

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(77) 508 final

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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

concerning the negotiation of an Agreement between
the European Economic Community and third countries
on the rules applicable to the international carriage
of passengers by coach and bus,

including

Proposal for a
COUNCIL DECISION

specifying and supplementing the features of the
Agreement that the Commission was authorized to nego-
tiate by the Council Decision of 15 October 1975

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concerning the negotiation of an Agreement between the European Economic Community and third countries on the rules applicable to the international carriage of passengers by coach and bus, including :

- a proposal for a Council Decision specifying and supplementing the features of the Agreement that the Commission was authorised to negotiate by the Council Decision of 15 October 1975.

I. BACKGROUND

1. On 13 March 1976 the Commission opened negotiations with the relevant third countries in accordance with the Council Decision of 15 October 1975 authorizing the Commission to negotiate an Agreement between the European Economic Community and third countries on the rules applicable to the international carriage of passengers by coach and bus¹, as amended by the Council Decision of 15 March 1976², and the Council Decision of 15 October 1975 laying down the negotiating directives for these negotiations³. These negotiations were continued at a second meeting held on 6 and 7 December 1975 with the head of the Swiss Delegation in the Chair, and at a third meeting on 5 and 6 July 1977 with the head of the delegation of the European Economic Community in the Chair.

¹Doc. R/2386/75 (TRANS 86)

²Doc. R/446/1/76 (TRANS 86 - rev. 1)

³Doc. R/2387/75 (TRANS 87).

The negotiations culminated in a preliminary draft Agreement, which will be discussed further with the third countries at the beginning of 1978.

2. At these meetings, the third countries put forward a number of proposals concerning the liberalization of occasional services and the administration of the Agreement.

II. PROBLEMS OF SUBSTANCE

3. (a) Scope of the Agreement

Article 1 of the Council Decision of 15 October 1975, as amended on 15 March 1976, authorizing the Commission to start these negotiations, states :

"The Commission is hereby authorized to negotiate an Agreement between the European Economic Community and Austria, Finland, Greece, Norway, Portugal, Spain, Sweden, Switzerland, Turkey and Yugoslavia for the establishment of uniform rules applicable to occasional services in the context of the international carriage of passengers by coach or bus to or from these third countries or between two Member States and passing in transit through one of these third countries."

Article 1 of the preliminary draft Agreement laying down the scope of its provisions stipulates that the Agreement to be concluded shall apply not only to the abovementioned transport links but to transport services between all the Contracting Parties.

The Commission considers that these transport links should be included in the Agreement to obviate the need for two distinct legal instruments, which would be likely to cause difficulties, including differences between the two Agreements. If, moreover, for example, transport services between Sweden, Norway or Finland and third countries further south, in both directions, are to be taken into consideration, it will be found that the transit routes will cross the territory of one or more Member States ; this means that the Community must regulate this type of transport in the Agreement. In these circumstances it should be stipulated that the proposed Agreement is also to apply to transport services between third countries.

(b) Liberalization measures concerning the entry of unladen replacement vehicles

In accordance with the statement recorded at its request in the minutes of the Council meeting of 15 October 1975, the Commission, in collaboration with the Member States, has continued its search for a solution to the problem of the entry of unladen replacement vehicles. France and Italy oppose the liberalization of this type of transport. They see no point in such measures, on the grounds that the national authorities can act promptly and issue authorizations permitting the entry of unladen vehicles without delay.

Germany opposes liberalization of this type of operation. It might however agree to a formula being found which would apply only to transport links between Member States.

In view of this state of affairs and the fact that the opinions of the third countries on this subject are also divided, the Commission did not recommend that the proposed Agreement include the entry of unladen replacement vehicles.

(c) Transport services to and from countries which are not party to the Agreement

Spain, Yugoslavia, Sweden and Switzerland consider that the Agreement should also apply to transport services to and from countries which are not party to the Agreement insofar as they concern the territory of the Contracting Parties.

