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**REPORT ON THE APPLICATION OF  
COUNCIL REGULATION (EEC) No 684/92 OF 16 MARCH 1992  
ON COMMON RULES FOR THE INTERNATIONAL CARRIAGE  
OF PASSENGERS BY COACH AND BUS**

(Presented by the Commission)

Proposal for a  
**COUNCIL REGULATION (EC)**

amending Council Regulation (EEC) No 684/92 on common rules for the  
international carriage of passengers by coach and bus

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## A. INTRODUCTION

Council Regulation 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus, which was adopted in the run-up to completion of the internal market, laid down the conditions for applying the principle of the freedom to provide services in the field of carriage of passengers by road and reduced to a minimum the administrative procedures involved for carriers, enabling them to become more competitive.

Article 20 of Regulation 684/92 states that the Commission must report to the Council on the application of the Regulation before 1 July 1995. Before 1 January 1996, the Commission must present a proposal for a Regulation on the simplification of procedures, including - in the light of the report's conclusions - the abolition of authorizations. This report gives effect to the provisions of Article 20.

## B. CONTENT OF REGULATION 684/92

Regulation 684/92 on common rules for the international carriage of passengers by coach and bus constitutes the general legal framework for international carriage of passengers by coach and bus in all the Member States of the Community and, following the entry into force of the EEA Agreement, the countries of the European Economic Area. It introduced the principle of the freedom to provide services in this sector, replacing the regulations that had been in force since the end of the 1960s and beginning of the 1970s. In practice, this means that carriers are permitted to carry out international transport services between Member States without discrimination on grounds of nationality or place of establishment, if they:

- are authorized in the State of establishment to undertake carriage by coach and bus;
- satisfy the conditions laid down in accordance with Community rules on admission to the occupation of road passenger transport operator;
- meet legal requirements on road safety as far as the standards for drivers and vehicles are concerned.

An undertaking established in one Member State may thus carry out transport services between other Member States.

### Types of services

The Regulation defines the various passenger transport services as follows and specifies for each of them the conditions of market access:

#### (1) Regular services

Regular services are services which provide for the carriage of passengers at specified intervals along specified routes, passengers being taken up and set down at predetermined stopping points. This type of service is open to all, subject, where appropriate, to compulsory reservation. Regular services are subject to authorization in accordance with a procedure laid down in Article 7 of the Regulation. This procedure is much faster and

more flexible than the arrangements under the previous rules. The authorization of the country of transit (whose territory is crossed without passengers being picked up or set down) was abolished and replaced by a simple notification of the application, with the possibility for the authorities of the country of transit to submit comments. In addition, the Regulation sets out in Article 7(4) six reasons for which an application for authorization may be rejected. However, the application of the provisions of Article 7(4) has given rise to a number of interpretation problems, which are dealt with in a special section below.

(2) Special regular services

Special regular services are regular services which provide for the carriage of specified categories of passengers to the exclusion of other passengers, notably the carriage of workers between home and work, school pupils and students to and from their educational institution, soldiers and their families between their state of origin and the area of their barracks and urban carriage in frontier areas. All these cases of special regular services are exempt from authorization provided that they are covered by a contract concluded between the organizer and the carrier.

(3) Shuttle services

Shuttle services as defined in Article 2(2) are services organized to carry groups of passengers assembled in advance by means of repeated outward and return journeys from a single area of departure to a single area of destination. These groups, made up of passengers who have completed the outward journey, are carried back to the place of departure in the course of a subsequent journey. "Area of departure" and "area of destination" mean the place where the journey begins and the place where the journey ends together with localities within a radius of 50 km. Outside the areas of departure and destination, groups may be picked up and set down respectively at up to three different places. The conditions of market access differ according to whether or not these services include accommodation: shuttle services without accommodation are subject to authorization, while those with accommodation are exempt from authorization.

(4) Occasional services

Occasional services are services falling neither within the definition of a regular service nor of a shuttle service. These services are described in Article 2(3.1) and the Annex to the Regulation. The same Article provides for the category of residual occasional services, namely any service which does not fall within the definition of occasional services contained in the Regulation. Only this latter category is subject to authorization.

(5) Own-account transport operations

Article 2(4) of the Regulation also determines the conditions applicable to own-account transport operations. These operations, which an undertaking carries out for its own employees or a non-profit-making body for its members in connection with its social objective, are exempt from authorization and subject instead to a system of certificates in accordance with models determined by the Commission provided that:

- the transport activity is only an ancillary activity for the undertaking or body;
- the vehicles used are the property of that undertaking or body or have been obtained on deferred terms by them or have been the subject of a long-term leasing contract and are driven by a member of staff of the undertaking or body.

(6) Authorization procedure

Article 7 of the Regulation lays down the authorization procedure. Authorizations are issued in agreement with the competent authorities of all the Member States in whose territories passengers are picked up or set down. However, the actual authorization document is issued by the authorizing authority, i.e. the competent authority of the Member State in whose territory the place of departure is situated (one of the termini of the service) and where the application was submitted, unlike the system under the previous rules according to which the competent authorities of the Member States concerned issued an authorization to each undertaking of its nationality participating in the pool.

C. PROBLEMS OF APPLICATION AND INTERPRETATION

The competent authorities of the Member States are responsible for the practical application of the Regulation. In this context, the national authorities have sometimes encountered difficulties in interpreting several of its provisions. As a result, since Regulation 684/92 was adopted and entered into force, the competent authorities of several Member States and the representatives of the professional associations have asked the Commission departments for clarification of certain provisions. The Commission departments gave their legal interpretation of the questions raised without prejudice to any other future position of the Commission, stating that it was for the Court of Justice to give binding legal interpretations of Community law pursuant to Article 177 of the EC Treaty.

The following are the main problems of application and interpretation of the Regulation:

1. Scope of the Regulation in relation to third countries

The question of the scope of the Regulation has arisen in connection with the authorization of coach services to third countries. Article 1(2) states: "In the event of carriage from a Member State to a third country and vice-versa, this Regulation shall apply to the part of the journey on the territory of the Member State of picking up or setting down, after conclusion of the necessary agreement between the Community and the third country concerned". The Commission departments considered that this provision could be interpreted *a contrario* as meaning that the Regulation applies to transit through Member States to a third country in the event that there is no picking up or setting down of passengers.

The problem arose in this context of the transit authorization required by the authorities of certain Member States whose territory is crossed with no picking up or setting down of passengers in the case of a regular service to a third country. Such transit authorizations may be required only from non-Community operators or where the service is provided by an undertaking established in the Community in conjunction with a firm

located in a third country. The Commission departments considered that Regulation 684/92 does not apply in such a case according to Article 1(1) and (2), and the competent authorities of the Member States of transit could require a transit authorization, in conformity with the general principles of the Treaty.

The Commission departments also interpreted Regulation 684/92 as meaning that passenger transport services between two Member States which involve transit on a closed-door basis through a third country, i.e. with no scope for picking up or setting down passengers, are to be considered as intra-Community transport and hence subject to the provisions of Regulation 684/92.

If transit via a third country is on an open-door basis, i.e. passengers can be picked up or set down, this service is both intra-Community, since the place of departure and the final destination are within the European Community, and a service from a Member State to a third country and vice-versa (given the intermediate destinations and stops in the country of transit) within the meaning of Article 1(2) of Regulation 684/92. In this case, Community legislation applies to the intra-Community part of the service, and bilateral agreements between the Member States and the transit country plus the ASOR Agreement apply (if an occasional service is involved) to the picking up and setting down of passengers going to or coming from the third country, pending the conclusion of the necessary agreement between the Community and the third country in question. However, the application of Community rules and the ASOR Agreement to occasional services between two Member States involving transit on an open-door basis through a third country may give rise to problems, since the two sets of rules are not liberalized to the same degree. If the service in question has not been deregulated under the ASOR Agreement, an authorization from the third country of transit could be necessary for the part of the journey made on its territory.

For example, an occasional service between Germany and Italy liberalized under the terms of Regulation 684/92 which picks up or sets down passengers in Switzerland will require authorization from the latter, since such picking up or setting down of passengers has not been liberalized under the terms of the ASOR Agreement.

To sum up, the bilateral agreements continue to apply in relations between Community countries and third countries, albeit subject to the obligation pursuant to Article 1(3) of Regulation 684/92 that Member States must endeavour to adapt such bilateral agreements with third countries in order to ensure compliance with the principle of non-discrimination between Community carriers.

Finally, the ASOR Agreement applies between the Community, Turkey and Switzerland, since the remaining contracting parties have become members of the Community or parties to the EEA Agreement.

## **2. The concept of the various services**

### **(a) Own-account transport operations**

Own-account transport operations are regulated in Article 2(4) and Article 13 of Regulation 684/92.

