

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 8 June 1982

Recommendation for a

COUNCIL DECISION

authorizing the Commission to negotiate an Agreement between the European Economic Community and third countries on the rules applicable to certain types of international carriage of passengers by road, by coach and bus

(submitted to the Council by the Commission)

COM(82) 288 final

EXPLANATORY MEMORANDUM

1. In Regulation n° 117/66/EEC of 28 July 1966 (1) the Council laid down certain common rules for the international carriage of passengers by road, including definitions of the various categories of passenger service and the rules applying to them within the Community.

Article 4(2) of the Regulation states that "the Community shall enter into any negotiations with third countries which may be found necessary for the purpose of implementing this Regulation".

Article 4(3) goes on to stipulate that once the common rules provided for in Articles 7 (concerning regular services) and 8 (concerning shuttle services) of the Regulation have been laid down, "the Council shall, as soon as possible and on a proposal from the Commission, lay down the common rules necessary in order to enable application of this Regulation to be extended to international carriage of passengers by road to or from third countries".

2. On 28 February 1972 the Council laid down the common rules provided for by Articles 7 and 8 of Regulation n° 117/66/EEC by adopting Regulation (EEC) n° 516/72 on shuttle services(2) and Regulation (EEC) n° 517/72 on regular and special regular services (3).

The Commission adopted the provisions for implementing those Regulations in 1968, in the case of occasional services (4), and in 1972 in the case of shuttle services and regular services (5) (6).

(1) O.J. n° 147, 09.08.1966, p. 2688

(2) O.J. n° L 67, 20.03.1972, p. 13

(3) O.J. n° L 67, 20.03.1972, p. 19

(4) O.J. n° L 173, 22.07.1968, p. 8

(5) (6) O.J. n° L 134, 12.06.1972, p. 1

3. Now that the conditions laid down in Article 4(3) of Regulation n° 117/66/EEC have thus been met, it is appropriate for the Community to fulfil the obligations incumbent upon it under that Article in respect of shuttle services and regular services.
4. Where occasional services are concerned, there have already been negotiations for an agreement - the ASOR - between the European Economic Community on the one hand and Austria, Finland, Norway, Portugal, Spain, Sweden, Switzerland, Turkey and Yugoslavia on the other. All those countries - apart from Yugoslavia, which will not take part in the Agreement at this stage - and the Community will sign the ASOR in the first half of 1982. Immediately thereafter it will be concluded, and thereby ratified as far as the Community is concerned.

The ASOR applies :

- a) to the international carriage of passengers by road by means of occasional services effected :
 - between the territories of two Contracting Parties or
 - starting and finishing in the territory of the same Contracting Party, and, should the need arise during such services, in transit through the territory of both a contracting and a non-contracting State,
 - ^{and} using vehicles registered in the territory of a Contracting Party which, by virtue of their construction and equipment, are suitable for carrying more than nine persons, including the driver, and are intended for that purpose ;
- b) to unladen journeys by vehicles in connection with these services.

In addition to the definition of the scope of the Agreement, the ASOR also contains :

- definitions of the various types of service (i.e. occasional services, regular services and shuttle services), based on the definitions agreed at Community level for services between the Member States ;

- measures to liberalize certain occasional services, although the degree of liberalization is more limited than that in respect of services between the Member States ;
- rules concerning the introduction of a control document for occasional services and details of how to use it ; a model standard control document is annexed to the Agreement (Community legislation is to be adopted in order to introduce the same model for services between the Member States) ;
- general and final provisions.

NATURE AND SCOPE OF THE NEGOTIATIONS

5. The nature and scope of the negotiations with the third countries must be determined in the light of the rules laid down in Article 4(2) and (3) of the 1966 Regulation, and of the requirements of the Community passenger transport system and of future developments in the flow of traffic to and from the third countries concerned.

5.1. The third countries concerned are those which took part in the ASOR negotiations, including Yugoslavia - which took part in all the negotiations but is not going to conclude the Agreement at this stage - because of its key position as a transit country for services to and from Greece.

These countries have been chosen either because of their geographical location or because of the volume of regular and/or shuttle service between them and the Member States. The decisive factor, however, was the degree of mutual interest in the establishment of common rules.

It does not seem desirable at the moment to open similar negotiations with the State trading third countries.

5.2. As regards the negotiating procedure, multilateral negotiations between the Community on the one hand and all the third countries concerned on the other would appear to be preferable, for the following reasons :

- they can make it possible to produce uniform solutions for all services, whether between the Community and the third countries concerned or between the third countries themselves ;

All the same, in so far as the problems to be discussed or any developments in the multilateral negotiations make it desirable for bilateral negotiations to be opened with each of the third countries affected or with groups of these countries, this option should not be excluded.

