

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(75) 490 final.

Brussels, 1 October 1975

COMMUNICATION
FROM THE COMMISSION TO THE COUNCIL
on the
OPERATION OF
THE MARKETS IN SURFACE GOODS TRANSPORT
WITHIN THE COMMUNITY

(Road, rail and inland waterway)

COM(75) 490 final.

SUMMARY

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I. INTRODUCTION

1. The Commission submits herewith, for the Council's examination and approval, as an annex to this document, an initial series of proposals for measures concerning

- the right to take up inland-waterways activities as a carrier;
- mutual recognition of the diplomas, certificates and other evidence of formal qualifications of carriers of passengers and goods by road and inland waterway, in order to facilitate the attainment of the right of establishment;
- the establishment of a Community system of determining rates and conditions of international rail transport;
- extension of the existing tariff system for the road haulage of goods between Member States;
- the replacement of this system in the near future through the introduction of reference tariffs;
- liberalization of all quota and authorization systems for certain types of carriage of goods by road between Member States, particularly on short hauls, on own account and in transit;
- extension and increase of the Community quota of authorizations for road freight transport between Member States;
- introduction of a system for observing the market in the carriage of goods by road, rail and inland waterway;

In addition, at a later date the Commission will submit to the Council a proposed regulation for drawing up common rules aimed at preventing certain practices of unfair competition between carriers.

2. These proposals aim at beginning, in the freight sector, the action which the Commission set out in its Communication of October 1973 on the operation of inland transport markets.
3. For information purposes, the Commission is at the same time sending the Council a report which aims to provide an outline of the current situation in inland transport markets in the Community. The aim of this report is to make it easier to obtain an unbiased appreciation of the proposals in question as well as to justify them and fix their objectives.
4. The position that these proposals occupy in the common transport policy is set out below.

II THE OPERATION OF INLAND FREIGHT TRANSPORT MARKETS WITHIN THE COMMON TRANSPORT POLICY

5. In its communication to the Council of 24 October 1973 on the development of the common transport policy, the Commission proposed the gradual introduction of a Community transport system capable of contributing to the attainment of the objectives of the Treaty of Rome, particularly the improvement of the quality and standard of living and working conditions, as well as permitting the smooth operation of transport at least cost to society. The Community regulations concerning the organisation of the freight transport markets by rail, road and inland waterway which aim at establishing a common transport market and which encourage freedom of choice of transport services within a healthy competitive framework, make up one of the elements of this common transport system.

The other sectors of this Community transport system consist especially of :

- the coordination of infrastructure investments;
- charging for the utilisation of infrastructures;
- the approximation of conditions of competition, particularly in the social, technical and tax sectors, and the improvement of the situation of the railways;

6. The Commission has also stressed that all these measures must take account of the interrelationships of the transport policy with other Community structural policies, contributing to the achievement of these policies' objectives and taking into consideration, by means of these same policies, the guidelines of the common transport policy.

In addition the Commission has set out its reasons for making progress by parallel stages in all the sectors mentioned in the common transport policy in order that the various measures complement one another. The work programme set out in the second part of the 1973 communication was drawn up similarly.

7. In order to implement this work programme the Commission has, meanwhile, taken the following action :

- as regards the coordination of investments, it has initiated a provisional study on transport requirements and is attempting progressively to bring about a comparison of national infrastructure investment programmes;

- as regards charging for the utilization of the infrastructure it is seeking to obtain the agreement of the Council to a first directive, presented in 1968, on the harmonization of tax structures for lorries and is contemplating some provisional action on the harmonization of rates of taxes. In addition the Commission is preparing the next Council deliberations on the guidelines to be followed in charging for the utilisation of the infrastructure, for which a proposition was presented in 1971.

 - as regards the harmonization of conditions of competition, especially in the fiscal, technical and social sectors, the Commission is trying to achieve an outcome to several proposals which have previously been submitted to the Council. These concern in particular, proposals for the weights and dimensions of vehicles, the inspection of motor vehicles and the harmonization of provisions relating to driving licences. They also include the proposal concerning the second regulation on social legislation relating to road transport. On 5 May 1975, the Commission presented a proposal to the Council relating to the implementation of a European agreement concerning the work of crews of vehicles engaged in international road transport (A.E.T.R.). On 17 September 1975 the Commission presented its proposals concerning the harmonization of certain social provisions relating to goods transport by inland waterway transport.
8. Council legislation in 1974 and 1975 is inserted in an equally positive manner in the work programme drawn up by the Commission. The two directives controlling access to the profession of passenger and freight road carrier may have favourable repercussions on the structure of road transport businesses. The Council's decision of 20 May 1975 on the improvement of railway undertakings' finances and on the harmonization of provisions regulating the financial relationships of these undertakings with the state are especially important. The implementation of this decision will contribute towards the possibility of the railways fulfilling their role in the Community's transport economy.

III. THE COMMISSION'S LONG-TERM CONCEPT OF THE ORGANISATION OF THE TRANSPORT MARKET

9. In its communication of October 1973 the Commission indicated the principles upon which future definitive regulations for the transport market should be based. These regulations should be drawn up in stages as an integral part of the overall Community transport system (c.f. especially points 25, 55, 72 and 73 of the communication).

These principles, which comply with the Treaty of Rome, should lead to a market organisation based on a market economy which operates within a framework of healthy competition and takes account of the social needs of society as a whole. These principles can be summarised and detailed as follows :-

- a) administrative and operational decisions will be taken by those parties directly concerned, i.e. the transport undertakings themselves (both public and private) which from then on be free to make investments in equipment and fix the price for their services;
- b) the transport undertakings enjoying this freedom will in return, be responsible for covering the costs of services rendered to their customers;
- c) the public authorities will be able to take action as regards transport capacity and rates as necessary in order to remedy serious and persistent disturbances on the market by taking measures whose nature, duration, timetable and scope must be adapted to the problems of the markets in question;
- d) the public authorities must also be able to take action to establish services conforming to the demands of public interest in order to satisfy the social, economic and Community needs where the commercial services on the market are unable to cope;
- e) the undertakings and the public authorities will be guided in their decision-making by a permanent market observation system involving forecasts and facts about the current situation and trends of these markets;

f) In the interest of an adequate organisation of the markets the bodies representing the operators and the trades unions should collaborate within the framework of the consultative organs.

IV. PROGRESSIVE & BALANCED ACTION DURING THE TRANSITIONAL PERIOD

10. In its communication of October 1973 the Commission expressed the opinion that the situation in the transport sector of the Community did not allow the sudden removal of existing state intervention in the sectors of transport capacity and the rates and conditions of transport. The setting up of a series of measures for the achievement of a community transport system will require several years' work. Therefore, during a transitional period (c.f. points 58 to 60 of the communication) it is necessary that certain interventions of public bodies in the market organisation should continue. Nevertheless the importance of these interventions could constantly be reduced as one approaches the effective establishment of a community transport system. In parallel with this progressive setting up of free market operation and without any resulting subordination of measures concerning the market to those of harmonisation, balanced progress should be made towards the harmonisation of the conditions of competition.

Equally, it should be possible during the transitional period to note, in a precise way, the structural alterations which affect the transport market and the measures that it is necessary to take in order to guide the changes in the direction best suited to the Community's requirements. In this regard it is important to take note especially of the influence that these changes could have on levels of employment and the position of workers, in order to allow the necessary measures to be taken, in good time, to prevent negative repercussions in the social sector.

The length of this transitional period cannot therefore be fixed in advance. The Commission is of the opinion that, in any case it is necessary to take account, during this period, of developments in the economic and social situation and the reactions of the transport market to the measures which will be taken for their operation.

11. The proposals set out at point 1 above, which the Commission is submitting to the Council in this document, constitute a first step towards the achievement of the objectives fixed for community action in the operation of the freight sector of the transport market and fit into the progressive and balanced action suitable to the transitional period. Viz:

- Access to the market

The measures to render more flexible the present restrictions on road transport capacity will make it easier to set up the organisation provided for in the final stage. On the other hand, the measures provided for at present are limited insofar as their repercussions are concerned. The Community quota implies the maintenance of capacity limitation for the moment. On the other hand the liberalisation of certain international traffics, which are still to be found in the bilateral quotas in some countries, essentially only refers to those exceptional cases for which, in the Commission's opinion, it seems that an urgent review of the regulations is necessary.

The proposal relating to the mutual recognition of diplomas, certificates and other evidence of formal qualifications for carriers, will facilitate the exercise of the right of establishment. The new regulation concerning access to the profession in the inland transport sector will contribute to improvements in the structure of that profession.

- Rates and conditions of transport

The proposals are limited to international traffic. The changes contemplated in road transport, from compulsory bracket tariffs to reference tariffs, as well as the setting up of a similar system for the railways, follow the pattern plotted by the Commission, the outcome of which should be the free fixing of rates for all transport modes.

The proposals include, among other things, the organisational elements which are still necessary, especially in the present economic situation of the Community.

- Observation of the market and provisions

The action provided for should already, from the beginning of the transitional period, provide the necessary information on the development of the market and so make available, both to transport undertakings and the authorities, the necessary criteria which they ought to possess in order to take their decisions both in the commercial sector and in the public interest. This information is also necessary in order to determine the timing and the contents of the other measures which are necessary in order to ensure the achievement of the action which is contemplated.

12. The Commission will submit other proposals to the Council which will aim at completing the action begun as set out above and which will take into account especially the results obtained from this first phase.

13. In the Commission's opinion, a balance exists between, on the one hand, the first proposed measures in the transport rates and capacity sector, and, on the other, the state of harmonisation of the conditions of competition.

The carrying out of the harmonisation programme provided for in the Council Decision of 13 May 1965 concerning the harmonisation of certain provisions affecting competition in the rail transport, road transport and inland waterway sectors, has reached such an advanced stage (c.f. 5th biennial report of the Commission of 20 June 1975, Doc. COM (75) 301 def.) that certain overtures can be envisaged towards more freedom in the organisation of the freight transport markets between Member States. The hoped for balance will be strengthened if the Council adopts the proposals which the Commission has submitted for the harmonisation sector at the same time as the new proposals concerning the organisation of the market.

In another connection, the uniform flexibility of access to the market and the fixing of rates for the markets in question within the Community will not have an unfavourable influence on the competitive position of the transport modes or undertakings; it could, on the contrary, contribute to a smoothing and a levelling of the consequences of this position. On the other hand, the maintenance of the compulsory rules for the organisation of the market could, through lack of flexibility, constitute a burden for the transport undertakings, which already have to conform to regulations outside the framework of the organisation of the market and which limit their opportunities in the commercial sector.

14. Among the measures contemplated at the beginning of this document, those concerning the community quota and the compulsory tariff system for road transport between Member States should be decided before the end of 1975 because of the expiry of the regulations at present in force.

In order to ensure a smooth transition from the present tariff system towards the new regime, a decision should be taken before the end of 1976 on the system of reference tariffs for international road freight transport.

