



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.01.1996
COM(95) 729 final

96/0002 (SYN)

Proposal for a

COUNCIL REGULATION (EC)

laying down the conditions under which non-resident carriers
may operate national road passenger transport services within a Member State

(presented by the Commission)

EXPLANATORY MEMORANDUM

Subject: Proposal for a Council Regulation laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State

A. BACKGROUND

1. The Court of Justice's judgment of 22 May 1985 on Case 13/83 ruled that the Council was under an obligation to establish the freedom to provide the national transport services referred to in Article 75(1b) of the Treaty within a reasonable period.
2. To implement this ruling, on 4 March 1987 the Commission submitted to the Council a proposal for a Council Regulation laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State.¹ This established that any carrier who operates road passenger transport services for hire or reward, is established in a Member State in accordance with its legislation, is authorized to provide international coach or bus services and satisfies the conditions laid down in Council Directive 74/562/EEC on admission to the occupation shall be permitted temporarily to operate national road passenger services for hire or reward by means of regular services, shuttle services or occasional services in a Member State other than that in which he is established.

The transport services provided on this basis were governed by the laws, regulations and administrative provisions in force in the host Member State, which had to be applied to non-resident carriers on the same conditions as imposed on carriers established in the host Member State, in order to prevent any discrimination against non-resident carriers on grounds of nationality or place of establishment.

3. On 10 March 1988 the European Parliament approved the Commission proposal, subject to three amendments.² The Commission found two of those amendments acceptable and on 4 November 1988 submitted an amended proposal.³
4. On 23 July 1992 the Council of Ministers adopted the proposal as 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.⁴ This Regulation introduced the freedom to provide cabotage services by coach and bus in two stages:

¹ OJ No C 77, 24.3.1987, p. 13.

² OJ No C 94, 11.4.1988, p. 125.

³ OJ No C 301, 26.11.1988, p. 8.

⁴ OJ No L 251, 29.8.1992, p. 1.

- with effect from 1 January 1993 in the case of closed-door tours and certain special regular services for workers, school pupils and students in zones within 25 km of frontiers;
- with effect from 1 January 1996 for all other services, except regular services.

In the case of the latter, Article 3(3) stipulates that "the Council shall review the situation of regular services other than those referred to in paragraph 2 in the light of the Commission report referred to in Article 12, taking into account, in particular, the national provisions applied by Member States regarding controls and authorization procedures for regular services."

5. On 29 October 1992 the European Parliament brought proceedings for annulment of this Regulation. The Court of Justice's ruling of 1 June 1994⁵ annulled the Regulation on the ground that the Council had disregarded the prerogatives of the Parliament. In particular, the obligation to consult the Parliament in the course of the legislative procedure provided for by Article 75 of the original version of the Treaty of Rome includes the duty to reconsult the Parliament on each occasion when the text finally adopted, viewed as a whole, departs substantially from the text on which the Parliament has already been consulted.

The Court considered that "a comparison between the Commission's initial proposal and the contested regulation shows that, as far as regular services are concerned, the amendments made have restricted the scope of the regulation to certain types of road passenger transport and to certain restricted frontier zones in such a way as to affect the very essence of the enactment. Those amendments must therefore be regarded as substantial."⁶

The Court of Justice decided that the provisions of the annulled Regulation may remain effective until the Council, after proper consultation of the Parliament, has adopted new legislation on the matter, in order to avoid calling into question the degree of liberalization which Regulation 2454/92 sought to achieve.

6. Since then the Treaty on European Union has amended the legislative procedure provided for in Article 75 of the Treaty and replaced the consultation procedure by the cooperation procedure in Article 189c. Consequently, this new procedure was the only way for adoption of the new Regulation implementing the Court's ruling.
7. For this reason, to safeguard the prerogatives of all the institutions involved in the legislative procedure, it was decided to restart the procedure from the beginning, i.e. to submit a new proposal for a Regulation based largely on the annulled text.
8. Articles 3(3) and 12 of Regulation 2454/92 require the Commission:

⁵ Case C-388/92.

⁶ Ground 13.

- to report (before 31 December 1995) on the application of the Regulation and, in particular, on the impact of cabotage transport operations on national transport markets and on whether consideration should be given to extending the scope of the Regulation to other regular passenger transport services;
- if necessary, in the light of the conclusions of the report, to submit a proposal for a Regulation to the Council.