OBJECTIVES OF THE NEGOTIATIONS

6. The main objective of the negotiations is to make it possible to lay down common rules for regular services and shuttle services performed in the various ways provided for in Regulation No. 117/66/EEC, and to ensure that the third countries concerned accept control documents which comply with the Community rules on the matter.

As regards extending the scope of the application of the provisions of Regulation n° 117/66/EEC to include transport services to or from a third country, there is a legal possibility for the Community to lay down unilateral measures governing the sections on Community territory, as confirmed by Article 4(3) of the Regulation.

However, the close link between services to or from third countries and intra-Community services, both from the point of view of the organization of the firms and as regards the operation of the services, leaves no doubt that, in practice, the establishment of common rules for the entire journey, whether on Community territory or in the third countries concerned, will make for more effective and more rational organization of the services involved, facilitate checks and simplify the administrative formalities.

In the light of these considerations, an international agreement or several international agreements with the third countries concerned would appear the best way of extending the scope of the common rules referred to in Article 4(3).

The negotiations on the conclusion of such an agreement or several such agreements must make it possible to lay down the common rules that are necessary in order to extend, wherever possible, the existing Community rules - and in particular those concerning the definitions of the various types of passenger services, the rules which apply to them, the authorization procedures and the format and content of the authorization documents - to services involving third countries.

Given these general objectives, the negotiating directives must be flexible enough to make it possible to take account of the progress of the discussions and of particular technical requirements which may emerge.

FORM OF THE AGREEMENT OR AGREEMENTS

7. As proposed in section 5.2., the negotiations should preferably lead to concluding a multilateral Agreement, but there are still reserve powers to negotiate bilateral agreements. Moreover, it would appear useful to be able to leave certain administrative work to the secretariat of the European Conference of Ministers of Transport (ECMT). In view of the existence, within the framework of the ECMT, of certain regulations concerning regular services and shuttle services in the field of international bus transport, it would appear appropriate to invite its secretariat to attend the multilateral negotiations as an observer.

8. Economic impact of the rules to be laid down

A survey conducted in several Member States indicates that all passenger services have expanded appreciably over the last few years, both on routes within the Community and on routes to and from third countries.

The main reasons for this are that :

- coach and bus fares have not risen as fast as rail or air fares ;
- the travelling conditions have improved (for example, the vehicles are now more comfortable and many motorways have been resurfaced) ;
- the coach and bus services available to tourists are now better organized, and the range of services has been improved.

8.1. Summary of some of the data gathered by the Commission departments.

8.1.1. Federal Republic of Germany

The total number of coach passengers carried, taking all the routes and all categories of service together, rose by 40.6 % between 1970 and 1980.

Between 1980 and 1981, bus services' share of total passenger transport rose from 8 % to 9.1 %, while the railways' and airlines' shares fell from 13.3 % to 12.2 % and from 15.3 % to 13.9 % respectively.

8.1.2. Belgium

The number of shuttle services rose from 64 in 1978 to 144 in 1981 - an increase of 125 %. Over that period breakdown of these services was as follows :

Year	Total	Intra-Community routes	Routes involving third countries
1978	64	12	52
1979	94	38	56
1980	128	59	69
1981	144	50	94

Note that in 1981 Belgium had almost twice as many services involving third countries as involving other Community countries.

8.1.3. France

France has provided data on a number of regular or special regular services involving third countries, some of which are set out below :

Paris - Valencia - Murcia : 1978 : Number of passengers carried : 94.144
 Passenger-kilometres worked : 101.298.944
 1980 : Number of passengers carried : 111.973
 Passenger-kilometres worked : 119.898.140
 Paris - Istanbul : 1979 : Number of passengers carried : 3.603
 Passenger-kilometres worked : 10.809.000
 1980 : Number of passengers carried : 4.146
 Passenger-kilometres worked : 12.438.000
 Amsterdam-Barcelona-Alicante:1978 : Number of passengers carried : 39.639
 Passenger-kilometres worked : 77.278.000
 1979 : Number of passengers carried : 99.020
 Passenger-kilometres worked : 222.398.920

8.1.4. "Europabus" - the coach service which certain European railways run for tourists - has stated that 47 % of its 30 regular international services involved third countries.

8.2. The figures given in section 8.1 clearly illustrate that there has been a substantial increase in the number and scale of regular services and shuttle services on routes involving third countries, and that the economic importance of those services cannot be ignored.

9. LEGAL BASIS FOR THE NEGOTIATIONS - THE COMMUNITY'S POWERS

Article 75 of the EEC Treaty together with Article 42 of Regulation No. 117/66/EEC provides the legal basis for entering into negotiations with third countries in this field.

