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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 3568/83

of 1 December 1983

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 establishment of which by the Member States is provided for in the Treaty; whereas, after the expiry on 31 December 1983 of 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 (3), the continuity of a Community policy in this sector should be ensured;

Whereas the fixing of rates should be based on reference tariffs which leave the final decision on the fixing of individual rates to the operators; whereas, however, two or more Member States should be offered the option of choosing, for relations between themselves, compulsory bracket tariffs instead of non-binding reference tariffs;

Whereas, as far as reference tariffs are concerned, an exceptional procedure should be laid down for transport markets of minor quantitative importance;

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, on the one hand, the costs of the corresponding transport services and, on the other hand, the situation and foreseeable developments in the markets concerned;

Whereas, as far as compulsory bracket tariffs are concerned, the essential provisions as stated in Council Regulation (EEC) No 2831/77 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 desirable 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 this 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 1987 at the latest on the subsequent system, for transport rates and conditions for the carriage of goods by road between Member States,

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(1) OJ No C 161, 20. 6. 1983, p. 191.
(2) OJ No C 341, 19. 12. 1983, p. 38.
(3) OJ No L 334, 24. 12. 1977, p. 22.

HAS ADOPTED THIS REGULATION:

General provisions

Article 1

This Regulation shall apply to the carriage of goods by road between the Member States for hire or reward, including goods covered by the Treaty establishing the European Coal and Steel Community, with the exception of the carriage of goods listed in the Annex to this Regulation. It shall apply even if carriage involves transit across a third country for part of the journey, or the vehicle containing the goods is carried by sea without intermediate reloading.

Article 2

1. The rates for the carriage of goods referred to in Article 1 shall be governed by a system of reference tariffs. The obligation to fix reference tariffs for transport markets of minor quantitative importance may be waived in accordance with the procedure laid down in Article 7 (1).

2. Two or more Member States may mutually agree, taking account of the economic and technical circumstances in the transport markets concerned, to introduce compulsory tariffs instead of reference tariffs.

Reference tariffs

Article 3

Reference tariffs shall constitute recommended rates. They shall constitute an indication for the determination of 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

The system of reference tariffs shall include bilateral and multilateral tariffs.

Article 5

1. Reference tariffs shall be established in the form of either general tariffs or special tariffs.

2. Reference tariffs shall incorporate price schedules and any other rules required for calculating transport rates. The price schedules shall be denominated in the currencies of the Member States concerned.

3. Reference tariffs may be differentiated as necessary to take account of special features of the various transport services, and to promote the fixing of individual transport rates which take due account of such tariffs.

Article 6

When reference tariffs are being fixed, account shall be taken of:

— the average cost of providing the corresponding services, including general overheads and a fair profit, and

— the situation and foreseeable developments in the markets concerned.

Article 7

1. Road hauliers' professional organizations in the Member States shall draw up proposals for the introduction or amendment of reference tariffs.

At the request of the professional organizations concerned, the Commission may grant derogations from the obligation referred to in the first subparagraph within 30 days and after consulting the Committee referred to in Article 16, account being taken of the particular features of the transport markets referred to in Article 2 (1).

2. The professional organization referred to in paragraph 1 shall consult the organizations representing transport users and providers of services ancillary to transport.

3. On expiry of a period of 30 days from the date of receipt of the proposal by the organizations representing transport users and freight forwarders, the road hauliers' professional organizations shall send the proposals, together with details of any positions adopted by the organizations consulted and their reactions, to their governments, which shall inform the Commission immediately upon receipt.

4. A Member State concerned may object to the introduction of measures within 60 days of the date on which it receives the relevant proposal. The Commission may also object to the introduction of measures within the same period if they are contrary to Community law. If neither the Member State concerned nor the Commission objects to the introduction of the measures, the road hauliers' professional organizations

shall publish them in their tariff bulletins and in the specialized press.

5. The reference tariffs shall be reviewed with a view to their possible modification during the year following their fixing or last review.

6. If the professional organizations fail to fix or amend a reference tariff, or if a Member State objects to the introduction of a tariff, each of the parties concerned may submit the dispute to the Commission. After consulting the Member States which so wish and the Committee referred to in Article 16, the Commission shall take a decision on the dispute within 60 days; this decision shall be notified to those concerned and published in the *Official Journal of the European Communities*.

Compulsory tariffs

Article 8

The compulsory tariffs shall be enforced and published by the competent authorities of the Member States concerned in the form of bracket tariffs. Their provision shall apply to the parties to transport contracts for the fixing of prices and conditions of transport, subject to the exceptions and exemptions set out 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 from 15 % below to 15 % above the base 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 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 published in the form of a base rate, which shall be the mid-point of the bracket. The base rates shall be denominated in the currencies of the Member States concerned.

The base rate shall be fixed having regard to both the average cost of the transport operation concerned, including, where appropriate, the general overheads, calculated 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 delivery 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 directly concerned, i.e. the States on the territories of which the goods are to be loaded and unloaded. The Commission may take part in such negotiations in an advisory capacity.

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

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

4. Compulsory tariffs shall be examined with a view to possible adjustment within one year of the fixing of the tariffs or of their last review.

Article 12

The compulsory tariffs shall be officially published in the Member States concerned. The particulars published shall include the date of their entry into force.