In response to a request from the authorities of one Member State, the Commission departments considered the case of a private individual using his or her own bus for a family holiday in another Member State. They found that this does not in principle comply with the definition of "own-account transport operation" within the meaning of the Regulation and consequently the exemption from authorization is not applicable. However, this would clearly be a disproportionate, excessively bureaucratic approach. A solution has been considered; the journey in question, which is entirely unconnected with any form of economic activity, does not come within the scope of the Regulation. The individual in question is neither an own-account carrier nor a carrier for hire or reward (Article 1). Hence this transport operation is governed solely by the provisions of the Member States applicable to the carriage of passengers.

After consultation, the Commission departments decided that transport operations by a public transport undertaking which, on the occasion of a study trip, carries its own employees, should be considered as an own-account transport operation, since in this case the carriage of its own employees is merely a one-off, ancillary, non-profit-making activity which meets the conditions of Article 2(4) of Regulation 684/92.

The concept of a non-profit-making body also covers non-commercial organizations using vehicles for social objectives manned by volunteer drivers.<sup>1</sup>

(b) Urban carriage in frontier areas (Article 2(1.2)(d) )

The Regulation regards urban carriage in frontier areas as a special regular service, the latter being defined as a service which provides for the carriage of specified categories of passengers to the exclusion of other passengers, in so far as such services are operated under the conditions specified in Article 2(1.1). Urban carriage in frontier areas is thus characterized by its "urban", "frontier" nature, and by the fact that certain categories of passengers are carried to the exclusion of others.

The Regulation does not define urban carriage in frontier areas. It merely provides that the competent authorities of the Member States concerned must act together to smooth the way for such services since, under Article 4(2) of the Regulation, they are exempt from authorization if they are covered by a contract concluded between the organizer and the carrier.

The Commission departments therefore considered that a transport service is to be regarded as urban carriage in frontier areas if it meets the conditions set out above and is carried out in a conurbation situated in two or more Member States.

(c) Regular services and shuttle services without accommodation

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<sup>1</sup> Declaration of the Council and the Commission entered in the minutes of the meeting at which Regulation 684/92 was adopted.

Regulation 684/92 defined several conditions for international passenger services by coach and bus, in particular regular services and shuttle services.

The main differences between the two categories of service are the following:

- regular services transport individual travellers, whereas shuttle services carry previously assembled groups of passengers;
- in the case of shuttle services without accommodation, the groups of passengers must be brought back to the place of departure in the course of a subsequent journey, although in the framework of regular services the passengers are not obliged to purchase the return ticket.

There are, therefore, a number of similarities between shuttle services and regular services, such as the relative regularity of shuttle services (... *by means of repeated outward and return journeys* ...) and the fact that the stops and timetables are determined in advance. It is because of these similarities that Article 4 of the Regulation has specified the same conditions of market access for shuttle services without accommodation and regular services. The authorization procedure is also the same for the two services, as are the reasons for rejection of an application for authorization set out in Article 7(4).

### **3. Procedure and time limits for granting authorization**

#### **(a) The case of "undertakings associated" for the purpose of operating a regular service or a shuttle service without accommodation**

The application of the Regulation revealed a problem concerning the determination of the authorizing authority in the case of an association of undertakings for the operation of a regular passenger transport service by coach. Article 6(1) states very clearly that "applications for authorization shall be submitted to the competent authorities of the Member State in whose territory the place of departure is situated, hereinafter referred to as the "authorizing authority". In the case of regular services, the "place of departure" shall mean one of the termini". It is clear that regular services have two termini. The Regulation does not give any other indication to the effect that one of the termini of regular services takes precedence over the other from the point of view of submission and issue of the authorization. In practice, the decision to submit an application for a regular passenger service by coach in the one or other terminus is at the discretion of the undertakings concerned.

In those circumstances, the Commission departments took the view that they could not accept the interpretation given by certain Member States and certain undertakings according to which the Member State on whose territory the undertaking "that manages" is established or the Member State in which the service originates is to be considered as the place of departure.

The Regulation does not define the concept of "association of undertakings", so a number of approaches could be envisaged according to the possibilities offered



by the various legal systems of the Member States. The Regulation does not require an association to be constituted formally, in the legal sense of the term. However, an agreement between all the enterprises in the association on the joint operation of the regular service is a minimum requirement.

As regards the method of designating the undertaking managing the operation of a regular service or a shuttle service without accommodation in the case of an association of undertakings where there is no agreement between the various members of the association, it is the responsibility of the association to reach agreement on designating the managing party. Authorization of the service could be delayed until such time as the managing undertaking is designated.

The Commission departments were asked to comment on the interpretation that each undertaking belonging to the association is its "own managing party", which they rejected as being in conflict with the wording and the objective of the second paragraph of Article 5(1).

The second paragraph of Article 5(1) of Regulation 684/92 states that "In the case of undertakings associated for the purpose of operating a regular service or a shuttle service, the authorization shall be issued in the names of all the undertakings. It shall be given to the undertaking that manages the operation and copies shall be given to the others. The authorization shall state the names of all the operators".

Consequently Regulation 684/92 is based on the criteria of "one service, one authorization" or "one authorization for each service".

They also considered that there was nothing to support the idea of the managing party having additional rights or advantages compared with the other holders of the authorization in the association.

The Commission departments found that the procedure according to which undertakings applying for authorization to operate a service in association with others submit their application in parallel in their respective Member States and authorization is granted to each member of the association by its own national administration after the details have been jointly agreed, is incompatible with Articles 5 and 7 of the Regulation.

- (b) Article 7(2) of the Regulation states that the competent authorities of the Member States whose agreement has been requested for the authorization of a regular service have a period of two months within which to notify their decision. This period is calculated from the date of receipt of the request for an opinion. These authorities alone are aware of the exact date of receipt of the request. Efficient administration requires that this date should not be unduly far removed from the date in the request for an opinion.

The solution proposed by the Commission departments is to send immediately, on receipt of the request for an opinion, an acknowledgement of receipt showing

the exact date on which the request was received. The two-month period would be calculated from that date.

- (c) The competent authorities of Member States whose agreement is requested for the establishment of a regular coach service must notify the authorizing authority of their decision within two months from the date of receipt of the request for an opinion. If, after this time limit expires, the authorizing authority has received no reply, the authorities consulted are deemed to have given their agreement and the authorizing authority may then grant the authorization. Article 7(1) requires the authorizing authority to forward to the competent authorities of all the Member States in whose territories passengers are picked up or set down a copy of the application and of any other relevant documentation. It is often the case that the authorities of the Member States in which passengers are picked up or set down request additional information and that the two-month time limit referred to above expires before such information is provided.

The Commission departments suggested on the basis of consultations with certain Member States that the authorizing authority should:

- forward all the relevant information and documentation together as soon as the matter is referred to the authorities of the other Member States in accordance with Article 7(1);
- supply the additional information requested without delay, provided that the request for such information is justified and not merely a delaying tactic.

The checks necessary for applying this Regulation (e.g. Article 7(4)(a) and (b)) must be carried out within the time limits laid down in Article 7(2) and (3). The Commission departments considered that, if the authorizing authority fails to forward the documents in good time or if an unjustified request is made by the authorities whose agreement is needed, the procedure for reaching agreement laid down in Article 7(1) and (2) has not enabled the authorizing authority to decide on the application and the matter may be referred to the Commission in accordance with Article 7(6).

- (d) Finally, in accordance with Article 7(6), if the procedure for reaching the agreement referred to in paragraph 1 does not enable a decision to be taken, the matter may be referred to the Commission within three months of the date of submission of the application by the transport undertaking. The matter may no longer be validly referred to the Commission on expiry of this period, as has been the case on several occasions.

#### 4. Reasons for rejecting the application (Article 7(4)(a) and (b))

- (a) The competent authorities of one Member State raised a problem concerning Article 7(4)(a), first indent, which states that the application for authorization may be rejected if the applicant is unable to provide the service that is the subject of the application with equipment directly available to him, since the

Regulation does not require the applicant to give an account of the equipment at his direct disposal.

Article 6(3) of the Regulation states that persons applying for authorization shall provide any further information which they consider relevant or which is requested by the authorizing authority.

In this context, the Commission departments suggested to applicants for authorization that they should supply the authorizing authority *motu proprio* with all necessary information to enable it to judge whether the equipment directly available is sufficient to perform the service which is the subject of the application.

- (b) Article 7(4)(b)(i) states that the application for a new authorization may also be rejected "if it is shown that the service in question would directly compromise the existence of regular services already authorized, except in cases in which the regular services in question are carried out only by a single carrier or group of carriers".