However, in view of the exceptional circumstances in this case, particularly the annulment of the Regulation by the Court and the urgent need to take the measures required to implement its ruling, this proposal is being submitted to the Council before the abovementioned report is drafted. In any case, the Commission's power to propose new legislation is not conditional upon the drafting of such a report.

9. The Treaty establishes the Single Market, within which there must be free movement of goods, persons, services and capital. This, together with the abolition of frontier controls, means that the cabotage system must be extended to all transport services by bus or coach, including regular services.

B. GROUND FOR ACTION AT COMMUNITY LEVEL

I. Subsidiarity

- (a) **What are the objectives of the proposed action in relation to the Community's obligations?**

The objective of this proposal is to lay down the conditions under which non-resident carriers may operate national coach and bus services within a Member State ("cabotage").

The fundamental objective is to establish the freedom to provide transport services and eliminate all discrimination against carriers on grounds of nationality or of the fact that they are established in a Member State other than the State in which the service is provided.

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

Competence for this activity lies solely with the Community (Article 75(1)(b) of the Treaty).

- (c) **What is the Community dimension of the problem (for example, how many Member States are involved and what solution has been used up to now)?**

This field involves every Member State.

The proposal is based on the text of Council Regulation No 2454/92 of 23 July 1992 and removes the restrictions placed on cabotage for certain passenger services.

This new Regulation must replace Regulation No 2454/92 which the Court of Justice annulled on 1 June 1994 on the grounds of a fault in the legislative procedure.

- (d) **What is the most effective solution taking into account the means available to the Community and those of the Member States?**

To make cabotage possible, Member States must allow non-resident carriers to operate national transport services on their territory. A clearly defined framework is needed for this to avoid all discrimination between operators from different Member States. Consequently, the proposal lays down the legal framework applicable to cabotage.

- (e) **What real added value will the activity proposed by the Community provide and what would be the cost of inaction?**

Adoption of this Regulation on cabotage will open up the national passenger transport markets to non-resident carriers. The freedom to provide cabotage services is one of the fundamental principles established by the Treaty itself. Inaction by the Community would jeopardize this principle at enormous cost, considering that economic progress in the European Union depends largely on the capacity of the Union's transport systems to provide the requisite mobility for goods and persons.

- (f) **What forms of action are available to the Community (recommendation, financial support, regulation, mutual recognition, etc.)?**

This proposal is based on Regulation (EEC) No 2454/92, which was annulled by the Court of Justice. Consequently, it too takes the form of a Council Regulation. Since non-nationals must have access to the national passenger transport markets on the same terms to avoid distortion of competition, a regulation binding in its entirety and directly applicable in all Member States is the only form of legislation which can be considered.

- (g) **Is it necessary to have a uniform Regulation or is a Directive setting out the general objectives sufficient, leaving implementation at the level of the Member States?**

As indicated in paragraph (f), this proposal replaces and amends an existing Regulation and must, therefore, also take the form of a Regulation. Moreover, the field covered makes it necessary for cabotage passenger services by road to be performed under the same conditions and using the same control documents. A Directive would not be an appropriate instrument.

II. Economic advantages of further harmonization

First, it must be remembered that this Regulation is based on Article 75(1)(b) of the Treaty, which stipulates that the freedom to provide transport services must be established. This implies, in particular, putting an end to all discrimination against providers of such services on grounds of their nationality or place of establishment. Accordingly, this draft Regulation provides that the same conditions and rules apply to the operation of national road passenger transport services within a Member State by non-resident carriers. This system is commonly known as "cabotage".

It must be stressed that the greatest economic argument in favour of cabotage is that carriers authorized in their country of establishment to operate international coach services will have the option of operating national passenger services in every European Union Member State and in every State in the European Economic Area established on 1 July 1994. This single market offers coach operators a travelling public of 370 million citizens, for whom the freedom to provide transport services will open up new opportunities for travel. These new opportunities could subsequently generate new jobs in the transport industry.

To avoid all distortion of competition, in accordance with the obligation to ensure non-discrimination between national operators and with the unique dimension of the internal market, the proposal lays down identical conditions for access to the various national markets by non-residents. Nevertheless, the proposal leaves all Member States the possibility of referring the matter to the Commission in the event of serious disturbance of a national market by non-resident carriers.