Given that the other proposed measures form an integral part of the coherent organisation of the transport market proposed in this document, they should, in the Commission's opinion, enter into force following a balanced programme which takes account of their interdependence.

PROPOSAL FOR A COUNCIL DIRECTIVE

on the establishment of common
rules for certain types of carriage
of goods by road between Member States

PROPOSAL FOR A COUNCIL DIRECTIVE

on the establishment of common
rules for certain types of carriage
of goods by road between Member States

EXPLANATORY MEMORANDUM

1. The liberalization measures laid down by the First Directive of 23 July 1962¹ for the carriage of goods by road between Member States have been expanded by the Directives of 19 December 1972² and 4 March 1974³, which extended the provisions of Annex I to the First Directive to carriage on own account and exempted vehicles with a permissible payload of not more than 3.5 tonnes from authorization.

On giving its agreement to such relaxations the Council also stipulated that other amendments providing for even greater liberalization which had been proposed by certain delegations should be studied as soon as possible⁴.

2. In accordance with the guidelines and objectives of the Commission's Communication on the development of the common transport policy submitted to the Council on 24 October 1973⁵, intervention by public authorities to regulate transport capacity should steadily decline as the market gradually comes to operate freely. In its proposals for easing the rules, the Commission has taken account of the priorities laid down by the Council and listed under point 1. The Commission considers an extension of the First Directive to be the most suitable means of achieving these aims.

¹OJ No 70, 6 August 1962, p. 2005.

²OJ No L 291, 28 December 1972, p. 155.

³OJ No L 84, 28 March 1974, p. 8.

⁴Doc. T/643/73 (Trans), 30 November 1973.

⁵Com(73)1725 final.

3. The proposed relaxations include the liberalization of those types of international carriage by road on own account which are still subject to bilateral quantitative restrictions. Experience has also shown that, far from disturbing the market, the absence of a quota system for transport operations in frontier zones has contributed to the development of these regions by removing the political obstacles to their economic growth; even better results would be achieved if the measures envisaged in the First Directive were reinforced.

It is also proposed to liberalize the international carriage by road of perishables, even foodstuffs, to enable seasonal products in particular to be sold quickly on European markets and to meet the requirements of an integrated agricultural market. Moreover, the goods in question must be transported within predetermined deadlines for both commercial reasons (opening up markets) and technical reasons (limited conservation period), and the vehicles used are costly to produce and are therefore put to maximum use.

The reason for liberalizing all types of carriage of live animals is that no other form of transport can be used as easily to convey the animals which require special attention during the journey.

Transport operations which, for reasons of geography, necessarily include transit across the territory of one or more Member States must not be allowed to cause barriers to intra-Community trade; such restrictions would not be in accord with Community integration.

4. In accordance with the wishes expressed by the European Parliament during its study of the proposal for a Directive amending the First Directive¹, the Commission proposes that the Council take advantage of this further amendment to the First Directive to replace and repeal the earlier Directives which have been substantively amended and supplemented.

¹Doc. 127/73, 16 July 1973, European Parliament.

PROPOSAL FOR A COUNCIL DIRECTIVE

on the establishment of common
rules for certain types of 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 adoption of a common transport policy involves inter alia
laying down common rules for the international carriage of goods by road
to or from the territory of a Member State or passing across the
territory of one or more Member States;

Whereas it is necessary, in order not to impede trade between the Member
States and to ensure that the transport sector can function smoothly and
adapt to the requirements of the market, to liberalize international road
transport, inter alia by gradually easing the restrictions on capacity;
and whereas for the purposes of this orderly advance towards the afore-
mentioned objective, the liberalization measures incorporated in stages
into the Directives on the carriage of goods between Member States
should be extended and restrictions on transit operations lifted; and
whereas the scope of these Directives should therefore be expanded;

Whereas it is desirable to clarify the situation by replacing the former
Directives so amended by a new Directive embodying all the provisions
which are applicable in this field;

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Each Member State shall, before 1 July 1976 and in the manner laid down in paragraphs 2 and 3 of this Article, if it has not already done so, liberalize the types of international carriage of goods by road involving other Member States listed in Annexes I and II to this Directive, where such carriage is performed to and from the territory of that Member State or passing in transit across the territory of that Member State.

2. The types of carriage listed in Annex I shall be exempted from any quota or authorization system.

3. The types of carriage listed in Annex II shall no longer be subject to a quota system. They may, however, remain subject to authorization provided no quantitative restriction is involved; in such case Member States shall ensure that decisions on applications for authorization are given within five days of receipt.

The authorization shall conform to the model which the Commission, after consulting the Member States shall establish in a regulation within three months from the date on which this Directive is adopted.

4. The two Annexes to this Directive shall form an integral part thereof.

Article 2

Member States shall inform the Commission of the measures taken to implement this Directive within three months of its entry into force and in any event before 1 July 1976.

Article 3

This Directive shall not affect the conditions under which any Member State authorizes its own nationals to engage in the activities mentioned in this Directive.

Article 4

The First Council Directive on the establishment of certain common rules for international transport (carriage of goods by road for hire or reward) of 23 July 1962¹, as amended by the Council Directive of 19 December 1972² and the Council Directive of 4 March 1974³, shall be repealed as from 1 July 1976.

Article 5

This Directive is addressed to the Member States.

Done at Brussels,

For the Council,

The President

¹OJ No 70, 6 August 1962, p. 2005.

²OJ No L 291, 28 December 1972, p. 155.

³OJ No L 84, 28 March 1974, p. 8.

ANNEX ITypes of carriage to be exempted from any transport quota or authorization system

1. Frontier traffic in areas, which shall be demarcated by each Member State according to its administrative organization, geographical characteristics or economic structure, extending on each side of the frontier to a depth of not less than 50 kilometres as the crow flies, measured from the frontier to the furthest point in each area.

In the case of carriage between Member States whose territories are separated solely by an area of sea, no account shall be taken of the distance travelled on board a means of sea transport specially constructed and equipped for the carriage of commercial vehicles and operated as a regular service.

2. Occasional carriage of goods to and from airports, in the event of air services being diverted.

3. Carriage of luggage in trailers coupled to passenger-carrying vehicles and the carriage of luggage in all types of vehicle to and from airports.

4. Carriage of mail.

5. Carriage of damaged vehicles.

6. Carriage of refuse and sewage.

7. Carriage of animal carcasses for disposal.

8. Carriage of bees and fish fry.

9. Funeral transport.

10. Carriage of goods in motor vehicles the permissible laden weight of which, including that of trailers, does not exceed 6 tonnes or the permissible payload of which, including that of trailers, does not exceed 3.5 tonnes.

11. Carriage of articles required for medical care in emergency relief, in particular for natural disasters.

12. Carriage of valuable goods (for example, precious metals) effected by special vehicles accompanied by the police or other security guards.

13. Carriage of perishable goods in controlled-temperature vehicles.

14. Carriage on own account.

ANNEX II

Types of carriage to be exempted from any quota system but which may remain subject to authorization in accordance with Article 1(3) of this Directive

1. Carriage from a Member State into the frontier zone of an adjacent Member State and vice versa; the frontier zone shall be demarcated as laid down in Annex I, paragraph 1, of this Directive; in the case where a Member State does not have a common land frontier with another Member State, the distance of 25 km as the crow flies shall be calculated as the frontier zone from the point where the vehicle is unloaded from a means of sea transport specially constructed and equipped for the carriage of commercial vehicles and operated as a regular service.
2. Carriage of objects and works of art for exhibition or for commercial purposes.
3. Occasional carriage of objects and material exclusively for publicity or information purposes.
4. Carriage of material, properties and animals to and from theatrical, musical or film performances or sporting events, circuses, exhibitions or fairs, or to and from the making of radio or television broadcasts or films.
5. Carriage of spare parts and supplies for sea-going vessels.
6. Carriage of live animals by means of special vehicles.
7. Removals by undertakings having special staff and equipment for this purpose.
8. Goods traffic in transit, in motor vehicles, whose total authorised loaded weight including that of the trailer, does not exceed 10 tonnes, and of which the authorised payload does not exceed 6 tonnes.

PROPOSAL FOR A COUNCIL REGULATION
on the Community quota for the carriage of goods
by road between Member States

EXPLANATORY MEMORANDUM

1. The Community quota system introduced by Council Regulation (EEC) No 1018/68¹ of 19 July 1968, supplemented by Council Regulation (EEC) No 2829/72² of 28 December 1972, as amended by Regulation (EEC) No 2063/74³ of 1 August 1974 and by Regulation (EEC) No 3256/74⁴ of 19 December 1974, expires on 31 December 1975: to avoid harmful economic and political repercussions, new measures adapted to the requirements of transport between Member States should be introduced. These measures should take the following points into account:
2. After seven years of applying a system which has enabled the undertakings concerned to organize their operations on a Community scale and to use their vehicles very efficiently, the system should progress from its experimental stage and no longer be limited to a stated period, this being subject however to any future decisions to initiate the final stage of operating the markets for the carriage of goods by road.
3. The Community quota system should allow steady and balanced progress along the road of Community integration towards the final stage of freeing the carriage of goods by road from all quantitative restrictions.

¹OJ No L 175, 23 July 1968, p. 13.

²OJ No L 298, 31 December 1972, p. 16.

³OJ No L 215, 6 August 1974, p. 1.

⁴OJ No L 349, 28 December 1974, p. 5.

4. For the Community quota system to have a real effect on the market in this direction, it should be promoted from its present embryonic status to that of catalyst in integrating the Community. To this end it should be gradually but substantially expanded. At present, the volume of goods carried under Community authorizations accounts for only about 6% of international road transport operations performed for hire or reward. As experience has clearly shown, the public authorities cannot use the quota system to prevent users employing the mode of transport which is qualitatively best suited to their requirements; the resulting expansion in own account operations springs from the over-rigid restrictions placed on operations for hire or reward. Taking all this into consideration it is proposed that, to begin with, the Community quota should be doubled.

5. The initial allocation of the Community quota among Member States largely reflected their carriers' existing relative shares of international traffic. But this principle, which answered a practical need, should not be regarded as permanent, since it risks penalizing those road hauliers who were or are subject to severe quantitative restrictions. What is more, it does not take into account the differences between the systems regulating the various transport links, or other elements, such as geographical situation, which may affect the share of the road haulage operators from a given Member State in intra-Community traffic.

Pending the introduction of a system which might take the form of giving each Member State a number of authorizations equivalent to the real needs of each undertaking, a pragmatic solution must be found; the Commission proposes that only 50% of the increase in the quota should be allocated according to the rate of use of the Community authorizations issued in 1973, the other half being distributed linearly.

6. Experience in operating the system has shown that the advantages of the log book which all road hauliers are required to keep are out of all proportion with the difficulties entailed in keeping it and in its use by the national authorities and the Commission. In addition, the statistical data on the use of Community authorizations are out of date when the periodic decisions on the allocation of the quota have to be taken.