Consequently, the request for new authorizations may be refused if there are already two other services operating on this route, but proof must still be supplied that the new service would directly compromise the existence of the regular services already authorized. It is up to the competent authorities to provide this proof, rather than for the undertaking making the application to prove the existence of a new clientele. Consequently, the grounds for rejection laid down in Article 7(4)(b)(i) of Regulation 684/92 cannot be automatically and systematically invoked whenever it is discovered that two services have already been authorized for a given link.

- (c) The refusal of authorization on the grounds that the new service might directly compromise the existence of regular services already authorized pursuant to Article 7(4)(b)(i) has posed one of the thorniest problems of interpretation, since the Regulation does not provide clear criteria for deciding what it means. The Commission departments stressed that, for the purposes of defining this concept, account had to be taken of the principle of maintaining the economic and financial balance of regular services already authorized, so that it was necessary to ascertain whether the entry into the market of a similar new service would disturb the economic and financial balance of the undertakings in relation to the investments in the operation of the regular service in question, putting in jeopardy the very existence or economic survival of the services already authorized.
- (d) According to the information available to the Commission, no request for authorization has ever been rejected on the grounds stated in (b)(ii) of Article 7(4).<sup>2</sup> However, the concept of a "comparable rail service on the direct

sections concerned" in that provision was the subject of a joint declaration by the Council and Commission entered in the minutes of the Council meeting which finally adopted Regulation 684/92. According to this declaration, a "comparable rail service on the direct sections concerned" may be interpreted as a comparable service in terms of fares, frequency and duration of journey. The expression "direct sections" must be construed in the geographical sense and, in keeping with the criteria concerning comparability with rail services, does not exclude a change of vehicles or possible connections involving changes of platform. The request for new authorizations may be rejected if a comparable rail service would be seriously affected by the establishment of the new coach service, but it is necessary to provide actual proof. It is for the competent authorities to provide this proof, rather than for the undertaking making the application to prove the existence of a new clientele. Consequently, the mere fact that a comparable rail service exists for a given link cannot automatically and systematically be taken as justification for rejecting an authorization.

#### **D. ACTION BY THE COMMISSION - ARBITRATION**

##### **Article 7(6)**

Article 7(6) of Regulation 684/92 provides that, if the procedure for reaching agreement between the competent authorities of all the Member States in whose territories passengers are picked up or set down does not enable the authorizing authority to decide on an application, the matter may be referred to the Commission within three months of the date of submission of the application. After consulting the Member States concerned, the Commission has to take a decision within six weeks, which takes effect within 30 days of its notification to the Member States concerned.

Article 14 of Regulation 517/72 already provided for the possibility of referral to the Commission in the event of disagreement between the competent authorities, although it did not specify any time limit for this procedure. The Commission took several decisions in the framework of that Regulation.

Regulation 684/92, by contrast, sets very strict, short time limits. The Commission was asked to intervene officially on three occasions, but was obliged to refrain from taking a formal decision since referral in all cases was made outside the period of three months from the date of submission of the application for authorization.

In spite of this, the Commission departments have always been willing, in the spirit of Article 7(6) of Regulation 684/92, to examine together with the parties concerned how an agreement might be reached, notably by organizing meetings with the responsible officials of the national administrations of the parties concerned. In some cases the Commission proposed a course of action which was accepted by the parties. Two cases referred to the Commission were satisfactorily solved, leading to an authorization issued

by the authorizing authority. In one case only which was still outstanding when this report was drafted, the Commission's good offices did not lead to an arrangement between the parties. The future amendment of the Regulation should allow longer time limits for referral to the Commission pursuant to Article 7(6).

The Commission departments also received complaints regarding unsatisfactory application of the Regulation owing to interpretation problems on the part of the national administrations.

#### **E. RELATIONS WITH NATIONAL EXPERTS AND THE TRADE**

The Commission departments attach great importance to relations with the national experts responsible for applying the Regulation to international transport by coach and bus and with the trade.

Meetings with the national experts have been organized annually since the entry into force of the Regulation, in July 1992, July 1993, September 1994 and in June 1995. The aim of these meetings was to gain first-hand knowledge of the problems and difficulties encountered by the national authorities responsible for implementing the Regulation in practice, and to notify all the Member States of the interpretations of the various provisions of the Regulation by the Commission departments.

These exchanges of view were considered fruitful by both sides and the suggestions made by the experts have been taken into account for the purposes of amending the Regulation, particularly as regards the simplification of procedures.

In addition, relations with all the national and European professional associations have been intensified; two meetings were organized with the representatives of these associations in January 1994 and September 1994 with a view to finding out the operators' problems in connection with implementation of the Regulation.

The trade was also consulted at European level in September 1995 on the subject of the proposal for amendments to the Regulation.

#### **F. EXTERNAL RELATIONS**

As already discussed in connection with the scope of the Regulation vis-à-vis third countries, Regulation 684/92 applies in the event of carriage from a Member State to a third country and vice versa, to the part of the journey on the territory of the Member State of picking up and setting down, after conclusion of the necessary agreement between the Community and the third country in question. Article 1(3) states that "pending the conclusion of agreements between the Community and the third countries concerned, this Regulation shall not affect provisions relating to the carriage referred to in paragraph 2 contained in bilateral agreements concluded by Member States with those third countries. However, Member States shall endeavour to adapt those agreements to ensure compliance with the principle of non-discrimination between Community carriers".

When the Regulation was finally adopted, the Council and Commission declared that they would take the appropriate measures in conformity with the provisions of the Treaty with a view to concluding any agreements that might prove necessary between the Community and third countries for the purposes of uniform application of the Regulation. The Commission, for its part, noted with regret that the text adopted by the Council did not permit significant progress towards ensuring the freedom of services in links between Member States and third countries.

The Commission, in order to comply with the obligations incumbent upon it under the Treaty, presented a recommendation for a Council Decision in December 1992 on the opening of negotiations between the Community and certain third countries in the field of carriage of goods and passengers by road. At its meeting of 7 December 1995 the Council adopted a negotiating mandate for the Commission concerning the opening of negotiations on occasional international passenger services by coach and bus.

In addition, the Council decided on 14 March 1995 to authorize the Commission to negotiate an agreement between the European Community and the Swiss Confederation in the field of road and air transport which includes the carriage of passengers by coach and bus. The negotiations with Switzerland are in progress.

Regulation 684/92 applies to Norway, Iceland and Liechtenstein as parties to the Agreement on the European Economic Area.

Following the accession of Austria, Sweden and Finland to the Community and the application of Regulation 684/92 to the European Economic Area, the ASOR Agreement<sup>3</sup> in fact only applies to occasional services between the Member States of the Community and Switzerland and Turkey.

#### **G. AGREEMENTS BETWEEN THE MEMBER STATES (Article 18 of the Regulation)**

Article 18 of the Regulation states that "Member States may conclude bilateral and multilateral agreements on the further liberalization of the services covered by this Regulation, in particular as regards the authorization system and the simplification or abolition of control documents".

On the basis of this provision, the Member States of the Community and of the European Economic Area agreed to waive the obligation to carry a set of translations of the journey form in all Community languages on board the vehicle carrying out a transport service exempt from authorization.

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<sup>3</sup> Agreement on the International Carriage of Passengers by Road by means of Occasional Coach and Bus Services, signed in Dublin on 26 May 1982.

Pursuant to Article 11(2), the control document consists of a journey form and a set of translations of the journey form. Article 15(1) requires the control document to be carried on the vehicle and to be presented at the request of any authorized inspecting officers. The Commission will take account of this agreement with a view to making the necessary amendments to the current text of the Regulation.

In addition, the Committee of Ministers of the Benelux Economic Union adopted a Decision on 20 December 1994 laying down certain rules applicable to regular services, shuttle services and occasional services within the Benelux area. Among other things, these rules concern the possibility of granting provisional authorization for regular services without the prior agreement of the host State under certain conditions, the derogation from the condition of a group previously assembled in the case of shuttle and occasional services and exoneration from authorization for residual occasional services.

## **H. THE TRANSPORT DOCUMENTS**

In implementation of Article 5(4), Article 6(2), Article 11(6) and Article 13(3), the Commission on 1 July 1992, after consulting the Member States, adopted a Regulation laying down detailed rules for the application of Council Regulation (EEC) No 684/92 as regards documents for the international carriage of passengers,<sup>4</sup> which contains the model of a control document and rules governing its use, the model of applications for authorization, of the authorization itself and of the certificates.

This Regulation applies simultaneously with the basic regulation, i.e. from 1 June 1992, although Article 11 provides for the possibility of using the models of the documents laid down in former Regulations 1016/68 and 1172/72 for a transitional period until 31 December 1993 on condition that they are amended, legibly, indelibly and appropriately insofar as it is necessary, in order to conform to the provisions of Regulation 684/92. The objective of this Article was to enable the Member States to print and distribute the new documents and use up stocks of old documents. Despite this additional period, however, some Member States have had difficulties in issuing the new documents at national level.