C. CURRENT SITUATION AND OBJECTIVES OF THE PROPOSAL

I. Current situation

Although the Court of Justice annulled Regulation 2454/92, it decided that the provisions of the Regulation may remain effective until the Council, after proper consultation of the Parliament, has adopted new legislation on the matter, in order to avoid calling into question the degree of liberalization which the Regulation sought to achieve.

Regulation 2454/92 provides for different stages for the establishment of cabotage for different types of coach and bus service:

1. Occasional services

- until 31 December 1995 authorization to operate non-regular cabotage services is restricted to closed-door tours;
- after that date, all non-regular cabotage services will be authorized.

2. Special regular services

Since the entry into force of Regulation 2454/92 cabotage in the form of special regular services - regular services carrying specific categories of passengers, to the exclusion of all other passengers - is authorized, subject to certain limits:

- (a) limits concerning the type of service, since only special regular services carrying workers between home and work and school pupils and students to and from educational establishments are covered;
- (b) geographical limits, since the services must be carried out in the frontier zone of a Member State - within 25 km as the crow flies from the frontier common to two Member States - by carriers with a registered office or other establishment in the frontier zone of an adjacent Member State, provided that:
 - the points of departure and destination of the transport services are situated in the frontier zone of the host Member State; and
 - the total distance involved does not exceed 50 km as the crow flies in each direction.

3. Regular services

Regulation No.2454, which was annulled by the Court, did not cover cabotage in the form of regular services - services carrying passengers at specified intervals along specified routes, with passengers being taken up and set down at predetermined stopping points. Regular services can be used by anyone - though passengers may, where appropriate, be obliged to make a booking.

Article 3(3) of Regulation No.2454 stipulates that the Council will review the situation of regular services other than the special regular services covered by Article 3(2), taking into account, in particular, the national provisions applied by Member States regarding controls and authorization procedures for regular services, in the light of the Commission report. This report must cover application of the Regulation and, in particular, the impact of cabotage on the national transport markets and whether consideration should be given to extending the scope of the Regulation to other regular passenger transport services.

II. Objectives of the proposal

The objectives of the proposal are as follows:

1. To implement the judgment in Case C-388/92, which annulled Regulation 2454/92.
2. To implement the principle of freedom to provide services in the sector concerned, which will entail removal of all restrictions placed on providers of services on grounds of their nationality or of the fact that they are established in a Member State other than the State in which the service must be provided.
3. To remove the restrictions which will persist even after 1 January 1996 in the case of special regular services.
4. To introduce cabotage in the course of regular services, particularly:
 - Regular cabotage in the course of a regular international service in accordance with Regulation 684/92 (Article 3(2) of the proposal).

At the moment, national services are never authorized as part of a regular international service. (For example, a London-Calais-Paris-Marseilles service may pick up passengers in London but not in Calais for the journey to Paris or Marseilles).

Opening up such national operations as part of international services must be considered authentic cabotage, provided the operator is a non-resident.

The proposal is that such cabotage operations should be subject to authorization by the competent authorities in the host Member State. The reasons allowed for refusal of authorization are extremely strict and are largely the same as those provided for international services in Regulation 684/92.

- Acceptance of regular cabotage services. For this type of cabotage transport, the Member States are obliged to apply the existing laws, regulations and administrative provisions in force in the host Member State regarding the routes to be operated and the regularity, continuity and frequency of services. All these provisions must be applied under the same conditions as are imposed on national carriers, so as to rule out any discrimination against non-resident carriers on the grounds of their nationality or place of establishment. These conditions are often defined in contracts, franchises or licences to operate public transport services by bus or coach in the Member States.

It is also stipulated that any compensation for public service obligations must be paid to all the Community operators concerned.

5. To reincorporate most of the provisions of Regulation 2454/92, particularly Articles 5, 6, 7, 8, 9, 10, 11, 12 and 14 thereof.

D. ARTICLE BY ARTICLE COMMENTS

Article 1

Article 1 of the proposal includes the full text of Article 1 of the annulled Regulation 2454/92, plus a more explicit reference to the fact that carriers satisfying the conditions laid down in this Article must be allowed to perform cabotage operations without discrimination on grounds of their nationality or place of establishment.