In view of the above and the cost of the present procedure, it is felt that the provisions on keeping log books and on the use of the information they contain should not be renewed. No doubt the figures for overall trends in movements between Member States will provide an adequate economic base for taking decisions in this matter.

7. In view of the many amendments which will therefore have to be made to Regulation No 1018/68, and in the interests of making the text clearer, it would seem appropriate to adopt a new Regulation embodying all the provisions more permanently governing the Community quota system, rather than to draft a regulation containing only the amendments in question.

Proposal for
REGULATION (EEC) No OF THE COUNCIL
of 1975
on the Community quota 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 introduction of a common transport policy entails, inter alia, the establishment of common rules for the transport of goods by road between Member States; and whereas these rules should be drawn up in such a way as to contribute towards the achievement of a common transport market;

Whereas the establishing of a system of Community authorizations has particularly encouraged the more intensive and efficient use of authorized capacity and the systematic adaptation of the undertakings concerned to the requirements of multilateral transport; and whereas in order to advance towards the liberalization of the carriage of goods by road substantial changes should be introduced into the quota system to render it more flexible; and whereas for these reasons it would be appropriate no longer to set a time limit to a system which has proved effective, and gradually and substantially to increase the number of Community authorizations;

Whereas the introduction of this system fosters the creation of a Community-wide transport market to which road haulage operators from all Member States may have equal access regardless of nationality;

Whereas, in order to encourage the fullest possible use of Community authorizations, it would be appropriate to permit road haulage operators also to carry out bilateral journeys under these authorizations and thus thereby to ease the restrictions which some transit quotas still incorporate;

HAS ADOPTED THIS REGULATION:

Article 1

The provisions of the Regulation shall apply to the carriage of goods by road for hire or reward effected between Member States under authorizations issued as Community authorizations within the Community quota.

Article 2

1. Community authorizations shall entitle their holders to effect, over all transport links between the Member States, the carriage of goods by road of the type specified in Article 1, with the exception of internal transport operations within the territory of a Member State, and to effect journeys unladen throughout the Community.

2. Community authorizations shall correspond to the model contained in the Annex. This Annex, which forms an integral part of this Regulation, also lays down the conditions of **use of the Community authorizations.**

3. Community authorizations shall be made out in the name of a carrier. They may not be transferred to third parties.

Each authorization may be used for only one vehicle at a time. It shall be carried on the vehicle and produced at the request of any authorized inspecting officer.

"Vehicle" means a single vehicle or a coupled combination of vehicles.

4. Community authorizations shall be valid for one calendar year.
5. Community authorizations shall be allocated by the Commission to the Member States for the purpose of issuing them to carriers.
6. Community authorizations shall, in accordance with the relevant national procedures, be issued by the competent authorities of the Member States, in respect of carriers established on their territory, within the limits of the total number of authorizations allocated to each Member State.
7. The issuing of a Community authorization shall be subject to a fee intended to cover the costs of administration and inspection.

Article 3

1. For 1976 the quota shall consist of 4 726 authorizations.
2. The number of Community authorizations allocated to each Member State shall be as follows:

| | |
|-----------------|-----|
| Belgium: | 496 |
| Denmark: | 298 |
| Germany: | 994 |
| France: | 826 |
| Ireland: | 79 |
| Italy: | 615 |
| Luxembourg: | 142 |
| Netherlands: | 835 |
| United Kingdom: | 441 |

3. For each of the following years the Council, on a proposal by the Commission, shall decide, by 30 November of the previous year, on the quota and the number of authorizations to be allocated to each Member State. These proposals shall be drawn up after consultation with the Committee referred to in Article 6 (i) a) of Regulation (EEC) No.(1).

4. (a) If, by the date fixed in paragraph 3 above, the Council has reached no decision in respect of 1977, the quota and numbers of authorizations set out in paragraphs 1 and 2 shall remain the same for that year.

(b) If, by the date fixed in paragraph 3 above, the Council has reached no decision in respect of any later year, the current quota and numbers of authorizations shall be increased by 20%.

Article 4

1. The Member States shall assist one another with a view to applying this Regulation and supervising its execution.

2. If the competent authorities of a Member State are aware of any infringement of this Regulation committed by the holder of a Community authorization granted in another Member State, the State on whose territory the infringement has been discovered shall report it to the authorities of the State which granted the Community authorization. The competent authorities shall give one another all the information they possess on the penalties imposed for these infringements.

Article 5

1. The Member States shall adopt and duly communicate to the Commission the laws, regulations or administrative provisions relating to the implementation of this Regulation.

These provisions shall cover, inter alia, the organization of, procedure for, and means of carrying out inspection measures, as well as the penalties for infringements.

(1) Regulation of the Council concerning a system for observing the markets for the carriage of goods by rail, road and inland waterway between the Member States O.J. of the EEC no. of page

Article 6

This Regulation shall enter into force on 1 January 1976.

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

Done at Brussels,

For the Council,
The President

(a)

(Thick light blue paper - format 15 x 21 cm)

(First page of Community authorization)

(Text to be worded in the official language or languages of the Member State issuing the authorization; translations in the other official languages of the Community to be given on pages (e) and (f))

| | | | |
|---|--|---|--|
| COMMISSION OF THE EUROPEAN COMMUNITIES | (Impressed stamp of the Commission of the European Communities) | State issuing the authorization- international distinguishing sign | Competent authority or agency |
|---|--|---|--|

COMMUNITY AUTHORIZATION No

for the carriage of goods by road for hire or reward between the Member States of the European Economic Community¹

This authorization entitles
.....
.....²

to carry goods by road for hire or reward, by means of a single vehicle or a coupled combination of vehicles, from any Member State of the European Economic Community by any route to any other Member State thereof, and to move such vehicle or combination unladen over any part of the territory of the aforesaid Community.

This authorization is valid from to

Issued at, date³

¹ Belgium (B), Denmark (DK), Germany (D), France (F), Ireland (IRL), Italy (I), Luxembourg (L), Netherlands (NL), United Kingdom (GB).

² Name, or registered business name, and full address of carrier.

³ Signature and stamp of the competent authority or agency issuing the authorization.

ANNEX

(b)

(Second page of Community authorization)

(Text to be worded in the official language or languages of the Member State issuing the authorization; translations in the other official languages of the Community to be given on pages (c) and (d))

GENERAL PROVISIONS

This authorization permits the international carriage of goods by road for hire or reward from any Member State of the European Economic Community by any route to any other Member State, but does not authorize the carrying out of any transport operation entirely within the territory of one Member State.

It is not valid for transport operation between a Member State and a non-member State, nor is it valid on the territory of a non-member State for transport in transit through that non-member State.

It is personal to the holder and non-transferable.

It may be used for only one vehicle at a time¹ and must be carried in that vehicle.

The authorization must be produced whenever required by an authorized inspecting officer.

The holder is required to comply in the territory of each Member State with the laws, regulations and administrative provisions of that State, and in particular with those concerning transport and road traffic.

This authorization must be returned to the competent issuing authority or agency within fifteen days following its date of expiry.

1

"Vehicle" means a single vehicle or a coupled combination of vehicles.

(c) and (d)

(Third and fourth pages of Community authorization)

(Translations in the other official languages of the Community of the text on page (b))

(e) and (f)

(Fifth and sixth pages of Community authorization)

(Translations in the other official languages of the Community of the text on page (a))

PROPOSAL FOR A COUNCIL DIRECTIVE

on access to the occupation of carrier of goods or of
passengers by waterway in national and international
transport

PROPOSAL FOR A COUNCIL DIRECTIVE

on access to the occupation of carrier of goods or of passengers by waterway in national and international transport

EXPLANATORY MEMORANDUM

The Commission considers that, as in the case of road transport, uniform conditions should be introduced for admission to the occupation of waterway carrier in order to facilitate the creation of a Community system based on healthy competition and the achievement of the right of establishment. A qualitative selection of applicants for admission to the occupation of carrier provides an incentive for better behaviour by undertakings on the market and helps to improve the quality of the service performed at the lowest cost.

The provisions should be applicable at both national and international level and should cover the carriage of both goods and passengers.

The rules are to relate to probity, financial standing and professional competence. They must be applicable to all carriers working for hire or reward. Undertakings effecting transport operations solely on own account would be exempt, since, as a general rule, they already fulfil those conditions by virtue of the principal activities in which they are engaged.

Probity is considered a necessary condition because of the guarantees which must be given to anyone requiring the performance of a service.

Financial standing is necessary for the launching and sound management of undertakings. The purpose of this condition is to prevent too heavy financial burdens resulting from the undertaking having a disproportionate amount of foreign capital, from impairing the undertaking's stability or encouraging the carrier to effect non-economic transport operations in fulfilment of his contractual obligations.

Professional competence is to be considered the most important of the conditions for access to the occupation. Carriers must be familiar with business management problems, and in particular with cost prices, they have to apply ever more complex rules and must have sufficient knowledge of demand trends; without such knowledge and experience, their difficulties could have detrimental effects on the undertaking and the market.

It would seem advisable to follow the pattern adopted for road transport as closely as possible, and especially to propose a relatively exhaustive set of proposals, including a detailed list of the subjects with which the applicant must be acquainted. As the measures advocated will, however, differ radically from those contained in Title II of the proposal for a Regulation on access to the market in the transport of goods by waterway presented on 29 November 1967¹, the Commission regards those provisions as having lapsed and considers that they should be replaced by this proposal for a Directive.

¹OJ No C 95, 21 September 1968.

PROPOSAL FOR A COUNCIL DIRECTIVE

on access to the occupation of carrier of goods or of passengers by waterway in national and international transport

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 organization of the transport market is one of the necessary preconditions for the implementation of the common transport policy which is provided for in the Treaty;

Whereas the adoption of measures designed to coordinate the conditions for access to the occupation of carrier is likely to promote the actual exercise of the right of establishment;

Whereas provision must be made for the introduction of common rules governing access to the occupation of carrier of goods or of passengers by waterway in national and international transport in order to improve the standard of carriers, and whereas such improvement is likely to help to set the market on a sounder footing and improve the quality of the service performed, in the interest of users, carriers and the economy as a whole;

Whereas the rules governing access to the occupation of carrier of goods or of passengers by waterway must therefore cover the probity, financial standing and professional competence of the carrier;

Whereas, however, it is not necessary for the common rules to cover certain transport operations which have only minor economic implications;

Whereas transitional provisions must be introduced to enable the Member States to adapt their national systems to the Community system;

Whereas the harmonization of the conditions for implementing the common rules necessitates a Community consultation procedure with regard to the measures to be implemented for this purpose at national level,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Access to the occupation of carrier of goods or of passengers by waterway shall be governed by the provisions adopted by the Member States pursuant to the common rules laid down in this Directive.

2. For the purposes of this Directive, the expression "occupation of carrier of goods or of passengers by waterway" shall mean the activities engaged in by any natural person or any undertaking carrying either goods or passengers by waterway for hire or reward.

