COMMISSION

COMMISSION RECOMMENDATION

of 16 March 1976

addressed to the Government of the Kingdom of Denmark on a draft law on road passenger transport operations

(76/333/EEC)

On 27 January 1976, the Danish Permanent Representation to the European Communities sent the text of a draft law on road passenger transport operations to the Commission on behalf of the Danish Government in accordance with Article 1 of the Council Decision of 21 March 1962 [1] instituting a procedure for prior examination and consultation in respect of certain laws, regulations and administrative provisions concerning transport proposed in Member States, as amended by the Council Decisions of 22 November 1973 [2].

The Danish Government requested that the procedure laid down in Article 2 (4) of the Decision, for use in the case of urgent measures, should be implemented, and sent copies of the draft to the other Member States.

The letter from the Permanent Representation reached the Commission on 29 January 1976. The 15-day period within which the Commission was required to draw up its opinion has been extended until 12 March 1976 in accordance with Article 2 (4) of that Decision and with the agreement of the Danish Government.

The Commission submits this recommendation in accordance with Article 2 (1) of the Decision referred to above :

1. The Commission believes it to be the Danish Government's intention to propose provisions governing access to the market in the field of national road passenger transport operations, since the rules applicable to transport operations between Member States have already been laid down at Community level.

2. The Commission considers, moreover, that the draft law under consideration also contains measures which the Danish Government proposes to adopt pursuant to the Council Directive of 12 November 1974 on admission to the occupation of road passenger transport operator in national and international transport operations [3]. The provisions more particularly concerned are those contained in Articles 12, 13, 14, 15 and 16 of the draft Danish law submitted for purposes of the consultation procedure.

The Commission reserves the right to comment later on these provisions, which must be submitted to the Commission pursuant to Article 6 of the Directive referred to.

3. As regards the other provisions of the draft Danish law covered by the consultation procedure initiated pursuant to Article 1 of the Council Decision of 21 March 1962, the Commission did not consider it necessary to convene a briefing session with representatives of the Danish Government or to consult the other Member States pursuant to Article 2 (3) of the Council Decision referred to above.

4. As regards these provisions, the Commission considers that there is a degree of interdependence between national and international markets in the field of road passenger transport and, more particularly, that in view of the characteristics of the services under consideration, the existence of varying legal rules might lead to a disadvantageous situation capable of disturbing the proper functioning of national and international services as a whole and create obstacles to the development of the right of establishment and the satisfactory operation of services at Community level.

The Commission therefore recommends the Danish Government to align as far as possible the national provisions which it intends to adopt, particularly those relating to the definitions and creation of services, with those already adopted at Community level, which are as follows :

(1) OJ No 23, 3. 4. 1962, p. 720/62.
(2) OJ No L 347, 17. 12. 1973, p. 48.
(3) OJ No L 308, 19. 11. 1974, p. 23.

— Council Regulation No 117/66/EEC of 28 July 1966 on the introduction of common rules for the international carriage of passengers by coach and bus (1);

— Council Regulation (EEC) No 516/72 of 28 February 1972 on the introduction of common rules for shuttle services by coach and bus between Member States (2);

— Council Regulation (EEC) No 517/72 of 28 February 1972 on the introduction of common rules for regular and special regular services by coach and bus between Member States (3).

5. The Commission recommends that the Danish Government should, in order to determine precisely the scope of the intended measures, indicate clearly in Article 1 of its draft law that the provisions of that draft law apply solely to national road passenger transport operations, i.e. to services where the route is situated entirely within Denmark.

6. The Commission considers that Article 4 provides that permits for scheduled services may be issued only in respect of services entered on a timetable drawn up in accordance with the provisions of Chapter 2 of the law on local or regional passenger transport. This law does not, however, contain any precise criteria with regard to satisfaction of the demand for transport. The Commission stresses in this connection that scheduled services are intended to meet certain needs of the community and that instituting them is justified by reasons connected in particular with safeguarding the interests of the public. Institution of such services therefore presupposes that the public authorities will impose certain restrictions on the way in which they are run and upon fares.

The Commission therefore recommends that the Danish Government specify in its draft law by which means and upon the basis of which procedures the public authorities responsible for authorizing the institution, maintenance, modification or discontinuance of a scheduled service should assess :

— the demand for transport which the scheduled service is intended to meet, in order in particular to adapt transport capacity and the way in which the service is run to that demand;

— the market situation in order to guarantee optimum use of transport facilities and in order not to jeopardize the satisfactory operation of existing services.

7. Article 7 provides that the DSB and the private railways, operating in the region under consideration, may, in order to coordinate road and rail services, and under certain conditions, propose amendments to the conditions laid down by the authority issuing permits, by submitting such proposals to the Passenger Transport Council.

The Commission considers that this provision will have the effect merely of creating a situation in which the DSB and the private railways will enjoy rights which are more extensive than those enjoyed by other operators in the market, a situation which is contrary to the fundamental principles of equality of treatment for all operators. As a result, the Commission recommends that the Danish Goverment ensure that Article 7 is drafted so as to leave no doubt that this principle is to be observed.

8. Article 9 provides a definition of 'tourist' services and 'charter' services. The Commission considers that these forms of transport are equivalent to services which are distinct from scheduled services and special scheduled services in that they are not provided with a frequency, and between points, which have been fixed in advance. They are therefore occasional services such as are defined at Community level in Article 3 of Regulation No 117/66/EEC. The Commission therefore recommends that the Danish Government use the definition of these services laid down in the said Article 3.

9. Article 11 refers to transport operations other than those referred to in Article 2 (scheduled services and special scheduled services) and Article 9 (tourist and charter services), and requires that they must be subject to an examination of transport needs.

The Commission has reached the conclusion that this refers to operations which are designated 'shuttle services' within the Community and which are defined, as regards international transport operations, in Article 2 of Regulation No 117/66/EEC. These services are in addition subdivided into two categories which are subject to different conditions for the issue of permits (see Articles 5 and 6 of Regulation (EEC) No 516/72) in so far as one category includes meals and accommodation in addition to transport, whereas the other is restricted to transport. With reference to the considerations set out in 1 above, the Commission recommends that the Danish Government amend Article 11 of this draft law accordingly.

10. Finally, the Commission notes that the Minister of Public Works is responsible for laying down special conditions governing vehicles and their drivers. It considers that the provisions to be adopted in this field are likely to affect the technical characteristics of vehicles and certain social aspects. It points out that in this field the Commission has submitted to the Council :

(1) OJ No 147, 9. 8. 1966, p. 2688/66.
(2) OJ No L 67, 20. 3. 1972, p. 13.
(3) OJ No L 67, 20. 3. 1972, p. 19.

— a proposal for a Directive on the approximation of the laws of the Members States relating to roadworthiness tests for motor vehicles and their trailers, 17 August 1972 (1);

— a proposal for a Directive concerning the minimum level of training for road transport drivers, 30 July 1970 (2).

The Commission recommends to the Danish Government that any provisions adopted in this field should be in line with these proposals.

11. The Commission will inform the other Member States of this recommendation.

Done at Brussels, 16 March 1976.

For the Commission

Carlo SCARASCIA MUGNOZZA

Vice-President

(1) OJ No C 119, 16. 11. 1972, p. 2, and amendments pursuant to Article 149 of the Treaty — Doc. COM (74) 809 fin., 10 June 1974.

(2) OJ No C 4, 18. 1. 1971, p. 12, and amendments pursuant to Article 149 of the Treaty — Doc. COM (75) 622 fin., 21 November 1975.