Article 2

This Article contains definitions of the various transport services. These definitions are partly taken from Regulation 684/92 on common rules for the international carriage of passengers by coach and bus,⁷ the aim being to standardize the definitions applicable to international and national transport services.

Regulation 684/92 defines four different types of service: regular services, special regular services, shuttle services and occasional services. Definition of the first two types poses no problem. Shuttle services are subdivided into two types in Regulation 684/92, depending whether or not accommodation is provided. This distinction has not been drawn in the proposal nor, moreover, in the legislation of most Member States, which classifies such services as either regular or non-regular (occasional). Nor did Regulation 2454/92 include the concept of shuttle services.

Article 3

Article 3 lays down the rules on access to the market. Under these, with effect from the date of entry into force of the Regulation, cabotage will be authorized for:

- all special regular services; the restrictions imposed by Regulation 2454/92 have been removed;
- all occasional services. Provision had been made for authorization of cabotage for such services, in any case, by Article 3(1) of Regulation 2454/92, which would have allowed cabotage for all non-regular services after 31 December 1995;
- two forms of cabotage have been provided for regular services:
 - regular cabotage in the course of a regular international service in compliance with Regulation 684/92 (Article 3(2) of the proposal). This provision will

⁷ OJ No L 74, 20.3.1992, p. 1.

allow better allocation of resources by carriers, since at the moment national services are never authorized as part of international services;

acceptance of regular cabotage services (Article 3.3 of the draft Regulation). For this type of cabotage transport, the Member States are obliged to apply the existing laws, regulations and administrative provisions in force in the host Member State regarding the routes to be operated and the regularity, continuity and frequency of services. All these provisions must be applied under the same conditions as are imposed on national carriers, so as to rule out any discrimination against non-resident carriers on the grounds of their nationality or place of establishment. These conditions are often defined in contracts, franchises or licences to operate public transport services by bus or coach in the Member States.

It is also stipulated that any compensation for public service obligations must be paid to all the Community operators concerned.

Article 4

This Article establishes the legal provisions applicable to cabotage in the course of the international transport services referred to in Article 3(2) of the proposal.

Regular international coach and bus services are subject to authorization in accordance with Article 4(4) of Regulation 684/92. The nature of the authorization, the authorization procedure, the grounds for rejection of applications to operate an international service and the obligations of carriers are set out in Articles 5 *et seq.* of Regulation 684/92.

This proposal makes cabotage in the course of international transport services subject to authorization. The need for such authorization is warranted by the internal logic of the system, since authorization is required for the international service itself.

The authorization will be issued by the competent authorities of the host Member State, i.e. of the Member State in which the cabotage operation is performed, unlike the authorizations for international services which are issued in agreement with the competent authorities of all the Member States in whose territories passengers are picked up or set down.

The reasons for rejection of authorization are the same as in Regulation 684/92, with one important change:

the proposal does not include the reason in Article 7(4)(b)(ii) of Regulation 684/92, which stipulates that applications may be rejected "if it is shown that the said service would seriously affect the viability of a comparable rail service on the direct sections concerned". This clause has been omitted in order to maintain competition between the various modes of transport.

The rest of Article 4 incorporates the equivalent clauses from Regulation 684/92 on international services.

Article 5

This Article incorporates all of Article 4 of the annulled Regulation 2454/92 plus one new reference: save as otherwise provided in Community legislation, the operation of the regular cabotage services provided for in Article 3.3 is to be subject to the existing laws, regulations and administrative provisions in force in the host Member State regarding the routes to be operated and the regularity, continuity and frequency of services.

Any compensation for public service obligations must be paid to all the Community operators concerned.

Articles 6, 7, 8, 9, 10, 11 and 12

These Articles contain virtually the full text of the equivalent clauses in the annulled Regulation 2454/92, with very minor changes which make no difference to the substance.

