

# Official Journal

## of the European Communities

ISSN 0378-6986

C 164

Volume 40

30 May 1997

English edition

## Information and Notices

---

<u>Notice No</u>	Contents	Page
	<i>I Information</i>	
	<b>Council</b>	
97/C 164/01	Common position (EC) No 21/97 of 14 April 1997 adopted by the Council, acting in accordance with the procedure referred to in Article 189c of the Treaty establishing the European Community, with a view to adopting a Council Regulation amending Regulation (EEC) No 684/92 on common rules for the international carriage of passengers by coach and bus .....	1
97/C 164/02	Common position (EC) No 22/97 of 14 April 1997 adopted by the Council, acting in accordance with the procedure referred to in Article 189c of the Treaty establishing the European Community, with a view to adopting a Council Regulation laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State .....	17
97/C 164/03	Common position (EC) No 23/97 of 14 April 1997 adopted by the Council, acting in accordance with the procedure referred to in Article 189c of the Treaty establishing the European Community, with a view to adopting a Council Regulation on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies .....	26

## I

(Information)

## COUNCIL

COMMON POSITION (EC) No 21/97

adopted by the Council on 14 April 1997

with a view to adopting Council Regulation (EC) No . . . /97 of . . . amending Regulation (EEC) No 684/92 on common rules for the international carriage of passengers by coach and bus

(97/C 164/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 75 (1) thereof,

Having regard to the proposal from the Commission<sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(2)</sup>,

Acting in accordance with the procedure referred to in Article 189c of the Treaty<sup>(3)</sup>,

shall report to the Council on the application of the Regulation and that the Council shall adopt before 1 January 1997, on a proposal from the Commission, rules on the simplification of procedures including, in the light of the report's conclusions, the abolition of authorizations;

(1) Whereas, in accordance with Article 75 (1) (a) of the Treaty, the establishment of a common transport policy entails, *inter alia*, laying down common rules applicable to the international carriage of passengers by road;

(2) Whereas such rules are contained in Council Regulation (EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus<sup>(4)</sup>;

(3) Whereas Article 20 of Regulation (EEC) No 684/92 lays down that before 1 July 1995 the Commission

(4) Whereas the definition of the various international coach and bus services should be simplified and improved; whereas those may be classed as regular services, special regular services and occasional services; whereas, therefore, the concept of shuttle service can be abolished;

(5) Whereas a system of market access exempt from authorization should be introduced for all occasional services, special regular services and all own-account transport operations;

(6) Whereas the system of authorization for regular services should be maintained, although a degree of flexibility should be introduced as regards the operating conditions for such services;

(7) Whereas in order to preserve intermodal competition, the railways should after a certain period no longer have priority in the context of the establishment of a coach or bus service;

(8) Whereas, in order to facilitate the inspection of transport operations, the international carriage of passengers by road for hire or reward should be subject to a Community licence drawn up in accordance with a harmonized model and issued

<sup>(1)</sup> OJ No C 203, 13. 7. 1996, p. 11.

<sup>(2)</sup> Opinion delivered on 27 November 1996 (OJ No C 66, 3. 3. 1997, p. 23).

<sup>(3)</sup> Opinion of the European Parliament of 28 November 1996 (OJ No C 380, 16. 12. 1996, p. 40, Council common position of 14 April 1997 and Decision of the European Parliament of . . . (not yet published in the Official Journal).

<sup>(4)</sup> OJ No L 74, 20. 3. 1992, p. 1.

under a swift and efficient administrative procedure;

- (9) Whereas certain time limits involved in the procedure for the issue of authorizations should be made more flexible;
- (10) Whereas Member States must take the necessary measures to implement this Regulation, in particular as regards effective, proportionate and dissuasive penalties;
- (11) Whereas provision should be made for the Commission to be assisted by an advisory committee when adopting measures implementing the Regulation as regards transport documents;
- (12) Whereas an appropriate deadline should be laid down for introducing the Community licence;
- (13) Whereas the application of this Regulation must be monitored on the basis of a report to be presented by the Commission,

HAS ADOPTED THIS REGULATION:

#### Article 1

Regulation (EEC) No 684/92 is hereby amended as follows:

##### 1. In Article 2:

- the following subparagraph shall be added to point 1.1: 'The regular nature of the service shall not be affected by any adjustment to the service operating conditions.'
- paragraph (d) of point 1.2 shall be deleted,
- in point 1.3 the words 'the use of additional vehicles and shorter intervals' shall be deleted,
- point 2 shall be deleted,
- point 3.1 shall be replaced by the following:

'3.1. Occasional services are services which do not meet the definition of regular services, including special regular services and which are characterized above all by the fact that they carry groups of passengers assembled on the initiative of the customer or the carrier himself. The organization of parallel or temporary services comparable to existing regular services and serving the

same public as the latter shall be subject to authorization in accordance with the procedure laid down in Section II.'

- point 3.2 shall be deleted,
- in point 3.4, second subparagraph, the terms 'after consulting the Member States' shall be replaced by 'in accordance with the procedure laid down in Article 16a'.
- point 4 shall be replaced by the following:

#### 4. Own-account transport operations

Own-account transport operations are those carried out for non-commercial and non-profit-making purposes by a natural or legal person, provided that:

- the transport activity is only an ancillary activity for that natural or legal person,
- the vehicles used are the property of that natural or legal person or have been obtained on deferred terms by them or have been the subject of a long-term leasing contract and are driven by a member of the staff of the natural or legal person or by the natural person himself.'

##### 2. The first indent of Article 3 (1) shall be replaced by the following:

'— is authorized in the State of establishment to undertake carriage by means of regular services including special regular services or occasional services by coach and bus.'

##### 3. The following Article shall be added:

#### 'Article 3a

##### Community licence

1. In order to carry out international passenger transport operations by coach and bus, any carrier meeting the criteria laid down in Article 3 (1) must hold a Community licence issued by the competent authorities of the Member State of establishment in accordance with the model set out in the Annex.
2. The competent authorities of the Member State of establishment shall issue the holder with the original of the Community licence, which shall be kept by the carrier, and the number of certified true copies corresponding to the number of vehicles used for the international carriage of passengers at the disposal of the holder of the Community licence,

either in full ownership, or in another form, notably by virtue of an instalment-purchase contract, a hire contract or a leasing contract.

3. The Community licence shall be established in the name of the carrier and shall be non-transferable. A certified true copy of the Community licence shall be carried on the vehicle and shall be presented at the request of any authorized inspecting officer.

4. The Community licence shall be issued for a period of five years which shall be renewable.

5. The Community licence shall replace the document issued by the competent authorities of the Member State of establishment certifying that the carrier has access to the market for the international carriage of passengers by road.

6. When an application for a licence is submitted, and at least every five years thereafter, the competent authorities of the Member State of establishment shall verify whether the carrier meets or continues to meet the conditions laid down in Article 3 (1).

7. Where the conditions referred to in Article 3 (1) are not met, the competent authorities of the Member State of establishment shall refuse to issue or renew a Community licence by means of a reasoned decision.

8. Member States shall guarantee the right of the applicant for, or holder of, a Community licence to appeal against a decision by the competent authorities of the Member State of establishment to refuse or withdraw this licence.

9. Member States shall inform the Commission no later than 31 January of each year of the number of carriers holding a Community licence as at 31 December of the previous year and of the number of certified true copies corresponding to the number of vehicles in circulation on that date.

10. Member States may decide that the Community licence shall also be valid for national transport operations.'

4. Article 4 shall be replaced by the following:

*'Article 4*

#### **Access to the market**

1. Occasional services as defined in Article 2 (3.1) shall not require authorization.

2. Special regular services defined in Article 2 (1.2) shall not require authorization if they are covered by a contract concluded between the organizer and the carrier.

3. Empty journeys by vehicles in connection with the transport operations referred to in paragraphs 1 and 2 shall likewise not require authorization.

4. Regular services as defined in the first subparagraph of Article 2 (1.1) and special regular services not covered by a contract between the organizer and the carrier shall require authorization in accordance with Articles 5 to 10.

5. Arrangements for own-account transport operations are set out in Article 13.'

5. The title of Section II shall be replaced by the title 'REGULAR SERVICES SUBJECT TO AUTHORIZATION'.

6. In Article 5:

— in the second subparagraph of paragraph 1, the first sentence shall be replaced by the following:

'In the case of undertakings associated for the purpose of operating a regular service, the authorization shall be issued in the names of all the undertakings.'

— in paragraph 2, the first sentence shall be replaced by the following:

'2. The period of validity of an authorization shall not exceed five years.'

— paragraph 3 (d) shall be replaced by the following:

'(d) the stops and the timetable',

— in paragraph 4, the terms 'after consultation of the Member States' shall be replaced by 'in accordance with the procedure laid down in Article 16a',

— paragraph 5 shall be replaced by the following:

'5. Authorizations shall entitle their holder(s) to operate regular services in the territories of all Member States over which the routes of the services pass.'

— the following paragraph shall be added:

'6. The operator of a regular service may use additional vehicles to deal with temporary and exceptional situations.

In this case, the carrier must ensure that the following documents are carried on the vehicle:

— a copy of the authorization of the regular service,

— a copy of the contract between the operator of the regular service and the undertaking providing the additional vehicles or an equivalent document,

— a certified true copy of the Community licence issued to the operator of the regular service.'

## 7. Article 6 shall be amended as follows:

— paragraph 1 shall be replaced by the following:

'1. Applications for authorization of regular services shall be submitted to the competent authorities of the Member State in whose territory the place of departure is situated, hereinafter referred to as the "authorizing authority". The place of departure shall mean "one of the termini of the service".'

— in paragraph 2, the terms 'after consultation of the Member States' shall be replaced by 'in accordance with the procedure laid down in Article 16a',

— paragraph 3 shall be replaced by the following:

'3. Persons applying for authorization shall provide any further information which they consider relevant or which is requested by the authorizing authority, in particular a driving schedule making it possible to monitor compliance with Community legislation on driving and rest periods and a copy of the Community licence for international carriage of passengers by road for hire or reward provided for in Article 3 (a).'

