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REGULATION (EEC) No 517/72 OF THE COUNCIL

of 28 February 1972

on the introduction of common rules for regular and special regular services by coach and bus between Member States

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to Council Regulation No 117/66/EEC[1] of 28 July 1966 on the introduction of common rules for the international carriage of passengers by coach and bus, and in particular Article 7 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

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

Whereas it is necessary that regular and special regular services be made subject to a system of authorization, in order that an effective check may be kept on compliance with the obligations devolving on carriers pursuant to this Regulation; whereas the period of validity of authorizations should be fixed taking into account the foreseeable duration of transport needs and the amortization of capital invested in transport equipment;

Whereas, in order to make it easier to carry out checks and simplify administrative formalities, provision should be made for a standard form of authorization, to be valid for the entire route covered by the service;

Whereas, in order to define the general conditions governing the operation of regular and special regular services, it is necessary to draw up standard operating rules for all Member States;

Whereas, in so far as the organization of domestic services is not thereby affected, and in order to encourage a better use of resources, it should be permissible for internal transport operations to be carried out in the course of operation of an international service;

Whereas, in order to ensure the proper functioning of services at minimum cost to the community in general, it is necessary on the one hand to adapt the supply of transport to the demand therefor on the routes to be served and, on the other, to coordinate passenger transport services in the areas concerned in an effective manner;

Whereas opportunities for cooperation between transport undertakings must be provided, for such cooperation is an effective means of improving the use of resources;

Whereas adequate procedures should be provided, on the one hand to enable carriers to adjust their services to the development of the market and to possible variations in transport needs and, on the other, to enable the competent authorities to vary the conditions subject to which a service is operated; whereas, furthermore, it is necessary to allow carriers to withdraw services;

Whereas, in order to facilitate the application of the relevant provisions of this Regulation, common rules should be laid down in respect of the procedure for drawing up and issuing authorizations; whereas for this purpose a standard form of application should be prescribed;

Whereas Community procedures should be provided for whereby difficulties arising during negotiations between Member States may be resolved; whereas to this end the Commission and, where necessary, the Council should be given power of decision in the matter;

[1] OJ No 147, 9.8.1966, p. 2688/66.

Whereas carriers must be given the opportunity to make representations concerning their interests, by appropriate means, in relation to certain decisions by Member States on applications;

Whereas to ensure compliance with the provisions of this Regulation some means of checking must be provided; whereas, in order to enable the competent authorities to follow the development of the market and to obtain the necessary information for assessment of applications in respect of a service, a standard form of return should be provided for, by means of which carriers will be required to supply the necessary statistical data;

Whereas, in order to meet the special needs to which services operating in frontier zones may be subject, it is desirable that Member States be permitted, in derogation from certain provisions of this Regulation, to apply more flexible rules than those laid down for other services;

Whereas transitional measures must be provided for to cover the period of validity of authorizations issued before the entry into force of this Regulation;

Whereas, in order to ensure that the common rules are implemented in a uniform manner, provision should be made for a procedure for Community consultation in respect of the measures to be taken for this purpose by the Member States;

HAS ADOPTED THIS REGULATION:

SECTION I

Scope and general provisions

Article 1

This Regulation shall apply to regular and special regular services coming within Article 1 of Regulation No 117/66/EEC and satisfying the conditions laid down in Article 4 (1) of that Regulation.

Article 2

Regular and special regular services shall, as the case may be, be operated under a regular service authorization or under a special regular service authorization (hereinafter called 'authorization').

Authorizations shall be drawn up and issued in accordance with this Regulation.

Article 3

1. Each authorization shall be in the name of a carrier who satisfies the requirements applicable, in the Member State where his vehicles are registered, to persons wishing to engage in international passenger transport.

2. The period of validity of an authorization may not exceed seven years in the case of a regular service or two years in the case of a special regular service.

Authorizations may, where the applicant so requests or where an authorization is issued to meet temporary transport needs, be issued for a shorter period of validity.