The term "undertaking" shall mean any association or group of persons with or without legal personality and whether or not operating on a profit-making basis, and any body coming under the public authorities, irrespective of whether that body itself has legal personality or whether it is responsible to another authority which has such personality.

Article 2

1. This Directive shall not apply to natural persons or undertakings pursuing the occupation of carrier of

- goods by waterway using vessels with a dead weight capacity at maximum draught not exceeding 400 tonnes and with engine power not exceeding 140 horse power,
- passengers by waterway using passenger vessels constructed and fitted out to carry less than twenty persons.

The Member States may lower the limits given above for all or some categories of transport. Natural persons and undertakings operating ferry services shall likewise be exempt.

2. The Member States may, after consulting the Commission, exempt from the application of all or some of the provisions of this Directive, natural persons or undertakings effecting only national transport operations by waterway which, by reason of their conditions of operation and their use for highly specialized purposes, have only a minor impact on the transport market.

Article 3

1. Natural persons or undertakings wishing to pursue the occupation of carrier of goods or of passengers by waterway must

- (a) be of good repute,
- (b) have suitable financial standing,
- (c) satisfy the conditions relating to professional competence.

If the applicant is a natural person who does not satisfy the condition under (c), the competent authorities may nevertheless authorize him to pursue the occupation of carrier provided that he informs those authorities of the person who actually manages the undertaking's transport operations on a permanent basis, and who must satisfy the conditions set out under (a) and (c).

If the applicant is an undertaking, one of the natural persons who actually manages the undertaking's transport operations on a permanent basis must satisfy the conditions stipulated under (a) and (c). The Member States may require that other persons employed by the undertaking also satisfy the condition stipulated under (a).

2. Until such time as conditions have been coordinated in this field, each Member State shall lay down the provisions which the applicant and, where appropriate, the natural persons referred to in paragraph 1, must satisfy as regards probity.

3. Financial standing shall mean the possession of the necessary financial resources for the setting up and sound management of the undertaking. Until such time as conditions have been coordinated in this field, each Member State shall lay down the conditions and forms of proof to be adopted for this purpose.

4. Professional competence shall mean possessing the standard of knowledge accepted by the authority or body appointed for this purpose by each Member State in the subjects listed in the Annex to this Directive. The required knowledge shall be acquired either by attendance at courses or by practical experience in a transport undertaking, or by a combination of the two. The Member States may exempt from the application of these provisions the holders of certain higher education or technical education diplomas which testify to a sound knowledge of the subjects listed in the Annex.

A certificate issued by the authority or body referred to in the first subparagraph must be produced as proof of professional competence. The certificate shall be recognized by all Member States.

Article 4

1. The Member States shall lay down the terms on which a transport undertaking engaged in the carriage of goods or of passengers by waterway may, by way of derogation from Article 3(1), operate on a provisional basis for a maximum of one year, which period may be extended by no more than six months in exceptional, duly justified cases, in the event of the death or physical or legal incapacity of the natural person pursuing the occupation of carrier or of the natural person satisfying the conditions set out in Article 3(1)(a) and (c).

2. However, the competent authorities in the Member States may, by way of exception, in certain special cases, permanently authorize the operation of a transport undertaking by a person who does not satisfy the condition relating to professional competence stipulated in Article 3(1)(c), but who has had at least three years' practical experience in the everyday management of the undertaking concerned.

Article 5

1. Natural persons and undertakings who provide proof that before 1 January 1979 they have been authorized in a Member State, pursuant to a national regulation, to pursue the occupation of carrier of goods or of passengers by waterway in national and/or international transport shall be exempt from the obligation to prove that they satisfy the conditions, whichever are applicable, stipulated in Article 3.

2. However, natural persons who, after 31 December 1975 and before 1 January 1979, are

- (a) authorized to pursue the occupation of carrier of goods or of passengers by waterway without having provided proof of their professional competence, pursuant to a national regulation, or
- (b) are appointed to the actual management, on a permanent basis, of the undertaking's transport operations,

must, before 1 January 1981, satisfy the condition relating to professional competence stipulated in Article 3(4).

The same requirement shall apply to the case described in the third subparagraph of Article 3(1).

Article 6

1. The reasons must be given for any decision taken by the competent authorities of the Member States, pursuant to the measures adopted on the basis of this Directive, by which an application for access to the occupation of carrier of goods or of passengers by waterway is rejected.
2. The Member States shall ensure that the competent authorities withdraw an authorization to pursue the occupation of carrier of goods or of passengers by waterway if they find that the conditions laid down in Article 3(1)(a), (b) or (c) are no longer satisfied, subject to allowing, where appropriate, sufficient time for the recruitment of a replacement.
3. The Member States shall ensure that the natural persons and undertakings referred to in this Directive have the opportunity of defending their interests by appropriate means with regard to the decisions referred to in paragraphs 1 and 2.

Article 7

1. The Member States shall, after consulting the Commission and before 1 January 1978, adopt the measures necessary for the implementation of this Directive, and in particular Article 3(4) thereof.
2. The Member States shall ensure that the initial examination of the standards referred to in Article 3(4) takes place before 1 January 1979.

Article 8

This Directive is addressed to the Member States.

Done at Brussels,

For the Council,
The President

LIST OF THE SUBJECTS REFERRED TO IN ARTICLE 3(4)

Recognition of professional competence must require proficiency in at least the following fields of knowledge. These must be described in detail and be defined or approved by the competent national authorities. The standard required must be accessible to persons whose educational level is equivalent to that obtained at the end of compulsory schooling.

A. Subjects of which a satisfactory knowledge is required for carriers intending to engage solely in national transport operations

1. Law

Rudiments of civil law and commercial, social and tax legislation, knowledge of which is necessary for the pursuit of the occupation, particularly as regards:

contracts in general,

contracts of carriage, in particular the liability of the carrier (nature and limits),

commercial companies,

commercial records (livres de commerce)

labour and social security regulations,

the tax system.

2. The commercial and financial management of an undertaking

methods of payment and financing,

calculation of cost prices,

system of prices and terms of carriage,

commercial accounting,

insurance,

invoices,

transport agents.

3. Access to the market

the provisions relating to access to and the pursuit of the occupation,
transport documents.

4. Technical standards and technical aspects of operation

the technical features of the vessels,
the choice of vessels,
registration,
lay days and unscheduled lay days.

5. Safety

the provisions laid down by law, regulation or administrative action
concerning waterway traffic,
accident prevention and measures to be taken in case of accident.

B. Subjects of which a satisfactory knowledge is required for carriers
intending to engage in international transport operations

the subjects listed under A,
the provisions applicable to waterway transport between the Member States
and between the Community and non-member countries, laid down in national
laws, Community rules, and international conventions and agreements,
customs practices and formalities,
principal rules governing traffic in the Member States.

PROPOSAL FOR A COUNCIL DIRECTIVE

aiming at the mutual recognition of diplomas, certificates and other evidence of formal qualifications for road or waterway passenger transport and goods haulage operators, including measures intended to encourage these operators effectively to exercise their right to freedom of establishment

PROPOSAL FOR A COUNCIL DIRECTIVE

aiming at the mutual recognition of diplomas, certificates and other evidence of formal qualifications for road or waterway passenger transport and goods haulage operators, including measures intended to encourage these operators effectively to exercise their right to freedom of establishment

EXPLANATORY MEMORANDUM

1. In its communication to the Council (30 October 1974 - doc. No SEC(74) 4024 final) on the consequences of the Court of Justice decision of 21 June 1974 in Case 2/74 (Jean Reyners v/Belgian State) for the proposals for a directive on the right of establishment, then before the Council, the Commission particularly mentioned that it would amend those proposals concerning the activities of road haulage operators¹ that had been drafted pursuant to the second sub-section of Article 149, and base them solely on Article 57(1) so as to remove those provisions likely to counteract any restrictions to the right of establishment.

The Commission stated that the same procedure would be followed to amend the proposal for a directive concerning the introduction of freedom of establishment for inland waterway transport activities².

¹ - Proposal for a Council Directive concerning the freedom of establishment for self-employed road haulage operators (OJ No C 72 of 17 June 1970, p. 10).

- Proposal for a Council Directive concerning the introduction of the freedom of establishment for self-employed road passenger transport operators (OJ No C 72 of 17 June 1970, p. 12).

² - Proposal for a Council Directive concerning the introduction of the freedom of establishment for self-employed operators in the carriage of goods and passengers by waterway (OJ No C 72 of 17 June 1970, p. 15).

2. On 12 November 1974¹ the Council also adopted provisions to coordinate the conditions of admission to the occupation of road haulage and passenger transport operator respectively. The proposals for Council directives concerning the right of establishment must therefore also be adapted to the above provisions. Further, since the provisions on coordination do not apply to certain categories of road haulage operator and as no such coordination has yet been achieved for inland waterway transport, it would be appropriate to take this into account by taking transitional measures. In the field of inland waterway transport similar measures should also be introduced pending coordination at a later date of the conditions of admission to the occupation; the Commission will shortly table a proposal aiming at coordination in this field.

3. Therefore, as it is felt that it would be possible to adopt an amended outline directive covering the whole field of transport sectors under consideration, the Commission is replacing the proposals for directives given listed in Paragraph 1 by the proposal for a directive given below.

¹OJ No L 308 of 19 November 1974.

PROPOSAL FOR A COUNCIL DIRECTIVE

aiming at the mutual recognition of diplomas, certificates and other evidence of formal qualifications for road or waterway passenger transport and goods haulage operators, including measures intended to encourage these operators effectively to exercise their right to freedom of establishment.

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 57 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

Whereas under the Treaty any discrimination in respect of establishment based on nationality is forbidden since the end of the transitional period; whereas the rule on nationality hereby established applies particularly to members of professional bodies to the extent that the professional activities of the person concerned involve the exercising of this right;

Whereas Article 57 of the Treaty provides that, in order to make it easier for persons to take up and pursue activities as self-employed persons, directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications, as well as for the coordination of the provisions laid down by law, regulation or administrative action in the Member States shall be issued;

Whereas the Council has adopted directives¹ on admission to the occupation of road haulage and road passenger transport operator respectively in national and international transport operations and whereas it would be appropriate to ensure the mutual recognition of diplomas, certificates and other evidence of formal qualifications in respect of the activities covered by these directives; whereas this does not concern those undertakings referred to in the above-mentioned directives unless they are companies or firms within the meaning of Article 58 of the Treaty;

¹OJ No L 308 of 19 November 1974.

