### *2.1.1.2 Preventing the authorisation of an already authorised transport service*

The CJEU indicated that public interest could justify preventing the authorisation of a transport service if such authorisation would compromise the economic sustainability of a pre-existing transport service, but only when such justification is foreseen<sup>8</sup> by relevant legislation<sup>9</sup>.

### *2.1.1.3 Road safety*

In the domain of public transport, the largest number of judgements for which a public interest exception was accepted related to road safety.

The CJEU has noted the following:

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<sup>5</sup> Case C-384/08 *Atanasio Group Srl v Comune di Carbognano*, paragraph 5654.

<sup>6</sup> Case C-384/08 *Atanasio Group Srl v Comune di Carbognano*, paragraph 54.

<sup>7</sup> Case C-384/08 *Atanasio Group Srl v Comune di Carbognano*, paragraph 56.

<sup>8</sup> Case C-338/09 *Yellow Cab Verkehrsbetriebs GmbH v Landeshauptmann von Wien*, paragraph 52.

<sup>9</sup> In this case, the relevant legislation was Article 7(4)(d) of Regulation No 684/92, replaced by Regulation (EC) No 1073/2009, Article 85(4)(d).



- The requirement that vehicles undergo a periodic road safety test serves the interests of road safety.<sup>10</sup>
- In a case where an application to open a service station was denied because of legislation prescribing minimum distances between service stations, the CJEU stated that a restriction of the fundamental freedoms may only be justified if the relevant measure is appropriate to attain the objective in question and does not go beyond what is necessary to do so.<sup>11</sup> This standard was not met in the case at hand because 1) the rule only applied to the construction of new service stations, not to pre-existing ones, casting a doubt on the consistency of the rule and 2) even accepting that the rule is an appropriate means of attaining the objectives of road safety and protection of health and the environment, these objectives would be more appropriately attained by taking into account the specific situation of each proposed service station (by means of controls that the municipalities must carry out or in the case of applications for permission to open a new service station, which include conformity with land use plan and legislation relating to health, the environment and road safety) The introduction of minimum distances therefore appears to go beyond what is necessary to attain the objectives pursued.<sup>12</sup>
- In a case regarding transfer licences, documents allowing for the transfer of a vehicle from one Member State to another, it was argued that such a transfer license is necessary to attain the objective of road safety because it allows the vehicles to be identified through the Member States' vehicle registry. While the CJEU states that "*it is not in dispute that road safety does constitute an overriding reason in the public interest capable of justifying a hindrance to the free movement of goods*"<sup>13</sup>, the CJEU found that it had not been established that the issuance of transfer licences was actually designed to attain the objective of road safety. This was because the transfer licence requirement did not apply to all vehicles registered in a different Member State.<sup>14</sup>
- National rules which define criteria for the determination of the date on which a vehicle was first authorised for use on the public highway, having restrictive effects on the free movement of goods, may be justified. If so, it should be ascertained whether the restriction of the free movement of goods arising from the contested condition specifically for parallel importers is necessary to ensure road safety and/or protection of the environment and whether that restriction is not disproportionate to its objectives, particularly in the sense that no other, less restrictive, measures are available.<sup>15</sup>

<sup>10</sup> Case C 55/93 van Schaik [1994] ECR I 4837, paragraph 19.

<sup>11</sup> Case C-384/08 Attanasio Group Srl v Comune di Carbognano, paragraph 51.

<sup>12</sup> Case C-384/08 Attanasio Group Srl v Comune di Carbognano, paragraph 54.

<sup>13</sup> Commission v Finland [2007] ECR I 2473, paragraph 40.

<sup>14</sup> Commission v Finland [2007] ECR I 2473, paragraph 41.

<sup>15</sup> Case C-314/98 Snellers [2000] ECR I-8633, paragraph 55.



- The case at hand concerned the issue of the registration of a leased vehicle in a Member State after it had already passed a roadworthiness testing in another Member State. The CJEU held that, when examining the roadworthiness and safety of vehicles and their environmentally-friendly quality, Member States must comply with the relevant EU law provisions. Thus, when a vehicle has undergone roadworthiness testing in a Member State all the other Member States must in principle recognise the validity of the tests undergone. Other Member States, however, may require additional, different tests in order to register a vehicle in their jurisdiction, including checking whether its condition has not deteriorated since it was tested in the first Member State.<sup>16</sup>
- Obliging companies operating multiple roadworthiness testing centres to maintain minimum distances between their various establishments (and to not hold more than 50% market share) goes against the freedom of establishment, unless such a measure is genuinely appropriate to achieve objectives of consumer protection and road safety.<sup>17</sup>

#### 2.1.1.4 Safety in port waters

- Ensuring safety in port waters constitutes an overriding reason in the public interest, however such a measure must satisfy the conditions of proportionality and non-discrimination<sup>18</sup>:
  - Proportionality: the introduction of a system of prior authorisation that aims to ensure the presence of several ships in a port at the same time and that does not give rise to risks to the safety of those ships is an appropriate means to pursue the objective of safety in port waters.
  - Non-discrimination: a prior authorisation scheme can be justified even though it derogates from a fundamental freedom if it is based on objective, non-discriminatory criteria known in advance, in order to limit the discretion of the national authorities in applying the scheme.

## 2.1.2 CONCLUSIONS

From the analysis of the case law above it can be concluded that, in the domain of transport, the overriding reasons in the public interest endorsed by the CJEU are quite limited and mainly revolve around safety, on the road and on water. Other overriding reasons in our analysis in WP 3.3.2 included: protecting workers in the naval sector, combatting noise pollution, reducing air pollutants, encouraging the modal shift to rail

<sup>16</sup> Case C-451/99 Cura Anlagen [2002] ECR I-3193, paragraph 59.

<sup>17</sup> Case C-168/14 Judgment of the Court (Second Chamber) of 15 October 2015 Grupo Itevelesa SL and Others v Oca Inspección Técnica de Vehículos SA and Generalidad de Cataluña, paragraphs 68 and 84.