## 8. Article 7 shall be replaced by the following:

*'Article 7***Authorization procedure**

1. Authorizations shall be issued in agreement with the authorities of all the Member States in whose territories passengers are picked up or set down. The authorizing authority shall forward to such authorities, as well as to the competent authorities of Member States whose territories are crossed without passengers being picked up or set down, a copy of the application, together with copies of any other relevant documentation, and its assessment.

2. The competent authorities of the Member States whose agreement has been requested shall notify the authorizing authority of their decision on the application within two months. This time limit shall be calculated from the date of receipt of the request for an opinion which is shown in the acknowledgement of receipt. If within this period the authorizing authority has received no reply, the authorities consulted shall be deemed to have given their agreement and the authorizing authority shall grant the authorization.

The authorities of the Member States whose territories are crossed without passengers being picked up or set down may notify the authorizing authority of their comments within the time limits laid down in the first subparagraph.

3. Subject to paragraphs 7 and 8, the authorizing authority shall take a decision on the application within

four months of the date of submission of the application by the carrier.

4. Authorization shall be granted unless:

(a) the applicant is unable to provide the service which is the subject of the application with equipment directly available to him;

(b) in the past the applicant has not complied with national or international legislation on road transport, and in particular the conditions and requirements relating to authorizations for international road passenger services, or has committed serious breaches of legislation in regard to road safety, in particular with regard to the rules applicable to vehicles and driving and rest periods for drivers;

(c) in the case of an application for renewal of authorization, the conditions of authorization have not been complied with;

(d) it is shown that the service in question would directly compromise the existence of regular services already authorized, except in cases in which the regular services in question are carried out by a single carrier or group of carriers only;

(e) it appears that the operation of services covered by the application is aimed only at the most lucrative of the services existing on the links concerned;

(f) a Member State decides on the basis of a detailed analysis that the said service would seriously affect the viability of a comparable rail service on the direct sections concerned. Any decision pursuant to this provision, together with the reasons therefor, shall be notified to the carriers affected.

As from 1 January 2000, in the event that an existing international bus service is seriously affecting the viability of a comparable rail service on the direct sections concerned, a Member State may, with the agreement of the Commission, suspend or withdraw the authorization to run the international bus service after having given six months notice to the carrier.

The fact that a carrier 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.

5. The authorizing authority and the competent authorities of all the Member States involved in the

procedure to reach the agreement provided for in paragraph 1 may refuse applications only on the basis of reasons compatible with this Regulation.

6. If the procedure for reaching the agreement referred to in paragraph 1 does not enable the authorizing authority to decide on an application, the matter may be referred to the Commission within the time limit of five months calculated from the date of submission of the application by the carrier.

7. After consulting the Member States concerned, the Commission shall within 10 weeks take a decision which shall take effect within 30 days of the notification of the Member States concerned.

8. The Commission decision shall continue to apply until such time as agreement is reached between the Member States concerned.

9. Having completed the procedure laid down in this Article, the authorizing authority shall inform all the authorities referred to in paragraph 1 of its decision, sending them a copy of any authorization; the competent authorities of the transit Member States may indicate that they do not wish to be so informed.'

9. In Article 8 (3), second subparagraph the words 'of intervals', shall be added after the word 'adjustment'.

10. Article 9 (4) shall be deleted.

11. The title of Section III shall be replaced by the title 'OCCASIONAL SERVICES AND OTHER SERVICES EXEMPT FROM AUTHORIZATION'.

12. Article 11 shall be replaced by the following:

*'Article 11*

**Journey form**

1. The services referred to in Article 4 (1) shall be carried out under cover of a journey form.

2. A carrier operating occasional services shall fill out a journey form before each journey.

3. The journey form shall contain at least the following information:

- (a) the type of service;
- (b) the main itinerary;
- (c) the carrier(s) involved.

4. The books of journey forms shall be supplied by the competent authorities of the Member State where the transport undertaking is established or by bodies appointed by those authorities.

5. The Commission shall, in accordance with the procedure provided for in Article 16a, lay down the model for the journey form and the way in which it is to be used.'

13. In Article 12, first paragraph, the terms 'of an international shuttle service with accommodation, or' shall be deleted.

14. In Article 13:

- paragraph 2 shall be deleted,
- in paragraph 3, second subparagraph, the term 'after consultation of the Member States' shall be replaced by 'in accordance with the procedure laid down in Article 16a'.

15. In Article 14:

- the following shall be deleted from the introductory part of paragraph 1: 'or a shuttle service',
- the last indent of paragraph 1 shall be replaced by the following:
  - '— the price of transport.'

16. Article 16 shall be replaced by the following:

*'Article 16*

**Penalties and mutual assistance**

1. The competent authorities of the Member State where the carrier is established shall withdraw the Community licence provided for in Article 3a where the holder:

- no longer meets the conditions laid down in Article 3 (1),
- has supplied inaccurate information concerning the data which were required for the issue of the Community licence.

2. The authorizing authority shall withdraw an authorization if the holder no longer fulfils the condition on the basis of which the authorization was issued pursuant to this Regulation, in particular where the Member State in which the carrier is established so requests. The authority shall immediately inform the competent authorities of the Member State concerned.

3. In the case of a serious breach or repeated minor breaches of road safety regulations, in particular with regard to the rules applicable to vehicles, driving and rest periods for drivers and the provision without authorization of parallel or temporary services, as referred to in Article 2 (1.3), the competent authorities of the Member State of establishment of the carrier who committed the breach may, *inter alia*, withdraw the Community licence or make temporary and/or partial withdrawals of the certified true copies of the Community licence.

These penalties shall be determined in accordance with the seriousness of the breach committed by the holder of the Community licence and with the total

number of certified true copies that he possesses in respect of his international trade.

4. The competent authorities of the Member States shall prohibit a carrier from operating on their territory an international passenger service within the meaning of this Regulation if he repeatedly commits serious breaches of the regulations governing road safety, in particular with regard to the rules applicable to vehicles and driving and rest periods for drivers. They shall immediately inform the competent authorities of the Member State concerned.

5. Member States shall on request provide each other with any relevant information in their possession concerning:

— breaches of this Regulation and of any other Community rules applicable to the international carriage of passengers by coach and bus committed in their territory by a carrier from another Member State, and the penalties imposed,

— the penalties imposed on their own carriers in respect of breaches committed in the territory of another Member State.'

17. The following Article shall be inserted:

*'Article 16a*

Where the procedure referred to in this Article is to be followed the Commission shall be assisted by the advisory committee set up by Council Regulation (EC) No .../97 of ... , laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State(\*) and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

(\*) OJ No L ...'

18. The second paragraph of Article 19 shall be replaced by the following:

'Member States shall adopt measures relating in particular to the means of carrying out checks and the system of penalties applicable to infringements of the provisions of this Regulation, and take all the measures necessary to ensure that those penalties are applied. The penalties thus provided for shall be effective, proportionate and dissuasive. Member States shall notify the relevant measures to the Commission within 12 months of the date on which this Regulation comes into force and shall notify any subsequent changes as soon as possible. They shall ensure that all such measures are applied without discrimination as to the nationality or place of establishment of the carrier.'

19. The Annex shall be replaced by that contained in the Annex to this Regulation.

*Article 2*

Before ...(\*), the Member States shall, after consulting the Commission, adopt the measures necessary for the implementation of this Regulation and notify such measures to the Commission.

*Article 3*

No later than 31 December 1999, the Commission shall report to the European Parliament and the Council on the results of applying this Regulation.

*Article 4*

This Regulation shall enter into force on the day following its publication of the *Official Journal of the European Communities*.

It shall apply from ... (\*), except for Article 3, which shall apply from ...(\*\*).

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...

*For the Council  
The President*

(\*) 12 months after the date on which this Regulation comes into force.

(\*\*) 18 months after the date on which this Regulation comes into force.

ANNEX

'ANNEX

EUROPEAN COMMUNITY

(a)

(Heavy-duty paper, blue — dimensions DIN A4)

(First page of the licence)

(Text in the official language(s) or one of the official languages of the Member State issuing the licence)

Distinctive symbol of the Member State<sup>(1)</sup> issuing the licence

Designation of the competent authority or body,

LICENCE No . . .

for the international carriage of passengers by coach and bus for hire or reward

The holder of this licence<sup>(2)</sup> .....

is authorized to carry out international carriage of passengers by road for hire or reward in the territory of the Community pursuant to the conditions laid down by Council Regulation (EEC) No 684/92 of 16 March 1992, as amended by Regulation (EC) No . . ./97 and in accordance with the general provisions of this licence.

Comments: .....

This licence is valid from ..... to .....

Issued in ..... , on .....

.....<sup>(3)</sup>

<sup>(1)</sup> (B) Belgium, (DK) Denmark, (D) Germany, (GR) Greece, (E) Spain, (F) France, (IRL) Ireland, (I) Italy, (L) Luxembourg, (NL) Netherlands, (A) Austria, (P) Portugal, (FIN) Finland, (S) Sweden, (UK) United Kingdom.

<sup>(2)</sup> Full name or business name of the carrier.

<sup>(3)</sup> Signature and stamp of the competent authority or body issuing the licence.

### General provisions

1. This licence is issued pursuant to Council Regulation (EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus, as amended by Regulation (EC) No .../97.
2. This licence is issued by the competent authorities of the Member State of establishment of the carrier for hire or reward who:
  - is authorized in the Member State of establishment to undertake carriage by means of regular services, including special regular services or occasional services by coach and bus,
  - satisfies the conditions laid down in accordance with Community rules on admission to the occupation of road passenger transport operator in national and international transport operations,
  - meets legal requirements on road safety as far as the standards for drivers and vehicles are concerned.

3. This licence permits the international carriage of passengers by coach and bus for hire or reward on all transport links for journeys carried out in the territory of the Community:
  - where the place of departure and place of destination are situated in two different Member States, with or without transit through one or more Member States or third countries,
  - from a Member State to a third country and vice versa, with or without transit through one or more Member States or third countries,
  - between third countries crossing the territory of one or more Member States in transit,and empty journeys in connection with transport operations under the conditions laid down by Regulation (EEC) No 684/92.

In the case of a transport operation from a Member State to a third country and vice versa, Regulation (EEC) No 684/92, is applicable, for the journey made in the territory of the Member State of picking up or setting down, once the necessary agreement between the Community and the third country in question has been concluded.