In response to requests from the professional associations in the sector of international carriage of passengers by coach and bus and by the national experts, the Commission on 25 October 1993 adopted Regulation 2944/93 amending Commission Regulation (EEC) No 1839/92 with regard to control documents for shuttle services with accommodation and for occasional services,<sup>5</sup> none of which are subject to authorization.

Two significant changes were made to the new journey forms:

1. The model control document for shuttle services with accommodation and for occasional services was standardized, whereas the previous system had two separate journey forms.

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<sup>4</sup> Commission Regulation 1839/92, OJ No L 187, 7.7.1992, p. 5.

<sup>5</sup> OJ No L 266, 27.10.1993, p.2.

2. The "pictogram" system on the lines of the ASOR model journey form was introduced to make it simpler and easier to use and check by the competent officials.

#### **I STATISTICS ON THE NUMBER OF AUTHORIZATIONS GRANTED BY THE MEMBER STATES.**

In order to assess the extent to which Regulation 684/92 is being applied, it has to be borne in mind that to a very large extent it favours international passenger transport services not subject to authorization, i.e. occasional services. It is thus difficult to quantify this part of the Regulation given that no prior official steps are necessary. By contrast, the table below shows the number of authorizations granted by the Member States for each of the categories of international passenger transport services still subject to authorization. These figures include all the authorizations granted since the entry into force of Regulation 684/92. These figures supplied by the Member States clearly show that the number of regular services created under the present system has significantly increased, with new routes being offered that often serve peripheral areas of the Community and so promote the mobility of its citizens.

However, the table also shows that certain categories of services subject to authorization provided for by the present legislation, namely shuttle services without accommodation and special regular services, are not particularly attractive to the transport undertakings. Consequently the Commission makes provision in its proposal for a Regulation amending Regulation 684/92 for abolishing the shuttle category of services and liberalizing all special regular services. Given the small number of authorizations granted for the latter by Member States, this is unlikely to disrupt the market for international coach services. Furthermore, the current legislation has a category of residual occasional services for all services that cannot be classified in the other categories. The Spanish authorities alone have granted 80 authorizations to this category, but its use is nonetheless insignificant, since the very same services can be classed in the occasional services category specified in Article 2(3.1)(b) of Regulation 684/92.



**TABLE ON THE NUMBER OF AUTHORIZATIONS GRANTED BY THE MEMBER STATES**

Number of authorizations issued under Regulation N° 684/92

Member State (M.S.)	Regular Service	Special Regular Service	Shuttle Service without accommodation	Residual Occasional Service	Own-Account Service	Situation on
Belgium	19	1(1)	1	1	6 (1.2) 4 (1.3)	31.12.1994
Denmark	22	0	0	0	0	5.5.1995
France	100	0	0	8 (2)	83 (1.2)	19.5.1995
Germany	76	10	0	1	0	31.1.1995
Greece	12 (3)	0	0	0	0	27.2.1995
Italy	17	0	0	0	0	9.3.1995
Ireland	51 (4.1)	0 (4.2)	0			14.2.1995
Luxembourg						No answer received
Netherlands	5	3	0	0	0	17.1.1995
Portugal	12	0	0	0	52	31.3.1995
Spain	17	0	0	80 (5)	0	10.1.1995

Member State (M.S.)	Regular Service	Special Regular Service	Shuttle Service without accommodation	Residual Occasional Service	Own-Account Service	Situation on
United Kingdom	5	1	1	16	0	20.2.1995
New M.S.						
Austria	0	0	0	0	0	16.3.1995
Finland	0	0	0	0	0	22.2.1995
Sweden	1	0	0	0	0	21.06.1995
EEA						
Iceland						
Norway						

- (1) With the exception of a specific case of carriage of workers, all the other new special regular services were in the categories defined in Article 2(1.2) and can be organized on the basis of an agreement concluded between the carrier and the organizer of the carriage.
- (1.2) Non-liberalized own-account service.
- (1.3) Liberalized own-account service.
- (2) All services with the UK.
- (3) 16 authorizations requested and four of them have been rejected.
- (4.1) Regular service including special regular services defined in Article 2(1.2).
- (4.2) Special regular services other than those defined in Article 2(1.2).
- (5) The occasional residual services authorized are combined air/coach services that could have been included in Article 2(3.1)(b) of Regulation 684/92 and are therefore exempt from authorization.

## PROPOSAL FOR A COUNCIL REGULATION

amending Council Regulation (EEC) No 684/92 on common rules for the international carriage of passengers by coach and bus

### EXPLANATORY MEMORANDUM

#### A. BACKGROUND

1. The first joint action in the field of the international carriage of passengers by coach and bus dates from the 1960s, when Council Regulation No 117/66/EEC of 28 July 1966 on the introduction of common rules for the international carriage of passengers by coach and bus<sup>1</sup> was adopted. In conformity with Articles 7 and 8 of this Regulation, common rules for regular services were laid down by Council Regulation 516/72/EEC of 28 February 1972,<sup>2</sup> and common rules for shuttle services by Council Regulation 517/72/EEC of 28 February 1972.<sup>3</sup> The provisions of these two Regulations remained in force until the adoption of Council Regulation (EEC) No 684/92/EEC of 16 March 1992.<sup>4</sup>
2. The latter instrument constitutes the authoritative legal framework for the international carriage of passengers by coach and bus. It lays down the conditions for applying the principle of the freedom to provide services in this sector and applies to all Member States of the Community and, following the entry into force of the EEA Agreement, the countries of the European Economic Area. In practice, it enables carriers to provide international transport services between Member States without discrimination on grounds of nationality or place of establishment, provided that they
  - are authorized in the State of establishment to undertake carriage by coach and bus;
  - meet the conditions laid down in accordance with Community rules on admission to the occupation of road passenger transport operator;
  - meet the legal requirements on road safety as far as the standards for drivers and vehicles are concerned.
3. In addition, the Regulation defines the different transport services and determines for each of them the conditions of market access. Shuttle services with accommodation, most occasional services, practically all special regular services and own-account transport operations do not require authorization. By contrast, all regular services and shuttle services without accommodation, residual occasional services, certain special regular services and certain own-account

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<sup>1</sup> OJ, 9.8.1966, p. 2688.

<sup>2</sup> OJ L 67, 20.3.1972, p. 13.

<sup>3</sup> OJ L 67, 20.3.1972, p. 19.

<sup>4</sup> OJ L 74, 20.3.1992, p. 1.

transport operations are still subject to authorization. The procedure for the granting of authorizations has been simplified and, in the event of authorization being rejected, the precise reasons must be given.

4. Article 20 of Regulation 684/92 states that the Commission must report to the Council on its application before 1 July 1995. Before 1 January 1996, the Commission must present to the Council a proposal for a Regulation on the simplification of procedures including - in the light of the report's conclusions - the abolition of authorizations.
5. In response to these provisions, the Commission has drafted a new proposal for a regulation making the following amendments:
  - abolition of the category of international shuttle services
  - abolition of the category of residual occasional services
  - liberalization of all occasional services
  - liberalization of all special regular services and own-account transport operations
  - improved wording of the definition of occasional services
  - introduction of the Community coach licence
  - restoration of competition between regular coach and bus services and regular rail services by deleting point (ii) of Article 7(4)(b)
  - extension of certain time limits.

## **B. JUSTIFICATION OF THE MEASURE AT COMMUNITY LEVEL**

### **I. Subsidiarity and proportionality**

- (a) **What are the objectives of the proposed measure with regard to the Community's obligations?**

This proposal aims to continue the liberalization process initiated at Community level in the field of international carriage of passengers by coach and bus. It thus reflects the progress made in completing the internal market. The fundamental objective is to implement the freedom to provide services in the transport sector by eliminating unjustified and/or excessive restrictions, in particular any discrimination against the service provider on grounds of nationality or establishment in a Member State other than that in which the service is to be provided.

- (b) **Does competence for the proposed measure lie solely with the Community or is it shared with the Member States?**

This is a measure for which the Community has exclusive competence (Article 75(1)a of the Treaty).

- (c) **What forms of action are open to the Community (recommendation, financial support, legislation, mutual recognition, etc.)?**

This proposal sets out to amend Council Regulation (EEC) No 684/92 and thus it, too, takes the form of a Council regulation. It lays down common rules for the international carriage of passengers by coach and bus in order to prevent distortion of competition. Since a regulation is binding in all its parts and directly applicable in all Member States of the Community, it is the only legal instrument conceivable.