<sup>18</sup> Case C-128/10 Naftiliaki Etaireia Thasou AE (C-128/10) and Amaltheia I Naftiki Etaireia (C-129/10) v Ypourgos Emporikis Naftilias paragraph 48.



and coordinating transport. From this additional analysis of the jurisprudence of the CJEU, together with the analysis already carried out under WP 3.3.2 it emerges that there is no exact definition of public interest as the concept changes depending on the specific circumstances of a case and also on the prevailing *Zeitgeist*<sup>19</sup>. This fleeting character of the public interest is, after all, its strength, as it makes this concept adaptable throughout time and in different contexts while being anchored in the solid foundations of the fundamental principles of the EU Treaties (as well as Member States' constitutions).

This does not preclude, however, that the CJEU may expand the justifications already accepted to include additional ones and that, with time, values such as conviviality, tranquillity, family-friendliness, aesthetics, health and value of life will be put to the attention of the CJEU. Of course, public health, in its most generic meaning, is part of the EU's policy and its importance underlined in the TFEU<sup>20</sup> as well as by the European Court of Human Rights (ECHR). The latter also issued several judgements<sup>21</sup> on the issues of public health, value of life and respect of family life in the context of environmental protection<sup>22</sup>, based on Article 8<sup>23</sup> and Article 2<sup>24</sup> of the European Convention on Human Rights, for example:

<sup>19</sup> The defining spirit or mood of a particular period of history as shown by the ideas and beliefs of the time.

<sup>20</sup> Article 168(1) TFEU states: "a high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities." The primary responsibility for health protection lies with the Member States, however the EU has a role in improving public health, preventing and managing diseases, mitigating sources of danger to human health and harmonising health strategies between Member States (<https://www.europarl.europa.eu/factsheets/en/sheet/49/public-health>).

<sup>21</sup> Thematic Report on Health-related issues in the case-law of the European Court of Human Rights, pages 22 and 23 available at [https://www.echr.coe.int/Documents/Research\\_report\\_health\\_ENG.pdf](https://www.echr.coe.int/Documents/Research_report_health_ENG.pdf); Guide on Article 2 of the European Convention on Human Rights, Right to life, page 13, available at: [https://www.echr.coe.int/Documents/Guide\\_Art\\_2\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf); and Guide on Article 8 of the European Convention on Human Rights, Right to respect for private and family life, home and correspondence, pages 41 and 42, available at [https://www.echr.coe.int/documents/guide\\_art\\_8\\_eng.pdf](https://www.echr.coe.int/documents/guide_art_8_eng.pdf).

<sup>22</sup> "Although there is no explicit right to a healthy environment under the Convention the ECHR has indicated in various cases that an individual's wellbeing may be negatively impacted by unsafe or disruptive environmental conditions. However, an issue under Article 8 only arises if individuals are directly and seriously affected by the nuisance in question and able to prove the direct impact on their quality of life. Article 8 may apply in environmental cases whether the pollution is directly caused by the State or whether State responsibility arises from the failure to regulate private sector activities properly." Guide on Article 8 of the European Convention on Human Rights, Right to respect for private and family life, home and correspondence, pages 42, available at [https://www.echr.coe.int/documents/guide\\_art\\_8\\_eng.pdf](https://www.echr.coe.int/documents/guide_art_8_eng.pdf).

<sup>23</sup> Article 8 – Right to respect for private and family life. "1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

<sup>24</sup> Article 2 – Right to life. "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection."



- ECHR found that authorities did not overstep their margin of appreciation, and is not contrary to the right to respect for private and family life enshrined in Article 8, to increasing night flights even if this resulted in a noise increase as only a small percentage of people suffered from the noise, housing prices did not drop and affected residents could move elsewhere without financial loss.<sup>25</sup>
- The extension of a main runway at an airport and the subsequent noise caused is not a violation of Article 8, due to the public-interest nature of the project and the fact that the Government had established the region's economic well-being as a legitimate aim. In addition, the authorities took measures to limit the impact of the noise disturbance on local residents. In light of this, the ECHR held that a fair balance had been struck between the competing interests.<sup>26</sup>
- The ECHR indicated that a proper balancing exercise was not carried out by the Hungarian courts and an enforceable decision that would ensure that a disproportionate individual burden would not be suffered in a case where for 16 years the noise from a nearby railway station made a home virtually uninhabitable. The ECHR concluded that the Hungarian State had not discharged its positive obligation to guarantee the applicant's right to respect for his home.<sup>27</sup>
- With regards to the protection of persons from environmental or industrial disasters: *"As to the choice of particular practical measures, the Court has consistently held that where the State is required to take positive measures, the choice of means is in principle a matter that falls within the Contracting State's margin of appreciation. There are different avenues to ensure Convention rights, and even if the State has failed to apply one particular measure provided by domestic law, it may still fulfil its positive duty by other means. In this respect an impossible or disproportionate burden must not be imposed on the authorities without consideration being given, in particular, to the operational choices which they must make in terms of priorities and resources; this results from the wide margin of appreciation States enjoy, as the Court has previously held, in difficult social and technical spheres."*<sup>28</sup>

It does not fall within the scope of this research to assess national courts' jurisprudence in this regard, however, it should be noted that in certain jurisdictions the value of health and of life with regards to climate change have been assessed (and recognized) pursuant to a "duty of care" enshrined in national legislation. The most notable example being the *Urgenda* case<sup>29</sup> and the *Royal Dutch Shell* case<sup>30</sup> as follows:

<sup>25</sup> *Hatton and Others v. the United Kingdom* - 36022/97 [2003] ECHR 338 (8 July 2003).

<sup>26</sup> *Flamenbaum and Others v. France* - 3675/04 23264/04 (13 December 2012).

<sup>27</sup> *Bor v. Hungary* no. 50474/08 (18 June 2013).

<sup>28</sup> *Budayeva and Others v. Russia*, §§ 134-135; *Vilnes and Others v. Norway*, § 220; *Brincat and Others v. Malta*, § 101.

<sup>29</sup> *Urgenda v The State of the Netherlands*, ECLI:NL:2019:2007 (December 20, 2019).

<sup>30</sup> *The Hague District Court, Vereniging Milieudefensie et al. v Royal Dutch Shell*, ECLI:NL:RBDHA:2021:5339 (26 May 2021).