4. This licence is personal and non-transferable.
5. This licence may be withdrawn by the competent authority of the Member State of issue in particular where the carrier:
  - no longer meets the conditions laid down in Article 3 (1) of Regulation (EEC) No 684/92,
  - has supplied inaccurate information regarding the data required for the issue or renewal of the licence,
  - has committed a serious breach or repeated minor breaches of road safety regulations, in particular with regard to the rules applicable to vehicles, driving and rest periods for drivers and the provision, without authorization, of parallel or temporary services as referred to in Article 2 (1.3) of Regulation (EEC) No 684/92. The competent authorities of the Member State of establishment of the carrier who committed the breach may, *inter alia*, withdraw the Community licence or make temporary and/or partial withdrawals of the certified true copies of the Community licence.

These penalties are determined in accordance with the seriousness of the breach committed by the holder of the Community licence and with the total number of certified true copies that he possesses in respect of his international trade.

6. The original of the licence must be kept by the carrier. A certified true copy of the licence must be carried on the vehicle carrying out an international transport operation.
7. This licence must be presented at the request of any inspecting officer.
8. The holder must, on the territory of each Member State, comply with the laws, regulations and administrative measures in force in that State, particularly with regard to transport and traffic.

9. 'Regular services' means services which provide for the carriage of passengers at specified intervals along specified routes, passengers being taken up and set down at predetermined stopping points. Regular services shall be open to all, subject, where appropriate, to compulsory reservation.

The regular nature of the service shall not be affected by any adjustment to the service operating conditions.

Regular services require authorization.

'Special regular services' means regular services which provide for the carriage of specified categories of passengers, to the exclusion of other passengers, at specified intervals along specified routes, passengers being taken up and set down at predetermined stopping points.

Special regular services shall include:

- (a) the carriage of workers between home and work;
- (b) carriage to and from the educational institution for school pupils and students;
- (c) the carriage of soldiers and their families between their homes and the area of their barracks.

The fact that a special service may be varied according to the needs of users shall not affect its classification as a regular service.

Special regular services do not require authorization if they are covered by a contract between the organizer and the carrier.

The organization of parallel or temporary services, serving the same public as existing regular services, requires authorization.

'Occasional services' means services which do not fall within the definition of regular services, including special regular services, and whose main characteristic is that they carry groups constituted on the initiative of a customer or of the carrier himself. The organization of parallel or temporary services comparable to existing regular services and serving the same public as the latter shall be subject to authorization in accordance with the procedure laid down in Section II of Regulation (EEC) No 684/92. These services shall not cease to be occasional services solely because they are provided at certain intervals.

Occasional services do not require authorization.'

---

## STATEMENT OF THE COUNCIL'S REASONS

## I. INTRODUCTION

On 10 May 1996 the Commission sent the Council a proposal, based on Article 75 (1) of the EC Treaty, for a Regulation amending Regulation (EEC) No 684/92 on common rules for the international carriage of passengers by coach and bus<sup>(1)</sup>.

The European Parliament and the Economic and Social Committee delivered their opinions on 28 November 1996<sup>(2)</sup> and 27 November 1996<sup>(3)</sup> respectively.

In the light of the European Parliament's opinion the Commission sent the Council an amended proposal<sup>(4)</sup> on 28 February 1997.

On 14 April 1997, the Council adopted its common position in accordance with Article 189c of the EC Treaty.

## II. AIM OF THE PROPOSAL

The Commission's amended proposal seeks to simplify and clarify the provisions of the existing Regulation and ensure progress towards liberalization.

It provides, *inter alia*, for:

- abolition of the category of international shuttle services which will be treated as regular services or occasional services depending on their particular features,
- abolition of the category of residual occasional services,
- liberalization of all special regular services (exempt from authorization if covered by a contract),
- exclusion from the scope of the Regulation of regular services carried out in the context of urban and suburban transport services between two or more Member States, referred to as 'urban carriage in frontier areas',
- liberalization of own-account transport operations, which remain subject only to a system of certificates,
- improvement and simplification of the definition of occasional services,
- introduction of the Community licence for the international carriage of passengers by coach and bus.

This licence would replace the document(s) issued by the Member State of establishment certifying that the carrier is admitted to the international market in the carriage in question. With a view to facilitating checks by the Member States, with particular reference to occasional services, the licence would constitute proof that the carrier is authorized in the Member State of establishment to undertake such carriage and that he satisfies Community rules concerning access to the profession and the rules on road safety. A carrier holding a licence could therefore carry out international carriage in a Member State other than the Member State of establishment without having to produce

<sup>(1)</sup> OJ No C 203, 13. 7. 1996, p. 11. Regulation (EEC) No 684/92 (OJ No L 74, 20. 3. 1992, p. 1).

<sup>(2)</sup> OJ No C 380, 16. 12. 1996, p. 40.

<sup>(3)</sup> OJ No C 66, 3. 3. 1997, p. 23.

<sup>(4)</sup> OJ No C 107, 5. 4. 1997, p. 3.

papers with the exception, as regards regular services, of the specific authorization and, as regards occasional services, of the journey form.

The licence system would also make it easier to apply penalties.

The copy of the Community licence carried on the vehicle would be solely that of the operator of the regular service with no requirement for the undertaking providing the additional vehicles, if it possessed a licence, to supply a copy of its licence,

- restoration of freedom of competition between regular coach and bus services and regular rail services by deleting point (ii) of Article 7 (4) (b) of Regulation (EEC) No 684/92,
- extension of certain time limits laid down under the procedure for authorizing regular services,
- harmonization and simplification of a number of administrative procedures laid down in the Regulation,
- implementation of the Regulation as from 1 June 1996.

The Commission proposal classifies the various categories of services as follows and lays down the following means of access to the market for each of these categories:

- *regular services*, subject to authorization,
- *special regular services*, all exempt from authorization (provided that they are covered by a contract between the organizer and the carrier),
- *occasional services*, exempt from any authorization,
- *own-account transport operations*, exempt from any authorization.

### III. ANALYSIS OF THE COMMON POSITION

The Council's common position essentially corresponds to the Commission proposal, with a number of amendments, the chief of which are as follows:

#### (a) Urban carriage in frontier areas

In Article 2, point 1.2 (d), and Article 4 (2) of Regulation (EEC) No 684/92, urban carriage in frontier areas is considered to be a special regular service exempt from authorization provided it is covered by a contract between the organizer and the carrier.

The Commission proposes that urban carriage in frontier areas be considered as a special case of regular services but that the *acquis communautaire* as regards liberalization be retained. For this purpose, it proposes:

- in Article 1 (1), the addition of a paragraph to point 1.1 of Article 2 of the existing Regulation in order to define urban carriage in frontier areas,
- in Article 1 (2), deletion of point 1.2 (d) of Article 2 of the existing Regulation,
- in Article 4 (2) (which states which services are exempt from authorization if covered by a contract), the addition of a reference to urban carriage in frontier areas.

The common position (new Article 1 (1), second indent) deletes point 1.2 (d) only of Article 2 of the existing Regulation.

Urban carriage in frontier areas would be considered as regular services requiring authorization, unless Member States made use of Article 18 of Regulation (EEC) No 684/92 to agree bilaterally or multilaterally on their liberalization.

**(b) Alteration to certain operating conditions for regular services: intervals**

The common position provides in Article 1, point 1, third indent (Article 2 of the Regulation, new point 1.3) and in Article 1, point 9 (Article 8 (3) of the Regulation, new second subparagraph) for the relaxation of the arrangements applicable to the operating conditions for regular services as regards the alteration of intervals.

**(c) Establishment of an advisory committee**

The draft Regulation provides for an advisory committee to assist the Commission when the latter adopts implementing measures, especially where they concern transport documents (see in Article 1, point 1, seventh indent (Article 2, point 3.4, second subparagraph of the Regulation), point 6, fourth indent (Article 5 (4) of the Regulation), point 7, second indent (Article 6 (2) of the Regulation), point 12 (Article 11 (5) of the Regulation), point 14, second indent (second subparagraph of Article 13 (3) of the Regulation) and point 17 (Article 16a of the Regulation)).

**(d) Competition between regular coach and bus services and comparable rail services**

Article 7 (4) (b) (ii) of Regulation (EEC) No 684/92 provides that an application for the authorization of a regular international coach and bus service may be rejected if it is shown that the service would seriously affect the viability of a comparable rail service on the direct sections concerned.

In its proposal, the Commission envisages reinstating the principle of free competition between different modes of transport. To this end it proposes that Article 7 (4) (b) (ii) of the existing Regulation should be deleted.

Article 1, point 8, of the Council's common position (new Article 7 (4) (f) of the Regulation) provides that, up to 31 December 1999, a Member State may, on the basis of a detailed analysis, refuse authorization for a regular international coach and bus service on the grounds that the service would seriously affect the viability of a comparable rail service on the direct sections concerned.

The Member State has to notify carriers concerned of the decision it has taken and the reasons for it.

The common position provides for a safeguard clause to apply as from 1 January 2000: a Member State will be able, with the agreement of the Commission, to suspend or withdraw an authorization it has issued on the basis of the provision mentioned above, after giving the carrier six months' notice.

**(e) Local excursions**

The Commission proposes the deletion of Article 12 of Regulation (EEC) No 684/92. This Article lays down in particular that within the framework of an international shuttle service with accommodation or an international occasional service, a carrier may carry out local excursions in a Member State other than that in which it is established.

Article 1, point 13, of the common position provides for the retention of Article 12, since local excursions carried out in the framework of international transport represent a stage in such transport if they are intended for non-resident passengers carried by the international carrier.

The words 'international shuttle service with accommodation' have been deleted, since the common position, in line with the Commission proposal, provides for the abolition of the shuttle services category and regards shuttle services with accommodation as occasional services.

(f) **Date of application of the Regulation**

The common position lays down in Article 4 that the Regulation will be applied 12 months after its entry into force but that the Community licence provided for in Article 1, point 3, (new Article 3a of the Regulation) will be implemented 18 months after the entry into force of the Regulation, in view of the complexity of the measures to be taken.

