

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(79) 538 final

Brussels, 11th October 1979

PROPOSAL FOR A COUNCIL DECISION
CONCERNING COMMON ACTION BY THE MEMBER STATES
FOR THE NEGOCIATION OF A CONVENTION
ON INTERNATIONAL MULTI-MODAL TRANSPORT

(presented by the Commission to the Council)

COM(79) 538 final

EXPLANATORY MEMORANDUM

HISTORY

1. Within the framework of U.N.C.T.A.D. the intergovernmental preparatory group (I.P.G.) was asked to draw up a preliminary draft convention on international multimodal transport. This Group has held six meetings following which it presented a draft text to the UNCTAD Council. During its 10th extraordinary session (March 1979) this latter decided to convene a United Nations conference at the beginning of November 1979 in order to negotiate this Convention as well as to re-open this conference if it were felt necessary.

This work is the extension of other studies and work devoted to this problem and undertaken by various international organisations, UNIDROIT and IMC and finally the ECE at Geneva jointly with I.M.C.O.

In June 1971 the Commission of the European Communities sent the Council a first proposed decision referring to the implementation of Community action under Article 116 of the Treaty ⁽¹⁾. This proposal has not been followed up because the work ceased within the ECE framework and was taken up by UNCTAD.

2. As far as the Customs aspects which will be examined within the framework of this Convention are concerned the Commission has, by letter of 2 August 1979, already sent the Council a recommendation for a Council decision ⁽²⁾ authorising the Commission to take part in the Geneva negotiations in the name of the EEC.

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(1) Doc. COM (71) 635 Final of 23 June 1971.

(2) Letter No. 8589/79 Trans 96 CID 31
 Coc. COM(79) 389 Final of 19.7.1979

SPECIAL INTEREST FOR THE COMMON MARKET

3. Multi-modal transport is becoming more and more important because of containerisation ; "door-to-door" transport of goods from the place of production or manufacture to their final destination and use has been considerably developed. Sea transport, which is the most important of international links, is often preceded or followed by other transport modes (rail, road, inland waterway or even air) for the transport of the same goods. Thus there is an obvious commercial interest that the same contract can cover the various successive phases of transport, being delivered by one person, the multi-modal transport entrepreneur (MTE). It is to this person, if there are disputes, that the shipper or the consignee must go, and not to each of the successive transporters.

4. The limited provisions within the framework of the Community would not provide a satisfactory solution to the problem in question which is a world-wide one. The Community interest should therefore be considered in relation to world regulations being drawn up.

The convention which aims at uniform regulation of the essential aspects of the international multi-modal transport of goods is of evident interest to world trade and will ensure better user protection and will, to some extent, avoid distortions in the conditions of competition between transport modes.

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EXTENT OF COMMON ACTION

5. The preliminary draft convention drawn up by the I.P.G. should essentially govern the multimodal transport contract, i.e. the transport of goods by at least two different transport modes, from a place situated in a country where the goods are accepted by the multi-modal transport entrepreneur to a designated place of delivery in a different country. In this connection the Convention contains provisions concerning the multi-modal transport document, especially its contents and its contractual nature, the responsibility of the multi-modal transport entrepreneur, the responsibility of the shipper, the rights and actions of the parties.

The developing countries would also wish to include some public law provisions by introducing concertation procedures, as far as sea transport, as well as Customs provisions in order to be able to control the activities of multi-modal transport entrepreneurs.

As far as the Customs aspects are concerned the Council already has before it a recommendation for a decision based on Article 113 of the Treaty⁽¹⁾.

6. As far as the transport aspects are concerned the Commission notes that cases of co-existence between the provisions of this future convention, in their present state and Community legislation, are non-existent and therefore raise no problems of incompatibility. The Commission does not at present envisage proposing measures regulating transport contracts.

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(1) Doc. COM (79) 389 Final of 19.7.1979

There is therefore, at present, no need to require the adhesion of the Community to the new convention for the transport aspects.

It is clear that if the negotiations would make it appear that some of the provisions of the Convention could affect present Community provisions it would be necessary to draw the necessary consequences for the application of Community law.