- Urgenda. the Dutch High Court declared as proven facts the existence of climate change and affirmed the legal obligation of the Dutch State under the European Convention on Human Rights to protect with due care and due diligence the rights of its citizens to a healthy environment as well as to lower its emissions by at least 25% before 2020 compared to 1990 levels.
- Royal Dutch Shell. In this case, the plaintiffs, successfully argued that the Royal Dutch Shell (RDS) has an unlawful combined annual volume of CO2 emissions and has an obligation to reduce its emissions through its company policy, which is not in line with global climate targets set in the Paris Agreement for 2030. In practical terms, even though RDS is aware of the need for ambitious actions to tackle the climate crisis, its current policies, policy intentions for the future and its ambitions amount to rather intangible, undefined and non-binding plans for the long-term (2050). The argument put forward by the Plaintiffs is based on an unwritten rule on duty of care<sup>31</sup> for which it is unlawful to act against the general interest or proper social conduct. The standard against which a conduct has to be assessed is not fixed but varies over time, as the courts interpret it in light of prevailing social norms and conventions.

Other rulings in line with the *Urgenda* case across the EU include:

- Belgium – the Brussels Court of First Instance found that the Belgian government breached its duty of care pursuant to the Belgian Civil Code as well as the rights to life and to private and family life pursuant to the European Convention on Human Rights by failing to prevent the impacts of climate change on the Belgian population.<sup>32</sup>
- Ireland - This case saw the successful challenge of the Irish Government strategy to tackle climate change (the National Mitigation Plan) as it was found unfit for the purpose of lowering greenhouse gas emissions, as it was too vague and aspirational.<sup>33</sup>
- Germany – The claimants indicated that the State failed to take appropriate measures to limit the increase of the Earth's temperature, endangering lives and creating unforeseeable consequences relying on constitutional freedoms such as right to life, right to an ecological minimum standard as well as the right to human dignity. The Court ultimately found that the German Constitution puts an obligation on the State to protect the climate and strive for climate neutrality.<sup>34</sup>

<sup>31</sup> Seven Dutch NGOs headed by Vereniging Milieudefensie, along with 17,000 individuals.

<sup>31</sup> Which can be inferred from the tortious act provision of Book 6, Section 162 of the Dutch Civil Code.

<sup>32</sup> Brussels Court of First Instance, VZW Klimaatzaak v Kingdom of Belgium & Others, no. 2015/4585/A, (17 June 2021).

<sup>33</sup> Irish Supreme Court, Friends of the Irish Environment CLG v The Government of Ireland, Ireland and the Attorney General [2020] IESC 49 (21 July 2020).

<sup>34</sup> German Constitutional Court, Neubauer et al. v Germany, 1 BvR 2656/18, 1 BvR 96/20, 1 BvR 78/20, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20 (29 April 2021).



Looking beyond the EU, the Federal Court of Australia has recently ruled that the government has an obligation to ensure that future coal projects do not harm children, imposing a duty of care to the government similar to that of the District Court of the Hague in the *Royal Dutch Shell* case.<sup>35</sup>

### 3 PUBLIC INTEREST AND ECONOMIC APPRAISALS

Having established that defining the *'public interest'* in exact terms is not feasible, in this Section we will analyse whether the overriding reasons in the public interest accepted by the CJEU, together with other REBALANCE values such as conviviality, tranquillity, family-friendly, aesthetics, health and value of life, could have a place in the economic appraisal of projects and policies and, therefore, influence the cultural shift proposed by REBALANCE.

The main difficulties with this exercise are as follows:

- The economic appraisal tools available at the moment are not able to fully capture the public interest values as well as the REBALANCE values (conviviality, tranquillity, family-friendly, aesthetics, health and value of life).
- The tool which gets closest to the goal of capturing the public interest is the cost-benefit analysis, as its aim is the maximisation of social welfare.
- On the other hand, values such as conviviality, tranquillity, family-friendly, aesthetics, health and value of life are subjective, vary across cultures and are nearly impossible to quantify and therefore difficult to capture in a cost-benefit analysis.
- Not an economic appraisal but it is worth mentioning that, in the context of the analysis of proposed legislation, the Commission set out guidelines<sup>36</sup> including an impact assessment, to assess whether future legislative or non-legislative EU action is justified. These guidelines have the aim of creating legislation that achieves its objectives while being targeted, effective, easy to comply with and with the least burden possible. The impact assessment includes the analysis of the relevant sustainable development goals and, if feasible, and how the initiative contributes (where relevant) on, among others, fundamental rights<sup>37</sup> and territories. It seems feasible to see the inclusion of the REBALANCE values in the impact assessment alongside the initiative's contribution to fundamental rights and sustainable development goals.

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<sup>35</sup> Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment [2021] FCA 560.

<sup>36</sup> Commission Staff Working Document, Better Regulation Guidelines, 3 November 2021, SWD(2021) 305 final.

<sup>37</sup> Including, for example and as more relevant for the purposes of this research, the right for private and family life (article 7) the right to health care (article 35), the right to environmental protection (Article 37), as indicated by the Charter of Fundamental Rights of the EU 2012/C 326/02.



### 3.1 Cost-benefit analysis

The most commonly used tool to assess the feasibility of projects is a cost-benefit analysis (CBA).

CBA, in its most generic definition, is practically synonymous with welfare economics, i.e., economics used to provide guidance for the formation of policy, either public or private. From another point of view, CBA uses the wealth maximisation rather than utility maximisation concept of efficiency<sup>38</sup> to evaluate government projects, including government regulation dealing with transport and the environment (i.e. it produces more benefits than costs). In addition, CBA can be used to explain and predict certain types of government decisions, especially those that can be relatively insulated from the influence of interest group politics.<sup>39</sup>

In short, CBA can be used to assess the economic advantages or disadvantages of an investment decision by quantifying the welfare changes as a result of its implementation. It aims to quantify all benefits and costs for society in monetary terms, including economic, social and environmental effects, with the unique criterion of maximising social welfare in a broader sense.<sup>40</sup>

In the EU, all major EU-funded investment projects in the 2014-2020 programming period had to use CBA as an assessment tool. This experience underlined the benefits of using CBA, ensuring an optimal allocation of available funding, but it also showed that CBA can be overly complex and time-consuming for certain sectors. It is for this reason that, under the 2021-2027 programming period, the use of CBA is voluntary. National authorities will be better placed to determine whether, in their specific national context, CBA or other tools are more suitable to conduct assessments. This is all the more true considering the climate commitments set in the European Green Deal: it is crucial that financial cash flows between stakeholders are not the only perspective that will be used in assessing projects.<sup>41</sup> Instead, climate impact should play a central role in the assessment.