#### IV. EUROPEAN PARLIAMENT AMENDMENTS

##### 1. European Parliament amendments adopted by the Council

(a) *Accepted by the Commission*

The Council followed the Commission proposal in adopting, as to substance if not formulation, the following European Parliament amendments:

- in the eighth recital: the part of Amendment 5 concerning the procedure for issuing the Community licence,
- in Article 1, point 1, fifth indent: the part of Amendment 12 that seeks to replace the first paragraph of the new definition of occasional services contained in Article 2, point 3.1, of the Regulation,
- in Article 1, point 1, eighth indent: Amendment 13, which seeks to replace the definition of own-account transport operations contained in Article 2, point 4, of the Regulation,
- in Article 1, point 3: Amendment 17, whereby the Regulation would include a provision (new Article 3a) concerning the introduction of a Community licence for the international carriage of passengers by coach and bus,
- in Article 1, point 6, sixth indent: Amendment 18 which seeks to include in Article 5 of the Regulation a new paragraph 6 on additional vehicles.

(b) *Not accepted by the Commission*

Article 3 incorporates that part of Amendment 24 which provides for the Commission to report on the application of the Regulation not only to the Council but also to the European Parliament.

In view of the time required for the adoption of the Regulation, the deadline given by the common position for submission of the report is not 1 July 1998 as in the amendment but 31 December 1999.

##### 2. European Parliament amendments not adopted by the Council

(a) *Accepted by the Commission*

The Council saw no need to adopt Amendment 1, whereby the Regulation would have included a new recital referring to the correspondence between liberalization and phased socioeconomic, fiscal and technical harmonization in the field of road passenger transport.

(b) *Partially accepted by the Commission*

As indicated in III (a) above, the Council regarded urban carriage in frontier areas as regular services and did not accept the change to Article 2 of Regulation (EEC) No 684/92 as contained in Amendment 11 or the insertion in the Regulation of the corresponding recital contained in Amendment 6; these two amendments sought to include within the scope of the Regulation regular international urban, suburban and regional services pending the Council's adoption of general legislation on public service concessions.

The Council did not adopt the part of Amendment 7 which refers to a Community action programme and a European Parliament resolution (this part was also rejected by the Commission). Nor did it adopt the part of Amendment 7, accepted by the Commission, which seeks the inclusion of a recital on the full accessibility of bus and coach services. It saw this as a matter to be dealt with in specific Community legislation.

(c) *Not accepted by the Commission*

The Council did not adopt:

- Amendment 2, whereby the Regulation would include a recital envisaging freedom of choice for users as regards their mode of transport provided that one of the objectives of the common transport policy, namely the reduction of road traffic, was respected. The Council pointed out that the reduction of coach and bus traffic was not one of the objectives of the common transport policy,
- Amendments 3 and 12 (the latter as regards the part which does not concern the new definition of occasional services), the aim of which is that the Regulation should include a recital and a provision concerning a new classification of international passenger services, reducing them to two categories: regular and non-regular services (with non-regular services further classified as special or occasional services). Other amendments follow from the new classification, namely Amendments 4, 22 and 23, which seek to amend a recital, a title and a provision respectively. The Council thought it preferable to keep the existing terminology for classifying the different services on the grounds that it was familiar and any change might cause problems for operators. The inclusion of special regular services among non-regular services was not acceptable since most of the elements involved in the definition of special regular services formed part of regular services,
- Amendment 12 (new definition of occasional services, second paragraph), whereby the definition of occasional services would include the possibility for a Member State to make an occasional service subject to authorization where it considered that the service 'would directly compromise the existence of regular services already authorized'.

The Council pointed out that, within the meaning of Article 7 (4) (b) of Regulation (EEC) No 684/92, authorization could be refused 'if it is shown that the service in question would directly compromise the existence of 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'. Thus the occasional service in question would be used only very rarely,

- the part of Amendment 5 that seeks to amend a recital (the eighth in the common position) so as to point out that the Community licence is required in the case of own-account carriers as well.

The Council commented that the European Parliament should also have proposed the inclusion of a provision to this effect, and said there was no need to require own-account carriers to hold a Community licence because such carriers did not meet the conditions laid down in accordance with Community rules on admission to the occupation of road passenger transport operator in national and international transport operations,

- Amendment 8, whereby the Regulation would include a recital referring to the Commission's intentions with regard to extending the scope of the Regulation.

The Council saw no need to make such a reference in the present Regulation,

- Amendments 9 and 26, which would insert a recital and a provision to the effect that before 30 June 1997 the Commission would submit a consolidated text of Regulation (EEC) No 684/92 that also incorporated two Commission Regulations on control documents and international passenger transport documents.

The Council considered that consolidation was not part of the object of the Regulation and that it was preferable not to include Commission Regulations in a Council Regulation since any subsequent adjustment to them could be made only by means of a Council Regulation,

- Amendment 10, which would insert a recital on the necessity for the Council to authorize the Commission to start negotiations with third countries on non-occasional international passenger transport by coach and bus. The Council thought this amendment irrelevant to the aim of the Regulation,
- Amendments 15 and 16, which seek to alter the conditions of access to the market laid down in Article 3 of the existing Regulation so as to require that own-account carriers and carriers for hire or reward should, as regards the rules applicable to drivers and vehicles, fulfil not only the legal provisions on road safety, as stipulated by the existing Regulation, but also the legal provisions in the social field. The Council considered that these amendments were extraneous to the aim of the Regulation,
- Amendment 19, which would amend Article 6 of Regulation (EEC) No 684/92 (Article 1, point 7, first indent, of the common position) to restrict applications for regular services to services on routes where a public transport service already existed.

The Council thought this amendment unclear, since it could be argued, *a contrario*, that the carrier who was the first to work a particular route was not subject to authorization,

- Amendment 20, amending Article 7 (4) (b) of Regulation (EEC) No 684/92 (Article 1, point 8, of the common position) so that authorization to carry out regular services is refused if an applicant has committed serious breaches of

legislation in regard to roadworthiness testing; the common position refers to breaches of the rules applicable to vehicles.

The Council thought it preferable to have a broader provision that also took account of the other rules applicable to vehicles,

- Amendment 21, which seeks to amend Article 7 (4) (d) of Regulation (EEC) No 684/92 (Article 1, point 8, of the common position); under this provision, authorization is not granted if the service in question directly compromises the existence of regular services already authorized. The amendment aims to clarify the grounds for refusing authorization by providing that the competent authorities must refuse authorization if the service in question compromises the economic and financial balance of regular urban and regional services already authorized.

The Council pointed out that this amendment conflicted with Amendment 11, which provided for regular urban, suburban and regional services to be excluded from the scope of the Regulation,

- a part of Amendment 24. As indicated above, the Council accepted the part of this amendment which relates to the submission by the Commission to the European Parliament and the Council of the report on the results of applying the proposed Regulation, although it would not be possible for the report to be submitted before 1 July 1998 since it was likely that the Regulation would have been adopted only one year previously.

The Council also took the view that, since the common position already involved an extension of the scope of Regulation (EEC) No 684/92, the Commission should not be expected to submit by a certain date, as envisaged in the amendment, a new proposal for a Regulation on the further extension of the scope of the Regulation,

- Amendment 25, whereby the deadline for implementing the Regulation would be 30 June 1997.

As indicated in III (f) above, the Council thought Member States should be allowed 12 months from the date on which the Regulation came into force in order to adopt the measures necessary for the implementation of the Regulation and 18 months to adopt the measures relating to the Community licence.

---

## COMMON POSITION (EC) No 22/97

adopted by the Council on 14 April 1997

**with a view to adopting Council Regulation (EC) No .../97 of ... laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State**

(97/C 164/02)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission<sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 189c of the Treaty<sup>(3)</sup>,

inequality in the conditions of competition because of their nationality and country of establishment, and hence promote the gradual approximation of national laws;

(5) Whereas the definitions of the various coach and bus services should be the same as those adopted in the context of international transport;

(6) Whereas non-resident carriers should be allowed to operate certain forms of coach and bus service, bearing in mind the specific characteristics of each form of service;

(7) Whereas the provisions applicable to cabotage transport operations should be established;

(8) Whereas the provisions of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services<sup>(6)</sup> apply in cases where, for the provision of special regular services, carriers post workers, from the Member State where they ordinarily work, who have an employment relationship with those carriers;

(9) Whereas, where regular services are concerned, only regular services provided as part of a regular international service, excluding urban and suburban services, should be opened up to cabotage, subject to certain conditions, and in particular to the legislation in force in the host Member State;

(10) Whereas provisions should be adopted so that action can be taken in the event of serious disturbance of the transport markets affected;

(11) Whereas an advisory committee should be set up with the task of assisting the Commission in drawing up documents relating to cabotage transport operations in the form of occasional services and advising the Commission on safeguard measures;

<sup>(1)</sup> OJ No C 60, 29. 2. 1996, p. 10.

<sup>(2)</sup> Opinion delivered on 25 September 1996 (OJ No C 30, 30. 1. 1997, p. 40).

<sup>(3)</sup> Opinion of the European Parliament of 28 November 1996 (OJ No C 380, 16. 12. 1996, p. 35), Council common position of 14 April 1997 and Decision of the European Parliament of ... (not yet published in the Official Journal).

<sup>(4)</sup> OJ No L 251, 29. 8. 1992, p. 1.

<sup>(5)</sup> Judgment of 1 June 1994, Case C-388/92, European Parliament v. Council (ECR 1994, p. 1-2081).

<sup>(6)</sup> OJ No L 18, 21. 1. 1997, p. 1.

- (12) Whereas it is desirable that Member States should grant each other mutual assistance with a view to the sound application of this Regulation, particularly in respect of penalties applicable in the event of infringements;
- (13) Whereas it is for the Member States to adopt the measures necessary for the implementation of this Regulation;
- (14) Whereas the application of this Regulation should be monitored by means of a report to be submitted by the Commission;
- (15) Whereas the aforementioned judgment of the Court of Justice, which declared Regulation (EEC) No 2454/92 void, upholds the effects of the Regulation until such time as the Council has adopted new legislation on the matter; whereas this Regulation will not be applied until 18 months after its entry into force; whereas it must therefore be considered that the effects of the voided Regulation will persist until this Regulation has been fully implemented,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

Any carrier who operates road passenger transport services for hire or reward, and who holds the Community licence provided for in Article 3a of Council Regulation (EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus<sup>(1)</sup>, shall be permitted, under the conditions laid down in this Regulation and without discrimination on grounds of the carrier's nationality or place of establishment, temporarily to operate national road passenger services for hire or reward in another Member State, hereinafter referred to as the 'host Member State', without being required to have a registered office or other establishment in that State.

