

REGULATION No 11

concerning the abolition of discrimination in transport rates and conditions, in implementation of Article 79 (3) of the Treaty establishing the European Economic Community

THE COUNCIL OF THE EUROPEAN ECONOMIC COMMUNITY,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 79 thereof;

Having regard to the proposal from the Commission;

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

Whereas Article 79 (3) requires the Council to lay down rules for the abolition, as regards transport within the Community, of the forms of discrimination referred to in Article 79 (1);

Whereas such abolition requires the prohibition of the above-mentioned forms of discrimination, including the fixing by tariff or otherwise, of transport rates and conditions which, when applied, would constitute discrimination;

Whereas it will only be possible to check what transport rates and conditions are being applied and to detect any discrimination if carriers and agents concerned with the carriage of goods are required to supply the necessary information, to make out a transport document enabling such information to be checked and to submit themselves to inspection;

Whereas, for the purpose of ensuring compliance with these provisions, there should be instituted a system of penalties, such penalties to be subject to review by the Court of Justice exercising unlimited jurisdiction, as provided for in Article 172 of the Treaty;

HAS ADOPTED THIS REGULATION:

Article 1

The provisions of this Regulation shall apply to the carriage of all goods by rail, road or inland waterway

within the Community, with the exception of goods listed in Annexes I and III to the Treaty establishing the European Coal and Steel Community.

Article 2

1. The provisions of this Regulation shall apply to all carriage of goods consigned from or to a point within the territory of a Member State, including the carriage thereof between Member States and third or associated countries.

2. This Regulation shall apply only to those parts of a journey which take place within the Community.

3. This Regulation shall apply also to those parts of a journey effected by rail, road or inland waterway where the goods are carried by other modes of transport over other parts of the journey.

Article 3

Where a carriage regulated by the terms of a single contract is performed by successive carriers, each such carrier shall be subject to the provisions of this Regulation in respect of that part of the carriage which he performs.

Article 4

1. In the case of transport within the Community, all discrimination by carriers which takes the form of charging different rates and imposing different conditions for carrying the same goods over the same transport links on grounds of the country of origin or of destination of the goods in question shall be prohibited.

This prohibition shall not affect the validity of private law contracts.

2. The fixing, by tariff or otherwise, of transport rates and conditions which, when applied, would constitute discrimination within the meaning of paragraph 1 shall also be prohibited.

3. The prohibitions laid down in this Article shall take effect from 1 July 1961.

Article 5

1. Before 1 July 1961 Governments shall notify the Commission of any tariff, or formal or other agreement on transport rates and conditions operating in their respective countries, whereby the rates and conditions for carrying the same goods over the same transport links vary according to the country of origin or of destination of the goods in question. Any measure of this kind subsequently introduced shall also be immediately notified to the Commission.

2. Before 1 July 1961 transport undertakings shall supply their respective Governments with all relevant information concerning the tariffs, and formal or other agreements on transport rates and conditions referred to in the preceding paragraph and shall notify them forthwith of any measure of this kind subsequently introduced.

3. The provisions of this Article shall apply to the carriage of goods consigned from or to a point within the territory of a Member State.

Article 6

1. A transport document giving the following details shall be required for each consignment of goods within the Community:

- name and address of the consignor;
- nature and weight of the goods;
- place and date of acceptance of the goods for transport;
- place at which the goods are to be delivered;
- route to be taken, or distance to be travelled, if these factors justify a rate different from that normally applicable;
- frontier crossing points, where appropriate.

2. Transport documents shall be made out in duplicate and shall be numbered. One copy shall accompany the goods; the other copy shall be retained by the carrier for two years, reckoned from the date of carriage, and shall be filed in numerical order. The latter copy shall show the full and final transport charges, whatever the form in which they may be made, any other charges and any rebates or other factors affecting the transport rates and conditions.

3. Where existing documents give all the details specified in paragraph 1 and, in conjunction with car-

riers' recording and accounting systems, enable a full check to be made of transport rates and conditions, so that the forms of discrimination referred to in Article 79 (1) of the Treaty may be thereby abolished or avoided, carriers shall not be required to introduce new documents.

4. The carrier shall be responsible for the proper preparation of transport documents.

Article 7

1. The provisions of Article 6 shall enter into force on 1 July 1961.

2. The Commission may, however, before that date and by a Regulation issued after consulting the Council, postpone for certain classes of transport to be determined later such entry into force until 1 January 1964 at the latest.