COUNCIL REGULATION (EC) No

of

**laying down the conditions under which non-resident carriers may operate
national road passenger transport services within a Member State**

COUNCIL REGULATION (EC) No

of

laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the European Community, and in particular Article 75 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 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 was annulled by the Court of Justice's ruling of 1 June 1994,⁸ by reason of a fault in the legislative procedure for adoption thereof;

Whereas, pursuant to Article 75(1b) of the Treaty, the establishment of a common transport policy entails, *inter alia*, laying down the conditions under which non-resident carriers may operate national transport services within a Member State;

Whereas Article 59 of the Treaty establishes the objective of abolishing restrictions on the freedom to provide services within the Community; whereas this objective must be achieved within the framework of the common transport policy in accordance with Article 61(1) of the Treaty;

Whereas, as the Court of Justice has said,⁹ the obligations imposed on the Council by Article 75(1)(a) and (b) of the Treaty include the obligation to ensure that there is freedom to provide services in the field of transport; whereas the extent of this obligation is clearly defined in the Treaty;

Whereas that provision entails the removal of all restrictions against a person providing the services in question on the grounds of his nationality or the fact that he is established in a Member State other than that in which the service is to be provided;

Whereas establishing the internal market involves the abolition of frontier controls and, consequently, an increase in intra-Community traffic;

⁸ Judgment of 1 June 1994, Case C-388/92, Parliament v. Council.

⁹ Judgement of 22 May 1985, Case 13/83, Parliament v. Council.

Whereas the rules applicable to cabotage for all forms of coach and bus service must be established;

Whereas the provisions of the host Member State applicable to cabotage transport operations should be fixed;

Whereas provisions should be adopted so that action can be taken in the event of serious disturbance of the transport markets affected;

Whereas it is desirable that Member States should grant each other mutual assistance with a view to the sound application of this Regulation, particularly in respect of penalties applicable in the event of infringements;

Whereas it is for the Member States to adopt the measures necessary for the implementation of this Regulation;

Whereas the application of this Regulation should be monitored by means of a report to be submitted by the Commission,

HAS ADOPTED THIS REGULATION:

Article 1

Any carrier who operates road passenger transport services for hire or reward who:

- is established in a Member State, hereinafter referred to as the "Member State of establishment", in accordance with its legislation, and
- is authorized, in that State, in accordance with relevant Community law, to pursue the occupation of road passenger transport operator in international transport operations,

shall be permitted, under the conditions laid down in this Regulation and without discrimination on grounds of the carrier's nationality or place of establishment, temporarily to operate national road passenger services for hire or reward in another Member State, hereinafter referred to as the "host Member State", without being required to have a registered office or other establishment in that State.

Such national transport services are hereinafter referred to as "cabotage transport operations".

Article 2

For the purposes of this Regulation:

1. "Regular services" means 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. Regular services shall be open to all - subject, where appropriate, to compulsory reservation.

2. "Regular international services" means the services referred to in Article 2(1.1) of Council Regulation No.684/92¹⁰
3. "Special regular services" means regular services which provide for the carriage of specified categories of passengers, to the exclusion of other passengers, at specified intervals along specified routes, passengers being taken up and set down at predetermined stopping points.

Special regular services shall include:

- (a) the carriage of workers between home and work,
- (b) carriage to and from the educational institution for school pupils and students,
- (c) the carriage of soldiers and their families between their place of origin and the area of their barracks.

The fact that a special service may be varied according to the needs of users shall not affect its classification as a regular service.

4. "Occasional services" means services falling neither within the definition of a regular service nor within the definition of a special regular service. These services shall not cease to be occasional services solely because they are provided at certain intervals.
5. "Vehicles" means motor vehicles which, by virtue of their type of construction and equipment, are suitable for carrying more than nine persons - including the driver - and are intended for that purpose.

Article 3

With effect from the date of entry into force of this Regulation, cabotage transport operations shall be authorized for the following services:

1. special regular services and occasional services;
2. the regular services defined in Article 2(1), provided they are performed by a carrier not resident in the host Member State in the course of a regular international service in accordance with the provisions of Council Regulation 684/92;
3. the other regular services.

¹⁰ OJ L 74, 20.3.1992, p. 1

Article 4

1. Cabotage transport operations carried out in accordance with Article 3(2) shall be subject to authorization by the competent authorities in the host Member State.
2. Applications for authorization may be refused:
 - (a) if the competent authorities in the host Member State produce evidence that the regular service for which the application to perform cabotage operations has been submitted 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;
 - (b) if the competent authorities in the host Member State produce evidence that the regular service for which the application to perform cabotage operations has been submitted 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 carriers 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.

Paragraph 4(a) of Article 7 of Regulation 684/92 shall apply, *mutatis mutandis*, to applications for authorization of cabotage operations in the form of the regular services provided for in Article 3(2).