The adoption and implementation of Regulation No. 117/66/EEC, Regulation (EEC) No. 516/72 and Regulation (EEC) No. 517/72 - all of which were based on Article 75 of the Treaty - brought the rules governing the international carriage of passengers by road into the sphere of the common transport policy and consequently necessarily conferred on the Community the power to conclude with third countries any agreement on the matters covered by those Regulations, given that external links cannot be separated from the rules governing internal measures. What is more, this Community competence is exclusive. Regulation No. 117/66/EEC gives the Commission the task of negotiating with third countries any agreements related to the field covered by that Regulation. Moreover, since this is an area in which the Community has introduced common rules in the context of the common transport policy provided for by the Treaty of Rome, the Member States no longer have the right, whether individually or collectively, to enter into any obligations vis-à-vis third countries such as might affect those rules. The Community alone is in a position to guarantee that obligations entered into vis-à-vis third countries are implemented in respect of all the area in which the Community legal system applies, and consequently it alone has the power to conclude agreements to that effect with third countries.

The procedural aspects are covered by Article 228 of the EEC Treaty.

10. NEGOTIATING DIRECTIVES

10.1. Article 2 of the proposal provides that the Commission is to conduct the negotiations on the basis of the Directives annexed to the proposal.

10.2. The ECMT has already laid down general rules for the international carriage of passengers by coach and bus (in Resolution No. 20 of 16 December 1969, as amended on 16 June 1971). More specifically, it has laid down definitions for regular services and shuttle services respectively.

- 10.3. The negotiations should make it possible to eliminate the differences between Community Legislation and the rules which currently apply to the international carriage of passengers to and from third countries, wherever the current parallelism is likely to raise legal problems or make it difficult to apply the rules in practice. However, they should be confined solely to the types of service provided between the Member States and the third countries which are of genuine economic importance to the various parties.
- 10.4. In the light of the foregoing considerations, the negotiations will be directed towards standardizing the definitions of the various types of regular services and shuttle services.
- 10.5. The desire for common rules does not necessarily imply that the same rules should apply to all the third countries concerned if economic and social conditions warrant different rules and disparities remain between the competitive position of the individual countries. Separate agreements could perhaps be concluded with certain of the third countries concerned, if this is the case.

Moreover, in the context of the negotiations one should not set out systematically to bring the ECMT rules into line with the Community legislation but examine whether, and if so to what extent, the differences between the two systems might call for changes in the Community rules. The necessary amendments to Community legislation would then be made in the Regulation establishing the measures to be taken to bring into effect the agreement which is to be concluded.

The conclusions which can be drawn from examining the differences between the various systems in this light - and which should be followed up during the negotiations - are set out below.

10.6. Scope of the negotiations

A. Definitions

a) The ECMT definition of regular services is broadly similar to the Community definition, as laid down in Article 1(1) of Regulation n° 117/66/EEC, though it goes into greater detail. In particular, it is based on the following principles :

- fixed itinerary ;
- frequency ; and
- timetables.

The ECMT definition of special regular services agrees word for word with that in Article 1(3) of Regulation n° 117/66/EEC.

It would be appropriate to look for ways of extending the definition laid down in Article 1(1) of Regulation n° 117/66/EEC to the third countries concerned, since the wording, and in particular the reference to "specified routes", allows a clearer distinction to be made between the strictly controlled regular services and the liberalized occasional services and will therefore make it easier to stamp out abuses.

b) The ECMT definition of shuttle services agrees word for word with that in Article 2(1), (2) and (3) of the Council Regulation. However, it does not incorporate the wording of Article 2(4), which provides for fixing the conditions under which exceptions to that definition may be authorized.

Since it is essential to continue to allow operators the freedom to accept for the return journey passengers who made the outward journey with another group, it would be desirable for the wording in question to be added to the ECMT definition, which would then apply to services between the Member States and the third countries concerned.

B. Scope

Both the ECMT Resolution and Regulation n° 117/66/EEC (see the second indent of Article 4(1) thereof) apply to carriage in vehicles intended to carry more than nine persons, including the driver. However, the Council Regulation also stipulates that the vehicle must be "suitable" for that purpose.

It would be advisable if the occasion arises, to propose to the third countries that they too should add this extra detail and, in consequence, accept the definition set out in Regulation No. 117/66/EEC.

C. Common rules of a more general nature

In addition to the technical points referred to above, a number of more general common rules should be agreed with the third countries in question, and in particular :

- detailed rules for joint examination, by the representatives of each Contracting Party, of the general operation of the agreement or agreements and of special cases which may arise when it is implemented ; the representatives could also put forward proposals for additions or amendments to the agreement or agreements ;
- detailed rules for a procedure for consultation and conciliation among the Contracting Parties whenever a particular need arises or when a dispute concerning the interpretation or application of the agreement or agreements makes it necessary ;
- rules concerning the period of validity of the agreement or agreements, which it should be possible to extend automatically for successive periods of a pre-established duration ;
- rules concerning termination of the agreement or agreements by one of the Contracting Parties, after consulting the other Party, and the period of notice required for notification of termination.