3. Each authorization shall specify the following:

(a) the route of the service, giving in particular frontier-crossing points, stopping points where passengers are taken up or set down and, in the case of special regular services, the category of persons accepted for carriage and their destinations;

(b) the period of operation of the service;

(c) the frequency of services;

(d) schedules;

(e) fares;

(f) the vehicles to be used in operating the service;

(g) special conditions (if any);

(h) the period of validity of the authorization.

4. Authorization shall be in a form to be prescribed by the Commission by regulation, after consulting the Member States, within three months following the adoption of this Regulation.

Article 4

1. An authorization shall entitle the holder to carry out, in accordance with the conditions set out therein, international passenger road transport operations in the territories of all Member States over which the route of the regular or special regular service in question passes.

2. The holder of an authorization shall not, without prior authority from the Member State referred to in Article 12 (2), in any way vary the conditions subject to which the service is operated, nor shall he withdraw a service before the period of validity of the authorization has expired.

Article 5

1. Every regular service and every special regular service shall be subject to operating rules, the model for which shall be adopted by the Council, acting by a qualified majority on a proposal from the Commission, by regulation.

2. Article 1 (2) of Regulation No 117/66/EEC is hereby repealed with effect from the entry into force of the Council regulation referred to in paragraph 1.

Article 6

If a Member State authorizes the holder of an authorization issued in accordance with this Regulation to carry out internal transport operations in its territory in the course of operation of the service concerned, it shall so inform the other Member States concerned and the Commission by sending them of copy of the authorization granted for such internal transport operations.

SECTION II

Introduction of a regular service or of a special regular service; variation of the conditions subject to which a service is operated; withdrawal of a service; renewal of authorizations

Article 7

Applications to introduce a regular service or a special regular service, to vary the conditions subject to which a service is operated, or to renew an authorization, shall be examined in accordance with Articles 8, 9 and 11, and with the procedure set out in Articles 12 to 15.

Article 8

1. Examination of an application to introduce a regular service or a special regular service shall be for the purpose of establishing that the traffic to which the application relates is not already catered for in a satisfactory manner, both as to quality and as to quantity, by existing passenger transport services.

2. The following, in particular, shall be taken into consideration during the examination referred to in paragraph 1:

(a) the current and foreseeable transport needs which the applicant is planning to meet;

(b) in the case of regular services, the state of the passenger transport market in the areas in question.

3. During the examination referred to in paragraph 1, consideration may be given to whether an equivalent transport service could be organized by undertakings already operating in the areas concerned.

Article 9

1. When examining an application to vary the conditions subject to which a regular service or a special regular service is operated, particular consideration shall be given to whether the proposed alterations:

(a) satisfy the requirements of Article 8; and

(b) correspond to developments in the market and in transport needs or are intended to rationalize and improve, under cooperation agreements concluded with other holders of authorizations, the operation of the service provided.

2. Without prejudice to Council Regulation (EEC) No 1191/69[1] of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway, and without prejudice to Article 16 (2) of this Regulation, the Member States concerned shall be entitled to vary by agreement, after hearing the holder of the authorization, the conditions subject to which a regular service is operated. Variations which would basically alter the conditions of an authorization may be made only where they are essential in order to ensure the provision of adequate transport services. Article 14 shall not apply.

Article 10

1. An authorization shall lapse three months after the competent authority has received from its holder notice of his intention to withdraw the service. Such notice must contain a proper statement of grounds.

The holder of the authorization shall notify in an appropriate manner the public and the passengers concerned of his intention to withdraw the service.

2. Notwithstanding paragraph 1, in the event of the demand for a service having ceased to exist, the authorization for a special regular service shall lapse on the date given by the holder in a communication to the competent authorities conveying his intention to withdraw the service. The communication must contain a proper statement of grounds.

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[1] OJ No L 156, 28.6.1969, p. 1.

Article 11

Examination of an application for renewal of an authorization shall be for the purpose of determining whether the service has been properly operated in accordance with the authorization and with the operating rules provided for in Article 5 (1), and whether the requirements of Article 8 continue to be satisfied.

