

COUNCIL REGULATION (EEC) No 2831/77

of 12 December 1977

on the fixing of rates 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 Parliament ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Whereas a policy in respect of transport rates and conditions constitutes an important aspect of the common transport policy, the introduction of which by the Member States is provided for in the Treaty; whereas after the expiry on 31 December 1977 of Council Regulation (EEC) No 1174/68 of 30 July 1968 on the introduction of a system of bracket tariffs for the carriage of goods by road between Member States ⁽³⁾, as last amended by Regulation (EEC) No 3181/76 ⁽⁴⁾, the continuity of a Community policy in this sector should be ensured;

Whereas a single system for the fixing of rates and conditions for the carriage of goods by road between Member States can be achieved only progressively and in parallel to the development of the markets concerned;

Whereas, as an experiment, Member States should be offered the choice, on the basis of a common principle, between a non-binding reference tariff and compulsory bracket tariffs;

Whereas, within this framework, the choice of either tariff system should be made after taking account, in both cases, of the economic and technical conditions of the transport markets concerned;

Whereas the reference tariffs, which are no more than recommended rates, leave the transport undertaking with the responsibility for agreeing transport rates with the customer on the basis of the market situation and reciprocal interests;

Whereas, in this way, reference tariffs should therefore take into consideration the costs of the corresponding transport services, so that the transport rates fixed may take account of the economic circumstances of carriers;

Whereas, as far as compulsory bracket tariffs are concerned, the essential provisions as stated in Council Regulation (EEC) No 1174/68 should be retained;

Whereas it should be possible to monitor the evolution of actual rates within the framework of both reference tariffs and compulsory tariffs;

Whereas it appears useful for the tariff committee made up of governmental experts and chaired by the Commission to be able to hear the views of experts from the relevant economic sectors;

Whereas, as far as the implementation of the Regulation is concerned, both effective control over compulsory tariffs and appropriate penalties should be provided for;

Whereas, in the light of the experience gained in application of this Regulation, the Council should act by 31 December 1982 at the latest on the subsequent system, if any, for transport rates and conditions for the carriage of goods by road between Member States,

HAS ADOPTED THIS REGULATION:

General provisions

Article 1

This Regulation shall apply to the carriage of goods by road for hire or reward between the Member States, including those goods covered by the Treaty establishing the European Coal and Steel Community, whether or not for part of the journey:

⁽¹⁾ OJ No C 259, 4. 11. 1976, p. 40.

⁽²⁾ OJ No C 281, 27. 11. 1976, p. 2.

⁽³⁾ OJ No L 194, 6. 8. 1968, p. 1.

⁽⁴⁾ OJ No L 359, 30. 12. 1976, p. 13.

- carriage involves transit across a third country,
- the vehicle containing the goods is carried by sea, rail or waterway without break of load.

Article 2

1. The rates charged for carriage referred to in Article 1 shall be governed by a system of tariffs drawn up in accordance with this Regulation.
2. The tariffs shall be either for reference or compulsory.
3. The Member States concerned shall decide by mutual agreement on the application of one or other of the tariffs systems for the period of validity of this Regulation, taking particular account of the economic and technical conditions of the transport market concerned.

Subject to compliance with this principle:

- the Member States may maintain compulsory tariffs where such tariffs have been applied in pursuance of a Community Regulation,
- the Member States may introduce reference tariffs where no Community tariff rules have been applied.

Reference tariffs

Article 3

The reference tariffs shall constitute recommended rates. They shall be an indication for determining transport rates, which the users and the transport undertakings shall be free to fix at their discretion according to the market situation and their own interests.

Article 4

1. The system of reference tariffs shall include bilateral and multilateral tariffs.
2. Reference tariffs shall be established in the form of either general tariffs or special tariffs. They shall be differentiated as necessary to take account of the characteristics of the various transport operations and to promote the fixing of individual rates which do not differ too widely from the reference tariffs.
3. The reference tariffs shall incorporate price schedules and all the other rules required for calculating

the transport rate (transport rate proper and associated costs). The Commission shall make a recommendation regarding these rules before 1 July 1978, after consulting the Committee referred to in Article 16.

