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(Acts whose publication is obligatory)

Council Regulation (EEC) No 2454/92

of 23 July 1992

laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Parliament [2],

Having regard to the opinion of the Economic and Social Committee [3],

Whereas, pursuant to Article 75 (1) (b) of the Treaty, the establishment of a common transport policy entails, *inter alia*, laying down the conditions under which non-resident carriers may operate national transport services within a Member State;

Whereas that provision entails the removal of all restrictions against a person providing the services in question on the grounds of his nationality or the fact that he is established in a Member State other than that in which the service is to be provided; whereas its implementation should be gradual;

Whereas non-resident carriers should be given free access to certain types of special regular transport services effected in the Member States' frontier zones, when the carrier's place of establishment is near enough to ensure continuity of the service in an appropriate fashion, in particular with a view to the safety of the persons transported;

Whereas, at this stage, other regular services which have not been established as fulfilling the above criteria should be excluded from the scope of the Regulation; whereas this situation should be reviewed in the future;

Whereas the provisions of the host Member State applicable to cabotage transport operations should be fixed;

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

Whereas it is desirable that Member States should grant each other mutual assistance with a wiew to the sound application of this Regulation, particularly in respect of penalties applicable in the event of infringements;

Whereas it is for the Member States to adopt the measures necessary for the implementation of this Regulation;

Whereas The application of this Regulation should be monitored by means of a report to be submitted by the Commission and any future action in this area should be considered in the light of that report,

HAS ADOPTED THIS REGULATION:

Article 1

Any carrier who operates road passenger transport services for hire or reward who:

— is established in a Member State, hereinafter referred to as the 'Member State of establishment' in accordance with its legislation , and

— is authorized, in that State, in accordance with relevant Community law, to pursue the occupation of road passenger transport operator in international transport operations,

(1) OJ No C 77, 24. 3. 1987, p. 13. and OJ No C 301, 26. 11. 1988, p. 8
(2) OJ No C 94, 11. 4. 1988, p. 125.
(3) OJ No C 356, 31. 12. 1987, p. 60.

shall be permitted, under the conditions laid down in this Regulation, 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 herinafter referred to as 'cabotage transport operations'.

Article 2

For the purposes of this Regulation, the following definitions shall apply:

(a) 'regular services' are 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;

(b) 'special regular services' are regular services which provide for the carriage of specified categories of passengers to the exclusion of other passenger;

(c) 'closed-door tours' are services whereby the same vehicle is used to carry the same group of passengers along the entire route;

(d) 'vehicles' are 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;

(e) 'frontier zone' is a zone extending to a depth of 25 km as the crow flies from the frontier common to two Member States.

Article 3

1. Until 31 December 1995, permission to operate cabotage transport operations in the form of non-regular services shall be restricted to closed-door tours. After that date all cabotage transport operations shall be authorized for all non-regular services.

2. Cabotage transport operations in the form of special regular services intended for

(a) the carriage of workers between home and work;

(b) carriage to and from the educational institution for school pupils and students,

may be carried out in the frontier zone of a Member State by carriers with a registered office or other establishment in the frontier zone of an adjacent Member State, provided that:

— the points of departure and destination of the transport services are situated in the frontier zone of the host Member State, and

— the total distance involved does not exceed 50 km as the crow flies in each direction.

3. The Council shall review the situation of regular services other than those referred to in paragraph 2 in the light of the Commission report referred to in Article 12, taking into account, in particular, the national provisions applied by Member States regarding controls and authorization procedures for regular services.

Article 4

1. The performance of cabotage transport operations shall be subject, save as otherwise provided in Community regulations, to the laws, regulations and administrative provisions in force in the host Member State in 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 not circumstances exceed the technical standards set out in the certificate of conformity;

(c) requirements relating to the carriage of certain categories of passengers, viz. schoolchildren, children and persons with reduced mobility;

(d) driving and rest time;

(e) VAT (value added tax) on transport serviced. In this area Article 2 (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 [1] — shall apply to the services referred to in Article 1 of this Regulation.

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

3. The national provisions referred to in paragraph 1 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.

4. 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.

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

Article 5

The Member State of establishment shall issue an authorization conforming to the model set out in Annex I to carriers who apply therefor and who satisfy the conditions laid down in Article 1.