As to the point of substance, the Commission considers that the proposed Agreement should be restricted at present to transport services where the points of departure and destination are to be found on the territory of one or more Contracting Parties. This would not preclude reconsideration of the question at a later date, in the light of practical experience of the application of the Agreement, and of a more detailed review of the matter from various aspects, taking into account factors such as the possible role of other international organizations like the ECE.

For these reasons, the Commission does not propose an amendment of the negotiating directives on this subject.

(d) Definition of occasional services

The Greek Delegation urges that the definition of occasional services be amended in such a way as to permit the taking up of up to five other passengers to occupy seats free from the start of the journey.

One of the fundamental differences between occasional services and regular services is that occasional services cannot take up or set down passengers along the route. To admit by definition the general possibility of exceptions would make it very difficult to distinguish between the two forms of transport, would allow of abuses and would be liable to jeopardize the smooth operation of regular services.

For these reasons, the Commission considers that the proposal should not be accepted.

(e) Entry of unladen vehicles into the territory of another Contracting Party to take up passengers

Portugal, Spain, Yugoslavia and Turkey oppose the liberalization measures which would allow an unladen vehicle to enter the territory of another Contracting Party, subject to clearly specified conditions, in order to take up passengers.

These third countries consider that they would be placed at a particular disadvantage by the provision liberalizing the entry of unladen vehicles into another Contracting Party to take up passengers previously set down in the Contracting Party in question by the same carrier, whose vehicle had left the country unladen. They are of the opinion that this liberalization measure would create an imbalance, particularly as regards the carriage of their emigrant workers employed in a Member State of the EEC. To correct this imbalance, Yugoslavia has proposed a specific clause stipulating that the passengers "shall constitute a group of workers employed abroad temporarily and carried to their country of origin by a coach registered in that country". The Swedish, Swiss and Greek Delegations welcomed this proposal.

The provision advocated by the third countries is not taken up in this proposal to amend the negotiating directives, because the Community Member States do not suggest it, on the grounds that such a change would rule out any possibility of effective checks and would jeopardize the smooth operation of regular and special regular services. The Commission shares the views of the Member States on this point.

III. INSTITUTIONAL PROBLEMS

4. Following a move by the Swiss Delegation, all the third countries confirmed that they wished the Secretariat of the ECMT to assume some role in administering the proposed Agreement.

The Commission considers that this proposal should be examined in the light of the following considerations :

(a) The third countries' interest in preserving some role for the ECMT

The fact that agreements are more and more often negotiated and concluded between the Community and third countries leads to a weakening of the role of such international organisations as the ECMT.

Nevertheless the third countries have not wished to see the disappearance of an institution forming a European forum in which they can exchange information and views and collaborate to a certain extent on transport policy measures.

(b) The Community's interest in preserving some role for the ECMT

Because of its very nature, transport must be conceived as an activity extending beyond political frontiers ; any common transport policy which claims to be realistic must therefore take into account the interpenetration of traffic with the third countries and the need to organize passenger and goods traffic on a wider geographical plane. To this end, co-operation with the ECMT is of proven value.

The Community thus has an interest in improving cooperation with the ECMT. This can be done without conflicting with the obligations of the Treaty or of secondary legislation.

(c) What role could the ECMT fulfil ?

The ECMT has no role in this kind of negotiation. This is explained by the fact that these negotiations with third countries are carried out exclusively by the Commission in the name of the EEC, under Article 228 of the Treaty.

On the other hand discussions in the ECMT take place between the member countries of the ECMT, including Member States of the EEC, to the exclusion of the Community itself because it is not a member of the ECMT.

However, it would be nice to avoid any possible inconveniences of a legal nature which might arise if, in the future, the ECMT were charged with an administrative role in the management of the agreement ; if it were simply to administrative management of this agreement such a role would not seem to be in conflict with the provisions of the Treaty and especially of its Article 228.