Reasons must be given for rejection of the application.

The competent authorities may refuse applications only on the basis of reasons compatible with this Regulation.

3. The Member States shall guarantee carriers an opportunity to defend their interests in the event of rejection of their application for authorization.
4. Authorizations shall be issued in the name of the transport undertaking; they may not be transferred by the latter to third parties. However, the carrier who has received the authorization may, with the consent of the competent authority in the host Member State, operate the service through the only subcontractor authorized to provide the international service referred to in Article 2(1.1) of Regulation 684/92. In this case, the name and role of the subcontractor shall be indicated in the authorization. The subcontractor must fulfil the conditions laid down in Article 1.

In the case of undertakings associated for the purpose of performing cabotage operations in the form of a regular service, the cabotage 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.

5. The authorization shall be valid for a maximum of five years and, in any case, for not longer than the authorization relating to the international service within the framework of which the cabotage operation is carried out.
6. Save in the event of force majeure, the operator of a regular cabotage service shall, until the authorization expires, take all measures to guarantee a transport service that fulfils the standards of continuity, regularity and capacity and the other conditions laid down by the competent authority of the host Member State with regard to the route of the service, the bus stops, the timetable and the period of validity of the authorization. These conditions may not be less favourable than the conditions applied to regular transport services provided by resident carriers.
7. The authorization or a certified true copy thereof must be kept on board the vehicle.
8. The Commission shall, after consulting the Member States, lay down the model for applications for authorization of cabotage operations in the form of regular services, the model authorization and the way in which they are to be used.

Article 5

1. The performance of the cabotage transport operations referred to in Article 3 shall be subject, save as otherwise provided in Community legislation, to the laws, regulations and administrative provisions in force in the host Member State in the following areas:
 - (a) rates and conditions governing the transport contract;
 - (b) weights and dimensions of road vehicles; such weights and dimensions may, where appropriate, exceed those applicable in the carrier's Member State of establishment, but they may under no circumstances exceed the technical standards set out in the certificate of conformity;
 - (c) requirements relating to the carriage of certain categories of passengers, viz. schoolchildren, children and persons with reduced mobility;
 - (d) driving and rest time;
 - (e) VAT (value added tax) on transport services. In this area Article 21(1a) of Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - common system of value added tax: uniform basis of assessment¹¹ - shall apply to the services referred to in Article 1 of this Regulation;

¹¹ OJ No L 145, 13.6.1977, p. 1; Directive last amended by Directive 91/680/EEC (OJ No L 376, 31.12.1991, p. 1).

2. Save as otherwise provided in Community legislation, cabotage operations which form part of the transport services provided for in Article 3(3) shall be subject to the existing laws, regulations and administrative provisions in force in the host Member State, regarding the routes to be operated and the regularity, continuity and frequency of services.

Any compensation for public service obligations must be paid to all the Community operators concerned.

3. The technical standards of construction and equipment which must be met by vehicles used to carry out cabotage transport operations shall be those laid down for vehicles put into circulation in international transport.
4. The national provisions referred to in paragraphs 1 and 2 shall be applied by the Member States to non-resident carriers on the same conditions as those imposed on their own nationals, so as effectively to prevent any open or hidden discrimination on grounds of nationality or place of establishment.
5. If it is established that, in the light of experience, the list of areas covered by the host Member State's provisions, as referred to in paragraph 1, needs to be amended, the Council shall do so by a qualified majority, in cooperation with the European Parliament, on a proposal from the Commission.

Article 6

The Member State of establishment shall issue a certificate conforming to the model adopted by the Commission after consulting the Member States to carriers who apply therefor and who satisfy the conditions laid down in Article 1.

The authority or agency in that Member State with the power to issue the certificate shall also have the power to withdraw it, temporarily or definitively, in particular as one of the penalties referred to in Article 11(4).

That certificate or a certified true copy thereof shall be kept on board the vehicle and be produced when requested by an authorized inspecting officer.

Article 7

1. Cabotage transport operations in the form of occasional services shall be carried out under cover of a control document - the journey form - which must be kept on board the vehicle and be produced when requested by an authorized inspecting officer.
2. The journey form, the model for which shall be adopted by the Commission after consulting the Member States, shall comprise the following information:
 - (a) the points of departure and destination of the service;
 - (b) the date of departure and the date on which the service ends.