Such national transport services are hereinafter referred to as 'cabotage transport operations'.

#### *Article 2*

For the purposes of this Regulation:

1. 'Regular services' means services which provide for the carriage of passengers at specified intervals along specified routes, passengers being taken up and set down at predetermined stopping points. Regular services shall be open to all, subject, where appropriate, to compulsory reservation.

<sup>(1)</sup> OJ No L 74, 20. 3. 1992, p. 1. Regulation as amended by Regulation (EC) No .../97 (not yet published in the Official Journal).

The fact that the operating conditions of the service may be adjusted shall not affect its classification as a regular service.

2. 'Special regular services' means regular services which provide for the carriage of specified categories of passengers, to the exclusion of other passengers, at specified intervals along specified routes, passengers being taken up and set down at predetermined stopping points.

Special regular services shall include:

- (a) the carriage of workers between home and work;
- (b) carriage to and from the educational institution for school pupils and students;
- (c) the carriage of soldiers and their families between their homes and the area of their barracks.

The fact that a special service may be varied according to the needs of users shall not affect its classification as a regular service.

3. 'Occasional services' means services which do not fall within the definition of regular services, including special regular services, and whose main characteristic is that they carry groups constituted on the initiative of a customer or of the carrier himself. These services shall not cease to be occasional services solely because they are provided at certain intervals.
4. 'Vehicles' means motor vehicles which, by virtue of their type of construction and equipment, are suitable for carrying more than nine persons, including the driver, and are intended for that purpose.

#### *Article 3*

Cabotage transport operations shall be authorized for the following services:

1. special regular services provided that they are covered by a contract concluded between the organizer and the carrier;
2. occasional services;
3. the regular services, 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 Regulation (EEC) No 684/92.

Cabotage transport cannot be performed independently of such international service. Urban and suburban services shall be excluded from the scope of this point. 'Urban and suburban services'

means transport services meeting the needs of an urban centre or conurbation, and transport needs between it and the surrounding areas.

#### Article 4

1. The performance of the cabotage transport operations referred to in Article 3 shall be subject, save as otherwise provided in Community legislation, to the laws, regulations and administrative provisions in force in the host Member State in relation to the following areas:

- (a) rates and conditions governing the transport contract;
- (b) weights and dimensions of road vehicles; such weights and dimensions may, where appropriate, exceed those applicable in the carrier's Member State of establishment, but they may under no circumstances exceed the technical standards set out in the certificate of conformity;
- (c) requirements relating to the carriage of certain categories of passengers, namely schoolchildren, children and persons with reduced mobility;
- (d) driving and rest time;
- (e) VAT (value-added tax) on transport services; in this area Article 21 (1) (a) of Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — common system of value-added tax: uniform basis of assessment<sup>(1)</sup> shall apply to the services referred to in Article 1 of this Regulation.

2. Save as otherwise provided in Community legislation, cabotage transport 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 authorizations, tendering procedures, the routes to be operated and the regularity, continuity and frequency of services as well as itineraries.

3. The technical standards of construction and equipment which must be met by vehicles used to carry out cabotage transport operations shall be those laid down for vehicles put into circulation in international transport.

4. The national provisions referred to in paragraphs 1 and 2 shall be applied by the Member States to non-resident carriers on the same conditions as those imposed on their own nationals, so as effectively to prevent any open or hidden discrimination on grounds of nationality or place of establishment.

5. If it is established that, in the light of experience, the list of areas covered by the host Member State's

provisions, as referred to in paragraph 1, needs to be amended, the Council shall do so by a qualified majority, on a proposal from the Commission.

#### Article 5

The Community licence or a certified true copy thereof shall be kept on board the vehicle and be produced when requested by an authorized inspecting officer.

#### Article 6

1. Cabotage transport operations in the form of occasional services shall be carried out under cover of a control document, the journey form, which must be kept on board the vehicle and be produced when requested by an authorized inspecting officer.

2. The journey form, the model for which shall be adopted by the Commission in accordance with the procedure laid down in Article 8, shall comprise the following information:

- (a) the points of departure and destination of the service;
- (b) the date of departure and the date on which the service ends.

3. The journey forms shall be supplied in books certified by the competent authority or agency in the Member State of establishment. The model for the book of journey forms shall be adopted by the Commission in accordance with the procedure laid down in Article 8.

4. In the case of special regular services, the contract concluded between the carrier and the transport organizer, or a certified true copy of the contract, shall serve as the control document.

However, the journey form shall be completed in the form of a monthly statement.

5. The journey forms used shall be returned to the competent authority or agency in the Member State of establishment in accordance with procedures to be laid down by that authority or agency.

#### Article 7

1. At the end of each quarter and within three months, which may be reduced by the Commission to one month in the case referred to in Article 9, the competent authority or agency in each Member State shall communicate to the Commission the data concerning cabotage transport operations, in the form of special regular services and occasional services, carried out during the quarter in question by resident carriers.

The communication shall be effected by means of a table conforming to the model adopted by the Commission in accordance with the procedure laid down in Article 8.

<sup>(1)</sup> OJ No L 145, 13. 6. 1977, p. 1. Directive as last amended by Directive 91/680/EEC (OJ No L 376, 31. 12. 1991, p. 1).

2. Once a year the competent authorities in the host Member State shall send the Commission statistics on the number of authorizations issued for cabotage transport operations in the form of the regular services referred to in Article 3 (3).

3. The Commission shall send the Member States, as soon as possible, summary statements drawn up on the basis of the data submitted under paragraph 1.

#### Article 8

Whenever reference is made to the procedure laid down in this Article the Commission shall be assisted by the advisory committee referred to in Article 10.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

#### Article 9

1. In the event of serious disturbance of the internal transport market in a given geographical area due to or aggravated by cabotage, any Member State may refer the matter to the Commission with a view to the adoption of safeguard measures and shall provide the Commission with the necessary information and notify it of the measures it intends to take as regards resident carriers.

2. For the purposes of paragraph 1:

— 'serious disturbance of the internal transport market in a given geographical area' means the occurrence on that market of problems specific to it, such that there is a serious and potentially enduring excess of supply over demand, implying a threat to the financial stability and survival of a significant number of road passenger transport undertakings,

— 'geographical area' means an area comprising part or all of the territory of a Member State or including part or all of the territory of other Member States.

3. The Commission shall examine the situation and, after consulting the advisory committee referred to in

Article 10, shall decide within one month of receipt of the relevant Member State's request whether or not safeguard measures are necessary and shall adopt them if they are necessary.

The measures introduced in accordance with this Article shall remain in force for a period not exceeding six months, renewable once for the same period.

The Commission shall without delay notify the Member States and the Council of any decision taken pursuant to this paragraph.

4. If the Commission decides to take safeguard measures concerning one or more Member States, the competent authorities of the Member States involved shall be required to take measures of equivalent scope in respect of resident carriers and shall inform the Commission thereof.

These measures shall be implemented no later than the same date as the safeguard measures decided on by the Commission.

5. Each Member State may refer a Commission decision as referred to in paragraph 3 to the Council within 30 days of its notification.

The Council, acting by a qualified majority within 30 days of referral by a Member State or, if there are referrals by more than one Member State, of the first referral, may take a different decision.

The limits of validity laid down in the second subparagraph of paragraph 3 shall apply to the Council's decision.

The competent authorities of the Member States concerned shall be bound to take measures of equivalent scope in respect of resident carriers and shall inform the Commission thereof.

If the Council takes no decision within the period laid down in the second subparagraph, the Commission decision shall become final.

6. Where the Commission considers that the measures referred to in paragraph 3 need to be prolonged, it shall submit a proposal to the Council, which shall take a decision by qualified majority.

#### Article 10

1. The Commission shall be assisted by an advisory committee composed of representatives of the Member States and chaired by a representative of the Commission.

The Committee, acting in accordance with the procedure laid down in Article 8, shall assist the Commission in drawing up a model for the journey forms, the book of journey forms and the table referred to in Articles 6 and 7.

2. In addition, the tasks of the Committee shall be to advise the Commission on:

- any request from a Member State pursuant to Article 9 (1),
- measures intended to resolve a serious disturbance of the market as referred to in Article 9, in particular the practical application of such measures.

3. The Committee shall draw up its rules of procedure.

#### Article 11

1. Member States shall assist one another in applying this Regulation.

2. Without prejudice to criminal prosecution, the host Member State may impose penalties on non-resident carriers who have committed infringements of this Regulation or of Community or national transport regulations within its territory on the occasion of a cabotage transport operation.

The penalties shall be imposed on a non-discriminatory basis and in accordance with paragraph 3.

3. The penalties referred to in paragraph 2 may, *inter alia*, consist of a warning or, in the event of serious or repeated infringements, a temporary ban on cabotage transport operations within the territory of the host Member State where the infringement was committed.

Where a falsified Community licence, falsified authorization or falsified certified true copy thereof is produced, the falsified document shall be withdrawn immediately and, where appropriate, forwarded as soon as possible to the competent authority of the carrier's Member State of establishment.

4. The competent authorities of the host Member State shall inform the competent authorities of the Member State of establishment of the infringements recorded and any penalties imposed on the carrier and may, in the event of serious or repeated infringements, at the same time transmit a request that a penalty be imposed.

In the event of serious or repeated infringements, the competent authorities of the Member State of establishment shall decide whether an appropriate penalty should be imposed on the carrier concerned; these authorities shall take into account any penalty already

imposed in the host Member State and ensure that the penalties already imposed on the carrier concerned are, as a whole, proportional to the infringement or infringements which gave rise to such penalties.

The penalty imposed by the competent authorities of the Member State of establishment, after consulting the competent authorities of the host Member State, may extend to withdrawal of authorization to pursue the occupation of road passenger transport operator.