- (d) **Is it absolutely necessary to adopt uniform rules or would a Directive establishing general principles and leaving implementation to the Member States be sufficient?**

As mentioned in (f) above, this proposal amends an existing regulation and must therefore itself take the form of a regulation. Moreover, the sector in question requires the international carriage of passengers by coach and bus to be carried out under the same conditions using the same control documents. A directive would therefore not be the appropriate instrument.

## **II. Economic advantages of continuing the harmonization process**

The economic arguments in favour of greater harmonization and liberalization of the rules on international carriage of passengers by coach and bus are as follows: the new proposal for a regulation aims to simplify and clarify the current provisions. Consequently, it abolishes the "shuttle" category by assimilating shuttle services without accommodation to regular services, and shuttle services with accommodation to occasional services. In addition, the proposal aims to restore competition between regular coach and bus services and regular rail services by deleting point (ii) of Article 7(4)(b), and harmonizes and further simplifies the administrative procedures. The new standards will introduce greater flexibility and the more appropriate criteria will open up new markets. The abolition of the restrictions maintained by the current Regulation will enable the transport undertakings to optimize the management of their activities and the profitability of their vehicle fleets.

It is also worth noting that, since the entry into force on 1 July 1994 of the Agreement on the European Economic Area, the application of Regulation 684/92 concerns a total population of 370 million inhabitants. It thus offers new opportunities to operators of coach and bus services. These new opportunities may generate new jobs in the transport industry.

In order to avoid any distortion of competition, the proposal for a regulation lays down identical conditions of market access for transport undertakings from the European Community and the European Economic Area in conformity with the non-discrimination requirement, so avoiding imbalances between those countries which restrict access to their national market as regards non-residents and those which open it up completely to other carriers.

## **C. EXAMINATION OF THE ARTICLES**

### **Article 1**

Article 1 of the proposal amends Article 2 of Regulation 684/92 as follows:

#### Urban carriage in frontier areas

Regulation 684/92 considers urban carriage in frontier areas as a special regular service, which in turn is defined as a service providing for the carriage of specified categories of passengers to the exclusion of other passengers, insofar as such services are operated under the conditions specified in Article 2(1.1). Urban carriage in frontier areas is therefore characterized by its "urban", "frontier" quality, and by the fact that certain categories of passengers are carried to the exclusion of others. In actual fact, urban services in frontier areas should be considered as a special case of regular services rather than of special regular services, since urban services in frontier areas must be accessible to all and not only to certain categories of passengers to the exclusion of others.

#### Additional vehicles

Article 2(1.3) of Regulation 684/92 provides that the operation of additional vehicles for existing regular services is governed by the same rules as these regular services, i.e. it is subject to authorization. Such a procedure would not appear to be justified, since Article 10 of the Regulation requires service operators to take all measures to guarantee a transport service that fulfils the standards of continuity, regularity and capacity. Where necessary owing to the growth in demand, the carrier is obliged to operate additional vehicles on the service. This obligation could not be fulfilled if the operator had to follow the authorization procedure, which takes a minimum of three months.

The proposed amendment provides for abolition of the authorization obligation for the operation of additional vehicles. Consequently, this amendment will give the undertakings greater flexibility, particularly during periods of increased demand.

#### Shuttle services

The proposal for a regulation provides for abolition of the concept of shuttle services.

This is justified for several reasons:

1. According to the information available to the Commission departments, this concept does not exist in Member States' internal legislation.
2. The report on the implementation of Regulation 684/92 shows that scarcely any authorizations have been granted for shuttle services without accommodation.
3. There are several similarities between shuttle services without accommodation and regular services, such as the relative regularity of shuttle services (*... by means of repeated outward and return journeys ...*) and the fact that they also have predetermined stopping points and timetables. It is because of these similarities that Article 4 of the Regulation has stipulated the same conditions of access to the market for both shuttle services without accommodation and regular services. The authorization procedure is the same for the two services, as are the reasons for rejection of the application for authorization set out in Article 7(4).

4. By contrast, shuttle services with accommodation could be considered as occasional services. For one thing, the conditions of market access and the control document are currently the same.

Abolishing the shuttle category of services would greatly simplify the nomenclature of passenger transport services by coach and bus. These would be classed as regular services, special regular services, occasional services and own-account transport operations. This classification coincides with that used in the legislation of most Member States.

#### Occasional services

The concept of occasional services has been considerably simplified. These services are currently defined by default, i.e. those which do not come into the category of regular services or special regular services. The list of these services in Article 2(3.1) of Regulation 684/92 and in the Annex is deleted. Some elements characterizing occasional services have been included in the definition, but as a guide.

Consequently, in order to distinguish between an occasional service and a regular or special regular service, it is necessary to stipulate that the occasional service does not meet the criteria laid down in the Regulation for those two services.

As the report on the implementation of Regulation 684/92 shows, the number of authorizations granted by Member States for residual occasional services is insignificant. Abolition of the concept of residual occasional service is therefore justified.

Occasional services remain exempt from authorization. By contrast, the organization of parallel or temporary services comparable to existing regular services and serving the same clientele as the latter is subject to authorization according to the procedure laid down in the Regulation. The objective of this provision, which is already contained in Article 2(1.3) of the current text of Regulation 684/92, is to avoid unfair competition with regular services on the part of "false occasional services", i.e. occasional services exempt from authorization which in practice are regular services.

#### Own-account transport operations

The definition of own-account transport operations has been supplemented by an explicit reference to their non-commercial character, which is, moreover, an essential feature of this type of service.

#### Article 2

No comment.

#### Article 3

Article 3 of the proposal introduces a new Article 3a which contains an important innovation in the sector of international carriage of passengers by coach and bus. This

is the "Community licence", which is issued by the competent authorities of the State of establishment to carriers meeting the conditions laid down in Article 3(1) of Regulation 684/92 and is based on a model contained in the annex to the Regulation. At present, each Member State draws up its own model authorization for international carriage, although the qualitative criteria for operation of these services are laid down by Regulation 684/92.

The Community licence will facilitate checks made outside the State of establishment, particularly in the case of occasional services, since these are exempt from authorization and currently operated under cover of a journey form which provides information on the service, but very little on the carrier involved. The Community licence will be the proof that the carrier is authorized in the State of establishment to undertake international carriage by coach and bus, and that the undertaking in question meets the conditions of access to the profession of road passenger transport operator pursuant to the Community directives.<sup>5</sup>

The Community licence will replace the current document(s) issued by the competent authorities of the State of establishment attesting that the carrier is admitted to the market in international carriage of passengers by road.

#### Article 4

Article 4 of the proposal amends Article 4 of Regulation 684/92 as regards the arrangements for market access as follows:

- All occasional services are exempt from authorization, unlike the system under Regulation 684/92 according to which residual occasional services have to be authorized. As the report on the application of Regulation 684/92 shows, Member States issued only an insignificant number of authorizations for residual occasional services. The latter category has therefore been abolished.
- All special regular services and urban carriage in frontier areas are exempt from authorization if they are covered by a contract concluded between the organizer and the carrier. Article 2(1.2) of Regulation 684/92 in conjunction with Article 4 requires special regular services to be authorized with the exception of those listed in points (a), (b), (c) and (d) of Article 2(1). In practice, the number of special regular services subject to authorization pursuant to Regulation 684/92 is very limited, as can also be seen from the report on application of the Regulation. Abolition of the authorization requirement for these services is therefore justified.
- Regular services remain subject to authorization.

#### Article 5

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<sup>5</sup> Council Directive 74/562/EEC, OJ L 308, 19.11.1974, p. 23, as last amended by Council Directive 89/438/EEC, OJ L 212, 22.7.1989, p. 101.



No comment.

### Article 6

Article 6 of the proposal amends Article 5 of Regulation 684/92 with regard to additional vehicles.

No comment on paragraphs 1 to 4.

A new paragraph 5 is inserted.

Article 1(3) of the proposal for an amendment provides for the abolition of the authorization obligation for the operation of additional vehicles.

The proposed amendment to Article 6 requires the carrier who makes additional vehicles available to the operator of the regular service to carry the following documents on the vehicle:

- a true copy of the Community licence of the carrier providing the additional vehicle;
- a copy of the equivalent contract or document between the operator of the regular service and the carrier providing the additional vehicle;
- a copy of the authorization of the regular service.

This new system will clarify the difference between the concept of "the use of additional vehicles" and "subcontracting".

As already discussed, the use of additional vehicles is justified by the temporary or seasonal growth in demand such that the holder of the authorization would be unable to meet the carriage obligation with the vehicles at his or her direct disposal.

A carrier who makes vehicles available to the holder of the authorization for the regular service through a hire contract, for example, is not named in the authorization document since the regular service is operated on behalf of the authorization holder and for a very specific period.