The authority or agency in that Member State with the power to issue the authorization shall also have the power to withdraw it, temporarily or definitively, in particular as one of the penalties referred to in Article 10 (4).

That authorization 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 shall be carried out under cover of a control document, which must be kept on board the vehicle and be produced when requested by an authorized inspecting officer.

2. The control document shall consist of a journey form and a set of translations of the journey form.

3. The journey form, the model for which is set out in Annex II, 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.

4. 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 is set out in Annex II.

5. In the case of the services referred to in Article 3 (2), the contract concluded between the carrier and the transport organizer, or a certified copy of the contract, shall serve as the control document.

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

6. 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 the aforementioned 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 8, the competent authority or agency in each Member State shall communicate to the Commission the data concerning the cabotage transport operations carried out during that quarter by resident carriers.

The communication shall be effected by means of a table, a specimen of which is set out in Annex III.

2. 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

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 numer of 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 9, shall decide within one month of receipt of the relevant Member State'sf 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 submit 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 final 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 becomes 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 9

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 tasks of the Committee shall be to advise the Commission on:

— any request from a Member State under Article 8 (1);

— measures intended to resolve a serious disturbance of the market as referred to in Article 8, in particular on the practical application of such measures.

The Committee shall draw up its rules of procedure.

Article 10

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 authorization or falsified certified copy thereof is produced, the falsified document shall be withdrawn immediately and 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 11

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

Article 12

1. The Commission shall report to the Council before 31 December 1995 on the application of this Regulation and, in particular, on the impact of cabotage transport operations on national transport markets and on whether consideration should be given to extending the scope of the Regulation to other regular passenger transport services. If necessary, and in the light of the conclusions of the report, the Commission shall submit a proposal for a Regulation to the Council.

2. The Council shall act in accordance with the Treaty as soon as possible on any proposal which the Commission may submit pursuant to paragraph 1.

Article 13

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

Article 14

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

It shall apply from 1 January 1993. However, Articles 8 and 9 shall apply from 1 January 1996.

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

Done at Brussels, 23 July 1992.

For the Council

The President

J. COPE

ANNEX I

MODEL FOR AUTHORIZATION REFERRED TO IN THE FIRST SUBPARAGRAPH OF ARTICLE 5

EUROPEAN ECONOMIC COMMUNITY

(format DIN A4)

(First page of the authorisation)

(Text in (one of) the official language(s) of the Member State of establishment)

Member State of establishment — international distinguishing sign (1)	Competent authority or agency

Authorization No. .....
for national road passenger services for hire or reward in a Member State other than the Member State of establishment (cabotage transport operations).

This authorization confirms that:

.....

.....

..... (2)

is authorized, in accordance with relevant Community legislation, to operate national road passenger services in the field of international transport.

The following restriction are imposed following the penalitie laid down:

Member State in which the restriction applies — international distinguishing sign (1)	Type and duration of the restriction

This authorization is valid from ..... to .....

Issued at ....., date .....

..... (3)

(1) International distinguishing signs of Member States:
Belgium (B), Denmark (DK), Germany (D), Greece (GR), Spain (E), France (F), Ireland (IRL), Italy (I), Luxembourg (L), Netherlands (NL), Portugal (P), United Kingdom (GB).

(2) Name, or registered business name, and full address of carrier.

(3) Signature and stamp of the competent authority or agency issuing the authorization.

(Second page of the authorization)

(Text in (one of) the official languate(s) of the Member State of establishment)

General provisions

This authorization permits cabotage transport operation in the Member States, in accordance with Council Regulation (EEC) No 2454/92 of 23 July 1992 laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State (*Official Journal of the European Communities* No L 251 of 29 August 1992, p. 1).

It is personal to the holder and non-transferable.

It may be withdrawn by the competent authority of the Member State of establishment, where the carrier has in particular:

— failed to comply with all the conditions to which the issue of the authorization was subject;

— given inaccurate information as regards data which were required for the issue or renewal of the authorization.

The authorization or a certified copy may be withraw by the competent authority of any Member State in the event of forgery.

The original of the authorization or a certified copy must be carried in the vehicle and must be produced whenever required by an authorized inspecting officer.