Recommendation for a Council Decision authorizing the Commission to negotiate
an Agreement between the European Economic Community and third
countries on the rules applicable to certain types of international
carriage of passengers by road, by coach and bus

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the recommendation from the Commission,

Whereas common rules on the international carriage of passengers by road
by coach and bus by means of regular services and shuttle services were
laid down in Council Regulation n° 117/66/EEC (1) ;

Whereas Article 4(2) of Regulation n° 117/66/EEC requires the Community
to enter into any negotiations with third countries which may be found
necessary for the purpose of implementing that Regulation ; whereas
paragraph 3 of that Article provides that, when the common rules provided
for in Articles 7 and 8 have been laid down, the Council shall, as soon
as possible, lay down the common rules necessary in order to enable
application of that Regulation to be extended to international carriage
of passengers by road to or from third countries ; whereas the common
rules provided for in the abovementioned Articles 7 and 8 were laid down
in Council Regulations (EEC) n° 516/72 (2) and 517/72 (3) ;

(1) O.J. n° 147, 09.08.1966, p. 2688/66

(2) O.J. n° L 67, 20.03.1972, p. 13

(3) O.J. n° L 67, 20.03.1972, p. 19

Whereas the negotiations between the Community and certain third countries concerning occasional services have been completed, and the Agreement relating thereto will shortly be concluded on behalf of the Community ;

Whereas in view of the economic importance of road passenger traffic in the form of regular services and shuttle services between the Community and third countries, it is also desirable to extend the application of the Community rules to such services ;

Whereas the only adequate means of attaining those objectives is for uniform rules to be agreed between the Community and the third countries concerned ;

Whereas, to this end, the Commission should be authorized to enter into such negotiations as are necessary ;

Whereas the substance and scope of the agreement or agreements should be specified and the conciliation procedure should be laid down ;

Whereas Austria, Finland, Norway, Portugal, Spain, Sweden, Switzerland, Turkey and Yugoslavia are the third countries with the greatest interest in road passenger services to and from the Community, and negotiations should therefore be entered into with these countries first,

HAS DECIDED AS FOLLOWS :

Article 1

The Commission is hereby authorized to open negotiations with Austria, Finland, Norway, Portugal, Spain, Sweden, Switzerland, Turkey and Yugoslavia with a view to concluding between the European Economic Community and those States an agreement or agreements establishing common rules for the international carriage of passengers by road by means of regular services and shuttle services by coach or bus.

Article 2

The Commission shall conduct the negotiations in accordance with the directives contained in the Annex.

Done at Brussels,

For the Council

The President

NEGOTIATING DIRECTIVES

1. General objective

The general objective of the negotiations is to conclude an agreement or agreements between the Community and certain third countries on rules for the international carriage of passengers by road by coach and bus.

2. Substance and scope of the agreement or agreements

2.1. Definition of the various types of service

(a) The definitions laid down in Article 1 of Council Regulation n° 117/66/EEC of 28 July 1966 (1) should be extended to include regular services and special regular services between the Member States and third countries.

(b) The definition of shuttle services, as laid down in Article 2(1), (2) and (3) of Regulation n° 117/66/EEC should also be extended ; a further provision should also be added to it in order to allow the public authorities to authorize carriers to accept for the return journey passengers who made the outward journey with another group.

2.2. Stipulation concerning vehicles

As regards the construction and equipment of the vehicles, the stipulation made in the second indent of Article 4(1) of the above-mentioned Council Regulation should also apply to services between the Member States and the third countries concerned.

2.3. Consultation and conciliation

Provision should also be made for conciliation procedures enabling the representatives of the Contracting Parties to hold joint consultation at the request of one of the parties whenever a particular need arise or a dispute concerning the interpretation or application of the agreement or agreements makes them necessary.

(1) O.J. n° 147, 09.08.1966

The representatives could also review the general operation of the agreement or agreements and, where appropriate, draw up proposals for amending or supplementing it.

2.4. Period of validity and extension of the agreement or agreements

The agreement or agreements should be valid for a period of ten years. Unless terminated by one of the Contracting Parties, its period of validity should thereafter be extended automatically.

2.5. Termination of the agreement or agreements

Each Contracting Party should have the right to terminate the agreement or agreements after consulting the other party before-hand and giving due notice.

3. Form of the Agreement

3.1. The negotiations will be conducted according to the procedure set out in Article 228 of the EEC Treaty. Third countries will be invited to begin negotiations with the Community with a view to concluding a multilateral agreement. If there is an opportunity during the course of these negotiations, it will still be possible to open bilateral negotiations with each one of the third countries or with a group of these countries.

3.2. As in the case of ASOR, the secretariat of the ECMT should be invited to take charge of certain administrative tasks, provided for in the agreement and relating to its administration.

A representative of the secretariat could be invited to attend the negotiations.

