

REGULATION (EEC) No 293/70 OF THE COUNCIL
of 16 February 1970

amending Article 5 of Regulation (EEC) No 1174/68 on the introduction of a system of bracket tariffs for the carriage of goods by road 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 the proposal from the Commission;

Having regard to the Opinion of the European Parliament¹

Having regard to the Opinion of the Economic and Social Committee²

Whereas Article 5 (1) of Regulation (EEC) No 1174/68³ provides that special contracts may be concluded in writing at transport rates outside the upper or lower limits of the relevant tariff brackets only where circumstances exist which were not taken into account at the time when the tariffs were fixed, and the tonnage to be carried under any such contract within any three-month period is not less than 500 metric tons;

Whereas, because of the practical limitations on the extent to which tariffs can be diversified, it is not possible when fixing tariffs to take into account all the circumstances likely to arise in road transport; whereas it may therefore happen that in the case of certain relatively specialised types of transport operation, other than those exempted from the application of Regulation (EEC) No 1174/68 by virtue of Article 16, a situation arises in which rates within the upper limit of the relevant tariff would not cover the costs of carriage, while the tonnage involved would be insufficient to allow of the conclusion of a special contract at rates above that limit;

Whereas the condition as to tonnage above referred to was laid down solely in order to avoid damaging

competition in the case of special contracts at rates below the lower limits of the relevant tariffs;

Whereas there is therefore no reason for this condition to apply in the case of such transport operations as may properly be the subject of special contracts at rates in excess of the maximum tariff rates; whereas in such cases care must be taken to prevent any abuse of a dominant position;

HAS ADOPTED THIS REGULATION:

Sole Article

The following shall be substituted for the second subparagraph of Article 5 (1) of Regulation (EEC) No 1174/68:

'The conclusion of such contracts shall be allowed subject to the following conditions:

- (a) circumstances must exist which were not taken into account at the time when the tariffs were fixed, as, in particular, where a special contract relates to transport operations having special technical features or where the contract is made in response to the requirements of competition or where it is entered into for a certain period; and
- (b) (i) where the special contract provides for transport rates above the upper limit of the relevant tariff bracket, such contract must relate to transport operations the technical features of which entail costs significantly higher than the average costs within the meaning of Article 3 (1) on which the relevant tariff is based, as, in particular, where:

- the goods require special handling during transit;

¹ OJ No C 160, 18.12.1969, p. 5.

² OJ No C 144, 8.11.1969, p. 11.

³ OJ No L 194, 6.8.1968, p. 1.

-
- the vehicle has to be fitted with special equipment;
 - a special vehicle fitted with permanent special equipment has to be used;
 - carriage has to be effected at a speed significantly slower than normal traffic speed;
 - the consignor requires particularly rapid delivery of the goods;
- the goods are of a dangerous or offensive nature;
 - the goods are such that they must be delivered in a single large load or are of abnormal dimensions; or
- (ii) where the special contract provides for transport rates below the lower limit of the relevant tariff bracket, the tonnage to be carried under any such contract within any three-month period must be not less than 500 metric tons.'

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

Done at Brussels, 16 February 1970.

For the Council

The President

Ch. HÉGER
