

# Access to the international market for coach and bus services. Recast

2007/0097(COD) - 09/01/2009 - Council position

The Council has taken full account of the proposal of the Commission and the European Parliament's opinion at first reading. With respect to the amendments proposed by the European Parliament, the Council observes that a considerable number of amendments have - in spirit, partially or fully - already been included in its common position.

The key policy issues are as follows:

**Clarification of the scope, the definitions and the principles:** the Council followed largely the Commission proposal and its common position foresees that this regulation applies to all international carriage on the territory of the Community, including carriage from and to third countries, and to national road passenger services operated by a non-resident undertaking on a temporary basis ("cabotage").

As regards international carriage, the Council established a comprehensive definition: for carriages, to or from a third country it is stipulated that, as long as there is no agreement between the Community and the third country in question, the Regulation does not apply to that part of the journey carried out within the Member State of picking up or setting down of passengers. It does, however, apply within a Member State crossed in transit.

In order to facilitate effective controls by enforcement authorities, especially those outside the

Member State in which the carrier is established, carriers are required to carry a certified true copy of the Community licence aboard each of their vehicles when performing an international carriage.

The European Parliament decided to follow the Commission's approach and did not adopt amendments on this issue.

**Community licence and certified copies:** the Commission proposal foresees the issuing of a Community licence for a renewable period of 5 years. The common position therefore extends the validity of the renewable Community licence to "up to 10 years", introduces the (comitology) regulatory procedure with scrutiny to care for future necessary technical adaptations of the validity of the Community licence, and also amends accordingly the provisions concerning the verification of conditions for the issuing and renewal of the licence.

In order to avoid possible falsifications of the above documents, the Council decided to amend Annex I by adding a series of security features, of which at least two have to be included in the documents. The European Parliament decided to follow the Commission's approach and did not adopt amendments on this issue.

**Procedure to authorise international regular services:** the common position foresees a streamlined and simplified procedure. Authorisation will henceforth be granted except in the following two cases: i) the service applied for would seriously affect the viability of a comparable service covered by one or more public service contracts on the direct sections concerned conforming to Community law, or ii) the principal purpose of the service is not to carry passengers between stops located in different Member States. In this context Member States have to set up non-discriminatory criteria when evaluating the viability of a public service contract during the authorisation procedure for international regular services.

The Council followed the Commission's approach that the authorities of Member States whose territory is merely crossed in transit, but where no passengers are picked up or set down, will simply be informed once the Member States concerned have agreed to authorise the service in question. However, the Council in addition set a two months deadline for the Commission to reach a decision on authorisation in cases the authorising authority is unable to reach such decision.

The European Parliament, on the contrary, deleted the possibility for the Member State to suspend or to withdraw an authorisation in case it seriously affects the viability of a public service contract.

**Cabotage:** as regards cabotage, the Council followed broadly the Commission proposal. Hence, the rules on cabotage remain in substance largely unchanged. In particular, the Council approved the deletion of the provision of Article 9 of Regulation (EC) No 12/98 on safeguard measures in case of serious disturbances of a national transport market.

As concerns the cabotage operations in the course of a regular international service, the Council specifies that this means "the picking up and setting down of passengers" within the same Member State, in compliance with the provisions of this Regulation, provided that it is not the principal purpose of this service.

Furthermore, the Council in conformity with the European Parliament deleted in its common position any reference to working time provisions as concerns the rules applicable to cabotage transport operations since no harmonised Community rules are in place.

**Cooperation between Member States:** following the Commission, the Council decided to include in its common position a provision obliging the Member States to exchange information via the national contact points. Member States are obliged to enter into their national register of road transport undertakings all serious infringements of Community transport legislation which have led to the imposition of a penalty. Moreover, the Council decided to enter into the national registers any temporary or permanent withdrawal of the Community licence or of the certified true copies. The latter entries will remain in the data base for two years. The European Parliament decided to follow the Commission proposal and did not adopt amendments on this issue.

**Sanctioning of infringements:** the common position as agreed by the Council followed to a large extent the Commission's approach towards serious infringements. However, the Council decided against the issuing of a warning and agreed to leave the choice of action to the Member States. Moreover, the Council agreed to leave the weighting of repeated minor infringements to the discretion of the Member States. The common position also introduces the obligation for the competent authority of the Member State of establishment of the undertaking to communicate to the competent authority of the Member State in which an infringement was ascertained whether and which penalties have been imposed. This communication has to be issued within two months after the final decision on the matter has been taken.

As regards the procedure to be followed by the Member State which ascertains a serious infringement committed by a non-resident haulier, the common position provides a delay of two months (instead of one month) to communicate the to the Member State of establishment. Moreover, the text does not contain any obligation for the Member State of establishment of the haulier to report on the follow-up. The European Parliament also decided against the inclusion of provisions concerning repeated minor infringement. Moreover, it voted in favour of a provision allowing the imposition of fines as a possible penalty.

Further amendments not included in the common position concern:

- 1 January 2009 as a fixed date of application of this Regulation;

- the reference to the Directive on the posting of workers as rules applicable to cabotage;
- the possibility to exempt cross-border regular services not extending more than 50 km beyond the border Member States from the authorisation procedure;
- the widening of the permission of local excursion;
- the reintroduction of the "12 days rule" in the legislation on driving and rest times.