Article 8

The provisions of Article 6 shall not apply:

- (a) to the carriage of goods not exceeding five metric tons in total weight consigned by a single consignor to a single consignee;
- (b) to the carriage of goods within a Member State over a distance which in total does not exceed one hundred kilometres;
- (c) to the carriage of goods between Member States for a distance which in total does not exceed 30 kilometres.

Article 9

The provisions of Article 6 shall not apply to the carriage of goods by an undertaking for its own requirements, subject to the following conditions:

- the goods must be carried by vehicles owned or obtained on deferred terms by the undertaking and driven by its own employee or employees;
- transport must be only ancillary to the overall activities of the undertaking;
- the goods carried must be the property of the undertaking or must have been sold, bought, loaned, borrowed, let out on hire or hired, produced, processed or repaired by the undertaking;
- the purpose of the journey must be to carry the goods to or from the undertaking or to move them, either inside the undertaking, or outside for its own requirements.

Article 10

If, by 1 July 1963, no rules have been made under Article 74 and in implementation of Article 75 of the Treaty as regards the publication of transport rates and conditions, decisions concerning the nature, form and extent of such publication shall be taken, together with any other appropriate measures, within the limits of, and as provided in Article 79 (1) and (3) of the Treaty, account being taken of the fact that such decisions and measures must in all cases be consistent with the common transport policy.

Article 11

1. Without prejudice to Article 5 of this Regulation, Governments and undertakings shall, at the request of the Commission, supply any additional information which may be needed concerning any tariff, or formal or other agreement on transport rates and conditions.

2. The Commission may set a time limit of not less than one month for the forwarding of such information.

3. If the Commission requests an undertaking to supply it with information the Commission shall immediately notify the Government of the Member State in which the undertaking has its seat by forwarding a copy of the request for information to that Government.

4. Information may be refused if it involves the disclosure of any facts which a Member State considers would be contrary to the essential interests of its security.

Article 12

1. Any carrier who charges different rates and imposes different conditions for the carriage of the same goods over the same transport links according to the country of origin or of destination of the goods in question shall, if so required by the Commission, show that such action is not in breach of the provisions of this Regulation.

2. The charging of different rates and the imposing of different conditions shall not constitute a breach of this Regulation if it results solely from competition between carriers or is due to operating conditions, whether technical or economic, peculiar to carriage over the transport link in question.

Article 13

1. Forwarding and other agents concerned with the carriage of goods shall, if so required by their

Government or by the Commission, supply all information relevant to the services provided and to the rates and conditions applied.

2. This requirement shall also apply to direct providers of services ancillary to carriage in any case where the remuneration payable to them and that payable to the carriers are comprised in a single overall charge.

3. The provisions of Article 11 (2), (3) and (4) shall also apply to requests for information made in pursuance of this Article.

Article 14

1. Member States shall be responsible for checking compliance with the obligations imposed on carriers by Articles 5 (2), 6 and 11 of this Regulation and with the obligation to supply information as laid down in Article 13.

They shall introduce the necessary measures for this purpose before 1 July 1961, after consulting the Commission.

2. In so far as may be necessary in order to implement this Regulation, the Commission may send its officials or any experts on visits of inspection to check and supervise compliance with the obligations imposed on undertakings by Articles 5, 6, 11 and 13 of this Regulation.

To this end, any authorised representatives of the Commission shall have the following rights and powers:

- (a) to check the books and other business records of undertakings;
- (b) to take copies or extracts of such books and records on the spot;
- (c) to be given access to all premises, land and vehicles of undertakings;
- (d) to require explanations on all points relating to the books and records of undertakings.

Authorised representatives of the Commission shall exercise these rights on production of a pass stating that they are empowered to carry out all necessary inspections pursuant to this Article. They must carry a written authority naming the undertaking to be inspected and the purpose of the inspection. Details of the written authority and of the status of the persons responsible for carrying out the inspection shall be duly notified beforehand to the Member State concerned.

Officials of that State may, at the request either of the latter or of the Commission, assist the authorised rep-

representatives of the Commission in the performance of their duties.