Under the cohesion policy<sup>42</sup>, five main objectives for EU funding for the 2021-2027 period have been laid out, which include:

*"[...] 2. a greener, low-carbon transition towards a net-zero carbon economy and resilient Europe, by promoting a clean and fair energy transition, green and blue investment, the circular economy, climate*

<sup>38</sup> The so-called Kaldor-Hicks approach.

<sup>39</sup> Cost-benefit analysis: Legal, Economic and Philosophical Perspectives. Matthew D.Adler and Eric A.Posner, p.317-318.

<sup>40</sup> European Commission, Economic Appraisal Vademecum 2021-2027, page 20.

<sup>41</sup> European Commission, Economic Appraisal Vademecum 2021-2027, page 8.

<sup>42</sup> EU Cohesion Policy contributes to strengthening economic, social and territorial cohesion in the European Union. It aims to correct imbalances between countries and regions. It delivers on the Union's political priorities, especially the green and digital transition.

[https://ec.europa.eu/regional\\_policy/en/2021\\_2027/#:~:text=EU%20Cohesion%20Policy%20contributes%20to,the%20green%20and%20digital%20transition](https://ec.europa.eu/regional_policy/en/2021_2027/#:~:text=EU%20Cohesion%20Policy%20contributes%20to,the%20green%20and%20digital%20transition).



*change mitigation and adaptation, risk prevention and management, and sustainable urban mobility;*  
 3. *a more connected Europe, by enhancing mobility [...]"*

CBA as a general concept is very reminiscent of the philosophical theory of utilitarianism. Utilitarian theory found utility as the decisive criterion to determine the moral action, as summarised in its fundamental principle "the greatest amount of good for the greatest number of people". Both CBA and utilitarian theory try to quantify the positives and the negatives of a situation to determine which outcome is beneficial. However, both also suffer from the same flaws, namely that non-quantifiable factors are difficult to integrate into the analysis<sup>43</sup>. As an example, historically, time-saving has been the main factor driving the appraisal of transport projects using CBA. However, much like utilitarian theory, it can be observed that, for example, while the building of a tram line in a previously quiet area might bring significant time savings to a great number of people (therefore bringing them happiness), it might also result in significant nuisance for the residents of the previously quite area. More people would be satisfied by this situation than those that would be dissatisfied, however whether the construction of this transport infrastructure is to be considered "fair" cannot be assessed merely based on quantitative factors.

### 3.2 Other economic appraisal methods

There are other methods to assess investment decisions, such as cost-effectiveness analysis (CEA), and multi-criteria analysis (MCA) methods.

CEA is a comparison of alternative projects/policies with a unique common effect which may differ in magnitude. It aims to select the project/policy that, for a given output level, minimises the net present value of the investment's costs or, alternatively, for a given cost, maximises the output level. Because of its characteristics, CEA is mainly used in the assessment of health-care programmes, that is, programmes whose benefits are very difficult, if not impossible to evaluate.<sup>44</sup>

The most notable difference between CEA and CBA is that CEA does not tell whether an investment decision provides a net benefit to society.<sup>45</sup>

MCA, on the other hand, is a tool for dealing with a set of different objectives that cannot be aggregated through shadow prices and welfare weights, as in standard CBA.

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<sup>43</sup> The principle of "the greatest amount of good for the greatest number of people" is at the base of the concept of fairness and justice under the utilitarian theory. However, this concept relies solely on the quantification of what is considered "good" for the majority of people rather than on the assessment of a measure based on its merits and on an objective analysis.

<sup>44</sup> Guide to Cost-Benefit Analysis of Investment Projects Economic appraisal tool for Cohesion Policy 2014-2020, page 345.

<sup>45</sup> "Cost-effectiveness analysis compares two or more project options in relation to their effectiveness and life-cycle costs in accomplishing a single policy-specific objective. By combining information on effectiveness and cost, the project promoter can determine which investment option provides the best effect at the lowest cost (or, conversely, which option provides the highest effect for given cost)." Economic Appraisal Vademecum 2021-2027, page 8.



MCA is appropriate for development programmes, pursuing simultaneously different policy objectives (e.g. equity, environmental sustainability, improved quality of life, etc.), rather than for the appraisal of a single investment project.<sup>46</sup>

### 3.3 Current assessment of transport projects and policies

Albeit now a voluntary tool, CBA continues to be used in the EU across different policy areas and institutions as the main economic appraisal tool to identify welfare-maximising projects. As regards transport projects and policy, the Economic Appraisal Vademecum 2021-2027 (the '2021-2027 Guide') proposes the following methods for assessments<sup>47</sup>:

Table 1 - Suggested economic appraisal methods by investment area (transport and sustainable urban development)

Area	Investment area	Project type	
		Small projects	Large/strategic projects
Transport	Transport infrastructure (all modes)	(simplified) CBA	CBA
	Transport infrastructure: compliance-driven project (all modes)	CEA/MCA	CEA/MCA
	New technology in transport	CEA/MCA	CBA/CEA/MCA
Sustainable urban development	Integrated territorial investment schemes or community-led local development schemes, programmes in cluster development and urban regeneration programmes	MCA (including simplified CBA/CEA for individual large projects in given sectors)	MCA (including detailed CBA/CEA for individual large projects in given sectors)

MCA and CBA are, therefore, the two most commonly used assessment methods when it comes to transport projects. However, the structure of these two methods, especially the values considered in the analysis, might be sufficient to influence the way in which the EU approaches transport policy in order to achieve the cultural shift at the base of REBALANCE.

<sup>46</sup> Guide to Cost-Benefit Analysis of Investment Projects Economic appraisal tool for Cohesion Policy 2014-2020, page 346.

<sup>47</sup> Economic Appraisal Vademecum 2021-2027, page 18.



