

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(80) 809 final

Brussels, 11th December 1980

PROPOSAL FOR A COUNCIL DECISION
SETTING UP AN INFORMATION AND CONSULTATION PROCEDURE FOR
RELATIONS AND AGREEMENTS WITH THIRD COUNTRIES IN THE FIELD OF
TRANSPORT BY RAIL, ROAD AND INLAND WATERWAY

(presented by the Commission to the Council)

COM(80) 809 final

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Explanatory Memorandum

A - Aims and principles of the procedure

1. The Council has already adopted certain decisions designed to promote the establishment of the common transport policy by setting up procedures for consultation between the Member States when they are considering taking national measures or action at international level relating to transport¹. These decisions have been taken from time to time as needed by the various modes of transport.

2. Because of the growth in trade between the Community and third countries, transport by rail, road and inland waterway (called herein "inland transport") between the Member States and third countries is expanding rapidly. It is expected that this trend will continue.

3. The Member States have individually concluded bilateral or multilateral agreements with third countries in order to facilitate transport. The number of such agreements is likely to grow in the future both because of the above-mentioned growth in trade - with an increasing number of third countries - and because of the completion of major new infrastructure projects linking Community communications networks (especially its inland waterway network) and those of third countries.

¹ . Council Decision of 21 March 1962 as amended (national measures on inland transport) OJ No 23 of 3.4.1962 and OJ No L 347 of 17.12.1973
 . Council Decision of 13 September 1977 (77/587/EEC) (relations with third countries and in international organizations on shipping matters) OJ No L 239 of 17.9.1977
 . Council Decision of 20 February 1978 (78/174/EEC) (investment in transport infrastructure) (repealing Decision 66/161 of 28 February 1966) OJ No L 54 of 25.2.1978
 . Council Decision of 20 December 1979 (80/50/EEC) (relations with non-Member countries and in international organizations on air transport) OJ No L 18 of 24.1.1980

4. Both the growth in the number of bilateral agreements with third countries and the adoption of national laws or regulations for which the Decision of 21 March 1962 provided a consultation procedure are likely to have effects not only on the common transport policy but, more generally, on the economics of transport in the Member States. It is therefore necessary to provide a means of ensuring that the bilateral agreements concluded by Member States with third countries in areas where the Community has not yet acted can be examined in relations to the common transport policy and the attainment of the objectives of the Treaty. A procedure for consultation between the Member States before inland transport agreements are concluded should therefore be established.

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5. It is also desirable that, besides consultation on draft bilateral agreements as such, there should be exchanges of views and information on relations between the Member States and third countries on matters relating to inland transport.

6. It would be helpful if the Member States could identify matters of common interest in good time and arrange exchanges of information about them. Each Member State should make the benefit of its experience in relations with third countries of matters relating to inland transport available to the other Member States and the Commission.

7. Each Member State would also seem to have an interest in strengthening its position when negotiating bilateral agreements with third countries by seeking the maximum possible common ground with the other Member States even though this may not amount to complete agreement. The fact that each Member State is aware of the general attitude of the other Member States toward bilateral relations with third countries as well as measures taken by them individually will certainly tend to discourage any attempts by third countries to employ divisive tactics.

8. The Commission believes the time has come to consider establishing a procedure which will make available the information required for points of view on these matters to be more closely aligned. To this end, it proposes to establish an information procedure which will include topics of general Community interest discussed by Member States with third countries.

B - The procedure in practice

9. The procedure for these consultations and exchanges of information would be based on that laid down for consultations on draft agreements in the Decision of 21 March 1962, together with an information procedure allowing for further consultations on agreements to be organized where appropriate.

10. The Commission proposes to organize under its chairmanship meetings between representatives of Member States as a forum for exchanges of views and information on relations with third countries in general (Article 1 of this proposal) and consultation on the agreements which Member States are preparing to conclude (Article 2). These meetings would, as a rule, be held on the Commission's initiative; it has however also been found necessary to make provision for a Member State to be able to request that a meeting be convened if it considers that circumstances so require.