The competent authorities of the Member State of establishment may also, pursuant to its national law, arraign the carrier concerned before a competent national court or tribunal.

They shall inform the competent authorities of the host Member State of the decisions taken pursuant to this paragraph.

#### Article 12

Member States shall ensure that carriers may appeal to the courts against any administrative penalty imposed on them.

#### Article 13

The Commission shall report to the European Parliament and the Council by 31 December 1999 at the latest on the application of this Regulation and, in particular, on the impact of cabotage transport operations on national transport markets.

#### Article 14

Member States shall adopt in good time the laws, regulations and administrative provisions necessary for implementation of this Regulation and shall communicate them to the Commission.

#### Article 15

This Regulation shall enter into force on the first day following its publication in the *Official Journal of the European Communities*.

It shall apply from ...(\*).

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...

For the Council  
The President

(\*) 18 months after the entry into force of this Regulation.

## STATEMENT OF THE COUNCIL'S REASONS

### I. INTRODUCTION

On 15 January 1996 the Commission sent the Council a proposal, based on Article 75 of the EC Treaty, for a Regulation laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State<sup>(1)</sup>.

The European Parliament and the Economic and Social Committee delivered their opinions on 28 November 1996<sup>(2)</sup> and 25 September 1996<sup>(3)</sup> respectively.

In the light of the European Parliament's opinion, the Commission sent the Council an amended proposal<sup>(4)</sup> on 28 February 1997.

On 14 April 1997, the Council adopted its common position in accordance with Article 189c of the Treaty.

### II. AIM OF THE PROPOSAL

The Commission's amended proposal is intended to replace and amend Regulation (EEC) No 2454/92 of 23 July 1992<sup>(5)</sup> following the Court of Justice's judgment of 1 June 1994 in Case C-388/92 (European Parliament v. Council)<sup>(6)</sup>, which annulled the aforementioned Regulation.

In order not to call into question the degree of liberalization which Regulation (EEC) No 2454/92 sought to achieve, the Court upheld the effects of the annulled Regulation 'until the Council, after proper consultation of the Parliament, has adopted new legislation in the matter'.

The amended proposal broadly duplicates the content of the annulled Regulation, but its scope is wider.

It provides for the lifting of certain restrictions imposed by the Regulation regarding special regular services, and introduces cabotage for regular services subject to certain conditions. The Commission states that its intention in so doing is to apply the principle of freedom to provide services to road passenger cabotage operations, which entails eliminating all restrictions on service providers on grounds of their nationality or of the fact that they are established in a Member State other than the one in which the service is to be provided.

The Commission endorsed the Council's common position and amended its proposal accordingly.

### III. THE COUNCIL'S COMMON POSITION

The Council's common position provides:

- (a) in Article 3 (3) for the introduction of cabotage for regular services performed by a non-resident carrier in the course of a regular international service, and for the exclusion of urban and suburban services from the scope of this provision;

<sup>(1)</sup> OJ No C 60, 29. 2. 1996, p. 10.

<sup>(2)</sup> OJ No C 380, 16. 12. 1996, p. 35.

<sup>(3)</sup> OJ No C 30, 30. 1. 1997, p. 40.

<sup>(4)</sup> OJ No C 124, 21. 4. 1997, p. 73.

<sup>(5)</sup> Council Regulation (EEC) No 2454/92 of 23 July 1992 laying down the conditions under which non-resident carriers may operate national road passenger services within a Member State (OJ No L 251, 29. 8. 1992, p. 1).

<sup>(6)</sup> ECR, 1994-I, p. 2081.

- (b) in Article 4 (2) for the cabotage services provides for in Article 3 (3) to be subject to the legislation of the host Member State;
- (c) in Article 10 (1) for an advisory committee to be set up to assist the Commission, using Procedure I of the Committee Procedure Decision (Article 8), in drawing up the model for the journey form (Article 6 (2)), the model for the book of journey forms (Article 6 (3)) and the model for the statistical table (Article 7 (1)).

In its eighth recital, the common position notes that the provisions of the Directive of the European Parliament and of the Council 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of the provision of services<sup>(1)</sup> apply in the case where, for the provision of specialized regular services, transporters post workers in their employment from the Member State where they habitually work.

#### IV. EUROPEAN PARLIAMENT AMENDMENTS

##### 1. European Parliament amendments approved by the Council and accepted by the Commission

The Council approved, in content if not in wording, the following European Parliament amendments:

- Amendment 1, for the inclusion in the Regulation of a new recital on the gradual approximation of national legislations, adopted as the fourth recital in the common position,
- Amendment 14, for the deletion of Article 4 of the original Commission proposal, which lays down the legal system applicable to cabotage operations performed in the course of a regular international service, as provided for in Article 3 (3) of the common position; pursuant to Article 4 (2) of the common position, such operations are subject to the provisions in force in the host Member State regarding requirements for authorizations, tendering procedures, connections to be served, regularity, continuity, frequency and routes,
- the part of Amendment 16 providing that the Commission shall report on the application of the Regulation not only to the Council but also to the European Parliament, adopted as Article 13 of the common position.

##### 2. European Parliament amendments not approved by the Council and not accepted by the Commission

The Council did not approve:

- Amendments 2 and 3, which provide for the inclusion in the Regulation of two recitals, one to avoid the risk of having 15 different national systems for cabotage, the other intended to note the parallelism between liberalization and gradual harmonization in the field of passenger road transport;

the Council takes the view that these objectives are already taken into account in other recitals and in the enacting terms of the common position,

- Amendment 4, for the inclusion in the Regulation of a new recital on optimizing the degree of capacity utilization of vehicles;

the Council regards this amendment as pointless, given the purpose of the Regulation,

<sup>(1)</sup> OJ No L 18, 21. 1. 1997, p. 1.

- Amendment 5, which provides for the inclusion in the Regulation of a recital providing for free choice for users of their mode of transport, provided they respect one of the goals of the common transport policy, namely the reduction of road traffic;

the Council notes that the reduction of road traffic of coach and bus passengers is not one of the goals of the common transport policy,

- Amendment 6, for the inclusion in the Regulation of a recital on full accessibility for bus services;

the Council believes that this is a question to be settled in the framework of specific Community legislation,

- Amendment 7, aimed at inserting a recital in the Regulation referring to the Commission's intentions regarding the extension of the scope of the Regulation;

the Council does not think it appropriate to make such a reference in this Regulation,

- Amendments 8 and 9, aimed at including two new recitals in the Regulation, one relating to the application of the same system to cabotage services provided by a firm resident in the host Member State as to those provided by a non-resident firm, and the other to the harmonization of the regulatory conditions applicable to cabotage transport;

the Council points out that these amendments are no longer necessary, since the common position restricts itself to introducing cabotage for regular services provided in the course of regular international transport and such cabotage operations are subject to the national legislation of the host Member State (see Article 4 (2) of the common position),

- Amendment 10, for the inclusion of a new recital in the Regulation recommending that cabotage operators have, or appoint a representative on the territory of the host Member State;

the Council regards this provision as incompatible with the free provision of services,

- Amendment 11, which seeks to stipulate in Article 1 that the Member State of establishment is the one where the transporter has her/his main centre of activity or registered place of business;

the Council thinks it is enough, in order for the transporter to meet this market access condition, to require her/him to hold the Community licence provided for in Regulation (EEC) No 684/92, as amended by the Regulation to be published in the same *Official Journal* as this Regulation,

- Amendment 12, aimed at extending the definition of 'specialized regular services' in Article 2 (2);

the Council notes that this definition is the same as the one in Regulation (EEC) No 684/92, as it will be amended (see above), as the definitions of different coach and bus services should be the same as those adopted in the framework of international transport,

- the part of Amendment 13 aimed at excluding from the scope of the Regulation not only regular urban and suburban services, as provided for in the common position, but also regional services, until such time as the requirements for the contracting of transport services on the basis of public service obligations in road passenger cabotage are harmonized;

the Council believes that if regional services were excluded from cabotage, the aim pursued by the Regulation would be considerably weakened,

- the part of Amendment 13 aimed at excluding certain geographical areas already covered by Community legislation from cabotage linked to regular international services;

the Council thought this provision would be too restrictive and would bring with it too many difficulties in monitoring,

- Amendment 15, the purpose of which is to require the Commission to send not only the Member States but also the European Parliament all the statistics relating to the performance of the cabotage operations covered by this Regulation;

the Council notes that the report on the implementation of the Regulation which the Commission is obliged to submit to the European Parliament and the Council pursuant to Article 13 of the common position will be drawn up on the basis of these statistics,

- the part of Amendment 16 aimed at adding a paragraph to Article 13 requiring the Commission to submit a report to the European Parliament and the Council before 31 December 1996 on the results of the implementation of the Regulation annulled by the Court and on the operation of regular services in the Member States;

apart from the fact that the date given has gone by, the Council does not think it is necessary for the Commission to submit such a report,

- the part of Amendment 16 aimed at providing, in accordance with Article 13 of the common position, that the Commission report should also deal with the question whether it would be appropriate to extend the scope of the Regulation and with the possible submission of a proposal by the Commission on the basis of the conclusions of the report;

the Council believes that, since the common position already involves an extension of the scope of the Community rules previously applied in this matter, it would not be desirable to ask the Commission to submit such a proposal.