Whereas these two directives do not apply to some categories of transport operator and whereas it would therefore appear necessary to establish some transitional measures with a view to encouraging the effective exercising of the freedom of establishment by these transport operators;

Whereas, in order to counteract any difficulties which might arise, and to guarantee that the beneficiary has acquired a level of professional competence equivalent to that required of nationals of the host State concerned, the transitional measures should consist of acknowledging the effective exercising of the activity concerned over a reasonable and fairly recent period in the applicant's country of origin as a sufficient condition of admission to the activities in question in those host States where there are regulations governing these activities;

Whereas, pending coordination at a later date of the provisions laid down by law, regulation or administrative action in the Member States in respect of admission to the occupation, it appears necessary to facilitate freedom of establishment by adopting transitional measures in the field of inland waterway transport;

Whereas in respect of good repute and financial standing it would be appropriate to acknowledge documents issued by a competent authority in the transport operator's country of origin and showing that these conditions have been satisfied, as sufficient proof for admission to the activity concerned in a host Member State;

Whereas proof in respect of professional competence, submitted pursuant to the Community provisions on admission to the occupation of transport operator, must be recognized as sufficient by the host Member State; whereas in cases where no such proof is required any intended measures must consist of acknowledging proof of the effective exercising of the activity in question over a reasonable and fairly recent period in the country of origin of the party concerned as sufficient for admission to the said activities in a host Member State where there are regulations governing this activity; whereas any vocational training must have been acquired, and the activity carried out, in the same branch as that in which the applicant wishes to establish himself in the host country;

Whereas to the extent that Member States also make admission to, or the carrying out of, the activities listed in this directive by employees subject to the possession of skills and professional competence, this directive must also apply to that category of person, the aim being to eliminate one obstacle to the free movement of workers and so to bring closer to fulfilment the measures contained in Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on the freedom of movement for workers within the Community;

Whereas it would therefore also be appropriate to apply the provisions on proof of good repute and financial standing to employees;

Whereas the provisional measures established under this directive will no longer be applicable when the conditions of admission to the activity concerned have been coordinated and when mutual recognition of diplomas, certificates and other evidence of professional qualifications has been achieved;

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. In respect of the activities referred to in Article 2, Member States shall take the measures defined in this directive concerning the establishment in their territory of natural persons and undertakings, hereinafter known as beneficiaries, referred to in Title I of the General Programme.
2. The provisions of this directive shall also apply to nationals of Member States who, pursuant to Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on the freedom of movement for workers within the Community, are called upon to carry out the activities referred to in Article 2 as employees.

Article 2

The provisions of this directive shall apply to the activities of transport operators carrying passengers or goods by road or inland waterway.

Article 3

1. For the purpose of admission to any of the activities referred to in Article 2, a Member State shall accept as sufficient proof of good repute an extract from judicial record or, failing this, an equivalent document issued by the competent judicial or administrative authority of the country of origin of the transport operator, or the country from which he has come, showing that requirements have been met.
2. Where no such documentary proof on good repute or financial standing is issued by the country of origin of a beneficiary, or the country from which he has come, a sworn statement (or, in States where this form of oath does not exist, a solemn declaration) made by the person concerned in the presence of a competent legal or administrative authority or, where necessary, a notary of the country of origin of the beneficiary or the country from which he has come, who will issue a document testifying that such an oath or solemn declaration has been made, may be substituted. The declaration on financial standing may also be made before a qualified professional body of the same country.
3. Documents submitted pursuant to paragraphs 1 and 2 shall be dated not more than three months prior to the date of submission.

Article 4

A host Member State shall accept certificates from banks of the country of origin of the applicant, or the country from which he has come, as sufficient proof of his financial standing.

Article 5

1. Where, pursuant to the Council Directives of 12 November 1974 on admission to the occupation of transport operator in respect of:
 - (a) road haulage in national and international transport operations (74/561/EEC)¹,

¹ OJ No L 308 of 19 November 1974, p. 18.

(b) road passenger transport in national and international transport operations (74/562/EEC)¹,

admission is subject to satisfactory evidence of professional competence, Member States shall acknowledge the certificates referred to in the second sub-section of Article 3(4) of Directive No 74/561/EEC and the second sub-section of Article 2(4) of Directive No 74/562/EEC as sufficient proof of such competence.

2. As concerns natural persons and undertakings referred to in Article 5(1) of Directive No 74/561/EEC and Article 4(1) of Directive No 74/562/EEC, and insofar as the undertakings concerned are companies or firms within the meaning of Article 58 of the Treaty, Member States shall accept attestations of the effective carrying out of the activity concerned in a Member State over a period of three years as sufficient proof of professional competence. This activity must not have ceased more than two years prior to the date on which the attestation is submitted.

Article 6

1. As concerns activities not included under Article 5 of this directive, or activities subject to the possession of general, commercial or occupational skills in a Member State, that Member State shall acknowledge an attestation of the effective carrying out of the activity in another Member State for a period of three years, either as an independent operator or as manager of an undertaking, on condition that this activity did not cease more than two years prior to submission of the application.

2. Any person who has carried out the activities listed below in an undertaking in the relevant type of business shall be considered as having carried out the activities of a manager of an undertaking in the sense of paragraph one above:

- (a) company or branch manager;
- (b) deputy to an operator or company manager, where this position implies responsibility corresponding to that of the operator or company manager represented.

¹ OJ No L 308 of 19 November 1974, p. 23.

Article 7

Within the time limit laid down in Article 8, Member States shall designate the authorities and bodies competent to issue the type of document referred to in Article 3 and the certificate referred to in Article 5(2) and in Article 6(1) of this directive. They shall immediately inform the other Member States and the Commission.

Article 8

1. Member States shall adopt the measures necessary to comply with this directive before 1 January 1978 and shall immediately inform the Commission.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this directive.

Article 9

This directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

BUREAU OF COMMERCE

transport

PROPOSAL for a REGULATION

concerning the fixing of rates for international
goods transport by rail

Proposal for a regulation concerning the fixing of rates for international
goods transport by rail

OBJECTIVES

I. GENERAL CONSIDERATIONS

1. In its Communication of 24 October 1973, the Commission proposed the gradual setting up of a Community transport system which would meet the requirements of economic union and of society at the least cost to the latter. It emphasized that, in this matter, the concept that the market economy is, in principle, the most effective instrument for resource allocation, remains the line to be followed for the common policy in the operation of the goods transport markets.

In the three year programme of action set out in the second part of that Communication, the Commission advocated, for the future operation of the transport markets, a number of measures to establish a transport system operating essentially according to the rules of healthy competition, while at the same time making provision for corrective procedures which would allow the necessary corrections to be made to the market, where the need arose.

2. In such a market, the functions which the transport rates should ultimately perform cannot be met by compulsory tariffs imposed on the undertakings by the State. **Decisions concerning the management** of transport services should be taken by the transport undertakings themselves. These latter should be free, particularly insofar as fixing rates is concerned, with the aim of assuring more flexible adaptation of rates for each mode of transport to costs and to the state of the market.

3. However, to avoid too sudden a break in the present schemes it is best to proceed in stages, that is to say, for the moment to restrict the removals of present constraints on free rate-fixing to international

transport whilst reserving the extension of this scheme to the internal market to a later stage in the development of the Common Transport Policy.

4. To achieve the above concept in the international rail transport sector, it appears necessary, from the beginning, to adopt the principle of commercial management in this sector, which implies the obligation for the undertakings to attain a balance between costs and receipts for the corresponding services. This obligation does not, however, exclude cross-subsidization within this sector (i.e. achieving an overall balance), and balancing financial results from one year to another.

5. This independence of the railways regarding rates and conditions means that national legislation will have to be brought into line, particularly all dispositions providing for either previous or a posteriori confirmation of these rates and conditions with the situation foreseen by this regulation.

However, the management freedom granted to the railways shall in no way infringe upon the rights of Member States to impose tariff obligations in conformity with Council Regulation (EEC) no. 1191/69 of the 26 June 1969 (1).

6. The provisions of Articles 2 and 3 of this regulation shall also be considered in the light of the decision of the Council of 20 May 1975 (2) concerning the improvement of the railways' financial position, particularly Article 9 thereof which stipulates that "the railway undertaking shall fix its rates with a view to optimising its financial results and achieving a financial balance".

(1) O.J. of the EC no. L 156 of 28 June 1969

(2) O.J. of the EC no. L 152/3 of 12 June 1971.

The measures envisaged in this regulation aim at contributing to this improvement in a section of railway activity which, in view of its characteristics, particularly lends itself to the achievement of this balance.

7. At the same time, consideration can be given to the provisions of this regulation which provide for the establishment, for inter-Community transport, of through tariffs where their creation can be justified by the interests of the carrier or of the market situation. Such tariffs are, in effect, a suitable instrument for reinforcing the competitive situation of the railways and for increasing rail transport's attractiveness to customers.

8. The decision really provides for the railways to set up, either by bilateral or multilateral methods, international joint tariffs, either in the form of general tariffs or of special published tariffs. However because of the general philosophy developed above, these tariffs will not be compulsory but will only be a reference for the determination of individual rates based on the market situation and operational costs.

It will therefore be possible for the railways and their customers to arrange individual rates for each traffic without any tariff restraint, but only with due regard for Community and national laws in the matter.

9. The adoption of this regulation will necessitate alterations to the agreement relating to the setting up of through international rail tariffs for the transport of coal and steel (1). Work on this revision is already in hand.

(1) O.J. ECSC No. 9 of 19 April 1955 (p. 701).

II. SPECIAL CONSIDERATIONS

Article 1

This article limits the application of the regulation to international rail freight transport by the main railway administrations in the Member States. It does not therefore apply to the secondary railways which exist in some states.

Article 2

In view of their autonomy, it is necessary to give railway undertakings the power to fix the level of their rates and conditions for the traffics covered by this regulation; however, this must be done without affecting the right of Member States to impose compulsory tariffs in conformity with Council Regulation (EEC) no. 1191/69 of 26 June 1969 relating to the action of Member States with regard to public service obligations.

Equally, from the point of view of commercial management and in conformity with the provisions of Article 9 (1) of the Council Decision of 20 May 1975 regarding the improvement of the railways' financial position and the harmonisation of rules governing the financial relationships between the railway undertakings and the state, the railways must ensure an overall balance between receipts and corresponding costs for international freight traffic.

Article 3

Consequently, in order that the railways should be managed on a commercial basis, Member States must adapt their legislation by removing all provisions which are opposed to this objective and especially all the limitations which spring from the railway undertakings' tariff relationship with the state.

Article 4

As far as goods transport between Member States is concerned, the process towards the application of through tariffs, where the market allows such application or where it conforms to the railways' own interests, should be accelerated.

The railway undertakings shall assume the responsibility for setting up these tariffs and the tariff techniques to be used in order to differentiate, as much as possible, between the tariffs, depending on the characteristics of the transport services concerned.

Article 5

In keeping with this general theme, the through tariffs are not of a compulsory nature and only give a guide for the agreement of rates between the railway administrations and their clients.

Articles 6 and 7

In line with this overall theme, the initiative for the creation of tariffs should rest with the railways. However, if the negotiations between the railway administrations encounter difficulties, a Community arbitration procedure is provided for, initially through the Commission and then, if necessary, through the Council.

Article 8

In order to be able to exercise the monitoring role over the transport market in the interest of society as a whole, the Commission and the competent authorities in the Member States must obtain information on actual rates.

It is evident that such information will be treated in confidence.

Articles 9 and 10

No comment.