Under the Guide to Cost-Benefit Analysis of Investment Projects Economic appraisal tool for Cohesion Policy 2014-2020 (the '2014-2020 Guide')<sup>48</sup>, the typical economic costs and benefits of transport projects were considered to include the following:

Table 2 - Typical economic benefits (costs) of transport projects

Effect	Valuation method
Travel time savings	<ul style="list-style-type: none"> <li>• Stated preferences</li> <li>• Revealed preferences (multi-purpose household/business surveys)</li> <li>• Cost saving approach</li> </ul>
Vehicle Operating Cost Savings	<ul style="list-style-type: none"> <li>• Market value</li> </ul>
Operating costs of carriers	<ul style="list-style-type: none"> <li>• Market value</li> </ul>
Accident savings	<ul style="list-style-type: none"> <li>• Stated preferences</li> <li>• Revealed preferences (hedonic wage method)</li> <li>• Human capital approach</li> </ul>
Variation in noise emissions	<ul style="list-style-type: none"> <li>• WTP/WTA compensation</li> <li>• Hedonic price method</li> </ul>
Variation in air pollution	<ul style="list-style-type: none"> <li>• Shadow price of air pollutants</li> </ul>
Variation in GHG emissions	<ul style="list-style-type: none"> <li>• Shadow price of GHG emissions</li> </ul>

A purely CBA-based method, like utilitarian theory, struggles with qualitative factors, such as public interest values as well as the REBALANCE values, when it comes to transport law (as can be seen in Table 2 above listing the CBA transport values of the 2014-2020 Guide). In particular, the overriding reasons of the public interest singled out by the CJEU figure only partially on this table: for example, accident savings do not equate to road safety and variation in noise emissions does not equate to combatting noise pollution.

An interesting approach to CBA can be observed in the CBA of Cycling in Norway (Table 3), Sweden, Finland and Denmark<sup>49</sup>, which takes values such as public health benefits and comfort (which includes air pollution, land use, urban quality, aesthetics, visual

<sup>48</sup> Guide to Cost-Benefit Analysis of Investment Projects Economic appraisal tool for Cohesion Policy 2014-2020, page 88.

<sup>49</sup> CBA of Cycling, page 47, available at: <https://norden.diva-portal.org/smash/get/diva2:702237/FULLTEXT01.pdf>



intrusion and encroachment) into account (although not all values are used for every country):

Table 3 - CBA of Cycling in Northern Europe

EFFECT	NORWAY	SWEDEN	FINLAND	DENMARK
<b>Comfort</b>	No value	SEK 0-20 per trip or SEK 0-5 per cyclekm	Partly included in health benefits (accessibility) and external effects (noise)	€ 0.06 per cyclekm (user benefits)
<b>Insecurity</b>	NOK 2 per cyclekm	Value included in comfort	No value	No value
<b>Public health benefits</b>	NOK 7300 per year (activated person)	SEK 1200 per year (activated person aged 50-60 years)	€1200 per year (activated person)	DKK 2760 per year (activated persons) or €2.35 per cyclehour (additional trips)
<b>Short-term absence</b>	NOK 2500 per year (employed activated person)	No value	Value included in health benefits	Value included in health benefits
<b>External costs</b>	NOK 0.4-1.4 per vkm (reduced car traffic)	SEK 0.45 per vkm (reduced car traffic)	€0.009-0.02 per vkm (reduced emissions), €10.6 per vh (reduced congestion). As regards possible reduction of noise emissions, value of €959 is used for persons subjected to	€0.05 per personkm (reduced car traffic)



			noise levels above 55dB	
<b>Parking</b>	NOK 325-1165 per month and car (reduced parking)	Yes, included in external costs	Yes, included in general vehicle costs. Savings received if change in mode of transport in average €24,7	No value
<b>Public transport</b>	No value	No value	€1.83 per trip (reduced income)	DKK 2 per personkm (reduced income)
<b>Cost of cycling</b>	No value	SEK 0.6 per cyclekm	No value	€0.05 per cyclekm
<b>School children</b>	3.90 NOK per childkm (reduction in school bus transport)	No value	No value	No value
<b>Accidents</b>	No value	MSEK 0.8-1.8 per injury accident	€84000 per accident. The calculated value of human life is €1 934 000 (used when evaluating fatal accidents)	No value
<b>Travel time for cyclists</b>	No value	SEK 70-90 per cyclehour	€17.31 in average (varies if it is business trip or leisure trip)	€4.7 per cyclehour
<b>Delay</b>	No value	SEK 2.3 per minute (road crossing)	No value	No value



The 2021-2027 Guide has made improvements to the previous framework by introducing a qualitative factors in its CBA<sup>50</sup>, such as "other environmental impacts", also looking at other countries' approaches (most notably Ireland and Germany). Table 4 reflects these qualitative factors ("impacts") included in the 2021-2017 Guide. Tables 5 and 6 reflect the impacts used, respectively, in Ireland and Germany. As for the Irish approach, it is noteworthy to note that for each of the impact a well-rounded qualitative, quantitative and monetary assessment is carried out and the social aspect as well as the environmental and economic is considered. As for the German approach, the inclusion of the spatial and urban planning in the analysis is particularly interesting, especially for the problems addressed (distributive equity, quality of urban areas).

Table 4 – CBA 2021-2027 for Transport projects: impacts

Impacts	Primary evaluation method	New content provided in this document regarding transport CBA simplification and standardisation
<b>Perceived passenger time</b>	Monetisation	New recommended methods/sources for unit values of value of time and detailed advice on door-to-door perceived time treatment
<b>Freight time</b>	Monetisation	Reference to a recent JASPERS rail freight guidance document providing a standardised approach and EU country unit values of time and operating costs (see section 'Costs and benefits of rail freight enhancements')
<b>Vehicle operating costs</b>	Monetisation	
<b>Safety</b>	Monetisation	More detailed guidance and references to new EU country unit values for accident costs
<b>Environmental emissions / local health</b>	Monetisation	Specific updated reference to sources of EU country unit external cost values per mode
<b>Climate change</b>	Monetisation	Updated references for evaluating the unit cost of carbon (see Section 2.5 in Part I of the EAV)
<b>Noise</b>	Monetisation	Specific updated reference to sources of EU country unit external cost values
<b>Other environmental impacts</b>	Qualitative assessment	Explanation of the need for qualitative assessment
<b>Wider economic benefits</b>	Mainly qualitative assessment	References to literature and recommendations on evaluation method
<b>O&amp;M costs</b>	Monetisation	Specific advice related to the set-up of the without-project scenario and related O&M costs

<sup>50</sup> Economic Appraisal Vademecum 2021-2027, page 55.