SECTION III

Procedure

Article 12

1. Applications for authorization to introduce a regular service or a special regular service, or to renew an authorization, shall be in a form to be prescribed by the Commission by regulation, after consulting the Member States, within three months following the adoption of this Regulation.

2. Applications as referred to in paragraph 1, applications to vary the conditions subject to which a service is operated, and notifications of the withdrawal of a service, shall be submitted to the Member State in whose territory the headquarters of the undertaking concerned is situated.

3. Applications as referred to in paragraph 2 shall be supported by documents providing evidence that the requirements of Articles 8, 9 and 11 are satisfied. In the case of applications as referred to in paragraph 1, the following shall also be submitted:

(a) evidence that the applicant satisfies the requirements referred to in Article 3 (1);

(b) the particulars required pursuant to Article 3 (2) and (3);

(c) a map on an appropriate scale, on which are marked out the route and the stopping points where passengers are to be taken up or set down;

(d) in the case of special regular services, particulars of the undertaking or establishment for which transport is to be provided.

4. The Member State referred to in paragraph 2 shall forward to the Member States over whose territories the service concerned is to pass and to the Commission a copy of each application and notification referred to in that paragraph, together with copies of the documents attached in accordance with paragraph 3; in the case of services as defined in Article 20, such copies shall be forwarded only to the aforementioned Member States.

Article 13

1. Decisions on applications to introduce a regular service or a special regular service, to vary the conditions subject to which a service is operated, or to renew an authorization, shall be taken by agreement between the Member States in whose territories passengers are to be taken up or set down.

2. The Member State referred to in Article 12 (2) shall inform Member States whose territories are to be crossed in transit without passengers being taken up or set down therein, and the Commission, of the progress of negotiations pursuant to paragraph 1 and of all decisions pursuant to that paragraph. Such Member States may submit their comments.

3. Where the Commission considers it necessary, or at the request of any Member State referred to in paragraph 1 or 2, the Commission shall participate in an advisory capacity in negotiations pursuant to paragraph 1.

4. Decisions pursuant to paragraph 1 shall take effect one month after their notification to the Member States referred to in paragraph 2. Where such Member States consider that a decision is liable to give rise to serious difficulties they may, acting in accordance with the procedure laid down in Article 14, object to the decision before it takes effect. In that case, implementation of the decision in question shall be deferred until that procedure is concluded.

If the aforesaid Member States expressly waive their right of objection, the States of departure and destination may fix a date prior to the expiry of the one-month period for the decision in question to take effect.

5. In the case of a minor variation of the conditions subject to which a service is operated in the territory of the Member State which must authorize the variation, it shall be sufficient, notwithstanding the provisions of paragraph 1, if that Member State simply notifies the other Member States concerned of the variation.

Article 14

1. Where negotiations pursuant to Article 13 (1) do not result in agreement or where action is taken under Article 13 (4), the dispute may, at the request of any Member State concerned, be referred to the Commission.

The Commission, after consulting the Member States concerned, shall as soon as possible adopt a decision, which shall be notified to those States.

2. The decision referred to in paragraph 1 shall take effect after thirty days, unless before the expiry of that period the matter is referred to the Council by any Member State concerned.

In that event, the Council shall, within thirty days, take a decision by a qualified majority.

3. Any decision of Commission or Council under paragraph 1 or 2 shall continue to apply until such time as agreement is reached between the Member States concerned, or until the adoption by Commission or Council of a new decision under paragraph 1 or 2.

Article 15

The Commission shall each year send a report on the operation of this Regulation to the Council.

Article 16

1. The competent authority of the Member State referred to in Article 12 (2) shall, according to the terms of agreement pursuant to Article 13 (1) or of any decision taken under Article 14:

— grant an authorization for the introduction of a regular service or of a special regular service;

— authorize a variation of the conditions subject to which a service is operated or, in the case of variation under Article 9 (2), notify the holder of the authorization of such variation.