The subcontractor, by contrast, is a transport undertaking which becomes responsible for the operation of the regular service on a permanent basis under the terms laid down by the Regulation and by the authorization. The subcontractor must be approved by the authorities involved in issuing the authorization and must figure in the authorization as the undertaking which operates the service on a subcontracting basis, and not as an undertaking which might be chosen from a list at a given moment to provide an *ad hoc* service.

### Article 7

Article 7 of the proposal amends Article 6 of Regulation 684/92 concerning the submission of applications for authorization of regular services.

No comment on paragraph 1.

Paragraph 3 of that Article specifies that persons applying for authorization shall provide any further information which they consider relevant or which is requested by the authorizing authority. This provision was developed by Article 7 of Commission Regulation 1839/92 laying down detailed rules for the application of Council Regulation (EEC) No 684/92 as regards documents for the international carriage of passengers. This Article stipulates the information which must be supplied by the applicant for the authorization, in particular the timetable, fare scales, evidence that the applicant meets the conditions applicable in the State of establishment to the international carriage of passengers by coach or bus, information regarding the type and volume of traffic expected and a map showing the route and stopping points.

The proposed amendment concerns the requirement to draw up a plan with operational details of the regular service in order to satisfy the Community legislation on driving and rest periods<sup>6</sup> and to supply a copy of the Community licence for the international carriage of passengers by road for hire or reward laid down in Article 3a.

The obligation to draw up an operational plan for the regular service is all the more justified as it requires the carrier to organize stops in line with the Community legislation on driving and rest periods. It therefore concerns a prior check of compliance with this legislation, the fundamental objective of which is to ensure maximum road safety.

#### Article 8

Article 8 of the proposal amends Article 7 of Regulation 684/92 on the authorization procedure for regular services.

1. It concerns, firstly, extending all the time limits laid down in that Article, since they have proved too short in practice:
  - the period for referral to the Commission pursuant to Article 7(6) will be four months instead of three from the date of submission of the application;
  - the period within which the Commission decides on a referral is ten weeks instead of six.
2. The second important amendment to Article 7(2) of the Regulation concerns the exact date from which the two-month period is calculated.

This Article stipulates that the competent authorities of the Member States whose agreement has been requested regarding the issuing of an authorization for a regular service have two months within which to notify the authorizing authority of their decision. This period is calculated from the date of receipt of the request for an opinion. Only the authority whose opinion has been sought knows the exact date of receipt.

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<sup>6</sup> Council Regulation (EEC) No 3820/85 and 3821/85 of 20 December 1985, OJ L 370, 31.12.1985, p.1.

The problem can be solved by sending immediately on receipt of the request for an opinion an acknowledgement of receipt showing the exact date on which the request was received. The two-month period would be calculated from the date shown on the acknowledgement. Efficient administration requires that the date in the acknowledgement of receipt should not be too far removed from the date shown in the request for an opinion.

3. The current wording of Article 7(5) states that "the authorizing authority may refuse applications only on the basis of reasons compatible with this Regulation". This provision should be applicable not only to the authorizing authority, which is the authority that must formally grant the authorization, but also to the competent authorities of all Member States on whose territories passengers are picked up or set down and who participate in the construction of the agreement necessary to grant the authorization. This is the objective of Article 8(5) of the draft amendment.
4. The draft amendment provides for deleting point 4(b)(ii) of Article 7 according to which:  
"The application may be rejected:  
(ii) if it is shown that the said service would seriously affect the viability of a comparable rail service on the direct sections concerned."  
Deleting this provision is justified from the point of view of the principle of freedom of competition between the various transport modes. Furthermore, according to the available information, no authorization has been rejected for this reason.  
In addition, the wording in 4(a) and (b) "An application may be rejected if :..." has been replaced by the phrase "Authorization shall be granted unless: ..". The purpose of this amendment is to limit as far as possible the discretionary powers of the national administrations when they state reasons for refusing applications. Authorization will have to be granted if none of the reasons for rejection specified by the Regulation can be advanced.  
The first, second and third indents of point (4)(a) and subparagraphs (i) and (iii) of point (4)(b) have been incorporated in full from the text of Regulation 684/92 in the interests of greater clarity of Article 7(4).

#### Article 9

No comment

#### Article 10

No comment

#### Article 11

Article 11 of the proposal amends Article 11 of Regulation 684/92.

According to Article 11(2) of Regulation 684/92, the control document consists of a journey form and a set of translations of the journey form. Article 15(1) requires the control document to be carried on the vehicle and presented at the request of any authorized inspecting officer. The objective of this amendment is to abolish the obligation to carry the set of translations of the journey form on the vehicle.

On the basis of Article 18<sup>7</sup> of Regulation 684/92 the Member States of the Community and of the European Economic Area have agreed to waive the requirement for the set of translations of the journey form in all Community languages to be carried on a vehicle undertaking a transport service exempt from authorization.

#### Article 12

This Article deletes Article 12 of Regulation 684/92 according to which "within the framework of an international shuttle service with accommodation, or an international occasional service, a carrier may carry out occasional services (local excursions) in a Member State other than that in which it is established (...)". In practice, this provision enables non-resident carriers to carry out strictly national services under certain conditions.

This issue has already been solved in the framework of Council Regulation (EEC) No 2454/92 laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State. Pursuant to Article 3 of this Regulation, permission to operate cabotage transport operations in the form of non-regular services will be restricted to closed-door tours until 31 December 1995. After that date, all cabotage transport operations will be authorized for all non-regular services.

Consequently, since the entry into force of Regulation 2454/92, cabotage in the form of "local excursions" as referred to in Regulation 684/92 has been liberalized to a much greater extent than provided for in Article 12 of the latter. This provision has thus become obsolete. Any carrier wishing to undertake a cabotage operation following an international service will be able to do so under the conditions set out in the cabotage Regulation.

#### Article 13

Article 13 of the proposal deletes Article 13(2) of Regulation 684/92. The objective of this amendment is to exempt from authorization all services for own account and not only those listed in Article 2(4) of Regulation 684/92.

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<sup>7</sup> Article 18 of the Regulation states that "Member States may conclude bilateral and multilateral agreements on the further liberalization of the services covered by this Regulation, in particular as regards the authorization system and the simplification or abolition of control documents".

#### Article 14

No comment

#### Article 15

Article 15 of the proposal amends the second paragraph of Article 19 of Regulation 684/92. This amendment concerns the penalties that Member States must adopt to implement the Regulation. These penalties must be effective, proportionate and dissuasive. The wording of the current proposal is taken from the model proposed in the Annex to the Commission Communication to the Council and European Parliament on the role of penalties in implementing Community internal market legislation (COM(95)162 final).

#### Article 16

Article 16 of the proposal concerns the deletion of the Annex to Regulation 684/92 containing the description of certain occasional services exempt from authorization. This description is now redundant since the proposal liberalizes all occasional services.

#### Articles 17, 18 and 19

No comment.

## PROPOSAL FOR A COUNCIL REGULATION

amending Council Regulation (EEC) No 684/92 on common rules for the international carriage of passengers by coach and bus

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 75, paragraphe 1, thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

In cooperation with the European Parliament,

Whereas, in accordance with Article 75(1)(a) of the Treaty, the establishment of a common transport policy entails, *inter alia*, laying down common rules applicable to the international carriage of passengers by road;

Whereas the definition of the various international coach and bus services should be simplified;

Whereas international coach and bus services may be classed as regular services, special regular services and occasional services; whereas, therefore, the concept of shuttle service may be abolished;

Whereas a system of market access exempt from authorization should be introduced for all occasional services, special regular services and all own-account transport operations;

Whereas regular services should continue to be subject to authorization;

Whereas intermodal competition should be preserved; whereas, therefore, the railways should no longer have priority in the context of the establishment of a coach or bus service;

Whereas, in order to facilitate the inspection of transport operations, the international carriage of passengers by road for hire or reward should be subject to a Community licence conforming to a harmonized model;

Whereas the time limits involved in the procedure for the issue of authorizations should be made more flexible;

Whereas Member States must take the necessary measures to implement this Regulation, in particular as regards effective, proportionate and dissuasive penalties;

Whereas the application of this Regulation must be monitored on the basis of a report to be presented by the Commission,

HAS ADOPTED THIS REGULATION:

*Article 1*

Article 2 of Regulation 684/92 is amended as follows:

- (1) A new subparagraph is added to point 1.1:  
*"Regular services operated within a conurbation situated in two or more Member States shall be designated "urban carriage in frontier areas"."*
- (2) Paragraph (d) of point 1.2 is deleted.
- (3) In point 1.3 the words "additional vehicles and" are deleted.
- (4) Point 2 relating to shuttle services is deleted.
- (5) Point 3.1 is replaced by the following:  
*"Occasional services are services meeting neither the definition of a regular service nor the definition of a special regular service, and which are characterized above all by the fact that they carry groups of passengers previously assembled, or that they are organized at the request of the customer, or comprise accommodation or other non-ancillary tourist services in the course of the journey or at the place of destination, or are organized on the occasion of special events, or comprise an empty journey in the course of the outward or return journey or are organized for the purpose of carrying out tours. The organization of parallel or temporary services comparable to existing regular services and serving the same public as the latter shall be subject to authorization in accordance with the procedure laid down in Section II of this Regulation".*
- (6) Point 3.2 is deleted.
- (7) Point 4 is replaced by the following:  
*"Own-account transport operations are those carried out for non-commercial purposes, notably by an undertaking for its own employees or by a non-profit-making body for the transport of its members in connection with its social objective provided that:*
  - the transport activity is only an ancillary activity for the undertaking or body,
  - the vehicles used are the property of that undertaking or body or have been obtained on deferred terms by them or have been the subject of a long-term leasing contract and are driven by a member of the staff of the undertaking or body."