Table 5 Ireland - Simplified version of appraisal summary table for transport projects<sup>51</sup>

	Impacts	Summary of key impacts	Assessment		
			Quantitative	Qualitative	Monetary (EUR, NPV)
<b>Economy</b>	Overall economic impacts	Summary of economic impact	Investment cost estimate Usage of project (number of daily vehicles/passengers)	Qualitative assessment of economic benefits	Project NPV, B/C Ratio and ERR (note this includes the present value of impacts noted beneath)
	Time savings	Summary of any time-saving benefits	Average time savings per user Hours saved per year	Qualitative assessment of time-saving benefits	Present value of time-saving benefits (passengers and freight)
	Vehicle operating costs	Summary impact on vehicle operating costs	Average operating costs per vehicle (without and with project scenarios)	Qualitative assessment of vehicle operating cost changes	Present value of vehicle operating cost savings
	Wider economic benefits	Summary of any wider economic benefits	Number and quality of indirect jobs created (if any)	Qualitative assessment of potential for wider economic benefits	Generally excluded but, where applicable, present value of wider economic benefits
	Additional economic objectives ...	...	...	...	...
<b>Environmental</b>	GHG impact	Summary of impact of project on climate change	Annual average tonnes of GHG emitted from project	Qualitative assessment of impact of project on climate change	Present value of GHG emission reductions
	Environment-related local health impacts	Summary of impact of project on emissions / local health	Annual average tonnes of NO <sub>x</sub> , CO, etc., emitted	Qualitative assessment of impact of project on environment / local health	Present value of environment-related local health impacts
	Additional environmental objectives ...	...	...	...	...
<b>Social</b>	Safety	Summary of impact on transport safety	Average number of annual fatalities and serious injuries saved	Qualitative assessment of impact of the project on safety	Present value of safety impacts
	Additional social objectives ...	...	...	...	...

<sup>51</sup> Economic Appraisal Vademecum 2021-2027, pages 60-61.



Table 6 - German methodology used to prepare the long-term national transport infrastructure investment plan

<b>CBA</b>	covering all of the common elements also addressed by the 2014 CBA Guide <sup>52</sup> – this is the only module based on monetisation of impacts
<b>environmental protection</b>	addressing all topics relevant for the environmental dimension not covered by the CBA, for example land consumption, protection of sensitive areas and habitat fragmentation
<b>spatial planning</b>	addressing the connectivity and accessibility of agglomerations in terms of distributive equity; accordingly, this differs from the allocative benefits of accessibility included in the CBA in terms of time savings
<b>urban planning</b>	addressing the local impacts of transport infrastructure projects that affect the quality of urban areas – this applies, for example, to projects able to relieve urban areas of through traffic or decongest them (note that the national plan does not address investment in urban transport infrastructure)

While the 2021-2027 Guide and the various methodologies used at Member State level provide a solid foundation, we believe this is not enough to achieve the cultural shift envisaged by REBALANCE. Below we will outline our proposed framework in this regard.

### 3.4 Our Proposed Framework

The 2021-2027 Guide also includes the Policy-Led Multi-Criteria Analysis (PLMCA) methodology, based on MCA, to assess urban development projects and programming. While transport programming forms a part of urban development its scope is broader and therefore the proposed methodology cannot fulfil the needs of transport-only projects alone. However, its principles can be used nonetheless to complete the CBA or MCA analysis in order to quantify values such as conviviality, tranquillity, family-friendly, aesthetics, health and value of life.

PLMCA, is an Excel-based tool that assists decision-makers with the selection of packages of measures and the timing of the delivery of such measures.<sup>53</sup> This tool seems suitable as its first step, 'Problem Structuring' structures the problem by defining the context of the decision, in particular the policy and institutional guidance that applies<sup>54</sup>. As a second step, 'Model building', a selection should be made of the appraisal criteria/indicators to use for each policy area and objective and their relative importance

<sup>52</sup> Guide to Cost-Benefit Analysis of Investment Projects Economic appraisal tool for Cohesion Policy 2014-2020.

<sup>53</sup> Economic Appraisal Vademecum 2021-2027, page 84.

<sup>54</sup> i.e., by including a dimension (e.g., social), a sub-dimension (e.g., choice and provision of accessible facilities); a policy objective (e.g., improve provision and access to facilities) a subj-objective (e.g., investing in health and social infrastructure) and a justification for the inclusion of objectives/sub objectives.



is determined by using of weights and/or rankings. As a third step, 'Analysis of impact and programme performance', a numerical scoring system is used to determine the performance of the project/programme relative to each criterion/indicator. As a last step, 'Reporting results', the final weighted score is determined by adding up the individual weighted scores of each subdimension and comparing them with the maximum possible score for the whole dimension. In addition, including a colour code associated with the scoring can help to clearly see the areas in which action is needed. An example of this adapted use of the PLMCA can be found in Annex 1 of this WP 5.1.

Our proposal is to use the PLMCA introduced in the urban development project to be integrated in the assessment of transport projects and policies, whether CBA or MCA. The seven standard dimensions, i.e., institutional, territorial, social, environmental, economic, financial and technical, could be complemented by the REBALANCE values of conviviality, tranquillity, family-friendly, aesthetics, health and value of life. In order to use this assessment method efficiently it will be necessary for the EU, national, regional and local transport policies to give clear guidance on the objectives and appraisal on the eligibility indicators.

## 4 FOCUS GROUP

A consultation on the proposed framework was held with a limited group of experts in public law (the 'focus group').<sup>55</sup>

First, the experts discussed the notion of 'public interest' in the law of the European Union. On this topic, they made *inter alia* the following remarks:

- Public policy is not equal to public interest;
- Public interest is not mentioned as such in the Treaty on the Functioning of the European Union (TFEU);
- Public interest is limited to 'human' interest. General interest is larger than the sum of the individual interest of persons (human/animals/environment);
- Public interest and general interest are nevertheless used interchangeably;
- Public interest within the EU has the connotation of a 'higher level', a reflection of the soul of society.

