



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.02.1997  
COM(97)72 final

96/0002 (SYN)

Amended 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 pursuant to Article 189 a (2)  
of the EC-Treaty)

## EXPLANATORY MEMORANDUM

At its plenary session of 27 and 28 November 1996, the European Parliament approved, subject to a number of amendments, the proposal for a Council Regulation (EC) No laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State.<sup>1</sup>

The Commission has accepted the amendments concerning:

- Recital 5a (new), on the gradual approximation of national legislation;
- Recital 6 concerning the general principle of the liberalization and phased harmonization of the conditions of competition, subject to "Union" being replaced by "Community";
- Recital 6a (new) on the degree of capacity utilization of vehicles;
- Recital 6c (new) concerning the accessibility of transport systems;
- Recital 8 on unifying the system applicable to cabotage operations of regular services;
- Article 1, first indent on the place of establishment of transport companies, subject to a formulation being found which is compatible with Article 58 of the Treaty;
- Article 3 on excluding urban and suburban services from the scope of the Regulation on cabotage;
- Article 4 concerning the deletion of the legal provisions applicable to cabotage operations carried out in the course of a regular international service, provided that Article 5(2) is also amended to introduce a reference to the services under Article 3(2).

Parliament's objective in Amendment 9 concerning Recital 8 is to make all cabotage operations in the form of regular services subject to the same legal provisions. For this reason, Amendment 14 of Parliament's Committee on Transport and Tourism proposes deleting from the Commission proposal Article 4, which lays down the legal

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<sup>1</sup> OJ No C 60, 29.02.96.

provisions applicable to cabotage operations carried out in the course of an international service. This makes all cabotage operations under Articles 3(2) and 3(3) subject to the same legal provisions, i.e. those contained in Article 5(2), which avoids a situation whereby the legal provisions applicable to cabotage operations under Article 3(2) are more favourable than those applicable to cabotage operations carried out for all the other regular services under Article 3(3).

However, it still remains possible to perform these cabotage operations, since provision is made in Article 3(2). It is therefore necessary to provide that the legal provisions applicable to cabotage operations performed in the course of an international service are the same as those applicable to cabotage operations under Article 3(3) of the Commission proposal, i.e. the national legislation of the host Member State referred to in Article 5(2).

The reference to Article 3(3) in Article 5(2) should therefore be supplemented with a reference to Article 3(2) which covers the issue of cabotage in the course of an international service.

- Article 13 on the report on the application of the Regulation and the possible submission of a proposal on the basis of the report's conclusions.

The Commission thus amends its proposal as follows:

**Amended 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**

The Commission proposal in document COM(95) 729 final - SYN 96/0002<sup>2</sup> is amended as follows:

<b>Initial Commission proposal</b>	<b>Amended proposal</b>
<b>Recital 5a (new)</b>	
	<u>"Whereas carriers providing such services should be subject to comparable systems, so as to limit inequality in the conditions of competition because of their nationality and country of establishment, and hence promote the gradual approximation of national legislation;"</u>

<b>Initial Commission proposal</b>	<b>Amended proposal</b>
<b>Recital 6</b>	
"Whereas establishing the internal market involves the abolition of frontier controls and, consequently, an increase in intra-Community traffic;"	<u>"Whereas the European Community's internal market is an area for the free movement of goods, persons, services and capital; whereas it is necessary to liberalize the transport of persons by coach and bus, in tandem with the phased harmonization of the socio-economic, fiscal and technical conditions governing road passenger transport within the Member States;"</u>

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<sup>2</sup> OJ No C 60, 29.02.96.