— renew the authorization; or

— formally refuse the application.

2. Decisions taken by the competent authorities of Member States pursuant to paragraph 1 must state the reasons on which they are based.

Member States shall ensure that transport undertakings in their capacity as such are given the opportunity to make representations concerning their interests, by appropriate means, in respect of such decisions.

3. The competent Member State shall send to the other Member States concerned copies of decisions taken pursuant to paragraph 1 and shall inform the Commission periodically of the authorizations granted, excluding those relating to services as defined in Article 20.

SECTION IV

Control procedures and penalties

Article 17

1. The following shall be carried on the vehicle and be produced at the request of any authorized inspecting officer:

— the authorization provided for in Article 3, depending on the terms of copy thereof; and

— the operating rules provided for in Article 5 (1).

2. The holder of an authorization shall supply annually to the Member State referred to in Article 12 (2), separately in respect of each regular or special regular service and compiled on a three-monthly basis, particulars as to the following:

(a) total passengers carried;

(b) total receipts or total passenger kilometres, depending on the terms of the implementing provisions adopted by each Member State pursuant to Article 22;

(c) total number of vehicles used and total number of seats available;

(d) total vehicle kilometres operated.

3. The information required under paragraph 2 shall be communicated by means of a return, the form of which shall be prescribed by the Commission by regulation, after consulting the Member States, within three months following the adoption of this Regulation. The Commission regulation shall likewise lay down detailed provisions for the use of the return; the latter shall take the place of similar existing documents.

4. The information required under paragraph 2 shall be used only for the purposes of the examination referred to in Article 8 or for statistical purposes. It shall be prohibited to use such information for tax purposes or to disclose it to third parties.

Article 18

1. An authorization issued pursuant to this Regulation shall be withdrawn by the Member State referred to in Article 12 (2) if the holder ceases to satisfy the conditions laid down in Article 3 (1).

Any Member State which has withdrawn an authorization shall forthwith notify the other Member States referred to in Article 12 (4) and the Commission of its action.

2. If it comes to the notice of a Member State that a breach of this Regulation has been committed in its territory by the holder of an authorization issued by another Member State, it shall inform the latter thereof. Member States shall send each other all the information in their possession concerning the penalties imposed for such breaches.

SECTION V

Transitional and final provisions

Article 19

Regular and special regular services within the meaning of Article 1 already in existence at the time of the entry into force of this Regulation may continue to be operated under national authorizations until such authorizations expire.

Such authorizations shall not, however, be renewed, save to the extent necessary to ensure that where a regular service or a special regular service is operated under more than one national authorization, these all expire at the same time.

Article 20

1. In the case of a regular service or a special regular service operated in the territory of only two Member States over a route of less than 100 km lying within a zone extending to a depth on each side of the frontier not exceeding 50 km as the crow flies, the Member States concerned may, under their agreement pursuant to Article 13 (1), waive the requirements of any of the following: Article 3 (3) and (4), Articles 4 (2), 10 (1), 12 (3) (b) (in respect of Article 3 (3) only), 13 (3), 17.

2. In the case of a special regular service the requirements of Article 9 (1) (b) may also be waived.

Article 21

This Regulation shall apply from 1 January 1973, except for Articles 3 (4), 12 (1) and 17 (3), which shall apply from the entry into force of this Regulation.

Article 22

Member States shall, before 1 October 1972 and after consulting the Commission, adopt such laws, regulations or administrative provisions as may be necessary for the implementation of this Regulation.

Such measures shall cover, *inter alia,* the organization of, procedure for and means of carrying out, checks on compliance and the penalties applicable in case of breach, and in particular failure to provide the notice required under Article 10 (1).

Such measures shall also determine whether, and subject to what conditions, an authorization as provided for in Article 2 and the service concerned may be transferred. The agreement of the competent authorities shall be required for the transfer of an authorization.

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

Done at Brussels, 28 February 1972.

For the Council

The President

G. THORN