If any undertaking refuses inspection as provided for in this Regulation, the Member State concerned shall give the authorised representatives of the Commission such support and assistance as may be necessary for the purpose of carrying out their inspections as instructed. Member States shall introduce the necessary measures for this purpose before 1 July 1961, after consulting the Commission.

3. All persons taking part in inspections as provided for in this Article shall observe professional secrecy, in accordance with Article 214 of the Treaty.

Article 15

1. Without prejudice to measures taken under Article 79 (4) of the Treaty, the Commission and Member States shall ensure that all facts made known to them in pursuance of Articles 5, 11, 13 and 14 remain confidential.

2. Unless the Council unanimously decides otherwise, information so obtained may only be used for the implementation of this Regulation.

Article 16

After consulting the Commission, Member States shall, within the time limit laid down in Article 14 (1), lay down appropriate penalties for:

- (a) carriers who fail to comply with the rules laid down in Articles 5 (2) and 6;
- (b) undertakings which, having been required to do so, fail to submit to their Governments within the time limit laid down, the information specified in Articles 11 and 13;
- (c) undertakings which knowingly submit false information to their Governments.

Article 17

1. If such an undertaking as aforesaid fails to submit the information requested by the Commission under Articles 11 and 13 within the time limit laid down, or if it knowingly supplies false information, the Commission may, in accordance with the second subparagraph of Article 79 (3) of the Treaty, take a decision imposing a penalty of not more than 500 units of account on the undertaking concerned and may specify a fresh date for submission of the required information. If that undertaking fails to supply the information by the fresh date, the decision may be repeated.

2. However, such penalties may be imposed only if the request for information has been presented in the form of a decision referring expressly to the penalties provided for in this Article.

Article 18

1. If the Commission is satisfied that there is discrimination within the meaning of Article 79 (1) of the Treaty, it may, in respect of each case of discrimination and taking a decision as provided for in Article 79 (4), impose on the carrier responsible a penalty not exceeding twenty times the carriage charge obtained or demanded.

2. If discrimination within the meaning of Article 79 (1) of the Treaty continues despite a decision by the Commission ordering that such discrimination be ended, the Commission may impose on the carrier responsible, in respect of each case of discrimination and in accordance with Article 79 (4) of the Treaty, a penalty not exceeding 10 000 units of account.

3. Before imposing a penalty under Article 17 of this Regulation, the Commission shall consult all Member States concerned, which shall be supplied with copies of all documents and evidence assembled in connection with the investigation conducted by the Commission under Article 79 (4) of the Treaty. Each Member State consulted may seek the opinion of an independent national body and shall reply within two months.

Article 19

Decision taken under Articles 17 and 18 of this Regulation shall not be of a criminal law nature.

Article 20

Before any decision is taken in pursuance of Articles 17 and 18, the undertaking concerned shall be notified of the measure proposed.

The Commission shall, by way of information, forward copies of decisions taken under Articles 17 and 18 to the Member States concerned.

Article 21

For the purposes of the preceding Articles, the unit of account shall be that used for drawing up the budget of the Community, as provided in Articles 207 and 209 of the Treaty.

Article 22

All undertakings, whether governed by public or by private law, shall be responsible for the acts of their servants as regards compliance with the provisions of this Regulation. This provision shall also apply as regards the penalties laid down in this Regulation.

Article 23

Penalties imposed by the Commission under Articles 17 and 18 shall be enforced in the manner laid down in Article 192 of the Treaty. Sums collected in enforcement of decisions imposing penalties shall be paid over to the European Economic Community and shall be shown as revenue in its budget.

Article 24

Where a Member State submits an application under Article 79 (4) of the Treaty requesting investigation of a case which it considers to constitute discrimina-

tion, such application shall state the reasons on which it is based.

Article 25

1. Before taking a decision or imposing a penalty under Article 18 of this Regulation, the Commission shall hear explanations from the person concerned or his authorised representative; it may appoint one of its officials to hear such explanations.

2. Pursuant to Article 172 of the Treaty, the Court of Justice shall have unlimited jurisdiction in regard to any penalty imposed under Articles 17 and 18. The Commission may not proceed with the enforcement of a penalty until the period allowed for appeal has expired.

Article 26

The Commission shall take the measures necessary for the implementation of this Regulation.

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

Done at Brussels, 27 June 1960.

For the Council

The President

P. GRÉGOIRE