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(Acts whose publication is not obligatory)

COMMISSION

COMMISSION OPINION

of 6 November 1986

addressed to the Government of the Kingdom of Spain concerning the draft of the basic law on inland transport

(86/537/EEC)

Pursuant to Article 1 of the Council Decision of 21 March 1962 instituting a procedure for prior examination and consultation in respect of certain laws, regulations and administrative provisions concerning transport proposed in Member States [1], as amended by Decision 73/402/EEC [2], the Spanish Government sent the Commission the draft of a basic law on inland transport in a letter from the Office of its Permanent Representative to the European Communities dated 11 March 1986.

The Commission received the letter from the Office of the Permanent Representative on 24 March 1986. In accordance with Article 1 of the abovementioned Decision the letter was also sent to the other Member States.

The Commission then organized a briefing session with the representatives of the Spanish Government in Brussels on 17 and 18 April 1986. The Commission did not consider it necessary to consult all the Member States on the subject of the provisions of the law.

In accordance with Article 2 (1) of the Council Decision, the Commisison has adopted the following opinion :

1. The Commission has taken note of the draft of the basic law on inland transport sent to it by the Spanish Government for its opinions or recommendations.

2. In its examination of the draft, the Commission intends, in accordance with the Council Decision of 21 March 1962, to confine itself to those aspects liable to interfere with action taken within the context of the common transport policy provided for by the Treaty establishing the European Economic Community. This opinion is based on these considerations, and more particularly on the effects which the proposed measures could have on international transport within the Community. The Commission refers to national features of the draft law only where they have a bearing on the implementation of the Treaty or of Community regulations.

   In particular, the Commission did not consider the provisions concerning :

   — urban or inter-urban passenger transport by underground railway, bus, tram, trolley bus or cable car,

   — concessions for and operation of private railway lines,

   — activities which are auxiliary and supplementary to main transport activities.

3. The Commission welcomes the attempt by the Spanish Government to bring about the organization and operation of a public transport system capable of meeting the needs of society as efficiently as possible and at the lowest possible social cost by endeavouring to harmonize conditions of competition between the different modes of transport and the different transport undertakings, while continuing to allow consumers freedom of choice (Articles 3, 4 and 5).

   It is pleased to note that transport services and activities are to be conducted within the framework of the market economy, while making the public authorities responsible for encouraging productivity and the full use of resources (Article 12).

[1] OJ No 23, 3. 4. 1962, p. 720/62.
[2] OJ No L 347, 17. 12. 1973, p. 48.

It notes that the draft law nevertheless allows for the possibility, for economic and social reasons, of establishing exceptional support tariffs to help particular undertakings (Article 19 (4)) and public service obligations, reductions or subsidized tariffs (Article 20). It would point out that tariff support measures require prior authorization from the Commission in accordance with Article 70 (4) of the ECSC Treaty and Article 80 (2) of the EEC Treaty, and that the possibility of imposing public service obligations in respect of transport by rail, road and inland waterway is the subject of Council Regulation (EEC) No 1191/69 [1].

Finally, the Commission has noted the declarations, made by the representatives of the Spanish Government at the briefing session, that the measures provided for by Article 26 will be implemented only in extremely exceptional circumstances (war or natural disasters). The object is not the authoritarian distribution of goods traffic between the various modes of transport, which would conflict with the objectives of the Treaty as pointed out by the Commission in its White Paper on completing the internal market. It therefore asks the Spanish Government to specify the cases in which these measures are to be applied.

4. Comments on the provisions relating to road transport are as follows:

4.1. *Admission to the occupation*

The Commission found that the general provisions in the draft law concerning admission to the occupation of operator of goods and passenger transport services by road conform with the general provisions of Community law on the subject.

However, Article 43 (1) states that regulations will be passed at a later date in order to implement these provisions, in particular as regards defining and establishing rules for implementing the criteria regarding professional competence of transport operators. The Spanish Government must submit these implementing measures to the Commission for its opinion beforehand. The Commission also requests that Article 42 (1) (a) of the draft law, which refers to nationality, should be amended to state explicitly that nationals of other Member States shall enjoy equality of treatment in accordance with the provisions of the Treaty concerning the right of establishment.

Lastly, the Commission would draw the attention of the Spanish Government to the fact that the 'first transitional provision' on page 144 of the draft law concerning professional competence conflicts with the provisions of Council Directives 74/561/EEC [2] and 74/562/EEC [3], as amended by Directives 85/578/EEC [4] and 85/579/EEC [5]. According to these provisions, and according to the Act of Accession of Spain and Portugal, the provisions concerning admission to the occupation apply from the date of accession and it is not possible therefore to dispense with the need to prove the professional competence of those persons admitted to the occupation after this date.