11. These meetings would allow Member States and the Commission to exchange information on their relations with third countries concerning inland transport and in particular on the prospects for future negotiations and the working of existing agreements. There would also be exchanges of views at these meetings on the possible implications of this information for the common transport policy. These exchanges might, where appropriate, encourage the Member States to coordinate their policies towards third countries and, if required, lead to the adoption of a common Community position.

12. With regard to agreements which Member States intend to conclude, that is, those for which negotiations with the third country or countries have reached an advanced stage, it is proposed that there should be consultation with representatives of the Member States before the Commission delivers its opinion on the draft agreement. These consultations should take place at an appropriate point and in any case in good time before the agreement is concluded.

13. These consultations, which would only be concerned with those draft agreements likely to interfere with the implementation of the common transport policy (including those which are also the subject of an exchange of views or formal consultations in other international organizations), would take place only if requested by a Member State or considered necessary by the Commission within one month of notification of the draft agreement. Consultation would take not more than one month. The Commission would then have a further month in which to deliver its opinion or recommendation so that the maximum time elapsing between notification of the agreement and delivery of the Commission's opinion would be three months. The opinion or recommendation can equally well refer to the technical content of the agreement in question or to more general consideration, whether concerning suitability or legal considerations (e.g. because there is no denunciation clause for the agreement or the agreement refers to too long a period without there being a provision for).

14. It should be noted that the exchanges of information at meetings organized under Articles 1 and 3 of this draft decision would allow representatives of Member States and the Commission to be kept informed on a regular basis about agreements for which negotiations were contemplated or under way. This would have a number of advantages.

15. In the first place, it would facilitate consultation following notification of a draft agreement. The Commission and the other Member States would already be aware of the subject of the negotiations and the general substance of the agreement. The Member State concerned would also have had the opportunity to take account of the observations of the other Member States and the Commission in its negotiations with the third country.

16. In the second place, these meetings would enable the question whether the agreement came within the scope of Article 2, that is, whether it was likely to interfere with the implementation of the common transport policy and should therefore be the subject of consultation, to be determined in advance.

17. To simplify the procedure, it is provided that, if no consultations have taken place, and if the Commission has not delivered an opinion within two months - at the most - of the date of notification of the agreement, it should be regarded as raising no objection from either the Member States or the Commission.

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C - Special case of through activities undertaken by international organisations

18. The Commission does not consider it indispensable to extend the information and consultation procedure to Member States' activities through international organisations.

19. A high proportion of the activities undertaken by organizations that specialize in inland transport (ECE-UN in Geneva, ECMT in Paris and CCR in Strasbourg) fall within the scope of the Community's responsibility and are therefore themselves joint activities.

20. In any case, informal exchanges of information and consultation already exist since Member States and the Commission consult each other at the Council's Working Party on Transport Questions or on the spot before sessions and meetings of international organizations. The Commission has observer status with some organizations (UN and its subsidiary bodies and special agencies, the OECD and the Council of Europe) and thereby obtains the information it requires ; in other cases it concludes arrangements or cooperation agreements and exchanges information with organizations (CCR, ECMT and the Central Office for International Railway Transport).

21. Agreements and conventions made by Member States in connection with their membership of international organizations, which are by nature agreements with third countries, are excluded from the consultation procedure provided for in this proposal for a decision.