It is important to arrive at standard transport rules applying to all the West European countries and based on Community transport regulations. In order to do this and bearing in mind the position of both the Member States and the third countries, this objective of Europe-wide application should be pursued in cooperation with the ECMT, insofar as is compatible with the Treaty.

The Commission thus considers that the most appropriate solution could be for the Community to join the ECMT qua Community, for this would enable it to conclude agreements within the ECMT and to pursue a common transport policy within that organisation. However, this solution would involve amending the present ECMT Statute, which allows only States to become members.

In any case, in view of the present Statute of the ECMT, this solution cannot be used for the Agreement in question. As the outcome of the approaches to be made to the ECMT on this subject cannot be awaited, another solution must be found which will not however pre-judge the future system. Some administrative duties could thus be entrusted to the ECMT Secretariat in the Agreement.

5. Bearing these considerations in mind, the proposals made by the third countries are listed below with the Commission's opinion on each one.

(a) Control document

It has been proposed that the control document should be drawn up and made available to the Contracting Parties by the ECMT Secretariat.

This provision appears unnecessary : it would mean an administrative perfectionism which would be superfluous in view of the fact that the model control document constituting an integral part of the Agreement is known to all the Contracting Parties and Community practice has shown that its production by the Member States would not give rise to any difficulty.

Accordingly, the Commission does not consider that this proposal should be followed up and it does not propose amending the negotiating directives.

(b) Implementing measures

It has been suggested that each Contracting Party should inform the ECMT Secretariat of the measures it has taken to implement the Agreement and that the Secretariat should then inform the other Contracting Parties.

It has also been suggested that a clause be introduced stating that the Contracting Parties shall inform each other of violations committed on their territory by carriers based in other Contracting Parties and, where applicable, the penalties imposed.

The Commission considers that these provisions are acceptable, in view of the considerations set out in point 4.

It is therefore proposed that the negotiating directives be amended accordingly.

(c) Steps to be taken in the event of problems arising from the operation of the Agreement

It is proposed that, if a Contracting Party requests a meeting to discuss problems arising from the operation of the Agreement, the ECMT Secretariat should convene the meeting and that the Chair should be taken in turn by the EEC and a third country.

The idea is acceptable. However, a slightly different method should be adopted to avoid to simplify procedures :

- the Contracting Party which wants the meeting so informs the ECMT Secretariat ;
- the ECMT Secretariat informs the other Contracting Parties, which if they agree that a meeting should be held, so inform the Chairman ;
- if five Contracting Parties, including the Community, express agreement, the Chairman convenes the meeting with the technical assistance of the ECMT Secretariat ; he fixes the time and place of the meeting ;
- the EEC takes the Chair for the first meeting called.

The Commission proposes that the negotiating directives be supplemented accordingly.

It has also been proposed that the ECMT Secretariat should report annually to the Contracting Parties on the implementation of the Agreement.

The Commission sees no point in a report of this type. Following the experience gained at Community level with the annual report provided for by Article 15 of Regulation (EEC) No 517/72 on regular and special regular services, the Commission considers that the value of the conclusions which may be drawn from a document of this type is not such as to merit the administrative work needed to draft it, which would fall on both national and international authorities.

The Commission does not, therefore, propose that the negotiating directives be supplemented in this matter.

(d) Deposit of the instruments of approval and ratification

It has been proposed that the Contracting Parties deposit the instruments of approval or ratification with the ECMT Secretariat, which would inform the other Contracting Parties of each deposit.

The Commission is of the opinion that the provision is acceptable, in view of the general considerations set out in point 4.

The Commission therefore proposes that the negotiating directives be supplemented accordingly.

(e) Termination of the Agreement

The third countries have also suggested that each Contracting Party may, for its part, terminate the Agreement by notifying the ECMT Secretariat at least one year before the end of the period of five years then current ; the Secretariat would inform the other Contracting Parties.

The Commission is of the opinion that the notice of termination of the Agreement should take place between the Contracting Parties concerned. However, the Commission considers that the said Contracting Parties should inform the ECMT Secretariat of their decision to terminate the Agreement.

