6.8.68 Official Journal of the European Communities No L 194/1

REGULATION (EEC) No 1174/68 OF THE COUNCIL

of 30 July 1968

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 Parliament;

Having regard to the Opinion of the Economic and Social Committee;

Whereas the regulation of transport rates and conditions is an important aspect of the common transport policy provided for under the Treaty;

Whereas such regulation is to apply first to the carriage of goods by road between Member States; whereas for this purpose there should accordingly be introduced in respect of such carriage a system of compulsory bracket tariffs, under which the competent authorities lay down and publish tariffs the provisions of which will govern, subject to the exceptions and derogations provided for in this Regulation, the fixing of transport rates and conditions;

Whereas, to enable the experience acquired to be taken into account, the system introduced should apply until 31 December 1971, with a provision for its extension for a further year in the event of the Council failing to decide by that date on the system to be applied subsequently;

Whereas the tariff rules established by this Regulation will in no way affect the position or conditions of remuneration of any providers of services ancillary to transport participating in transport operations;

Whereas tariffs must be drawn up in such a way as to avoid both abuse of dominant positions and damaging competition; whereas such tariffs must be fixed by reference to a base-rate, set with due regard to the cost of the relevant transport operations and to the state of the market and in such a way as to provide a fair return for carriers;

Whereas the procedure whereby tariffs are to be fixed or amended by Member States should be laid down;

Whereas the circumstances should be defined in which carriers may make special contracts providing for rates which depart from the bracket tariffs;

Whereas in the event of disturbances on the transport market there should be provision for the conclusion of special contracts to be subjected, for a specific period, to prior approval;

Whereas appropriate publication procedures should be instituted for the bracket tariff system, both as regards tariff rates and as regards special contracts; whereas, to enable the competent authorities to obtain adequate information as to the state of the market, provision should be made for the organisation of sample surveys of rates applied within the tariff brackets;

Whereas to assist the Commission in implementing this Regulation it is necessary to set up an advisory committee composed of experts appointed by the Member States;

Whereas, to ensure that the Regulation is properly applied, provision should be made for checks on compliance and for penalties;

Whereas it is necessary to define the extent to which, having regard to the provisions of Article 232 (1) of the Treaty, this Regulation is to apply to transport operations covered by the Treaty establishing the European Coal and Steel Community;

Whereas for economic and practical reasons the new system need not be made to apply to certain types of carriage;

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation shall apply to the carriage of goods by road between Member States of the Community, including operations involving transit across a third country.

2. All transport operations falling within the terms of paragraph 1 shall be subject to a system of compulsory bracket tariffs.

3. 'Compulsory tariffs' means a system of tariffs prescribed and published by the competent authorities and governing, subject to the exceptions and derogations provided for in this Regulation, the fixing of transport rates and conditions.

Article 2

1. 'Bracket tariffs' within the meaning of Article 1 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 5, the conclusion of contracts at transport rates falling outside the upper or lower limits of the relevant tariff brackets shall be prohibited.

Article 3

1. Each 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 both to the average cost of the transport operation concerned, including the general expenses of the business, for a properly managed undertaking enjoying normal conditions of use of its carrying capacity, and to market conditions, and shall be such as to provide a fair return for carriers.

2. 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 concerned, the length of the transit period, the tonnage conditions, and the type of goods carried.

Article 4

1. Tariffs shall be fixed or amended by agreement between the Member States directly concerned, that is the States on whose territories the goods are to be loaded or unloaded.

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 paragraph 2 (b).

2. The Commission may participate in an advisory capacity in negotiations for the fixing or amendment of tariffs as provided for in paragraph 1; it may submit to the Member States directly concerned proposals designed to produce agreement.

Member States shall supply the Commission with the information necessary for this purpose.

(a) If an agreement is reached between the Member States directly concerned it shall be notified forthwith to the Commission and to the other Member States.

Any Member State may ask the Commission to examine such agreement. The Commission, acting as soon as possible and after consulting the Committee of Experts provided for in Article 11, may make a recommendation.

(b) If the negotiations referred to in paragraph 1 do not result in agreement, or if the negotiations referred to in Article 15 do not result in agreement within the period laid down, the dispute may be referred to the Commission at the request of any of the Member States concerned. The Commission, acting as soon as possible and after consulting the Committee of Experts provided for in Article 11, shall take a decision, which shall be notified to the Member States concerned and at the same time communicated to the other Member States.

This decision shall take effect after the expiry of a period of twenty days unless before the expiry of that period the matter is referred to the Council by a Member State.

In such a case, the Council shall give its decision by a qualified majority within twenty days.

(c) Decisions by the Council or the Commission referred to in (b) above shall remain in force until such time as an agreement is concluded between the Member States concerned or until any further decision by the Council or the Commission in accordance with the procedure laid down in this Article.

3. Tariffs shall be communicated by Member States to the Commission.

Article 5

1. By way of derogation from Article 2 (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:

— circumstances must exist which were not taken into account at the time when the tariffs were fixed, as, in particular, where a special contract is made in response to the requirements of competition or where it is entered into for a certain period; and

— the tonnage to be carried under any such contract within any three-month period must be not less than 500 metric tons.

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 whose territory 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 Member States of registration of the vehicles and the States 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 the provisions of this Regulation.

5. If as a result of these investigations it is found that there has been any breach of the provisions 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 authorisation as provided for in the second subparagraph of paragraph 6;

— 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 in the preceding subparagraph. 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 on the transport market in respect of the carriage of certain products 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 States directly concerned, that is the States where the goods are to be loaded and unloaded.

In such cases the carrier may not carry out the transport operation concerned until he has received authorisation from the competent authorities of the Member State where the goods are to be loaded, after they have received the consent of the competent authorities of the Member State where the goods are to be unloaded.