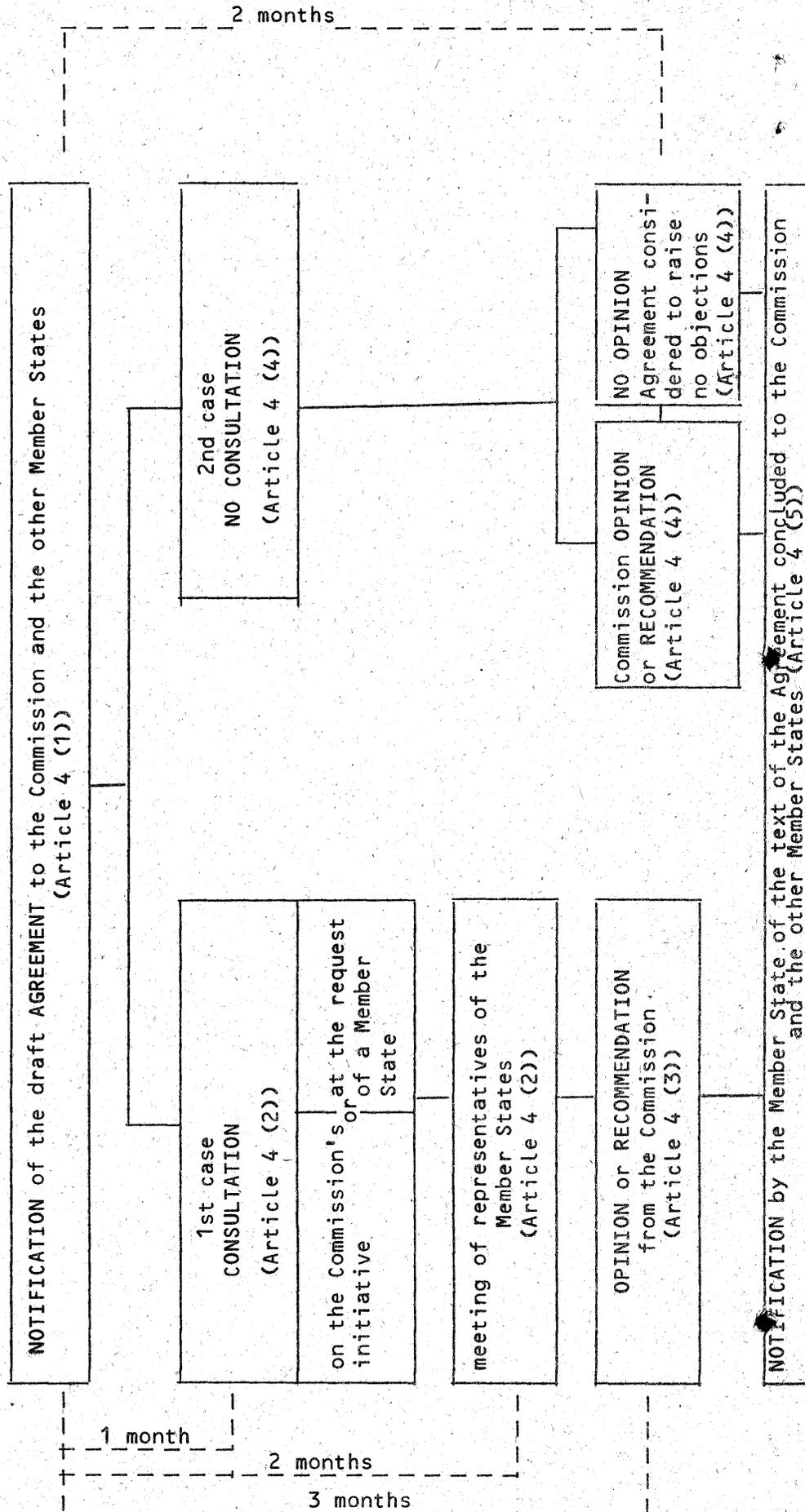
D - Conclusion

22. In conclusion, the Commission's object in making this proposal is not to secure uniformity of action at all costs but to organize exchanges of views on the relations between Member States and third countries and the agreements which sometimes result so that (a) the common transport policy and its future development and (b) the interests of Member States, separately as a whole, can be protected.

EXCHANGES OF VIEWS AND INFORMATION
(Articles 1 and 3 of the proposal)

MEETING OF REPRESENTATIVES OF MEMBER STATES	
- on the Commission's initiative	- at the request of a Member State - within one month of receipt of the request
1) Exchange of information - on relations with third countries - on agreements contemplated	
2) Exchange of views on this information and its implications for the common transport policy	
3) Any guidelines considered necessary	

CONSULTATIONS ON AN AGREEMENT notified by a Member State (Articles 2 and 4 of the proposal)



Proposal for a Council Decision setting up an information and consultation procedure for relations and agreements with third countries in the field of transport by rail, road and inland waterway