Consequently the Commission proposes to supplement the negotiation directives in this manner.

(f) Accession to the Agreement

The third countries propose that any Government of a new member country of the ECMT may accede to the Agreement by means of written notification to the ECMT Secretariat, which would inform the other Contracting Parties.

The Commission does not think it would be judicious to make the agreement automatically open to accession by any other State. Furthermore, in view of the fact that all the West European States are party to the Agreement, the question arises only with respect to the East European countries. In line with current practice, the suitable forum for multilateral relations with the East European countries would be the UN at Geneva, not the ECMT.

For these reasons, the Commission does not propose to supplement the negotiating directives along the lines advocated by the third countries.

(g) Deposit of the Agreement

It has been proposed that the original Agreement be deposited in the archives of the ECMT Secretariat, which would then send a certified copy to each of the Contracting Parties.

The Commission is of the opinion that this suggestion is acceptable, in view of the general considerations set out in point 4.

The Commission therefore proposes that the negotiating directives be supplemented accordingly.

IV. CONCLUSIONS

In accordance with these considerations, the Commission submits to the Council :

- a proposal for a Council Decision specifying and supplementing the features of the Agreement that the Commission was authorised to negotiate by the Council Decision of 15 October 1975.

x

x x

Proposal for a
COUNCIL DECISION

specifying and supplementing the features of
the Agreement that the Commission has been
authorized to negotiate by the Council Decision
of 15 October 1975

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic
Community,

Having regard to the proposal from the Commission,

Whereas the Council, by its Decision of 15 October 1975, authorized
the Commission to negotiate an Agreement between the European Economic
Community and certain third countries concerning the regime to be
applied to the international carriage of passengers by coach and bus
and, for this purpose, established negotiating directives;

Whereas provision should be made to specify the scope of this Agreement
and in particular to underline the fact that it concerns transport
between Contracting Parties, including that carried out in transit on
the territory of one of the Contracting Parties; whereas, moreover,
the negotiating directives established by the Council on 15 October 1975
should be supplemented, in particular by a provision for a mutual infor-
mation procedure concerning offences committed on the territory of one
Contracting Party by carriers from another, and the penalties imposed;
whereas, in addition, certain administrative tasks provided for in the
Agreement should be entrusted to the Secretariat of the ECMT;

HAS DECIDED AS FOLLOWS:

Sole Article

The features of the Agreement that the Commission has been authorized to negotiate are specified and supplemented in accordance with the Annex hereto.

Done at Brussels,

For the Council
The President

ANNEX

1. The Commission is hereby authorized to negotiate an Agreement
 - between the European Economic Community and Austria, Finland, Greece, Norway, Portugal, Spain, Sweden, Switzerland, Turkey and Yugoslavia,
 - applicable to occasional international road passenger services carried out between the territory of two Contracting Parties or on departure from and destination to the territory of the same Contracting Party and, during such a transport service, whether in transit through the territory of another Contracting Party or in transit through the territory of a non-Contracting Party.

The words "territory of a Contracting Party" shall apply, where the European Economic Community is concerned, to those territories where the Treaty establishing that Community is applicable under the conditions stipulated by the Treaty.

2. General and final provisions of the negotiating directives

7. The Contracting Parties shall notify each other of infringements of the Agreement committed on their territory by carriers established in another Contracting Party and of any penalties imposed.

8. The following administrative duties connected with the administration of the Agreement shall be entrusted to the Secretariat of the ECMT :

- compilation of the implementing measures taken by each Contracting Party in order to implement the Agreement and notification thereof to all the other parties,
- provision of technical assistance to the Chair for purposes of convening meetings of the Contracting Parties,

- custody of the instruments of approval and ratification deposited by the Contracting Parties and notification of such to the other parties,
- collection of terminations of the Agreement by the Contracting Parties,
- custody of the Agreement and dispatch of certified copies to each Contracting Party.