Initial Commission proposal	Amended proposal
<b>Recital 6a (new)</b>	
	<p><u>"Whereas from an environmental point of view it is desirable to offer carriers the possibility of optimizing the degree of capacity utilization of their vehicles:"</u></p>

Initial Commission proposal	Amended proposal
<b>Recital 6c (new)</b>	
	<p><u>"Whereas the accessibility of transport systems and in particular the accessibility of intercity bus and coach services, especially on routes across Europe, is one of the objectives of the common transport policy:"</u></p>

Initial Commission proposal	Amended proposal
<b>Recital 8</b>	
<p>"Whereas the provisions of the host Member State applicable to cabotage transport operations should be fixed;"</p>	<p><u>"Whereas the provisions of the host Member State applicable to cabotage transport operations should be fixed, so as to ensure that these transport operations are carried out under an authorization system and that the same regulatory conditions are applicable to cabotage operations of regular services, and that these operations are carried out exclusively in the host Member State or that they are carried out in the course of a regular international service in accordance with the provisions of Council Regulation No 684/92:"</u></p>

Initial Commission proposal	Amended proposal
<b>Recital 9 (new)</b>	
	<p><u>"Whereas urban carriage should, for the present, be excluded from the scope of this Regulation, in view of its character as a service in the general interest:"</u></p>

Initial Commission proposal	Amended proposal
<b>Article 1, first indent</b>	
<p>"Any carrier who operates road passenger transport services for hire or reward who:</p> <ul style="list-style-type: none"> <li>- is established in a Member State, hereinafter referred to as the "Member State of establishment", in accordance with its legislation, and"</li> </ul>	<p>"Any carrier who operates road passenger transport services for hire or reward who:</p> <ul style="list-style-type: none"> <li>- is established in a Member State <u>of the Community, where his central offices and main place of business is located</u>, hereinafter referred to as the "Member State of establishment", in accordance with its legislation, and"</li> </ul>

Initial Commission proposal	Amended proposal
<b>Article 3</b>	
<p>"With effect from the date of entry into force of this Regulation, cabotage transport operations shall be authorized for the following services:</p> <ol style="list-style-type: none"> <li>1. special regular services and occasional services;</li> <li>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;</li> <li>3. the other regular services."</li> </ol>	<p>"With effect from the date of entry into force of this Regulation, cabotage transport operations shall be authorized for the following services:</p> <ol style="list-style-type: none"> <li>1. special regular services and occasional services;</li> <li>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;</li> <li>3. the other regular services.</li> </ol> <p style="text-align: center;"><u>Regular urban and suburban services shall not be covered by this Regulation."</u></p>

Initial Commission proposal	Amended proposal
<b>Article 4</b>	
<ol style="list-style-type: none"> <li>"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.</li> <li>2. Applications for authorization may be refused: <ol style="list-style-type: none"> <li>(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</li> </ol> </li> </ol>	<p><u>Deleted.</u></p>

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 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

<p>favourable than the conditions applied to regular transport services provided by resident carriers.</p> <p>7. The authorization or a certified true copy thereof must be kept on board the vehicle.</p> <p>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."</p>	
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Initial Commission proposal	Amended proposal
<b>Article 5(2)</b>	<b>Article 4(2)</b>
<p>"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 capacity to provide transport services, the routes to be operated and the regularity, continuity and frequency of services.</p> <p>Any compensation for public service obligations must be paid to all the Community operators concerned."</p>	<p>"Save as otherwise provided in Community legislation, cabotage operations which form part of the transport services provided for in Article 3(2) and (3) shall be subject to the existing laws, regulations and administrative provisions in force in the host Member State, regarding the capacity to provide transport services, the routes to be operated and the regularity, continuity and frequency of services.</p> <p>Any compensation for public service obligations must be paid to all the Community operators concerned."</p>

Initial Commission proposal	Amended proposal
<b>Article 6</b>	<b>Article 5</b>
<b>Article 7</b>	<b>Article 6</b>
<b>Article 8</b>	<b>Article 7</b>
<b>Article 9</b>	<b>Article 8</b>
<b>Article 10</b>	<b>Article 9</b>
<b>Article 11</b>	<b>Article 10</b>
<b>Article 12</b>	<b>Article 11</b>

<b>Initial Commission proposal</b>	<b>Amended proposal</b>
<b>Article 13</b>	<b>Article 12</b>
"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."	"The Commission shall report to the Council <u>and Parliament</u> before 31 December 1999 on the application of this Regulation and, in particular, on the impact of cabotage transport operations on national transport markets."

<b>Initial Commission proposal</b>	<b>Amended proposal</b>
<b>Article 14</b>	<b>Article 13</b>
<b>Article 15</b>	<b>Article 14</b>

The remainder of the text is unchanged.

Done at Brussels,

For the Council

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