Article 5

The reference tariffs shall be established in such a way as to lead to the application of transport rates which cover the costs of the corresponding services, including the general expenses of the business, and to allow a fair profit for a properly managed and rationally operated undertaking engaged in the carriage of goods by road.

Article 6

1. Road hauliers' professional organizations in the Member States concerned shall, by joint agreement and as a result of bilateral or multilateral negotiations, draw up drafts for the introduction or amendment of reference tariffs. The Commission and the Member States concerned may take part in these negotiations in an advisory capacity. The professional organizations shall provide the Commission and the Member States in good time with any information necessary for their participation in such negotiations.

2. The abovementioned professional organizations shall consult the organizations representing transport users and those representing providers of services ancillary to transport and shall send the drafts, together with the details of the positions adopted by the organizations consulted, to the Governments of the Member States concerned, which shall inform the Commission immediately upon receipt.

A Member State concerned may object to the introduction of any measures within 60 days of the date on which it receives the drafts. The Commission may also object within the same period to the introduction of such measures, if they are incompatible with Community law. If neither the Commission nor any Member State concerned objects to the introduction of such measures, the road hauliers' professional organizations shall publish them in their tariff bulletin and in the specialized press.

By way of derogation from this procedure, the measures to be taken in pursuance of Article 17 may expressly provide that the tariff or tariff amendment be approved within the same period by a Member State concerned.

Article 7

1. If the negotiations for the establishment or amendment of a reference tariff should fail, any professional

organization concerned may refer the dispute to its own Member State, which shall immediately inform the other Member States concerned and the Commission.

In this case and where a Member State opposes the introduction of the measures, the Member States concerned may as soon as possible adopt a decision which shall be notified to the interested parties, officially published in the Member States concerned and communicated to the Commission.

2. If the Member States concerned do not succeed in adopting a decision in accordance with the second subparagraph of paragraph 1, the dispute shall be referred to the Commission at the request of one of those Member States.

The Commission, after consulting the Committee referred to in Article 16, shall adopt a Decision which shall be notified to the interested parties and published in the *Official Journal of the European Communities*.

3. The Commission may, on its own initiative, set the organizations concerned a period for the completion of the negotiations referred to in Article 6 (1). If no agreement has been reached by the end of this period, the procedure provided for in paragraphs 1 and 2 shall be applicable.

4. The Commission may prescribe a period within which the Member States concerned must take a decision pursuant to the second subparagraph of paragraph 1. If no decision has been taken by the end of this period, the procedure provided for in paragraph 2 shall be applicable.

Compulsory tariffs

Article 8

Compulsory tariffs shall be brought into force and published by the competent authorities of the Member States in the form of bracket tariffs. They shall be obligatory in the establishment of transport rates and conditions, subject to the exceptions and derogations provided for in this Regulation.

Article 9

1. Bracket tariffs within the meaning of Article 8 are tariffs laying down maximum and minimum rates. The difference between these two rates constitutes the bracket spread.

2. The bracket spread shall be 23 % of the maximum rate.

3. Rates for any given transport operation may be freely determined within the upper and lower limits of the relevant bracket tariff. Subject to the provisions of

Article 14, the conclusion of contracts at transport rates falling outside the upper or lower limits of the relevant tariff brackets shall be prohibited.

Article 10

1. Each compulsory tariff shall be drawn up by reference to a base-rate, which shall be the middle point of the bracket.

The base-rate shall be fixed having regard to both the average cost of the transport operation concerned, including, where appropriate, the general expenses of the business, for a properly managed undertaking enjoying normal conditions of use of its carrying capacity, and market conditions, and shall be such as to provide a fair return for carriers.

2. Compulsory tariffs may vary according to the circumstances of the service provided, and in particular according to the technical and economic characteristics of the operation in question, the route, the length of the transit period, the tonnage conditions, and the type of goods carried.

Article 11

1. Compulsory tariffs shall be fixed or amended by agreement between the Member States concerned, that is the States on the territories of which the goods are to be loaded or unloaded. The Commission may take part in such negotiations in an advisory capacity.

The Commission may prescribe a period within which the Member States concerned must take a decision pursuant to paragraph 1. If no decision has been taken by the end of this period, the procedure provided for in Article 13 (1) and (2) shall be applicable.