Proposal for a
COUNCIL REGULATION
concerning the fixing of rates for inter-
national goods transport by rail within
the Community.

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 & Social Committee,

Whereas the organisation of the freight transport market has to be conceived on the basis of a market economy in order to ensure the optimum allocation of resources; whereas this conception extends, in particular, to the system of rates and conditions of transport which form an important element of the common transport policy required by the Treaty;

Whereas, in consequence, the fixing of rates and conditions of transport should be freely done by the transport undertakings themselves and not by the authorities imposing compulsory tariffs;

Whereas this concept has to be reached in stages beginning with the present situation and, in the first place, with international goods transport;

Whereas the achievement of this concept in the railway sector depends upon the principles of the commercial management of international traffic in the undertakings;

Whereas, as a result, the railway administrations must achieve a balance between receipts and costs for corresponding services; this obligation does not exclude the possibility of medium term cross-subsidization within the sector;

Whereas the conversion of international railway tariffs towards a free market situation should allow a more flexible adaptation by the undertakings concerned both of rates to costs and to the market situation and that because of this, the intervention of the public authorities in the drawing up of transport rates should be ended subject to the proviso that Member States may impose compulsory tariffs in conformity with Regulation (EEC) no. 1191/69 of 26 June 1969;

Whereas, henceforth, it will be necessary to modify the national legislative or administrative procedures which still involve the interference of public authorities in the tariff policy of the railways;

Whereas the range of measures envisaged is likely to contribute, within the framework established by article 9.1 of the Council Decision of 20 May 1975, to the improvement of the railways' financial position in a sector of activity to which, owing to its characteristics, commercial management is particularly suitable;

Whereas the drawing up of through tariffs for goods transport between Member States is likely on the one hand to strengthen the competitive position of the railways and, on the other hand, to increase the attractiveness of the railways' services to the customer;

Whereas the movement of transport rates towards market economy rules only allows tariffs to be of a reference nature as the rates are fixed freely between railway undertakings and their customers;

Whereas, within the framework of such an organisation the initiative for drawing up such through tariffs in line with the market situation and their own interests should belong only to the railway undertakings;

Whereas, nevertheless, in cases where the negotiations between railway undertakings for the setting up or alteration of through tariffs may come up against difficulties, it will be necessary to establish a Community arbitration procedure;

Whereas, in order to ensure that national and Community provisions are respected, the Commission and Member States should be able to obtain information on the actual freight rates practised.

HAS ADOPTED THIS REGULATION

Article 1

1. This regulation applies to international freight transport undertaken by the following railway administrations:

- Société Nationale des Chemins de fer Belges (SNCB)/Nationale Maatschappij der Belgische Spoorwegen (NMBS),
- Dansk Statsbaner (DSB),
- Deutsche Bundesbahn (DB),
- Société Nationale des Chemins de fer Français (SNCF),
- Coras Iompair Eireann (CIE),
- Azienda autonoma delle ferrovie dello Stato (FS),
- Société Nationale des Chemins de fer Luxembourgeois (CFL),
- Naamloze Vennotschap Nederlandse Spoorwegen (NS),
- British Railways Board (BRB),
- Northern Ireland Railways Company Ltd (NIR).

Article 2

1. The railway undertakings will themselves establish tariffs and conditions for international freight transport taking into account their obligations under the EEC and ECSC Treaties.
2. In conformity with the objectives set out in the provisions of Article 9, paragraph 1 of the Council Decision of 20 May 1975 (1), the railways must ensure that receipts for international freight transport are equal to the corresponding costs.
3. The provisions of this Article do not affect the right of Member States to impose compulsory tariffs in accordance with Council Regulation (EEC) no. 1191/69 of the 26 June 1969 (2).
4. When supplying the information provided for in Article 8 of the Council Decision of 20 May 1975 (1), the railways will also supply States with detailed information on the obligation provided for in paragraph 2.

Article 3

The governments of the Member States will take all the steps necessary to remove from their national legislation any provisions which are incompatible with commercial management of international freight transport by rail and especially those provisions referring to a priori or a posteriori approval of rates and conditions of transport by the governing authorities.

Article 4

1. The transport of goods between Member States shall be controlled by a system of through reference tariffs which take account of the needs of the markets concerned and the interests of the railway undertakings.

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- (1) O.J. of the EEC - no. L 152/3 12 June 1975
 - (2) O.J. of the EEC - no. L 156/1 28 June 1969

2. Through tariffs are established for freight consignments on the basis of a single transport contract which conforms with the provision of the international convention concerning the transport of freight by rail (CIM) on the lines figuring in the list given in Article 59 of that Convention.

3. Through tariffs are established either, on the basis of general tariffs, or, on the basis of special tariffs. They may be differentiated according to any of the criteria which contribute to their reference function.

Article 5

The through reference tariffs constitute an indicator for determining transport rates that the railways and users are free to use according to the market situation and their own interests.

Article 6

The through tariffs can be established, modified or withdrawn by negotiations between the railway undertakings. These undertakings will provide for the publication of these measures in their tariff bulletins.

Article 7

1. If the negotiations referred to in Article 6 do not lead to an agreement, any of the railway undertakings concerned can submit the problem to the Commission.

2. Within a month from receipt of the communication referred to in Paragraph 1, the Commission will take a decision on the tariffs in question. This will be done after consultation with the advisory committee provided for in Art. 6 (1a) of Council Regulation (EEC) No.⁽¹⁾

(1) Regulation of the Council concerning a system for observing the market for the carriage of goods by rail, road and inland waterway between the Member States.

The decision will be notified

to the railway administrations concerned, to Member States and to the public through the Official Journal of the European Communities.

3. The decision of the Commission becomes binding within one month of its publication unless, in the meantime, a Member State has raised the question in Council. In the latter case the Council shall, within one month, take a decision by a qualified majority and publish it in the Official Journal of the European Communities.

Article 8

1. The railway administrations are required to provide the Commission and the competent authorities in the Member States, if so required, all information concerning the rates and conditions established for the transport of freight between Member States.

2. The Commission will establish, as and when needed, a standard outline for the submission of this information.

3. The information obtained when this Regulation is applied is covered by professional secrecy.

Article 9

For the purpose of applying this Regulation, Member States will provide each other, as well as the Commission, with mutual assistance.

Article 10

In due course and after consultation with the Commission, the Member States shall adopt the legal and administrative provisions necessary for the implementation of this Regulation.

Article 11

This regulation enters into force on 1 January 1978.

This regulation is binding in its entirety and directly applicable in every Member State.

Done at Brussels,

For the Council

The President

PART 6

PROPOSAL FOR A COUNCIL REGULATION

amending Council Regulation (EEC) No 3255/74 of 19 December 1974
extending and amending 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

Proposal for a

Council Regulation amending Council Regulation (EEC) No 3255/74 of 19 December 1974 extending and amending 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

Explanatory memorandum

Council Regulation (EEC) No 1174/68 - henceforth referred to as the Regulation - expires on 31 December 1975 in accordance with Regulation (EEC) No 3255/74. If by this date the Council has not decided to extend the Regulation or replace it with another Community rates system, the basis of the compulsory system of bracket tariffs currently in application would simply disappear from Community law.

In 1974 the Commission proposed an extension of the Regulation until 31 December 1976, stating that a Council Decision on the future system of international road transport rates which took all the aspects of the problem into account could not be expected before this date.

1 January 1977 appeared the most appropriate date for introducing an alternative solution. In order to ensure a smooth transition and obviate any disadvantages for the economic sectors concerned, the Commission considered that the Regulation's tariff system should be maintained up to this date. The Commission is of the opinion that there has been no fundamental change in this situation.

Furthermore, since the end of 1974 the Commission has begun work on the future operation of the goods transport markets within the Community. The system of fixing rates for the international carriage of goods by road is an important element of this work. It should not therefore be examined without taking account, especially, of the connection with the rules of fixing rates in other transport markets as well as of access to the market. A decision on the rates system and which would fully reflect political and economics realities can be taken only in the general framework of the overall action which the Commission proposes to the Council.

The Commission therefore considers that the Council will not be able to take an appropriate decision on the future system of prices for cross frontier road transport until 1976. The regulation now in force, as amended by Council Regulation (EEC) N° 3255/74 of 19 December 1974 should therefore be extended until 31 December 1976.

PROPOSAL FOR A COUNCIL REGULATION No
OF

amending Regulation (EEC) No 3255/74 extending and amending
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 Parliament;

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

Whereas, by virtue of Article 1 of Council Regulation (EEC) No 3255/74 of
19 December 1974, 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 expires on 31 December 1975;

Whereas the Commission of the European Communities has submitted to the
Council proposals on the operation of the transport markets in which
the system of rates for the international carriage of goods by road forms
an essential element; and whereas this system of rates is closely
connected especially with the proposals on the fixing of rates in other
goods transport markets, as well as on access to the market;

Whereas the time required for the examination of all these proposals necessitates the extension for a period of a further year of the tariff system introduced by Regulation (EEC) No 1174/68 as last amended by Regulation (EEC) No 3255/74;

HAS ADOPTED THIS REGULATION:

Article 1

The date 31 December 1975 set out in Article 1(1) of Regulation (EEC) No 3255/74 shall be replaced by the date 31 December 1976.

Article 2

This Regulation shall enter into force on 1 January 1976.

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

Done at Brussels,

For the Council

The President

PART 7

PROPOSAL FOR A COUNCIL REGULATION

for a system of reference tariffs for the
carriage of goods by road between Member
States

Proposal for a Council Regulation for a system of reference tariffs for
the carriage of goods by road between Member States

EXPLANATORY MEMORANDUM

I. General Considerations

1. In its Communication of 24 October 1973, the Commission proposed the gradual setting up of a transport system which would meet the requirements of economic union and of society at the least cost to the latter. It emphasized that, in this matter, the concept that the market economy is, in principle, the most effective instrument for resource allocation, remains the line to be followed for the common policy in the operation of the goods transport markets.

In the three-year programme of action set out in the second part of that Communication, the Commission advocated as from now, a number of measures for the market, designed to establish a transport system operating essentially according to the rules of healthy competition, while at the same time making provision for procedures which would allow necessary corrections to be made to the market where the need arose.

2. In such a market the functions which the transport rates should ultimately perform cannot be met by compulsory tariffs imposed on the undertakings by the State. Decisions concerning the management of transport services should be taken by the transport undertakings themselves. These latter should be free, particularly insofar as fixing rates is concerned, to achieve a more flexible adaptation of rates to costs, for each type of transport, and to the state of the market.

3. As regards the carriage of goods by road between the Member States, Council Regulation ⁽¹⁾ (EEC) No. 1174/68 of 30 July 1968 set up a system of compulsory bracket tariffs on an experimental basis.

Its implementation ran into difficulties and suffered considerable setbacks and the system has not produced the results hoped for, as it has not been possible to achieve uniformity in its implementation, particularly as regards monitoring and penalties.