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the Economic and Social Committee,

Whereas it is desirable to facilitate the exchange of information and views in the field of relations with third countries concerning transport by rail, road or inland waterway in order to identify matters of common interest and promote coordination, where necessary, of the action taken by the Member States with regard to the third countries concerned and whereas therefore an information procedure should be instituted ;

Whereas the conclusion by Member States of bilateral or multilateral agreements with third countries in the field of transport by rail, road or inland waterway and the implementation of national provisions laid down by law or regulation may influence the development of the common transport policy and interfere with its implementation;

Whereas, in addition to the consultation procedure set up by the Council Decision of 21 March 1962 ¹, specific preliminary consultations before the conclusion and implementation of these agreements is required to ensure that they conform to the provisions of Community law and the objectives of the common transport policy

¹ Council Decision of 21.3.1962 instituting a procedure for prior examination and consultation in respect of certain laws, regulations and administrative provisions concerning transport proposed in the Member States
(OJ No 23 of 3.4.1962) amended by Council Decision No 73/402 of 22.11.1973 (OJ No L 347 of 17.12.1973)

HAS ADOPTED THIS DECISION :

Article 1

1. The Member States and the Commission shall keep each other informed and undertake exchanges of views on the various aspects of actual or prospective developments in relations between Member States and third countries concerning transport by rail, road or inland waterway and on the working of bilateral or multilateral agreements in this field.

In particular, Member States shall inform the Commission and the other Member States of any agreements with third countries which they intend to negotiate, amend or renew.

2. The aims of the information and exchanges of views mentioned in paragraph 1 shall be :

- a) to identify matters of common interest;
- b) to examine the implications of the information provided for the common transport policy and its development;
- c) to seek convergence of views on relations with third countries; and
- d) to facilitate where necessary coordination of the action taken by Member States with regard to the third countries concerned and to consider any expedient policy towards them.

Article 2

1. When a Member State intends to conclude or amend an agreement with one or more third countries in the field of transport by rail, road or inland waterway which may interfere with the implementation of the common transport policy, it shall send the complete draft in good time to the other Member States and to the Commission. If appropriate, there will then be consultation, the purpose which is to ensure that the agreement contemplated conforms to Community law and the objectives of the common transport policy.

Article 3

1. The exchanges of views and information provided for in Article 1 shall take place at meetings of representatives of each Member State arranged by the Commission and under the chairmanship of its representative.
2. The Commission shall furthermore arrange a meeting of national representatives within one month of receiving a request from a Member State.

Article 4

1. The communication of an agreement which a Member State proposes to conclude with a third country as laid down in Article 2 shall take place before the agreement is initialled or, in the absence of initialling, before the completion of negotiations.
2. If, within one month of receiving this communication, a Member State requests consultation or the Commission considers it appropriate, the Commission shall arrange for consultation with all the Member States on the agreement in question.

For this purpose the Commission shall arrange a meeting of representatives of the Member States, chaired by it, within two months of receiving the communication.

3. Following consultation the Commission shall address an opinion or recommendation to the Member State not more than two months after receiving the communication and shall inform the other Member States of it, at the same time. During this period, the Member State may not conclude the agreement in question without the opinion or recommendation of the Commission.

4. If consultation has not taken place, the Commission may, if it considers it appropriate, deliver an opinion or recommendation not more than two months after receiving the communication. During this period the Member State may not conclude the agreement concerned without an opinion or recommendation from the Commission. Once the above period of two months has elapsed, and if there is still no opinion or recommendation, the agreement with the third country or countries shall be deemed not to be subject to any objection from the Commission or the Member States.

5. The Member States shall inform the Commission of the texts of agreements concluded with third countries which come within the scope of this Decision.

Article 5

Past or future developments and agreements and conventions concluded or to be concluded within international organizations are excluded from the scope of the present Decision.

Article 6

The Commission may decide that the Decision does not apply to certain categories of development in relations with third countries and agreements with them.

Article 7

The information and consultations provided for in the Decision shall be covered by professional secrecy.

Article 8

This Decision is addressed to the Member States.

Done at Brussels,