7. Similarly to the case of CIM/CIV (Convention concerning international rail transport) for which the Council has adopted a decision concerning common action under Article 116, the Commission proposes that the Member States pursue their work at Geneva within the framework of common action, under Article 116, following the directives set out in the annex to the draft decision.

This common action of the Member States should have as an objective the conclusion of a convention satisfying the needs of the interests of world trade, while taking account at the same time of Community interests.

From this point of view the Member States should take up common positions on the main provisions of the convention, if possible in collaboration with the other industrialised countries in Group B.

In the present state of the negotiations it is not possible now to draw up a definitive common position on the main provisions of the convention but the principles enumerated in the attached directives to the proposed decision should, in any case, be defended by the Member States within the framework of common action.

8. Implementation of common action

The principles enunciated in the attached directives to the proposed convention should be followed in the provisions to be inserted in the convention. For this the representatives of the Member States and of the Commission will consult each other in Geneva as need be as the negotiations develop in the working groups of the diplomatic conference.

CONCLUSIONS

The Commission proposes that the Council adopt the attached proposed decision concerning common action by the Member States for the Geneva negotiations for a convention on international multi-modal transport.

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PROPOSAL FOR A
COUNCIL DECISION
CONCERNING COMMON ACTION
BY THE MEMBER STATES FOR THE
NEGOCIATION OF A CONVENTION ON
INTERNATIONAL MULTI-MODAL TRANSPORT

THE COUNCIL OF THE EUROPEAN COMMUNITIES

HAVING REGARD TO the Treaty establishing the European Economic Community,
and in particular Article 116 thereof ;

HAVING REGARD TO the proposal from the Commission ;

WHEREAS , within the framework of the United Nations Conference on
Trade and Development , a diplomatic conference will be convened at
the beginning of November 1979 for the purpose of drawing up a
convention on international multi-modal transport ;

WHEREAS the purpose of such a convention will be in particular to establish
rules as regards liability arising from contracts for the international
multi-modal transport of goods ;

WHEREAS the application of such uniform rules is of particular interest
for the common market and necessitates common action by the Member States
within the framework of the international organisations concerned ;
whereas, within the framework of this common action , the Member States
should ensure that the development of Community law in this sector is not
prejudiced ;

WHEREAS the representatives of the Member States to such organisations
and the representatives of the Commission should consult each other
during the negotiations on matters arising in connection with the common
action ;

HAS DECIDED AS FOLLOWS :

SOLE ARTICLE

As regards transport, the Member States shall, within the framework of the diplomatic conference convened by the United Nations Conference for Trade and Development at Geneva for the purpose of concluding a convention on international multi-modal transport, carry out the work by means of common action on the basis of the annexed directives. The representatives of the Member States and of the Commission shall consult each other during such common action.

Done at Brussels,

For the Council

The President

DIRECTIVES

1. The agreement reached in 1977 (1) between the regional groups shall remain the framework for the future convention and constitute a priori the limit of the possible concessions on the part of the Member States of the European Communities.
 2. As far as the provisions of the Convention are concerned the Member States of the European Communities will ask that the following principles be inserted in this convention:
 - a) optional application of the convention while respecting the principle of contractual freedom;
 - b) largest possible territorial application of the convention; exclusions or exemptions should only be envisaged if they are necessary in the interest of users for the needs of trade or for avoiding conflicts with other unimodal conventions such as CIV/GIM and CMR;
 - c) application of the convention to all transport modes with the exception of the modes used for the initial and terminal sectors where these are of little importance in relation to the total journey;
 - d) if possible determination of a uniform regime of liability and limits on the liability of the multi-modal transport entrepreneur; the network liability regime will be applied when damage or loss can be localised.
 - e) insertion of a clause safeguarding the development of Community law in the sector covered by the future convention.
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- (1) Agreement between all the groups on the scope of the draft convention reached during the second part of the third session of the T.P.G. (of 10-28/1/77) Doc. Annex 1 to Doc TD/B/640 and TD/B/AC 15/23.