4. A transport market operating according to the laws of the market economy, with no constraints of any sort, can be established only gradually. In order to achieve a smooth transition from a system of compulsory tariffs to a system of free formation of rates, the Commission proposes the interim application of reference tariffs for road transport between the Member States. These reference tariffs would be purely indicative: they would not restrict the freedom and responsibility of the transport undertakings.

5. The current Regulation covers only the formation of rates for the international carriage of goods by road within the Community. Its scope covers all goods transport operations, including the carriage of products covered by the Treaty establishing the European Coal and Steel Community.

6. Negotiations for the establishment of reference tariffs should be held by the road hauliers' organisations, with the participation of users, representatives of services ancillary to transport, and of the unions. However, in order to ensure, in the reference tariffs system, a balance between the enterprises controlling rates themselves and the public interest, it would seem necessary to give these tariffs an official character, i.e. their confirmation by a Community procedure.

7. In order to carry out the tasks falling upon it in the sector of rates and conditions of international road transport in general and the regime of reference tariffs in particular, the Commission shall receive assistance from the advisory committees set up under Council Regulation No. concerning a system for observing the markets for the carriage of goods by rail, road and inland waterway between the Member States.

(1) OJ of the EEC No. L 194/1 of 6 August 1968.

II. Particular considerations

Article 1

This article defines the field of application of the regulation, which includes all transport by road between Member States including goods transport under the ECSC Treaty, transit through third countries or transport by road where part of the journey is by another means of transport, but without breaking the load. The regulation also applies to international road transport where the vehicle is carried by sea. (Roll on - Roll off).

Article 2

This Article requires that road transport between Member States be subject to a system of reference tariffs, while emphasizing that such a system only provides an indicator for fixing transport rates: transport users and carriers would always be free to agree rates in accordance with the market situation and their own interests.

Article 3

The experiences gained in the tariff sector show that the tariffs are becoming more and more differentiated. Such a differentiation is all the more indispensable for the reference tariffs as it is desirable that these tariffs shall play their indicative function for rates in the various transport markets.

Article 4

For effective application reference tariffs must be as close as possible to the market situation, while, at the same time, allowing transport rates to be applied which not only cover the carriers' costs but also yield them a fair profit, the aim of any commercial enterprise.

Article 5

This article contains the procedural provisions for establishing draft reference tariffs.

In order to reduce to a minimum interference by public authorities in the transport economy, transport firms, in consultation with other interested bodies, will themselves be responsible for establishing reference tariffs through the medium of their trade organisations.

The transmission of these draft tariffs to the governments of the Member States and to the Commission is necessary not only in order to apply the procedure of Article 6, but also to ensure adherence to the provisions of this regulation.

Article 6

In order to give the system of reference tariffs a certain official character and in order to achieve a balance between the need for a transport rates policy based on the market economy and the protection of public interest, it is considered desirable to provide, in Article 6, a procedure for confirmation of tariffs at the Community level.

With this in mind, it would seem wise to confer this administrative task on the Commission with the reservation that Member States would have the possibility of appealing to the Council.

Article 7

It was felt that the procedure for establishing reference tariffs could also apply to cases where important changes had to be made to these tariffs.

For minor changes, a simplified procedure, limited to contacts between interested socio-economic bodies, should be adequate.

The Commission will, however, define conditions and methods of application for this simple procedure within 6 months of the entry into force of this regulation.

Article 8

It is necessary to provide for cases where negotiations between the carriers' trade organisations and other interested bodies fail to establish reference tariffs. If this happens, Article 8 stipulates that the dispute shall be referred to the Commission. The procedures in Article 6 will be used similarly.

Article 9

In order to be able to exercise their function of monitoring the transport market in the public interest, the Commission and the competent national authorities must be able to obtain information on the rates actually used in applying the tariff system.

Article 10

Each year, the Commission will prepare a report on the evolution of road transport rates and conditions.

In preparing this report, the Commission will be aided by the Committees set up under Council Regulation No 1..... concerning a system for observing the markets for the carriage of goods by rail, road and inland waterway between the Member States.

Article 11

In order to avoid too abrupt a change from the present system of compulsory tariffs for road transport between Member States to a system of reference tariffs, it was considered useful simply to convert the compulsory tariffs in force into reference tariffs from 1st January 1977, the date of application of the present regulation.

For traffic between Member States where no compulsory tariffs apply, reference tariffs must be drawn up and published before 31st December 1977. This extra year is necessary because up until now these traffics have escaped from any tariff system and as such a system is an innovation.

In order to meet this deadline, tariff negotiations between trade organisations must be completed by 30th September 1977, so that the procedure for confirmation, or, if necessary, for recourse to the Council, can take place before 31st December 1977.

Article 12

The enforcement of this regulation requires that the Member States adopt either legislative or administrative measures. These measures should be taken in good time.

The enforcement measures proposed by a Member State shall be notified to the Commission, which may consult the Member States on this subject either on its own initiative or at the request of a Member State.

The Member States will, of course, assist each other and the Commission for the proper application of this regulation.

Article 13

It is apparent that some types of transport should not be included in the tariff regime because of their limited economic importance (low weight or short distance for example), or their special characteristics (some goods listed in Annexes I and II of the first Council Directive on the establishment of certain common rules for international transport) or technical difficulties of tariffication (transport of live animals or exceptional transport from the point of view of material or of special traffic arrangements.)

Articles 14 and 15

No comment.

PROPOSAL FOR
COUNCIL REGULATION (EEC) No.
of

a system of reference tariffs for the carriage of goods by road
between Member States.

THE COUNCIL OF THE EUROPEAN COMMUNITIES,
having regard to the Treaty setting up the European Economic Community
and particularly Article 75 therein,
having regard to the proposal of the Commission,
having regard to the opinion of the European Parliament,
having regard to the opinion of the Economic & Social Committee,

Whereas the organisation of the goods transport market ought to be
conceived in accordance with the laws of the market economy in order
to ensure the optimum allocation of resources;

Whereas this conception also applies to the field of transport rates
and conditions which constitute an important element in the Common
Transport Policy, the application of which is prescribed by the Treaty;

Whereas, therefore, the fixing of transport rates and conditions ought
~~only~~ to be the responsibility of transport undertakings themselves and no
longer the responsibility of public authorities imposing compulsory tariffs;

Whereas in order to avoid too abrupt a change from the present system of rates and conditions of transport, it would seem appropriate to achieve this conception progressively and to apply it, in the first instance, only to goods traffic by road between Member States;

Whereas the transfer from a compulsory tariff system for road transport between Member States towards a system of free rate fixing should be carried out via the setting up of a system of reference tariffs;

Whereas in view of their rôle in the management of transport undertakings, reference tariffs ought to take account of the costs of the relevant transport services;

Whereas reference tariffs have only an indicative value, the establishment of draft tariffs can be left to the initiative of the economic interests concerned;

Whereas, nevertheless, in order to maintain a balance between the need to protect the public interest and the need to confer the responsibility for establishing tariffs on the relevant economic interests, the draft reference tariffs should be submitted to the Commission for confirmation, with the reservation that there is the possibility of appeal to the Council;

Whereas in order to ensure that the procedures conform to those of the Community, the Commission and the Member States must be able to obtain information concerning the transport rates actually applied;

Whereas, for a transitional period, it is appropriate to convert the compulsory tariffs in force on 31 December 1976 into reference tariffs: that for traffic routes where such compulsory tariffs are not applicable on that date it is necessary to give the relevant trade organisations time to establish such reference tariffs;

Whereas, for both economic and practical reasons certain types of transport would be exempt from any system of tariffs

HAS ADOPTED THIS REGULATION

Article 1

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

- carriage involves a transit journey through a non-member country,
- the vehicle containing the goods is carried without break of load by sea, rail or waterway.

Article 2

1. The transport operations referred to in article 1 shall be subject to a system of reference tariffs.

2. The reference tariffs shall constitute 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 3

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

2. The reference tariffs shall be established either in the form of general tariffs or in the form of special tariffs. They can be differentiated under any of the criteria which contribute to their function as reference tariffs.

3. The tariffs shall incorporate price schedules and all the other rules required for calculating the transport rate (transport rate proper and associated costs).

Article 4

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

Article 5

1. The reference tariffs shall be established by joint agreement among the associations of carriers of goods by road in the Member States concerned, as a result of bilateral or multilateral negotiations. The organizations representing transport users and providers of services ancillary to transport as well as trade unions shall be associated with these negotiations.

2. The road transport trade organizations shall send the draft tariffs to the Commission and the Member States concerned.

3. The Member States shall designate the organizations referred to in paragraphs 1 and 2.

Article 6

1. The reference tariffs shall be confirmed under the conditions set out in the procedures hereafter.
2. Within one month from the date of receipt of the draft reference tariffs, the Commission shall take a decision on the confirmation of these draft tariffs, after consulting the committee referred to in Article 6, paragraph 1 (a) of Council Regulation (EEC) No.⁽¹⁾ This decision shall be published in the Official Journal of the European Communities.
3. The decision of the Commission shall become binding from one month from the date of publication unless, meanwhile, a Member State raises the question in Council. In this case, the Council shall take a decision by qualified majority within one month and publish the decision in the Official Journal of the European Communities.
4. As soon as the decision confirming the draft becomes binding, the governments of the relevant Member States will ensure publication of the confirmed tariffs.

Article 7

1. The procedure set out in Articles 5 and 6 applies equally to modifications of the reference tariffs.
2. However, the procedure referred to in Paragraph 1 does not apply to non-essential modifications which shall be published in the tariff bulletin of the transport trade organisations, after consultation with organisations representing users, providers of services ancillary to transport and the transport workers' unions.
The terms and conditions of the simplified procedure shall be drawn up by the Commission, within 6 months from the date of application of this regulation, after consultation with the advisory committees provided

(1) Regulation concerning a system of observing the markets for the carriage of goods by rail, road and waterway between the Member States.
O.J. of the EEC no

for in Article 6 (1 a) and b)) of Council Regulation (EEC) No (1)

Article 8

If the negotiations, either for drawing up or modifying the reference tariffs, cannot end in agreement, the interested organisations shall inform the Commission of the disagreement. In this case, the decision concerning the difficulty shall be drawn up following a procedure similar to that referred to in Article 6.

Article 9

1. The transport undertakings shall be required to communicate to the Commission and to the appropriate authorities of the Member States, upon request, any information relating to rates operative for the international carriage of goods by road.
2. The Commission shall establish, if the need arises, a uniform outline programme for these communications.
3. Information obtained in implementation of this Regulation shall be covered by the obligation of professional secrecy.

Article 10

The Commission shall, by 1 December each year and after consultation with the advisory committees provided for in Article 6 (1 a) and b)) of Council Regulation (EEC) No (1), draw up a report on the trends in rates and conditions of transport in the sector of road and inland transport between Member States.

(1) Regulation of the Council concerning a system of observing the markets for the carriage of goods by rail, road and inland waterway between the Member States.