4.2. *Other provisions common to goods and passenger transport by road*

The rule on nationality in Article 48 (1) (a) calls for the same remark as that made in point 4.1 concerning Article 42 (1) (a).

The Commission notes that licences authorizing holders to carry out road transport operations may be transferred to third persons in accordance with the rules given in Article 53. The Commission would draw the attention of the Spanish Government to the fact that the authorizations provided for in Council Directive 65/269/EEC [6], as last amended by Directive 85/505/EEC [7], Council Regulation (EEC) No 3164/76 [8], as last amended by Regulation (EEC) No 3243/85 [9], and Council Regulations (EEC) No 516/72 [10] and (EEC) No 517/72 [11] are personal and may not be transferred to third persons under any circumstances. The Commission asks that the draft be amended to bring it into line with Community law.

The Commission has taken note of the statements made by the representatives of the Spanish Government at the briefing session, namely that:

— the first sentence of Article 112 (1) (a) should read as follows: '(a) this transport operation shall be authorized in general terms by the provisions of the international treaties to which Spain is a contracting party or by any specific provisions of national law.'

  In this connection, the Commission notes that, as stated by the Spanish Delegation, this point (a) concerns international transport operations which do not require authorization;

[1] OJ No L 156, 28. 6. 1969, p. 1.

[2] OJ No L 308, 19. 11. 1974, p. 18.
[3] OJ No L 308, 19. 11. 1974, p. 23.
[4] OJ No L 372, 31. 12. 1985, p. 34.
[5] OJ No L 372, 31. 12. 1985, p. 35.
[6] OJ No 88, 24. 5. 1965, p. 1469/65.
[7] OJ No L 309, 21. 11. 1985, p. 27.
[8] OJ No L 357, 29. 12. 1976, p. 1.
[9] OJ No L 309, 21. 11. 1985, p. 1.
[10] OJ No L 67, 20. 3. 1972, p. 13.
[11] OJ No L 67, 20. 3. 1972, p. 19.

— the word 'Spanish' will be deleted in Article 112 (1) (b), since it conflicts with Community law.

The Commission feels it should point out that, pursuant to the Judgment of the Court of Justice in Case 13/83, handed down on 22 May 1985 [1], the Council is required, within a reasonable period, to bring about the free movement of services in respect of national transport operations carried out by transport operators not resident in a Member State. The need for free movement of services means abolishing all restrictions imposed on the person providing the service on grounds of nationality and place of establishment. The Commission suggests that the Spanish Government draft the law in such a way that the decisions which the Council will have to adopt on goods transport and passenger transport can easily be taken into account at a later stage. To this end, a reservation should be included in the text of Article 112 (3) concerning the measures the Council will be adopting.

4.3. *Specific provisions regarding the carriage of goods by road*

The definition of transport on own account given in Article 104 is slightly different from that given in point 11 of Annex 1 to the first Council Directive of 23 July 1962 [2], as last amended by Directive 83/572/EEC [3]. In order to avoid any ambiguity with regard to transport within the Community, the Commisison would prefer that Article 104 refer to the definition of transport on own account given in the first Directive.

With regard to Article 112 (2), the Commisison would draw the attention of the Spanish Government to the fact that this provision should not risk jeopardizing proper application in Spain of Community rules exempting certain categories of road haulage between Member States from any system of authorization and/or quotas, in accordance with the abovementioned Directive.

The Commission notes that the law does not include the Community provisions on combined transport contained in Council Directive 75/130/EEC [4] as amended by Directive 79/5/EEC [5], 82/3/EEC [6] and 82/603/EEC [7], and in particular the definition of combined rail/road transport and the exemption of this type of transport operation from any system of quotas and authorizations. The Commission considers that in this connection explicit reference should be made to Community law.

4.4. *Special provisions for road passenger transport*

The provisions in chapters V and VI concerning international passenger transport apply to transport operations both within the Community and to and from non-Community countries. With regard to transport operations within the Community, the Commission would draw the attention of the Spanish Government to the need to ensure correct implementation of Council Regulation No 117/66/EEC [8], Council Regulation (EEC) No 516/72 and Council Regulation (EEC) No 517/72.