---

## COMMON POSITION (EC) No 23/97

adopted by the Council on 14 April 1997

with a view to adopting Council Regulation (EC) No ... /97 of ... on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies

(97/C 164/03)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 103 (5) thereof,

Having regard to the proposal from the Commission<sup>(1)</sup>,

Acting in accordance with the procedure referred to in Article 189c of the Treaty<sup>(2)</sup>,

- (1) Whereas the stability and growth pact is based on the objective of sound government finances as a means of strengthening the conditions for price stability and for strong sustainable growth conducive to employment creation;
- (2) Whereas the stability and growth pact consists of this Regulation which aims to strengthen the surveillance of budgetary positions and the surveillance and coordination of economic policies, of Council Regulation (EC) No ...<sup>(3)</sup> which aims to speed up and to clarify the implementation of the excessive deficit procedure and of the resolution of the European Council of 17 June 1997 on the stability and growth pact<sup>(4)</sup> in which the Member States, the Council and the Commission have agreed on firm political guidance in order to implement the Treaty and the stability and growth pact in a strict and timely manner;
- (3) Whereas in stage three of economic and monetary union (EMU) Member States are, according to Article 104c of the Treaty, under a clear Treaty obligation to avoid excessive general government deficits; whereas pursuant to Article 5 of Protocol 11 on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland to the Treaty, Article 104c (1) does not apply to the United Kingdom if it does not move to the third

stage; whereas the obligation under Article 109e (4) to endeavour to avoid excessive deficits will continue to apply to the United Kingdom;

- (4) Whereas adherence to the medium-term objective of budgetary positions close to balance or in surplus, to which all Member States are committed in accordance with the aforementioned resolution of the European Council on the stability and growth pact, will allow Member States to deal with normal cyclical fluctuations while keeping the government deficit within the 3 % of GDP reference value;
- (5) Whereas it is appropriate to complement the multilateral surveillance procedure of Article 103 (3) and (4) with an early warning system, under which the Council will alert a Member State at an early stage of the need to take the necessary budgetary corrective action in order to prevent a government deficit becoming excessive; whereas in accordance with the aforementioned resolution of the European Council on the stability and growth pact all Member States have committed themselves to take the corrective budgetary action they deem necessary to meet the objectives of their stability and convergence programmes whenever they have information indicating actual or expected significant divergence from the medium-term budgetary objective;
- (6) Whereas the multilateral surveillance procedure of Article 103 (3) and (4) should furthermore continue to monitor the full range of economic developments in each of the Member States and in the Community as well as the consistency of economic policies with the broad economic guidelines referred to in Article 103 (2); whereas for the monitoring of these developments, the presentation of information in the form of stability and convergence programmes is appropriate;
- (7) Whereas there is a need to build on the useful experience gained during the first two stages of economic and monetary union with convergence programmes;
- (8) Whereas the Member States adopting the single currency, hereafter referred to as 'participating

<sup>(1)</sup> OJ No C 368, 6. 12. 1996, p. 9.

<sup>(2)</sup> Opinion of the European Parliament of 28 November 1996 (OJ No C 380, 16. 12. 1996, p. 28), Council common position of 14 April 1997 and Decision of the European Parliament of ... (not yet published in the Official Journal).

<sup>(3)</sup> Not yet published in the Official Journal.

<sup>(4)</sup> Not yet published in the Official Journal.

Member States', will, in accordance with Article 109j, have achieved a high degree of sustainable convergence and in particular a sustainable government financial position; whereas the maintenance of sound budgetary positions in these Member States will be necessary to support price stability and to strengthen the conditions for the sustained growth of output and employment; whereas it is necessary that participating Member States submit medium-term programmes, hereafter referred to as stability programmes; whereas it is necessary to define the principal contents of such programmes;

- (9) Whereas the Member States not adopting the single currency, hereafter referred to as 'non-participating Member States', will need to pursue policies aimed at a high degree of sustainable convergence; whereas it is necessary that these Member States submit medium-term programmes, hereafter referred to as 'convergence programmes'; whereas it is necessary to define the principal contents of such convergence programmes;
- (10) Whereas the currencies of non-participating Member States joining the new exchange rate mechanism, hereafter referred to as ERM2<sup>(1)</sup>, will have a central rate *vis-à-vis* the euro, thereby providing a reference point for judging the adequacy of their policies; whereas, so as to enable appropriate surveillance in the Council, non-participating Member States not joining ERM2 will nevertheless present policies in their convergence programmes oriented to stability thus avoiding real exchange rate misalignments and excessive nominal exchange rate fluctuations;
- (11) Whereas lasting convergence of economic fundamentals is a prerequisite for sustainable exchange rate stability;
- (12) Whereas it is necessary to lay down a timetable for the submission of stability programmes and convergence programmes and their updates;
- (13) Whereas in the interest of transparency and informed public debate it is necessary that Member States make public their stability programmes and their convergence programmes;
- (14) Whereas the Council, when examining and monitoring the stability programmes and the convergence programmes and in particular their medium-term budgetary objective or the targeted adjustment path towards this objective, should take into account the relevant cyclical and structural

characteristics of the economy of each Member State;

- (15) Whereas in this context particular attention should be given to significant divergences of budgetary positions from the budgetary objectives of being close to balance or in surplus; whereas it is appropriate for the Council to give an early warning in order to prevent a government deficit in a Member State becoming excessive; whereas in the event of persistent budgetary slippage it will be appropriate for the Council to reinforce its recommendation and make it public; whereas for non-participating Member States the Council may make recommendations on action to be taken to give effect to their convergence programmes;
- (16) Whereas both convergence and stability programmes lead to the fulfilment of the conditions of economic convergence referred to in Article 104c,

HAS ADOPTED THIS REGULATION:

## SECTION 1

### Purpose and definitions

#### Article 1

This Regulation sets out the rules covering the content, the submission, the examination and the monitoring of stability programmes and convergence programmes as part of multilateral surveillance by the Council so as to prevent, at an early stage, the occurrence of excessive general government deficits and to promote the surveillance and coordination of economic policies.

#### Article 2

For the purpose of this Regulation 'participating Member States' shall mean those Member States which adopt the single currency in accordance with the Treaty and 'non-participating Member States' shall mean those which have not adopted the single currency.

## SECTION 2

### Stability programmes: An essential basis for sustainable growth and employment creation

#### Article 3

1. Each participating Member State shall submit to the Council and Commission information necessary for the purpose of multilateral surveillance at regular intervals

<sup>(1)</sup> Referred to in resolution of the European Council of 17 June 1997 on a new exchange rate mechanism (not yet published in the Official Journal).

pursuant to Article 103 of the Treaty in the form of a 'stability programme', which provides an essential basis for price stability and for strong sustainable growth conducive to employment creation.

2. A stability programme shall present the following information:

- (a) the medium-term objective for the budgetary position of close to balance or in surplus and the adjustment path towards this objective for the general government surplus/deficit and the expected path for the general government debt ratio;
- (b) the main assumptions about expected economic developments and important economic variables which are relevant to the realization of the stability programme such as real gross domestic product (GDP) growth, employment and inflation;
- (c) a description of budgetary and other economic policy measures being taken and/or proposed to achieve the objectives of the programme, and, in the case of the main budgetary measures, an assessment of their quantitative effects on the budget;
- (d) an analysis of how changes in the main economic assumptions would affect the budgetary and debt position.

3. The information about paths for the general government surplus/deficit ratio and debt ratio and the main economic assumptions referred to in paragraph 2 (a) and (b) shall be on an annual basis and shall cover, as well as the current and preceding year, at least the following three years.

#### Article 4

1. Stability programmes shall be submitted before 1 March 1999. Thereafter, updated programmes shall be submitted annually. A Member State adopting the single currency at a later stage shall submit a stability programme within six months of the Council Decision on its participation in the single currency.

2. Member States shall make public their stability programmes and updated programmes.

#### Article 5

1. Based on assessments by the Commission and the Committee set up by Article 109c of the Treaty, the Council shall, within the framework of multilateral surveillance within the meaning of Article 103, examine whether the medium-term budget objective in the stability programme is compatible with the safety margin needed to ensure the avoidance of an excessive deficit, whether

the economic assumptions on which the programme is based are realistic and whether the measures being taken and/or proposed are sufficient to achieve the targeted adjustment path towards the medium-term budgetary objective.

The Council shall furthermore examine whether the contents of the stability programme facilitate the closer coordination of economic policies and whether the economic policies of the Member State concerned are consistent with the broad economic policy guidelines.

2. The Council shall carry out the examination of the stability programme referred to in paragraph 1 within at most two months of the submission of the programme. The Council, on a recommendation from the Commission and after consulting the Committee set up by Article 109c, shall deliver an opinion on the programme. Where the Council, in accordance with Article 103, considers that the objectives and contents of a programme should be strengthened, the Council shall, in its opinion, invite the Member State concerned to adjust its programme.

3. Updated stability programmes shall be examined by the Committee set up by Article 109c on the basis of assessments by the Commission; if necessary, updated programmes may also be examined by the Council in accordance with the procedure set out in paragraphs 1 and 2 of this Article.

#### Article 6

1. As part of multilateral surveillance in accordance with Article 103 (3), the Council shall monitor the implementation of stability programmes, on the basis of information provided by participating Member States and of assessments by the Commission and the Committee set up by Article 109c, in particular with a view to identifying actual or expected significant divergence of the budgetary position from the medium-term budgetary objective, or the adjustment path towards it, as set in the programme for the government surplus/deficit.

2. In the event that the Council identifies significant divergence of the budgetary position from the medium-term budgetary objective, or the adjustment path towards it, it shall, with a view to giving early warning in order to prevent the occurrence of an excessive deficit, address, in accordance with Article 103 (4), a recommendation to the Member State concerned to take the necessary adjustment measures.

3. In the event that the Council in its subsequent monitoring judges that the divergence of the budgetary position from the medium-term budgetary objective, or the adjustment path towards it, is persisting or worsening, the Council shall, in accordance with Article 103 (4), make a recommendation to the Member State concerned to take prompt corrective measures and may, as provided in that Article, make its recommendation public.

## SECTION 3

**Convergence programmes: An essential basis for sustainable growth and employment creation***Article 7*

1. Each non-participating Member State shall submit to the Council and the Commission information necessary for the purpose of multilateral surveillance of regular intervals pursuant to Article 103 in the form of a 'convergence programme', which provides an essential basis for price stability and for strong sustainable growth conducive to employment creation.
2. A convergence programme shall present the following information in particular on variables related to convergence:
  - (a) the medium-term objective for the budgetary position of close to balance or in surplus and the adjustment path towards this objective for the general government surplus/deficit; the expected path for the general government debt ratio; the medium-term monetary policy objectives; the relationship of those objectives to price and exchange rate stability;
  - (b) the main assumptions about expected economic developments and important economic variables which are relevant to the realization of the convergence programme, such as real GDP growth, employment and inflation;
  - (c) a description of budgetary and other economic policy measures being taken and/or proposed to achieve the objectives of the programme, and, in the case of the main budgetary measures, an assessment of their quantitative effects on the budget;
  - (d) an analysis of how changes in the main economic assumptions would affect the budgetary and debt position.
3. The information about paths for the general government surplus/deficit ratio, debt ratio and the main economic assumptions referred to in paragraph 2 (a) and (b) shall be on an annual basis and shall cover, as well as the current and preceding year, at least the following three years.