ANNEX II

MODEL FOR BOOK OF JOURNEY FORMS REFERRED TO IN ARTICLE 6 (4)

(Format DIN A4)

(Front cover of book of journey forms)

(Text in (one of) the official language(s) of the Member State of establishment)

Member State of establishment

Competent authority or

International distinguishing sign of Member State (1)

Book No .....

BOOK OF JOURNEY FORMS FOR CABOTAGE TRANSPORT OPERATIONS (PASSENGERS), established in accordance with the provisions of Council Regulation (EEC) No 2454/92 of 23 July 1992 laying down the conditions under which non-resident carriers may operate national road transport services within a Member State (*Official Journal of the European Communities* No L 251 of 29 August 1992, p. 1).

This book is valid until .....

Issued at ....., Date .....

..... (2)

(1) International distinguishing signs of Member States: Belgium (B), Denmark (DK), Germany (D), Greece (GR), Spain (E), France (F), Ireland (IRL), Italy (I), Luxembourg (L), Netherlands (NL), Portugal (P), United Kingdom (GB).

(2) Stamp of the competent authority or agency issuing the book.

(Inside front cover of book of journey forms)

(Text in (one of) the official language(s) of the Member State of establishment)

General Provisions

1. This book contains 25 detachable sheets, numbered 1 to 25, one of which must be completed before the beginning of the cabotage transport operation to which it relates. Each book is numbered and that number is marked on every page of the book.

   However, in the case of the special regular services referred to in the second indent of point 6 of these general provisions, the journey form must be completed in the form of a monthly statement, indicating in 4 and 5 all the dates on which the services in question were performed.

2. The carrier is responsible for the proper completion of the journey forms.

3. The journey form, together with a compilation of translations, must be carried in the vehicle throughout the cabotage journey. It must be produced whenever required by an authorized inspecting officer.

   However, in the case of the special regular services referred to in the second indent of point 6 of these general provisions, the contract between the carrier and the transport organizer, or a certified copy of the contract, shall serve as the control document.

4. Each journey form must be completed legibly and in indelible ink.

5. The journey forms used must be sent to the competent authority or agency of the Member State of establishment.

6. It should be noted that for:

   — non-regular services, cabotage transport operations are restricted to closed-door tours until 31 December 1995. All non-regular services may carry out cabotage operations from that date;

   — regular services, cabotage operations are restricted to special regular services carried out in a frontier zone and intended for the carriage from home to work and vice versa of workers and for the carriage from home to educational establishment and vice versa of schoolchildren and students. Other regular services are excluded from cabotage.

7. Cabotage transport operations shall be subject, save as otherwise provided in Community regulations, to the laws, regulations and administrative provisions in force in the host Member State in 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, viz. 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, as last amended by Directive 91/680/EEC, shall apply to the services referred to in Article 1 of Regulation (EEC) No 2454/92.

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

MODEL FOR JOURNEY FORM REFERRED TO IN ARTICLE 6 (3)

BOOK No .....

Journey form No .....

Cabotage transport service (passengers)

(Paper — DIN A4)

Member State of establishment — International distinguishing sign: .....

Book No: .....

Journey form No: .....

1. Name(s) of the driver(s) .....
   .....
   .....

2. Name(s) and address(es) of the carrier(s): .....
   .....
   .....

3. Journey:
   (a) Point(s) of departure of the service:
   .....
   .....
   (b) Point(s) of destination of the service:
   .....
   .....
   c) Total distance of the service:
   .....
   .....

4. Date of departure: .....

5. Date of termination: .....

6. Number of passengers: .....

7. Unforeseen changes to the journey: .....
   .....
   .....

ANNEX III

MODEL FOR COMMUNICATION REFERRED TO IN THE SECOND SUBPARAGRAPH OF ARTICLE 7 (1)

CABOTAGE TRANSPORT OPERATIONS CARRIED OUT IN .... (QUARTER) .... (YEAR) BY CARRIERS ESTABLISHED IN (INTERNATIONAL DISTINGUISHING SIGN OF THE MEMBER STATES)

Host Member State	Number of passengers		Number of passengers-km	
	Type of services		Type of services	
	special regular	non-regular	special regular	non-regular
D				
F				
I				
NL				
B				
L				
GB				
IRL				
DK				
GR				
E				
P				
cabotage total				