3. The journey forms shall be supplied in books certified by the competent authority or agency in the Member State of establishment. The model for the book of journey forms shall be adopted by the Commission after consulting the Member States.
4. In the case of special regular services, the contract concluded between the carrier and the transport organizer, or a certified copy of the contract, shall serve as the control document.

However, the journey form shall be completed in the form of a monthly statement.

5. The journey forms used shall be returned to the competent authority or agency in the Member State of establishment in accordance with procedures to be laid down by the aforementioned authority or agency.

Article 8

1. At the end of each quarter and within three months, which may be reduced by the Commission to one month in the case referred to in Article 9, the competent authority or agency in each Member State shall communicate to the Commission the data concerning cabotage transport operations, in the form of special regular services and occasional services, carried out during that quarter by resident carriers.

The communication shall be effected by means of a table conforming to the model adopted by the Commission after consulting the Member States.

2. Once a year the competent authorities in the host Member State shall send the Commission statistics on the number of authorizations issued for cabotage transport operations in the form of the regular services defined in Article 3(2) and (3).
3. The Commission shall send the Member States as soon as possible summary statements drawn up on the basis of the data submitted under paragraph 1.

Article 9

1. In the event of serious disturbance of the internal transport market in a given geographical area due to or aggravated by cabotage, any Member State may refer the matter to the Commission with a view to the adoption of safeguard measures and shall provide the Commission with the necessary information and notify it of the measures it intends to take as regards resident carriers.
2. For the purposes of paragraph 1:

- "serious disturbance of the internal transport market in a given geographical area" means the occurrence on that market of problems specific to it, such that there is a serious and potentially enduring excess of supply over

demand, implying a threat to the financial stability and survival of a significant number of passenger transport undertakings;

"geographical area" means an area comprising part or all of the territory of a Member State or including part or all of the territory of other Member States.

3. The Commission shall examine the situation and, after consulting the Advisory Committee referred to in Article 10, shall decide within one month of receipt of the relevant Member State's request whether or not safeguard measures are necessary and shall adopt them if they are necessary.

The measures introduced in accordance with this Article shall remain in force for a period not exceeding six months, renewable once for the same period.

The Commission shall without delay notify the Member States and the Council of any decision taken pursuant to this paragraph.

4. If the Commission decides to take safeguard measures concerning one or more Member States, the competent authorities of the Member States involved shall be required to take measures of equivalent scope in respect of resident carriers and shall inform the Commission thereof.

These measures shall be implemented no later than the same date as the safeguard measures decided on by the Commission.

5. Each Member State may submit a Commission decision as referred to in paragraph 3 to the Council within 30 days of its notification.

The Council, acting by a qualified majority within 30 days of referral by a Member State or, if there are referrals by more than one Member State, of the first referral, may take a different decision.

The limits of validity laid down in the second subparagraph of paragraph 3 shall apply to the Council's decision.

The competent authorities of the Member States concerned shall be bound to take measures of equivalent scope in respect of resident carriers and shall inform the Commission thereof.

If the Council takes no decision within the period laid down in the second subparagraph, the Commission decision becomes final.

6. Where the Commission considers that the measures referred to in paragraph 3 need to be prolonged, it shall submit a proposal to the Council, which shall take a decision by qualified majority.

Article 10

The Commission shall be assisted by an Advisory Committee composed of representatives of the Member States and chaired by a representative of the Commission.

The tasks of the Committee shall be to advise the Commission on:

- any request from a Member State under Article 9(1);
- measures intended to resolve a serious disturbance of the market as referred to in Article 9, in particular on the practical application of such measures.

The Committee shall draw up its rules of procedure.

Article 11

1. Member States shall assist one another in applying this Regulation.
2. Without prejudice to criminal prosecution, the host Member State may impose penalties on non-resident carriers who have committed infringements of this Regulation or of Community or national transport regulations within its territory on the occasion of a cabotage transport operation.

The penalties shall be imposed on a non-discriminatory basis and in accordance with paragraph 3.

3. The penalties referred to in paragraph 2 may, *inter alia*, consist of a warning or, in the event of serious or repeated infringements, a temporary ban on cabotage transport operations within the territory of the host Member State where the infringement was committed.