The experts continued by observing that, although the EU started as an economic project, it established a community of values,. One could say that the TFEU contains a number of clauses that contain outdated wording. That could be explained by the circumstance that EU Member States aimed to remove possible hurdles in order to stimulate private initiatives on production, distribution and innovation. EU Competition law provides an example: it is (at least partly) designed to achieve efficiency.

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<sup>55</sup> On 7 October 2022. The focus group consisted of (i) mr. M.J.J.M. (Maurice) Essers: Of Counsel EU competition law, EU public procurement law and EU state aid law at Clairfort Advocaten; (ii) Prof. mr. J.W. (Johan) van de Gronden, Professor International and European law at the Radboud University Nijmegen; (iii) Prof. mr. P.H.L.M. (Pieter) Kuypers, Professor EU and national public procurement law and EU State Aid law at the Radboud University Nijmegen and (iv) mr. dr. F.L. (Frank) Stevens, Associate Professor Maritime and Transport law at Erasmus University Rotterdam.



The experts agree that certain common principles apply within all transport modalities: reliability, accessibility, affordability, security, safety, passenger's rights, health and environment.

#### 4.1 Qualification of 'public interest'

The experts agreed that the CJEU has never defined the term 'public interest' in its case law. The reason might be found in the fluidity of the term through history and the broad applicability (not limited to a certain topic, field or aspect of society). Each case is limited to its merits and place in history. It is used in a dynamic manner: each culture or country has its own interpretation (in majority) of public interest, its interpretation might and should change over time to maintain its flexibility.

A government body – at EU, national, regional, or municipal level – may qualify a certain policy as being of public interest. In issuing (transport) policy, all government bodies have to comply with the four freedoms of the TFEU (freedom of goods, services, people and capital). This means that the measure in question should be appropriate to attain the underlying objective and not go beyond what is necessary to attain that objective. This qualifying power finds its end in protectionism.<sup>56</sup> Any measure within the competence of the EU that results in protectionism by a EU Member State is considered contrary to the EU Treaties.

#### 4.2 Quantification of 'public interest'

To quantify public interest, a parallel could be found in the methods of assessing proposals in (European) public procurement procedures (public contracts and public concession contracts). In such measurements government bodies often use expert panels or consumer satisfaction surveys. The methodology used has to be transparent and non-discriminatory.

The use of the notion of public interest in a Cost Benefit Analysis (CBA) could be realised through a transparent and non-discriminatory methodology to measure the Rebalance value and sub-values, for instance using an expert panel or consumer satisfaction surveys.

The Rebalance project aims at a paradigm shift in society around the idea of mobility; to rebalance, that is, to depart from speed as the main decisive aspect taken into account in making mobility policies. The Rebalance values are conviviality, tranquillity (quietness, peacefulness), family-friendliness, health, aesthetics and value of life. In the opinion of the experts these values seem to overlap to a large extent. Accordingly, these could be reduced to one or more core value(s). According to the experts, the 'value of life' value embraces all the named values and could as such serve the core value, possibly reformulated as 'quality of life'. Therefore, incorporating the Rebalance values into the CBA method would lead to another dimension for assessing 'quality of life'. This category could be made quantitative via a methodology covering all the named values.

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<sup>56</sup> Protectionism, sometimes referred to as trade protectionism, is the economic policy of restricting imports from other countries through methods such as tariffs on imported goods, import quotas, and a variety of other government regulations.



Depending on the individual project and its level (EU, regional, national, local) this 'quality of life' value might be used and quantified with a transparent and non-discriminatory methodology through a CBA.

The experts are of the strong opinion not to substitute the seven standard dimensions of the CBA, i.e. institutional, territorial, social, environmental, economic, financial and technical, by the REBALANCE values of conviviality, tranquillity, family-friendly, aesthetics, health and value of life.

Though, they advise to add a dimension 'quality of life' that embraces the values conviviality, tranquillity, family-friendly, aesthetics and health. As such, the Rebalance project could be of more relevance in practice. The experts express the hope that one day this notion of 'quality of life' – covering the Rebalance values – would be incorporated in the EU legislation and submitted to the CJEU, and in doing so could embed the Rebalance values into the underlying values of the European Union.

## 5 CONCLUSIONS

The REBALANCE project aims at using the fluidity and multi-sidedness of the concept of public interest to propose the inclusion of subjective concepts, such as conviviality, tranquillity (quietness, peacefulness), family-friendliness, health, aesthetics and value of life into the formal appraisal of transport-related policy and projects.

The aim of this Work Package (WP) 5.1 was to conduct research on the concept of 'public interest' in EU law to support a shift toward a new culture of mobility for the more effective consideration of emerging social values not yet fully considered in transport policymaking, and a better alignment with the SDGs and the mounting concerns about climate change.

In order to define policies and measures in the area of mobility, authorities (whether European, national, regional or local) have to take into account the free movement of goods, persons, capital and services, as laid down in the EU Treaties and internal market rules. However, in some cases a policy or measure may have the effect of restricting these freedoms, rather than enhancing them. To be justified, such restrictions need to be based on public interest considerations (the so-called public interest exception). However, the CJEU will only accept restrictions of these freedoms if the measure in question is (i) appropriate to attain the underlying objective and (ii) does not go beyond what is necessary to attain that objective. Only then a measure can be qualified as having 'overriding reasons relating to the public interest'.

The CJEU has consistently held that reasons of purely economic nature cannot constitute overriding reasons in the public interest. Thereby, the CJEU determined that if an objective could be considered to fall within the scope of consumer protection (i.e. it is not a reason of purely economic nature), the objective could be regarded as an overriding reason of the public interest. The CJEU has also recognised that this concept covers a number of grounds, including: the protection of the (urban) environment, (including town and country planning), road safety, cultural policy objectives and the freedom of expression (including social, cultural, religious and philosophical values of society). Specifically for transport, it can be concluded from the analysis of the case law



of the CJEU that 'the overriding reasons in the public interest' endorsed are quite limited and mainly revolve around safety, protecting workers in the naval sector, combatting noise pollution, reducing air pollutants, encouraging the modal shift to rail and coordinating transport.