The Commission notes that the three categories of service defined in Article 109 of the draft law do correspond with those in the abovementioned EEC regulations. However, Chapter VI mentions another category — 'tourist services' — which is not mentioned in Community law but which might clash with one of the three abovementioned categories. The system for controlling these tourist services is different from Community regulations and may therefore create incompatibilities. The Commission would ask the Spanish Government to reconsider whether it is necessary to maintain this category of road passenger transport.

In addition, the procedure and criteria mentioned in Article 111 for setting up a regular service are not entirely in conformity with those provided for in Regulation (EEC) No 517/72. The Spanish Government is therefore asked to adopt the provisions contained in this Regulation.

Finally, to avoid any ambiguity, the Commission asks that specific reference be made to Community law in respect of the definitions and procedures given in the draft law for passenger transport by road within the Community.

5. The provisions of Title VI of the draft law concerning rail transport, which specifically relate to the State corporation 'Red Nacional de los Ferrocarriles Españoles (RENFE)', call for the following remarks :

5.1. The Commission approves the following points :

(i) that the State is granting RENFE legal personality independent of the State (Article 181), and that it can operate autonomously (Article 182 (3));

(ii) that basic guidelines are laid down for the activities of RENFE, and that the objectives to be met and the financial support to be given to RENFE by the State are all specified in programme contracts (Article 183);

[1] OJ No C 144, 13. 6. 1985, p. 4.
[2] OJ No 70, 6. 8. 1962, p. 2005/62.
[3] OJ No L 332, 28. 11. 1983, p. 33.
[4] OJ No L 48, 22. 2. 1975, p. 31.
[5] OJ No L 5, 9. 1. 1979, p. 33.
[6] OJ No L 5, 9. 1. 1982, p. 12.
[7] OJ No L 247, 22. 8. 1982, p. 6.
[8] OJ No 147, 9. 8. 1966, p. 2688/66.

(iii) that RENFE is required to operate its rail services in such a way as to balance its budget;

(iv) that RENFE will be paid subsidies by way of compensation for public service obligations, for the normalization of accounts and to make good operating losses.

5.2. While recognizing that these provisions are compatible with the common transport policy, the Commission would remind the Spanish Government that it should, when preparing provisions for implementing the law, and in particular when issuing mandates, drafting contracts and preparing finance laws, comply with Community regulations on these subjects, particularly Council Regulations (EEC) No 1191/69 [1], (EEC) No 1192/69 [2], (EEC) No 1107/70 [3], as amended by Regulation (EEC) No 1473/75 [4] and (EEC) No 1658/82 [5], and Council Decision 75/327/EEC [6]. In order solely to avoid any ambiguity, it would be preferable to make explicit reference to Community law in the draft law.

5.3. The Commission notes, however, that although the provisions of Article 189 on the setting of transport rates leave RENFE 'as much operational autonomy as possible', they do impose limits established by the authorities and the obligation to abide by the tariff-approval procedures set out in Article 18 and 19 of the draft law, which also apply to other public transport undertakings. To the extent that they apply to the international carriage of passengers and goods by rail, these provisions do not conform with the provisions of the Council Decisions 82/529/EEC [7] and 83/418/EEC [8]. Articles 18, 19 and 189 should therefore be amended to bring them into line with Community law. In fact, purely in order to avoid any ambiguity, it would be preferable to make explicit reference to Community law.

5.4. Finally the Commission would emphasize that the various procedures for controlling and inspecting the activities of the RENFE given in Article 193 should, as far as is possible, avoid interfering with day-to-day management and be confined to *ex post* inspections.

6. The Commission notes that the draft law submitted to it contains guidelines for national inland transport policy and that it is not possible fully to evaluate its scope without knowing the measures which will be taken to implement it. It therefore asks the Spanish Government to inform it of these implementing measures in good time, under the procedure for prior examination and consultation set up by the Council Decision of 21 March 1962.

7. The Commission is informing the other Member States of this opinion.

Done at Brussels, 6 November 1986.

For the Commission

Stanley CLINTON DAVIS

Member of the Commission

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[1] OJ No L 156, 28. 6. 1969, p. 1.
[2] OJ No L 156, 28. 6. 1969, p. 8.
[3] OJ No L 130, 15. 6. 1970, p. 1.
[4] OJ No L 152, 12. 6. 1975, p. 1.
[5] OJ No L 184, 29. 6. 1982, p. 1.
[6] OJ No L 152, 12. 6. 1975, p. 3.
[7] OJ No L 234, 9. 8. 1982, p. 5.
[8] OJ No L 237, 26. 8. 1983, p. 32.