2. Each Member State shall bring such tariffs into force within two months following the conclusion of negotiations for the fixing or amendment of tariffs or, as the case may be, following the completion of the procedure referred to in Article 13 (1) and (2).

3. Without prejudice to paragraphs 1 and 2, a Member State may, in order to offset the effects of monetary fluctuations, unilaterally carry out an upward revision of price schedules expressed in its currency. The Member State concerned shall inform the other Member States concerned and the Commission at least one month before this measure is brought into effect.

Article 12

The compulsory tariffs shall be officially published in the Member States concerned. The particulars published

shall include the dates of their entry into force. Only the maximum rate for each bracket need be published.

Article 13

1. If the negotiations for the establishment or modification of a compulsory tariff fail, the dispute shall be referred to the Commission at the request of a Member State.

The Commission, after consulting the Committee referred to in Article 16, shall adopt a Decision which shall be notified to the interested parties and published in the *Official Journal of the European Communities*.

2. The Commission Decision shall become binding one month after the date of publication, unless in the meantime a Member State refers the matter to the Council. In this case, the Council shall take a decision by a qualified majority within three months of referral of the matter and publish the decision in the *Official Journal of the European Communities*.

Article 14

1. By way of derogation from Article 9 (3), special contracts may be concluded in writing between a carrier and another party at transport rates outside the upper or lower limits of the relevant tariff brackets.

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) where a 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 cost within the meaning of Article 10 (1) on which the relevant tariff is based, as, in particular, where:
 - the goods require special handling during transit,
 - 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

(c) where a 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 not be less than 500 tonnes.

Special contracts must in all cases be such as to maintain or increase the carrier's trading returns.

2. On concluding any special contract, the carrier shall forthwith communicate the terms thereof to the competent authorities of the Member State of origin, that is, the State where his vehicles are registered or, if this is not the State where the goods are to be loaded or unloaded, then the State on the territory of which the goods are to be loaded.

When communicating the terms of the contract, the carrier shall attach all particulars supporting the conclusion of the contract and the rates agreed.

3. Those authorities shall send copies of all the relevant documents to the competent authorities of the Member States concerned, that is, the States in which the vehicles are registered and those where the goods are to be loaded and unloaded.

4. The authorities referred to in paragraphs 2 and 3 shall, using the information contained in the documents submitted, institute all investigations and inquiries they consider desirable in order to check that the parties to the contract have complied with this Regulation.

5. If as a result of these investigations it is found that there has been any breach of this Regulation:

- the competent authorities of the Member States may require that during a prescribed period those carriers whose vehicles are registered on their territory shall not perform any special contract without prior authorization,
- the competent authorities of the Member States concerned may, in addition to the steps which they may take in accordance with their own regulations, request the competent authorities of the State where any vehicle concerned is registered to apply the measures referred to above. The State where the vehicle is registered shall inform the other Member States and the Commission of any measures taken.

6. In the event of any disturbance of the transport market in respect of the carriage of certain goods over certain routes, the conclusion of special contracts may, for a specific period, be made subject to prior approval by the competent authorities of the Member State where the goods are to be loaded.

The Governments of the Member States concerned shall take the measures necessary to this end by mutual agreement.

A market shall be considered disturbed where, in particular, the average level of rates applied over a given period is not sufficient for a properly managed transport undertaking enjoying normal conditions of use of its carrying capacity to operate at a profit.

Common provisions

Article 15

1. Transport undertakings shall be required to communicate to the competent authorities of the Member States, upon request, any information concerning rates applied in the international carriage of goods by road. The Governments of the Member States shall inform the Commission of any sequel to such information.
2. To improve knowledge of the market situation, surveys may be made concerning the rates charged for the carriage of certain types of goods on major routes.
3. The Council, acting by a qualified majority on a proposal submitted by the Commission after hearing the opinion of the Committee provided for in Article 16, shall lay down the programmes in respect of the communications provided for in paragraph 1 and the surveys provided for in paragraph 2 and the details for carrying them out.
4. Information obtained in implementation of this Regulation shall be covered by the obligation of professional secrecy.