O.J. of the EEC no

Article 11

1. During the transitional period, before the reference tariffs are drawn up under the conditions defined in this Regulation, the compulsory bracket tariffs applicable to goods transport by road between Member States in force on 31 December 1976 under Regulation (EEC) No. 1174/68¹, last modified by Regulation (EEC) No. ², shall be converted, as from 1 January 1977 into reference tariffs within the meaning of this Regulation. As from that date, the upper limits of these tariffs shall constitute the schedules of rates within the meaning of Article 3 (3).

2. For those goods transport traffics by road for which no compulsory bracket tariffs have been drawn up under the terms of Regulation (EEC) No. 1174/68, the reference tariffs shall be published by 31 December 1977 at the latest. To this end the negotiations referred to in Article 5 shall start, without delay, as soon as this Regulation enters into force. In the event of lack of agreement before 30 September 1977, the Commission shall be informed of the disagreements under the conditions set out under Article 8.

Article 12

1. In due course, and after consultation with the Commission, the Member States shall adopt the legal and administrative provisions necessary for the implementation of this Regulation.

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 and administrative provisions referred to in paragraph 1.

3. The Member States shall afford assistance to each other and to the Commission for the purposes of the application of this Regulation.

¹ O.J. of the EC No. L 194/1 of 6 August 1968

² O.J. of the EC No. of

Article 13

No tariff system shall be applied:

- to the carriage of goods not exceeding five tonnes in total weight consigned by a single consignor to a single consignee,
- to the carriage of goods over a distance which in total does not exceed fifty kilometres,
- to the types of carriage listed in the Annexe to this Regulation,
- to the carriage of live animals,
- to carriage involving the use of special vehicles or special traffic arrangements.

Article 14

The provisions of this Regulation shall not apply to any obligation covered by the Treaty establishing the European Coal and Steel Community.

Article 15

This Regulation shall enter into force on 1 January 1977.

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

Done at Brussels

For the Council

The President

Annex to Regulation (EEC) No.
concerning a system of reference tariffs
for the transport of goods by road
between Member States.

Goods whose transport is exempt from any tariff system, as provided for under Article 13 of the regulation.

- 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 vehicle to and from airports;
- carriage of mails;
- 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 publicity or information purposes;
- removals by undertakings having special staff and equipment for this purpose;
- carriage of material, 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, 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.

PART 8PROPOSAL FOR A COUNCIL REGULATION (EEC)

concerning a system for monitoring the
markets for the carriage of goods by
rail, road and inland waterways between
the Member States.

PROPOSAL FOR A COUNCIL REGULATION (EEC)

concerning a system for observing
the markets for the carriage of goods by rail,
road and inland waterways between the Member
States.

EXPLANATORY MEMORANDUM

1. In its Communication to the Council of 25 October 1973 on the development of the common transport policy (1), the Commission proposed the introduction by stages of a Community transport system, capable of meeting the needs of economic union and of permitting the smooth operation of the transport markets.

This communication argued that the roles of the public authorities and of transport undertakings have to be distinguished more clearly in that the transport markets must be able to function freely within the framework established by the authorities and subject to the essential corrective measures.

2. In its general communication concerning all the proposals relating to the operation of the transport markets, the Commission defines the overall framework which it sees as necessary for the final stage, when the markets would be managed by the carriers themselves and when interventions by the public authorities would be strictly limited to serious market disturbances or to satisfy social, economic and Community requirements.

(1) Bulletin of the European Communities - Supplement 16/73.

It also states its reasons for providing for a transitional period during which the new rules would apply only to carriage between the Member States and the freedom of carriers regarding investment in equipment and the formation of rates would still be restricted.

3. It is therefore in order to pave the way for the final stage of organization of the transport markets, and to determine the rate of advance towards the final objective, that the Commission considers it necessary to set up forthwith a system for observing the markets.

4. The purpose of the market observation system is to collect and keep constant data and information on the situation in the markets and on the short and medium term trends in users' needs and available transport capacities.

5. With this in mind, the Commission considers it advisable in close and constant collaboration with the competent authorities of the Member States and the business organizations, to establish a set of indicators showing the market trend, and, at regular intervals, to draw up reports on the forecasts for transport supply and demand.

These reports or estimates are intended for all the authorities concerned - Community Institutions, Member States and organizations representing carriers - to enable them to base their respective decisions on economically valid grounds.

In observing the markets, these forecasts will be compared with the actual market situation, as initially established by the transport organizations and users, associating with a view to enabling carriers, and, above all, the public authorities to take the necessary safeguard measures or to advance the process by which carriers will freely manage the markets themselves.

6. It appears necessary for the Commission to have the assistance of Advisory Committees, both in utilizing the data collected by means of the above mentioned indicators, and in producing forecasts on the short and medium term trend of needs and transport capacity.

7. For this purpose it is proposed that the following should be set up :

- a Committee consisting of representatives of carriers, providers of services ancillary to transport, transport workers' unions and users;

- a Committee consisting of government representatives.

These committees would be closely associated with the Commission in the performance of the tasks assigned to it by this Regulation. They would also have a power of initiative in that they could deliver the opinions they considered appropriate for the smooth operation of the markets, in particular on the basis of their everyday practical and professional experience.

PROPOSAL FOR COUNCIL REGULATION N.O.

on ~~concerning~~ a system for observing the markets for the carriage of goods by rail, road and inland waterways between the 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 in order to ensure that the markets for the carriage of goods between Member States by rail, road and inland waterway function smoothly, it is essential to establish a permanent system for observing these markets with the aim of gathering and using all the data and information available on the markets and forecasting short- and medium-term trends in supply and demand for the carriage of goods;

Whereas, since this system constitutes one of the basis on which the transport markets will be organized, it must be introduced at Community level, with participating ^{of} the national authorities, as well as of professional bodies and Transport workers' unions; and whereas this system should supply the facts regarding the situation of the markets and make it possible to identify trends and collate the data gathered into forecasts for short- and medium-term transport needs and capacities; and whereas these forecasts must provide the reference base for any investment decisions by under-

takings and for the activities connected with the permanent observation of the market by the competent authorities;

Whereas such a observation system implies the power to conduct sample surveys of the market, or of particular sectors of the market;

Whereas, to assist the Commission in carrying out the duties in respect of observing the transport markets which have been assigned to it, the Commission must be in a position to call ~~the~~ the active participation of the undertakings, the users, the transport workers' unions, and the national public authorities; and whereas it would seem necessary for this purpose to institute Advisory Committees made of representatives of carriers, users, ~~providers of services ancillary to transport and transport workers' unions, and representatives of the governments of the Member States~~ respectively;

./.

HAS ADOPTED THIS REGULATION :

Article 1

1. In order to ensure that the markets for the carriage of goods between the Member States by rail, road and inland waterway function smoothly, a system for observing these markets is hereby established.

2. The observation system shall include :

- analysis of the markets;
- forecasting short- and medium-term trends in transport requirements and capacities.

The management of this system shall be the responsibility of the Commission, assisted by the Advisory Committees referred to in article 6.

Article 2

1. The analysis of the markets shall involve the appraisal of the situation in the transport markets and the identification of the trends therein by means of a number of indicators, including :

- the relationship between supply and demand for the carriage of goods,
- the economic situation of transport undertakings,
- jobs available and the level of employment.

For this purpose the following in particular shall be taken into account :

- the actual freight rates,
- the average rate of use of transport capacity,
- the number of transport undertakings ceasing operations or becoming bankrupt,
- unemployment figures in the transport sector.

2. The Commission shall draw up annual reports on the situation in the transport markets and trends developing therein. The first of these reports shall be drawn up by..... (1).

Article 3

1. In forecasting short- and medium-term transport requirements and capacities, the following shall be assessed :

- requirements in respect of the carriage of goods between Member States for each form of transport ;
- the development of transport capacity by road, rail and inland waterway.

For this purpose the following in particular shall be taken into account :

- the guidelines given in the programme for medium-term economic policy and the projections carried out pursuant to the Council Decision of 18 February 1974 setting up the Economic Policy Committee (2) ;
- the guidelines and programmes established under the Community's regional policy pursuant to the Council Decision of 18 March 1975 establishing the European Regional Development Fund (3);
- foreseeable trends in transport demand, taking into account developments in industrial and agricultural production and structural changes.

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(1) It is proposed to set a time-limit of one year from the date on which the Advisory Committees are established.

(2) OJ N^o. L 63, 5 March 1974.

(3) OJ N^o. L 73, 21 March 1975.

2. The forecasts referred to in § 1 above shall be drawn up in the form of annual reports, covering periods of five years and the first such report being submitted by 1 January (1).

These reports shall include forecasts for the following period of five years. The forecasts shall be reviewed annually; when necessary they shall be revised to reflect the actual situation on the markets, taking account of the findings of the analysis referred to in Article 2.

Article 4

1. In carrying out the duties assigned to it under Articles 2 and 3, the Commission may undertake sample surveys of the markets or of sectors of the market covering transport undertakings, users and providers of services auxiliary to transport, or request Member States to make such surveys, according to a programme established by the Commission after consulting the Committees referred to in Article 6 (1).

2. The information gathered pursuant to Article 4 (1) shall not be used for any other purpose than that for which it was requested.

3. The Commission and its officials and other servants shall not divulge, as separate items, any information they have gathered in the course of implementing this Regulation, this information being, by its nature, covered by professional secrecy.

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(1) It is proposed to set a time-limit of one year from the date on which the Advisory Committees are established.

Article 5

1. The reports referred to in Article 2 (2) and Article 3 (2) shall be drawn up by the Commission after consulting the Committees referred to in Article 6 (1).

2. They shall be made available to :

- the other Institutions of the Community,
- the governments of the Member States,
- the Advisory Committee on Transport established under Article 83 of the Treaty.

Article 6

1. With a view to assisting the Commission in carrying out the duties assigned to it by this Regulation, the following shall be established by the Commission:

a) an advisory committee, consisting of representatives of transport undertakings, users, providers of services ancillary to transport and transport workers' unions;

b) an advisory committee, consisting of representatives of the Member States.

2. The Committees referred to in § 1 shall deliver to the Commission opinions on all questions relating to the operation of the markets for the carriage of goods by rail, road and inland waterway between Member States, either at the request of the Commission or on their own initiative.

Article 7

The Commission shall, within six months of the date on which this Regulation enters into force, adopt measures concerning :

- the form, content and procedure of the analysis machinery referred to in Article 2 and in particular of the indicators;
- the Advisory Committees referred to in Article 6 (1).

Article 8

The Member States shall, within six months of the date on which this Regulation enters into force and after consulting the Commission, adopt the laws, regulations and administrative provisions necessary for the implementation of this Regulation. These provisions shall inter alia relate to the organization, the procedure the supervisory machinery, the penalties applicable for infringements and the measures necessary for the performance by the Commission of the tasks assigned to it under the present regulation.

2. The competent authorities in the Member States shall give the Commission all the assistance necessary for the latter to carry out the duties assigned to it under this Regulation.

Article 9

This Regulation shall enter into force on

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

Done at Brussels,

For the Council

The President