Where a falsified certificate, falsified authorization or falsified certified copy thereof is produced, the falsified document shall be withdrawn immediately and, where appropriate, forwarded as soon as possible to the competent authority of the carrier's Member State of establishment.

4. The competent authorities of the host Member State shall inform the competent authorities of the Member State of establishment of the infringements recorded and any penalties imposed on the carrier and may, in the event of serious or repeated infringements, at the same time transmit a request that a penalty be imposed.

In the event of serious or repeated infringements, the competent authorities of the Member State of establishment shall decide whether an appropriate penalty should be imposed on the carrier concerned; these authorities shall take into account any penalty already imposed in the host Member State and ensure that the penalties already imposed on the carrier concerned are, as a whole, proportional to the infringement or infringements which gave rise to such penalties.

The penalty imposed by the competent authorities of the Member State of establishment, after consulting the competent authorities of the host Member State, may extend to withdrawal of authorization to pursue the occupation of road passenger transport operator.

The competent authorities of the Member State of establishment may also, pursuant to its national law, arraign the carrier concerned before a competent national court or tribunal.

They shall inform the competent authorities of the host Member State of the decisions taken pursuant to this paragraph.

Article 12

Member States shall ensure that carriers may appeal against any administrative penalty imposed on them.

Article 13

The Commission shall report to the Council before 31 December 1999 on the application of this Regulation and, in particular, on the impact of cabotage transport operations on national transport markets.

Article 14

Member States shall adopt in good time and communicate to the Commission the laws, regulations and administrative provisions relating to the implementation of this Regulation.

Article 15

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

It shall apply from 1 January 1996.

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

Done at Brussels,

For the Council
The President

IMPACT ASSESSMENT FORM

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

Title of proposal:

Council Regulation laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State.

The proposal

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

This Community legislation is based on Article 75(1)(b) of the Treaty. This confers on the Community exclusive powers to define the conditions under which non-resident carriers may operate transport services within a Member State. In addition, the internal market has established the principle of the freedom to provide services which, in the case of transport, implies ending all discrimination against providers of services on the grounds of their nationality or place of establishment.

Also, the proposal will replace Council Regulation No 2454/92 of 23 July 1992 laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State, which the Court of Justice annulled on 1 June 1994 following a fault in the procedure.

Nevertheless the new proposal has been updated to take full account of the progress made in the transport sector since the establishment of the internal market. In this context, the new proposal incorporates most of the clauses in Regulation 2454/92 but also removes certain restrictions maintained by Regulation 2454/92 on special regular services and introduces cabotage in regular services, subject to certain conditions.

The impact on business

2. Who will be affected by the proposal?

- Which sectors of business?

Operators of road passenger services for hire or reward admitted in their Member States of establishment to the occupation of road passenger transport operator in international transport.

- Will the proposal affect SMEs more than big businesses?

The proposal will affect all businesses, irrespective of their size. That said, it must be added that approximately 80% of road transport undertakings are small firms.

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

The proportion of small businesses is relatively high in the southern Member States.

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

Nothing

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

- On employment?

Cabotage opens up new opportunities for coach services and will lay the foundation for the creation of new jobs in this industry in the medium term.

- On investment and the creation of new businesses?

The undertakings concerned will be able to benefit from the internal market, the European Economic Area and a travelling public of 370 million citizens. This large market will inevitably require new investment by existing undertakings and the creation of other new undertakings in the coach transport sector.

- On the competitive position of businesses?

The introduction of cabotage will open up the various national passenger transport markets in the European Union and the European Economic Area to non-resident undertakings. As a result, these will be able to offer their services wherever the opportunities arise. A single market of 370 million citizens will undeniably enhance the competitiveness of the undertakings concerned but also benefit European citizens, wherever they live, since greater competition will offer them a wider choice of means of transport.

5. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements, etc.)?

No.

Consultation

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

Since the proposal will replace Council Regulation No 2454/92 of 23 July 1992 laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State, which the Court of Justice annulled on 1 June 1994 because of a fault in the procedure, and since it incorporates virtually all the provisions of that Regulation, there was no need to consult the trade associations.

ISSN 0254-1475

COM(95) 729 final

DOCUMENTS

EN

07 06

Catalogue number : CB-CO-95-763-EN-C

ISBN 92-77-98702-2

Office for Official Publications of the European Communities

L-2985 Luxembourg