Article 13

1. If the negotiations for the establishment or modification of a compulsory tariff are not concluded within six months, the dispute shall be referred to the Commission at the request of a Member State concerned.

2. After consulting the Committee referred to in Article 16, the Commission shall adopt a decision which shall be notified to the interested parties and published 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) where circumstances 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 a contract must relate to transport operations whose technical features entail a cost 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 unhealthy nature,

— the goods consist of 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 improve the carrier's trading returns.

2. On concluding any special contract, the carrier shall forthwith communicate the terms thereof to the competent authorities of his home State, i.e. the Member State where his vehicles are registered or, if that is not the State where the goods are to be loaded or unloaded.

The carrier shall attach all particulars supporting the conclusion of the contract and the rates agreed to his communication.

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

4. Using the information contained in the documents submitted, the authorities referred to in paragraphs 2 and 3 shall institute any 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 should be found that there has been any breach of this Regulation:

— the competent authorities of the Member States may require that those carriers whose vehicles are registered on their territory shall not, during a prescribed period, perform any special contracts without prior authorization;

— in addition to the steps which they may take in accordance with their own regulations, the competent authorities of the Member States concerned may request the competent authorities of the State where the vehicle is registered to apply the measures referred to above. The State where the vehicle is registered shall inform the other Member States concerned and the Commission of any measures taken.

6. In the event of disturbance on the transport market for certain products on certain routes, the conclusion of all special contracts may be made subject, for a given period, to prior approval by the competent authority of the Member State in whose territory the goods are to be loaded.

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

There shall be deemed to be disturbance on a market in particular where the average level of prices over a given period is insufficient to ensure the profitability of a properly managed transport undertaking working to normal capacity.

Common provisions

Article 15

1. Transport undertakings shall be required upon request to communicate any information concerning rates applied in the international carriage of goods by road to the competent authorities of the Member States. The Governments of the Member States shall inform the Commission of the conclusions drawn from such information.

2. Surveys may be made of the rates charged for the carriage of certain types of goods on major routes, in order to improve knowledge of the market situation.

3. Acting by a qualified majority on a proposal submitted by the Commission after hearing the opinion of the Committee provided for in Article 16, the Council shall lay down the programmes in respect of the communications provided for in paragraph 1 and the surveys provided for in paragraph 2, and shall prescribe the details of their execution.

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 implementing this Regulation and the provisions adopted for its application.

The Committee shall:

— deliver opinions in those cases expressly provided for in this Regulation,

— draw up a report by 1 October of each year on the changes in rates and conditions for the carriage of goods by road between Member States which took place during the preceding year,

— advise the Commission at its request on all questions concerning the development of the future rate system in this sector.

The Commission may consult the Committee within the framework of this Regulation on any other matter where it considers it appropriate to do so.

2. The Committee shall consist of government experts; each Member State shall appoint not more than two experts. The Committee 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 professional transport undertakings, transport users and providers of services ancillary to transport.

Article 17

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

As far as compulsory tariffs are concerned, the Member States referred to in Article 11 shall provide in particular for permanent and effective checks and for appropriate penalties for breaches.

Member States shall designate the organizations referred to in Article 7.

2. The Commission shall consult the Member States on the drafts of the instruments referred to in paragraph 1 at the request of a Member State or on its own initiative.

3. The Member States shall afford assistance to one another and to the Commission for the purpose of applying this Regulation.

Article 18

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

Article 19

1. Subject to paragraph 2, the reference tariffs and compulsory tariffs fixed on the basis of Regulation (EEC) No 2831/77 which are in force when this Regulation enters into force shall remain in force as reference tariffs until they are replaced by reference tariffs fixed in accordance with this Regulation.

2. In the case referred to in Article 2 (2), the compulsory tariffs fixed on the basis of Regulation (EEC) No 2831/77 which are in force when this Regulation enters into force shall remain in force until

they are replaced by tariffs fixed in accordance with this Regulation.

3. Any laws, regulations or administrative provisions introduced by the Member States pursuant to Regulation (EEC) No 2831/77 shall remain in force until they are replaced by the provisions fixed in accordance with Article 17 (1).

4. To the extent necessary, amendments of a technical nature may be made to compulsory or reference tariffs in the six months following entry into force of this Regulation.

Article 20

This Regulation shall enter into force on 1 January 1984.

It shall apply until 31 December 1988.

Acting on the basis of a proposal from the Commission submitted after consulting the Committee provided for in Article 16, the Council shall decide by 31 December 1987 on the subsequent arrangements applicable to rates and conditions for the carriage of goods by road between the Member States.

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

Done at Brussels, 1 December 1983.

For the Council

The President

N. AKRITIDIS

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 carcases 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 to be used exclusively for advertising or information purposes

— Removals by undertakings possessing specialized staff and equipment

— Carriage of equipment, properties and animals to or from theatrical, musical or film performances or sporting events, circuses, exhibitions or fairs, or transport operations for 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 connection with emergency relief, and in particular with natural disasters

— Carriage of spare parts for sea-going vessels and aircraft

— Carriage of products intended for the provisioning of sea-going vessels and aircraft

— Carriage of live animals by means of specialized vehicles

— Carriage involving the use of exceptional vehicles or traffic arrangements

— Carriage of goods not exceeding five tonnes in total weight sent by a consignor to a single consignee

— Carriage of goods over a total distance of less than 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

— Combined transport by road and rail and/or inland waterway