Our case law analysis suggests that the CJEU has not provided an exact definition of 'public interest'. It acknowledges though that the concept changes depending on the specific circumstances of a case and on the prevailing *Zeitgeist*. The fluid character of the notion of public interest is, after all, its strength, as it makes this concept and the various areas of EU policy-making adaptable over time while being anchored in the solid foundations of the fundamental principles of EU treaties and legislation (as well as Member States' constitutions).

In the analysis of whether the overriding reasons in the public interest accepted by the CJEU, together with the REBALANCE values, could have a place in the economic appraisal of projects and policies and, therefore, influence the cultural shift proposed by REBALANCE, it might be feasible to use the PLMCA method. The PLMCA is an Excel-based tool that assists decision-makers with the selection of packages of measures and the timing of the delivery of such measures. This tool, introduced in the urban development projects, could be integrated in the assessment of mobility projects and policies, whether CBA or MCA.

Taking the opinion of the expert group into account, it could be argued that the dimension 'quality of life' embraces all REBALANCE values. This dimension 'quality of life' could be added as an additional standard dimension to the existing seven standard dimensions of the CBA, i.e., institutional, territorial, social, environmental, economic, financial and technical.

In the context of the analysis of proposed legislation, the European Commission sets out guidelines including an impact assessment, to assess whether future legislative or non-legislative EU action is justified. These guidelines have the aim of creating legislation that achieves its objectives while being targeted, effective, easy to comply with and carrying the least possible burden. The impact assessment includes the analysis of the relevant sustainable development goals and how the initiative impacts fundamental rights and territories. It seems feasible to see the inclusion of the REBALANCE values in the impact assessment alongside the initiative's contribution to fundamental rights and sustainable development goals.

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# ANNEX 1

## Example<sup>57</sup> of the functioning of the Policy-Led Multi-Criteria Analysis (PLMCA) assessment method

Below we will provide an example of how the PLMCA works in practice.

For the purposes of this example, the mock project is a "regeneration programme of neighbourhoods X,Y,Z, in City A" with five priority actions (1. housing, 2. skills, 3. culture, 4. business and 5. transport). The priority action no 5 on transport, for the purposes of our example consists of "updating old and building of new tram lines in underserved neighbourhoods X, Y, Z in City A".

### 1. Problem Structuring

The PLMCA framework starts with problem structuring by defining the context, in particular the policy and institutional guidance that applies. Columns 1–5 in the table below illustrate this process. In the example below we will only consider one dimension for the transport policy action no 5 "updating old and building of new tram lines in underserved neighbourhoods X, Y, Z in City A", i.e., conviviality, for illustration purposes. Our proposal would be to include, in addition to conviviality, other dimensions such as tranquillity, family-friendly, aesthetics, health and value of life.

(1) Dimension	(2) Sub-dimension	(3) Policy objective (Generic Good Practice for Sustainable Urban Development)	(4) Sub-objectives (specific to the case)	(5) Justification for inclusion of objectives/sub objective in Matrix
Conviviality	Creation of a sense of community	The new tram lines are designed not only to facilitate the mobility of the residents of affected the neighbourhoods towards the city center and between the neighbourhoods themselves but also to create the chances for residents to meet and to reach places of social gathering and social activities	Creation of a social center, shopping area, communal garden and playground at the tram terminuses	Promoting social inclusion, combating poverty and any discrimination

<sup>57</sup> Example adapted on the basis of the example illustrated in the 2021-2017 Guide, pages 85-90.



## 2. Model Building

The next phase consists on choosing the appraisal criteria/indicators for each policy area and objective as well as deciding on their relative importance through the use of weights and/or ranking. The table below (i.e., Column 6) depicts the first part of this phase (i.e. deciding which criteria or indicators to use for the first subdimension, that is, creation of a sense of community).

(6) Criteria
<p><b>Qualitative</b></p> <ul style="list-style-type: none"> <li>• Improvement of social services quality aimed at addressing the specific needs of the community</li> <li>• Extent of investment of social infrastructure contributing to the local development</li> <li>• Extent to which the proposal improves access to affordable sustainable and high quality services</li> </ul> <p><b>Quantitative</b></p> <ul style="list-style-type: none"> <li>• Population living in the affected areas</li> <li>• Persons benefitting from the new/upgraded infrastructure</li> <li>• Population covered by improved social services</li> </ul>

## 3. Analysis of impact and programme performance

The next step is the determination of the performance of the project/programme relative to each criterion/indicator, usually using a numerical scoring system. A colour code has been used in the Table below to show the scores for each area of action (Columns 7-11), where green means achieving the maximum score (e.g., between 100%-70%), orange means achieving a medium score (e.g., between 69%-40%) and red a low score (e.g., below 40%). Column 12 summarises the extent to which the areas of action of the regeneration programme meet the criteria (listed in Column 6).

(7) Priority Action 1 – Housing	(8) Priority Action 2 – Skills	(9) Priority Action 3 – Culture	(10) Priority Action 4 - Business	(11) Priority Action 5 - Transport	(12) Priority actions 1-5 Aggregated project evidence
					All packages strongly aligned to social cohesion and opportunity. Clear intent



					to serve the community and to provide effective and meaningful community services and assets.
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In order to make the calculation for each of the Priority Actions, the risks and their mitigation as well as the opportunities should be laid out, for example as follows:

(13) Risk & Mitigation	(14) Opportunities
The residents of the concerned neighbourhoods might not decide to use the transport and social space created defeating the goal of achieving conviviality	Creation of tram lines can allow residents to easily reach other parts of the adjoining neighbourhoods creating a network effect of social opportunities

#### 4. Reporting results

The final scores for each dimension (i.e., in our example conviviality, tranquillity, family-friendly, aesthetics, health and value of life) and the whole programme under analysis are reached by adding up the individual weighted scores of each subdimension and comparing them with the maximum possible score for the whole dimension (usually presented in percentage terms). The weighted scores for each dimension provide guidance for the prioritisation of the priority actions. In addition, colour coding clearly shows how each subdimension performed against the objectives and therefore which aspects to emphasise. In our example, the "conviviality" dimension of the project has a weight of 2, the programme proposed achieved score of 8/10 and the weighted score is represented by the weight times the score (as shown below in Columns 15-17).

(15) Weight	(16) Score	(17) Weighed score
2	8	$2 \times 8 = 16$