*Article 2*

- (1) The first indent of Article 3(1) of Regulation 684/92 is amended as follows:

"- is authorized in the State of establishment to undertake carriage by means of regular services, *special regular services* or occasional services by coach and bus".

### Article 3

A new Article 3a is added in Regulation 684/92:

#### "Article 3a

##### *Community licence*

1. *Any carrier meeting the criteria laid down in Article 3(1) must hold a Community licence issued by the competent authorities of the State of establishment in accordance with the model in the Annex to this Regulation.*
2. *The competent authorities of the State of establishment shall issue the holder with the original of the Community licence, which shall be kept by the transport undertaking, and the number of certified true copies corresponding to the number of vehicles at the disposal of the holder of the Community licence, either in full ownership, or in another form, notably by virtue of an instalment-purchase contract, a hire contract or a leasing contract.*
3. *The Community licence shall be established in the name of the carrier and shall be non-transferable. A certified true copy of the Community licence shall be carried on the vehicle and shall be presented at the request of any authorized inspecting officer.*
4. *The Community licence shall be issued for a period of five years which shall be renewable.*
5. *The Community licence referred to in paragraph 2 shall replace the document issued by the competent authorities of the State of establishment certifying that the carrier has access to the market for the international carriage of passengers by road.*
6. *When an application for a licence is submitted, and at the latest five years after its issue and at least every five years subsequently, the competent authorities of the State of establishment shall verify whether the carrier meets or continues to meet the conditions laid down in Article 3(1).*
7. *Where the conditions laid down in Article 3(2) are not met, the competent authorities of the State of establishment shall reject the issue or renewal of the Community licence by means of a reasoned decision.*
8. *The competent authorities shall withdraw the Community licence where the holder:*
  - *no longer meets the conditions laid down in Article 3(1)*



- *has supplied inaccurate information regarding the data required for the issue of the Community licence.*

9. *In the event of serious infringements or of minor and repeated infringements of the regulations relating to transport, the competent authorities of the State of establishment of the carrier who has committed the offence may take action involving in particular the temporary and/or partial withdrawal of the true copies of the Community licence.*

*These penalties shall be determined on the basis of the gravity of the offence committed by the holder of the Community licence and in the light of the total number of true copies the holder has for international transport operations.*

10. *Member States shall guarantee the right of the applicant for, or holder of, a Community licence to appeal against a decision by the competent authorities of the State of establishment to reject or withdraw this licence.*
11. *Member States shall inform the Commission no later than 31 January of every year of the number of carriers holding a Community licence as at 31 December of the previous year and of the number of certified true copies corresponding to the number of vehicles in circulation on that date".*

#### *Article 4*

1. Article 4 of Regulation 684/92 is replaced by the following:

- "1. Occasional services as defined in Article 2(3.1) shall not require authorization.*
- 2. Special regular services defined in Article 2(1.2) and the urban carriage in frontier areas defined in the second subparagraph of Article 2(1.1) shall not require authorization if they are covered by a contract concluded between the organizer and the carrier.*
- 3. Empty journeys by vehicles in connection with the transport operations referred to in paragraphs 1 and 2 shall likewise not require authorization.*
- 4. Regular services as defined in the first subparagraph of Article 2(1.1) shall require authorization in accordance with Articles 5 to 10.*
- 5. Arrangements for own-account transport operations are set out in Article 13."*

#### *Article 5*

1. The title of Section II of Regulation 684/92 is amended as follows:  
*"Regular services subject to authorization."*

#### *Article 6*

- Article 5 of Regulation 684/92 is amended as follows:

1. In the second subparagraph of paragraph 1, the words "or a shuttle service" are deleted.
2. In paragraph 2 the words "and two years for shuttle services without accommodation" are deleted.
3. In paragraph 3(d) the words "for regular services" are deleted.
4. In paragraph 5 the words "and shuttle services without accommodation" are deleted.
5. A new paragraph 6 is inserted:  
*"6. In the case of additional vehicles being used for existing regular services, a copy of the corresponding contract or document between the operator of the regular service and the carrier providing the additional vehicles and a copy of the authorization of the regular service must be carried on the vehicle.*

*A carrier providing additional vehicles must hold the Community licence provided for in Article 3(a). A true copy of the Community licence must be carried on the additional vehicle."*

#### *Article 7*

Article 6 of Regulation 684/92 is amended as follows:

1. Paragraph 1 is replaced by the following text:  
*"Applications for authorization of regular services shall be submitted to the competent authorities of the Member State in whose territory the place of departure is situated, hereinafter referred to as the "authorizing authority". The place of departure shall mean "one of the termini of the service"."*
2. Paragraph 3 is replaced by the following text:  
*"Persons applying for authorization shall provide any further information which they consider relevant or which is requested by the authorizing authority, in particular an operational plan of the regular service for the purpose of complying with Community legislation on driving and rest periods and a copy of the Community licence for international carriage of passengers by road for hire or reward provided for in Article 3(a)."*

#### *Article 8*

Article 7 of Regulation 684/92 is replaced by the following text:

1. *"Authorizations shall be issued in agreement with the competent authorities of all the Member States in whose territories passengers are picked up or set down. The authorizing authority shall forward to such authorities - as well as to the competent authorities of Member States whose territories are crossed without*

passengers being picked up or set down - a copy of the application, together with copies of any other relevant documentation, and its assessment.

2. The competent authorities of the Member States whose agreement has been requested shall notify the authorizing authority of their decision on the application within two months. This time limit shall be calculated from the date of receipt of the request for an opinion *that is shown in the acknowledgement of receipt which the authorities concerned must send to the authorizing authority. The acknowledgement of receipt must conform to a model drawn up by the Commission after consultation of the Member States.* If within this period, the authorizing authority has received no reply, the authorities consulted shall be deemed to have given their agreement *and the authorizing authority shall grant the authorization.*

The authorities of the Member States whose territories are crossed without passengers being picked up or set down may notify the authorizing authority of their comments within the time limits laid down in the first subparagraph.

3. Subject to paragraphs 7 and 8, the authorizing authority shall take a decision on the application within three months of the date of submission of the application *by the carrier.*

4. *Authorization shall be granted unless:*

(a) the applicant is unable to provide the service that is the subject of the application with equipment directly available to him;

(b) in the past the applicant has not complied with national or international legislation on road transport and in particular the conditions and requirements relating to authorizations for international road passenger services or has committed serious breaches of legislation in regard to road safety, in particular with regard to the rules applicable to vehicles and driving and rest periods for drivers;

(c) in the case of an application for renewal of authorization, the conditions of authorization have not been complied with;

(d) it is shown that the service in question would directly compromise the existence of regular services already authorized, except in cases in which the regular services in question are carried out only by a single carrier or group of carriers;

(e) it appears that the operation of services covered by the application is aimed only at the most lucrative of the services existing on the links concerned.

The fact that an operator offers lower prices than are offered by other road transporters or the fact that the link in question is already operated by other road carriers may not in itself constitute justification for rejecting the application.

5. The authorizing authority *and the competent authorities of all the Member States involved in the procedure to reach agreement provided for in paragraph 1* may refuse applications only on the basis of reasons compatible with this Regulation".
6. If the procedure for reaching the agreement referred to in paragraph 1 does not enable the authorizing authority to decide on an application, the matter may be referred to the Commission within a the time limit *of four months calculated from the date of submission of the application by the carrier*.
7. After consulting the Member States concerned, the Commission shall within *ten weeks* take a decision which shall take effect within thirty days of the notification of the Member States concerned".
8. The Commission decision shall continue to apply until such time as agreement is reached between the Member States concerned.
9. Having completed the procedure laid down in this Article, the authorizing authority shall inform all the authorities referred to in paragraph 1 of its decision, sending them a copy of any authorization; the competent authorities of the transit Member States may indicate that they do not wish to be so informed."