7. Such procedure shall be brought into operation one month after a request from any Member State directly concerned, provided the other Member State directly concerned accedes thereto. Any Member State may ask the Commission to examine the procedure. The Commission, acting as soon as possible and after consulting the Committee of Experts provided for in Article 11, may make a recommendation.

If the other Member State directly concerned does not accede to the request, the procedure shall come into operation only after a decision by the Council, acting by a qualified majority on a proposal submitted by the Commission after hearing the opinion of the Committee of Experts provided for in Article 11.

8. The 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.

Article 6

Bracket 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 7

Transport rates and conditions which, in accordance with the provisions of Article 5, depart from the published tariffs shall be communicated by the competent authorities to the bodies referred to in Article 8.

Article 8

1. Each Member State shall designate or set up a body or bodies to be responsible for the publi-

cation of the transport rates and conditions referred to in Article 7.

2. Each such body shall publish forthwith the following particulars of all special contracts notified to it relating to any transport operation whose loading point is situated within the area for which it is responsible:

— name of carrier;

— route or routes concerned;

— type of goods;

— tonnage;

— rates agreed;

— date on which the contract was made;

— duration of contract;

— principal special conditions.

In addition each such body shall at the end of each month draw up and publish a return, broken down by class of goods and route, of all contracts providing for the loading or unloading of goods within its area.

These returns shall be sent immediately to the Commission, which shall forward them to the competent authorities of the Member States. Every six months the Commission shall draw up a report on the basis of the afore-mentioned returns.

Article 9

Detailed rules for giving effect to Articles 7 and 8 shall be adopted by the Commission, after hearing the opinion of the Committee of Experts provided for in Article 11, within six months following the entry into force of this Regulation.

Article 10

1. To enable the competent authorities to obtain adequate information as to the state of the market, sample surveys shall be made of rates applied within the tariff brackets.

Such surveys shall concern the rates charged for the carriage of certain types of goods on major routes.

The results of the surveys shall not be published. They shall, however, be sent to the competent authorities of the Member States concerned and to the Commission, so as to enable them to carry out their task of supervising the market.

2. The Council, acting by a qualified majority on a proposal submitted by the Commission after hearing the opinion of the Committee of Experts provided for in Article 11, shall lay down, in so far as may be necessary, the programme of such surveys and the details for carrying them out.

Article 11

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

The Committee shall consist of not more than two government experts appointed by each Member State and shall have a representative of the Commission as Chairman.

The Committee shall be convened by the Chairman, either on his own initiative or at the request of a Member State. At least eight days' notice shall be given of meetings and such notice shall include details of the agenda. Less than eight days' notice may be given in cases of urgency.

2. In any case expressly provided for in this Regulation, the Committee shall when so requested by the Commission give an advisory opinion. Any such opinion of the Committee must state the reasons on which it is based and be given within a time limit fixed by its 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.

3. Every six months the Committee shall draw up a report on market trends.

4. The Committee shall be given all such information as it may need to carry out the tasks laid upon it. It shall automatically receive from the Commission the returns of contracts published pursuant to Article 8 by the bodies responsible for publication.

By way of derogation from Article 15 (2) of Regulation No 11[1] on the abolition of discrimination in transport rates and conditions, adopted in implementation of Article 79 (3) of the Treaty establishing the European Economic Community, the Committee shall also be entitled to have access to information collected in pursuance of that Regulation.

Article 12

1. Member States shall, in good time and after consulting the Committee, adopt such laws, regulations or administrative provisions as may be necessary for the implementation of this Regulation.

Such measures shall cover, *inter alia*, the organisation of, procedure for and means of carrying out, checks on compliance and the penalties applicable in case of breach.

2. The Commission, if so requested by a Member State or if it considers it appropriate, shall consult

[1] OJ No 52, 16.8.1960, p. 1121.

with the Member States concerned upon the proposed terms of measures as referred to in paragraph 1.

3. Member States shall assist each other in applying the provisions of this Regulation and in checking compliance therewith.

4. If the competent authorities of a Member State are aware of a breach of the provisions of this Regulation, they shall report it to the other Member States directly concerned. The competent authorities shall notify each other of all information in their possession concerning the penalties imposed for such breaches.

Article 13

All information obtained in implementation of this Regulation shall be covered by the obligation of professional secrecy, unless its publication is expressly provided for by the Regulation;

Article 14

The provisions of this Regulation shall apply to transport operations covered by the Treaty establishing the European Coal and Steel Community, in so far as that Treaty or the provisions implementing it do not contain special provisions in that respect.

Article 15

Tariffs shall be fixed in accordance with the procedures laid down in Article 4 not later than one year after the entry into force of this Regulation.

Negotiations for the fixing of such tariffs must be completed not later than ten months after the entry into force of this Regulation.

Article 16

This Regulation shall not apply:

(a) to the carriage of goods not exceeding five metric tons in total weight consigned by a single consignor to a single consignee;

(b) to the carriage of goods over a distance which in total does not exceed fifty kilometres;

(c) to the types of carriage listed in Annexes I and II to the First Council Directive[1] on the establishment of certain common rules for international transport (carriage of goods by road for hire or reward);

(d) to carriage involving the use of special vehicles or special traffic arrangements.

Article 17

This Regulation shall remain in force until 31 December 1971 and then, in the event of the Council not having decided before 31 December 1971 on the system to be applied thereafter, for a further period of one year.

Article 18

This Regulation shall enter into force on 1 September 1968.

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

Done at Brussels, 30 July 1968.

For the Council

The President

G. MEDICI

[1] OJ No 70, 6.8.1962, p. 2005.