*Article 8*

1. Convergence programmes shall be submitted before 1 March 1999. Thereafter, updated programmes shall be submitted annually.
2. Member States shall make public their convergence programmes and updated programmes.

*Article 9*

1. Based on assessments by the Commission and the Committee set up by Article 109c of the Treaty, the

Council shall, within the framework of multilateral surveillance pursuant to Article 103, examine whether the medium-term budget objective is compatible with the safety margin needed to ensure the avoidance of an excessive deficit, whether the economic assumptions on which the programme is based are realistic and whether the measures being taken and/or proposed are sufficient to achieve the targeted adjustment path towards the medium-term objective and to achieve sustained convergence.

The Council shall furthermore examine whether the contents of the convergence programme facilitate the closer coordination of economic policies and whether the economic policies of the Member State concerned are consistent with the broad economic policy guidelines.

2. The Council shall carry out the examination of the convergence programme referred to in paragraph 1 within at most two months of the submission of the programme. The Council, on a recommendation from the Commission and after consulting the Committee set up by Article 109c, shall deliver an opinion on the programme. Where the Council, in accordance with Article 103, considers that the objectives and contents of a programme should be strengthened, the Council shall, in its opinion, invite the Member State concerned to adjust its programme.

3. Updated convergence programmes shall be examined by the Committee set up by Article 109c on the basis of assessments by the Commission; if necessary, updated programmes may also be examined by the Council in accordance with the procedure set out in paragraphs 1 and 2 of this Article.

*Article 10*

1. As part of multilateral surveillance in accordance with Article 103 (3), the Council shall monitor the implementation of convergence programmes on the basis of information provided by non-participating Member States according to Article 7 (2) (a) of this Regulation and of assessments by the Commission and the Committee set up by Article 109c of the Treaty, in particular with a view to identifying actual or expected significant divergence of the budgetary position from the medium-term budgetary objective, or the adjustment path towards it, as set in the programme for the government surplus/deficit.

In addition, the Council shall monitor the economic policies of non-participating Member States in the light of convergence programme objectives with a view to ensure that their policies are geared to stability and thus to avoid real exchange rate misalignments and excessive nominal exchange rate fluctuations.

2. In the event that the Council identifies significant divergence of the budgetary position from the medium-term budgetary objective, or the adjustment path towards it, it shall, with a view to giving early warning in order to prevent the occurrence of an excessive deficit, address in accordance with Article 103 (4), a recommendation to the Member State concerned to take the necessary adjustment measures.

3. In the event that the Council in its subsequent monitoring judges that the divergence of the budgetary position from the medium-term budgetary objective, or the adjustment path towards it, is persisting or worsening, the Council shall, in accordance with Article 103 (4), make a recommendation to the Member State concerned to take prompt corrective measures and may, as provided in that Article, make its recommendation public.

#### SECTION 4

#### Common provisions

##### *Article 11*

As part of the multilateral surveillance described in this Regulation, the Council shall carry out the overall assessment described in Article 103 (3).

##### *Article 12*

In accordance with the second subparagraph of Article 103 (4) the President of the Council and the Commission shall include in their reports to the European Parliament the results of the multilateral surveillance carried out within the meaning of this Regulation.

##### *Article 13*

This Regulation shall enter into force on 1 July 1998.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at . . .

*For the Council*  
*The President*

## STATEMENT OF THE COUNCIL'S REASONS

### I. INTRODUCTION

1. On 18 October 1996 the Commission forwarded to the Council the above proposal for a Regulation, based on Article 103 (5) of the EC Treaty.
2. The European Parliament, in its first reading, delivered an opinion on 28 November 1996.

On 20 March 1997 the Commission presented an amended proposal pursuant to Article 189a (2) of the Treaty. This amended proposal takes account of the opinion of the European Parliament and of the amendments suggested therein, of the conclusions of the Dublin European Council and of the results achieved by the Council Working Group on EMU on the original proposal.

3. On 14 April 1997, the Council adopted its common position pursuant to Article 189a of the Treaty.

### II. OBJECTIVE

The above proposal for a Regulation seeks to introduce an early-warning system in order to identify at an early stage significant divergences from the medium-term budgetary objectives of close to balance or in surplus to which all Member States have committed themselves. This early-warning system will encourage Member States to take, without delay, the necessary budgetary corrective action on receiving information indicating significant slippage of the budgetary position from the medium-term budgetary objective or the adjustment path towards it, with a view to avoiding the occurrence of an excessive general government deficit.

To this effect, the common position adopted by the Council outlines in particular the contents, the time schedule and the publicity requirements for:

- stability programmes, which have to be submitted by Member States adopting the single currency,
- convergence programmes, which have to be submitted by Member States not adopting the single currency.

Stability and convergence programmes are an essential basis for price stability and strong sustainable growth conducive to employment creation. The common position builds on the experience gained during the first two stages of economic and monetary union (EMU) with convergence programmes. In stage three of EMU, Member States are under a clear Treaty obligation to avoid excessive general government deficits<sup>(1)</sup>.

Adherence to the objective of sound budgetary positions close to balance or in surplus will allow Member States to deal with normal cyclical fluctuations while keeping the government deficit within the 3% of GDP reference value. For this reason, both stability and convergence programmes must in particular give details on the medium-term budgetary objective and the adjustment path towards it, including the expected path for the general government debt ratio, on the main underlying economic assumptions, on budgetary and other economic policy measures taken or proposed to achieve the objective, and they must

<sup>(1)</sup> Pursuant to Article 7 of Protocol 11, this obligation does not apply to the United Kingdom unless it moves to stage three; the obligation pursuant to Article 109e (4) to endeavour to avoid excessive deficits will continue to apply to the United Kingdom.

contain an analysis of how changes in the main economic assumptions would affect the budgetary and debt position.

Furthermore convergence programmes must contain information on medium-term monetary policy objectives and their relationship to price and exchange rate stability.

Thus a comprehensive set of rules for effective monitoring by Council and Commission of budgetary positions of Member States will be created and an adequate early-warning system will be introduced.

### III. ANALYSIS OF THE COMMON POSITION

The common position of the Council takes into account, if not literally then at least in substance, a number of important amendments suggested by the European Parliament in its opinion, most of which were also included in the amended Commission proposal:

- Article 1 of the common position defines the purpose of this Regulation in conformity with Amendment 18 as suggested by the Parliament in its opinion,
- in conformity with Amendment 21 stability and convergence programmes must include an assessment of the quantitative effects of the budgetary measures which were taken to achieve the objectives of the stability and convergence programmes (see Articles 3 (2)c and 7 (2)c of the common position),
- the first recital of the common position states that the stability and growth pact is based on the objective of sound government finances as a means to strengthening the conditions for price stability and for strong sustainable growth conducive to employment creation. This replies, though in shorter terms, to the basic concerns of the Parliament which were expressed in Amendments 1 and 59. In the same spirit, the subtitles of sections 2 and 3 of the common position characterize stability and convergence programmes as being an essential basis for sustainable growth and employment creation,
- Article 11 provides for an assessment by the Council of economic developments in the Community as implied by stability and convergence programmes. This Article reflects, with a different wording, the substance of Amendment 31 and reflects at the same time Article 103 (3) of the Treaty.

On the contrary, the Council has not accepted to include in its common position other amendments suggested by the European Parliament:

- because they would imply widening the scope of the Regulation beyond its specific purpose and its specific legal basis (e.g., in particular Amendments 16, 17 and 22 which relate to the continuation of the Cohesion Fund, Amendments 11 and 32 which refer to Community financial assistance, or Amendments 10 and 63 which refer to other Treaty objectives than those relevant to this specific Regulation),
- because they could be incompatible with the procedural provisions of the Treaty in so far as they tend to modify the respective roles of the institutions within the meaning of the Treaty (e.g., Amendment 70 on the review clause and Amendments 26, 29 and 30 on prior information of the European Parliament whenever the Council intends to invite a Member State to adjust its stability and convergence programme pursuant to Articles 5 (2) and 9 (2) of the Regulation),
- because they would upset the delicate balance for the overall assessment of stability and convergence programmes by giving too much weight to specific concepts of economic

analysis (e.g., Amendments 4, 66, 67 and 68 which refer specifically to government investment or Amendment 62 which specifically refers to cyclical neutrality).

Compared with the amended Commission proposal, the Council's common position, in addition to minor drafting changes especially in the recitals, contains in particular the following modifications:

- it introduces the date of 1 March 1999 (instead of the date of 1 January 1999) as the end date before which stability and convergence programmes must be submitted (see Articles 4 (1) and 8 (1) of the common position); this will give Member States more time for preparation for the submission of their programmes,
- it adds the qualification that stability and convergence programmes are an essential basis for price stability and strong sustainable growth conducive to employment creation,
- it deletes the requirement as proposed by the Commission in its amended proposal (Articles 3 (2) (e) and 7 (2) (e) thereof) for Member States to include in their stability and convergence programmes information on their commitment to take the necessary additional measures to prevent slippage from the medium-term budgetary objective; this commitment will be reflected in the European Council resolution on the stability and growth pact,
- it specifies that the Council shall monitor economic policies of non-participating Member States in the light of their convergence programme objectives in particular with a view to ensuring that their policies are geared to stability and thus to avoid real exchange rate misalignments and excessive nominal exchange rate fluctuations (see Article 10 (1) and the related recitals 10 and 11 of the common position).

#### IV. CONCLUSION

The Council considers that

- its common position fully complies with the request of the European Council in Dublin to prepare a specific Regulation on the strengthening of the surveillance of budgetary positions of Member States by providing an adequate early warning system as part of the stability and growth pact,
  - the common position takes into account the opinion delivered by the European Parliament and includes a number of important specific amendments suggested therein,
  - the modifications contained in its common position as compared with the amended Commission proposal are not of a substantial nature and will facilitate the interpretation and the implementation of this Regulation.
-