Article 16

1. A Committee attached to the Commission is hereby set up for the purpose of assisting the Commission in the implementation of this Regulation and of the provisions adopted for its application.

The Committee shall:

- deliver opinions in those cases expressly provided for in this Regulation,
- draw up by 1 October of each year a report on the development during the preceding year of rates and conditions for the carriage of goods by road between Member States,
- advise the Commission at its request on all questions concerning the development of future rates systems in this sector.

Within the framework of this Regulation, the Commission may consult the Committee on any other matter where it considers it appropriate.

The opinions of the Committee must state reasons on which they are based and be given within a time limit fixed by the chairman. Opinions shall be adopted by a qualified majority within the meaning of the first subparagraph and second subparagraph, first indent, of Article 148 (2) of the Treaty. The chairman shall not vote.

2. The Committee shall consist of not more than two government experts appointed by each Member State and shall have as chairman a representative of the Commission, which shall also provide secretarial services.

The Committee shall be convened by its chairman on his own initiative or at the request of a Member State. The Committee may hear the views of representatives of transport undertakings, transport users and providers of services ancillary to transport.

Article 17

1. In due course, and after consulting the Commission, the Member States shall adopt the laws, regulations and administrative provisions necessary for the implementation of this Regulation.

As far as compulsory tariffs are concerned, Member States shall in particular provide for both permanent and effective control and appropriate penalties for breaches.

Member States shall designate the organizations referred to in Article 6.

2. At the request of a Member State or on its own initiative, the Commission shall consult the Member States with regard to the drafts of the laws, regulations and administrative provisions referred to in paragraph 1.
3. The Member States shall afford assistance to one another and to the Commission for the purposes of applying this Regulation.

Article 18

This Regulation shall not apply to the types of carriage listed in the Annex, which forms an integral part of this Regulation.

Article 19

This Regulation shall not affect any obligation arising from the Treaty establishing the European Coal and Steel Community.

Article 20

1. The reference tariffs and the new compulsory tariffs must be published not later than 1 January 1979.
2. The compulsory tariffs in effect when this Regulation enters into force shall remain so until they are replaced by other tariffs.
3. Any laws, regulations or administrative provisions introduced by the Member States pursuant to Regulation (EEC) No 1174/68 shall remain in force for the compulsory tariffs established pursuant to this Regulation until they are replaced by provisions adopted on the basis of Article 17 (1).

Article 21

1. This Regulation shall enter into force on 1 January 1978.

It shall remain applicable until 31 December 1983.

2. The Council shall, acting upon a proposal from the Commission drawn up after consultation of the committee provided for in Article 16, decide before 31 December 1982 on the subsequent system for transport rates and conditions for the carriage of goods by road between Member States.

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

Done at Brussels, 12 December 1977.

For the Council

The President

L. DHOORE

ANNEX

Types of carriage to which this Regulation does not apply:

- occasional carriage of goods to or from airports, in the event of air services being diverted,
 - carriage of luggage in trailers coupled to passenger-carrying vehicles and the carriage of luggage in all types of vehicles to and from airports,
 - carriage of mail,
 - carriage of damaged vehicles,
 - carriage of refuse and sewage,
 - carriage of animal carcasses for disposal,
 - carriage of bees and fish fry,
 - carriage of objects and works of art for exhibition or for commercial purposes,
 - occasional carriage of objects and material exclusively for advertising or information purposes,
 - removals by undertakings having special staff and equipment for this purpose,
 - carriage of equipment, properties and animals to or from theatrical, musical or film performances or sporting events, circuses, exhibitions or fairs, or to or from the making of radio or television broadcasts or films,
 - carriage of gold, silver, platinum, money, coins and securities, stamps, documents, precious stones or real pearls,
 - carriage of articles required for medical care in emergency relief, in particular for natural disasters,
 - carriage of spare parts for sea-going vessels,
 - carriage of live animals,
 - carriage involving the use of special vehicles or special traffic arrangements,
 - carriage of goods not exceeding five tonnes in total weight consigned by a single consignor to a single consignee,
 - carriage of goods over a distance which in total does not exceed 50 kilometres; where the road vehicle is transported by sea over part of the distance, the sea journey shall not be taken into consideration in the calculation of that distance.
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