#### *Article 9*

Article 9(4) of Regulation 684/92 is deleted.

#### *Article 10*

The title of Section III of Regulation 684/92 is amended as follows:  
*"Occasional services and other services exempt from authorization"*.

#### *Article 11*

Article 11 of Regulation 684/92 is amended as follows:

1. The following is deleted from paragraph 2:  
"and a set of translations of the journey form".
2. The following is deleted from paragraph 3:  
"and shuttle services with accommodation".
3. Point (c) of paragraph 4 is deleted.

#### *Article 12*

Article 12 of Regulation 684/92 is deleted.

Article 13

Article 13(2) is deleted.

Article 14

Article 14 of Regulation 684/92 is amended as follows:

1. The following is deleted from the first subparagraph of paragraph 1:  
"or a shuttle service".
2. The following is deleted from the last indent of paragraph 1:  
"and, in the case of passengers who have paid for accommodation, the total price of the journey, including accommodation, and details of the accommodation".

Article 15

The second paragraph of Article 19 of Regulation 684/92 is amended as follows:

*"Member States shall adopt measures relating in particular to the means of carrying out checks and the system of penalties applicable to infringements of the provisions of this Regulation, and take all the measures necessary to ensure that those penalties are applied. The penalties thus provided for shall be effective, proportionate and dissuasive. Member States shall notify the relevant measures to the Commission not later than 31 December 1996, and shall notify any subsequent changes as soon as possible. They shall ensure that all such measures are applied without discrimination as to the nationality or place of establishment of the carrier."*

Article 16

The Annex to Regulation 684/92 is deleted.

Article 17

Member States shall, before 31 December 1996 and after consulting the Commission, adopt the measures necessary for the implementation of this Regulation and notify such measures to the Commission.

Article 18

The Commission shall report to the Council before 31 December 1999 on the application of this Regulation.

*Article 19*

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Communities*.

It shall apply from 1 June 1996.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council

\* ANNEX

EUROPEAN COMMUNITY

(a)

(Heavy-duty paper, blue - dimensions DIN A4)

(First page of the licence)

(Text in the official language(s) or one of the official languages of the Member States issuing the licence)

Distinctive symbol of the country<sup>8</sup>  
State issuing the licence

Designation of the  
competent authority or body

LICENCE No ....

for the international carriage of passengers by coach and bus  
for hire or reward

The holder of this licence<sup>9</sup> .....

is authorized to carry out international carriage of passengers by road for hire or reward in the territory of the Community under the conditions laid down by Council Regulation (EEC) No 684/92 of 16 March 1992, as amended by Regulation .... and in accordance with the general provisions of this licence.

Comments: .....

This licence is valid from .....to .....

Issued in....., on .....

.....<sup>10</sup>

<sup>8</sup> Distinctive symbol of the country: (B) Belgium, (DK) Denmark, (D) Germany, (GR) Greece, (E) Spain, (F) France, (IRL) Ireland, (I) Italy, (L) Luxembourg, (NL) Netherlands, (P) Portugal, (UK) United Kingdom, (FIN) Finland, (A) Austria, (S) Sweden.

<sup>9</sup> Full name or business name of the carrier.

<sup>10</sup> Signature and stamp of the competent authority or body issuing the licence.

## General provisions

1. This licence is issued pursuant to Council Regulation .... amending Council Regulation (EEC) No 684/92 on common rules for the international carriage of passengers by coach and bus.
2. This licence is issued by the competent authorities of the State of establishment of the carrier for hire or reward who:
  - is authorized in the State of establishment to undertake carriage by means of regular services, special regular services or occasional services by coach and bus;
  - satisfies the conditions laid down in accordance with Community rules on admission to the occupation of road passenger transport operator in national and international transport operations;
  - meets legal requirements on road safety as far as the standards for drivers and vehicles are concerned.
3. It permits the international carriage of passengers by coach and bus for hire or reward on all transport links for journeys carried out in the territory of the Community:
  - where the place of departure and place of destination are situated in two different Member States, with or without transit through one or more Member States or third countries,
  - from a Member State to a third country and vice versa, with or without transit through one or more Member States or third countries,
  - between third countries crossing the territory of one or more Member States in transit,and empty journeys in connection with transport operations under the conditions laid down by Regulation 684/92 as amended by Regulation ...
4. This licence is personal and non-transferable.
5. It may be withdrawn by the competent authorities of the Member State of issue where the carrier has in particular:
  - failed to meet all the conditions to which use of the licence was subject;
  - supplied inaccurate information regarding the data required for the issue or renewal of the licence.



6. The original of the licence must be kept by the transport undertaking. A certified true copy of the licence must be carried on the vehicle carrying out an international transport operation.
7. The licence must be presented at the request of any inspecting officer.
8. The holder must, on the territory of each Member State, comply with the laws, regulations and administrative measures in force in that State, particularly with regard to transport and traffic.

## BUSINESS IMPACT ASSESSMENT

### IMPACT OF THE PROPOSAL ON BUSINESS WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)

#### Title of the proposal:

Council Regulation on common rules for the international carriage of passengers by coach and bus.

#### Proposal

1. Taking account of the subsidiarity principle, why is Community legislation necessary in this area and what are its main aims?

The Community legislation is based on Article 75(1)a of the Treaty. Its provisions confer on the Community the competence to define common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States. In addition, the principle of the freedom to provide transport services implies the elimination of any discrimination against the service provider on grounds of nationality or place of establishment.

Furthermore, the proposal responds to the provisions of Article 20 of Council Regulation (EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus, which states in Article 20 that the Commission must submit to the Council before 1 January 1996 a proposal for a regulation on the simplification of procedures including - in the light of the report's conclusions - the abolition of authorizations.

#### The impact on business

2. Who will be affected by the proposal?

- Which sectors of business?

Carriers of passengers by coach and bus for hire or reward and for own account, authorized in their State of establishment to exercise the profession of road passenger transport operator in the field of international transport.

- Does the proposal affect SMEs more than large businesses?

The proposal affects all undertakings, irrespective of their size. Nevertheless, approximately 80% of road transport undertakings are SMEs.

- Are there particular areas of the Community where these businesses are found?

The proportion of SMEs is relatively high in the southern countries of Europe.

3. What will business have to do to comply with the proposal?

In order to benefit from this proposal, which introduces greater flexibility into the provision of transport services, a transport undertaking must be authorized in a Member State in conformity with the relevant Community legislation to exercise the profession of road passenger transport operator in the field of international transport.

4. What economic effect is the proposal likely to have?

- On employment?

The proposal concerns a more liberal system of market access. It therefore opens up new prospects in the field of coach travel and in the medium term will generate new employment in the sector.

- On investment and the creation of new businesses?

Businesses will benefit from the internal market of the European Union and the European Economic Area with a total population of 370 million inhabitants. This large market will doubtless call for new investment on the part of existing firms and the creation of other businesses in the field of coach travel.

- On the competitive position of businesses?

Through the introduction of a more liberal system, access to the passenger transport market will be easier throughout the European Union and the European Economic Area. Operators will be able to offer their services where opportunities present themselves. There is no question that a large single market functioning according to uniform rules offers better possibilities to the undertakings concerned, and also to citizens who will have a better choice of transport mode owing to greater competition.

5. Does the proposal contain measures to take account of the specific situation of SMEs (reduced or different requirements, etc.)?

No.

Consultation

6. List the organizations which have been consulted about the proposal and outline their main views:

A consultation meeting on the new proposal for a Council Regulation amending Regulation (EEC) No 684/92 on common rules for the international carriage of passengers by coach and bus took place on 8 September 1995. The IRU (International Road Union) and EUROCHAMBRES were present.

The two organizations declared their support for a simplification of the rules in the new regulation to avoid possible interpretation problems. They welcomed the proposal to abolish, firstly, the "residual occasional service" category, which will simplify the definition of the remaining services and, secondly, the "shuttle service" category, by assimilating shuttle services without accommodation to regular services and those with accommodation to occasional services.

In addition, the professional organizations agreed with the Commission's proposal to restore competition between regular coach and bus services and regular rail services.

The Commission proposal to provide for a more flexible approach in the case of additional vehicles for operators when demand shows a sudden increase was welcomed, as was the introduction of a "Eurolicence" for coach services as a quality symbol.

The Commission took account of the views of the professional organizations consulted in preparing its proposal for a new instrument to amend the common rules on international carriage of passengers by coach and bus.

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