COMMISSION DECISION

of 28 May 1975

addressed to the Government of the Grand Duchy of Luxembourg on a draft Grand-Ducal regulation implementing 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

(Only the French text is authentic)

(75/357/EEC)

The Government of the Grand Duchy of Luxembourg by a letter of 4 July 1974 from the Office of its Permanent Representative referred to the Commission a draft Grand-Ducal regulation implementing Council Regulation (EEC) No 1174/68 [1] of 30 July 1968 on the introduction of a system of bracket tariffs for the carriage of goods by road between Member States and Commission Regulation (EEC) No 358/69 [2] of 26 February 1969 laying down detailed rules for the publication of transport rates and conditions which depart from published tariffs.

After a briefing session held with the Commission and as a result of the amendments made with effect from 1 January 1975 to Regulation (EEC) No 1174/68 [3] by Council Regulation (EEC) No 3255/74 of 19 December 1974, the Government of Luxembourg informed the Commission by letters of 3 and 29 January from the Office of its Permanent Representative of certain amendments to be made to the initial text of the draft.

These communications constitute a consultation with the Commission on the draft as required by Article 12 (1) of Regulation (EEC) No 1174/68.

The Commission does not consider it necessary to initiate any consultation with the other Member States as provided for by Article 12 (2) of Regulation (EEC) No 1174/68.

The Commission's Opinion on the draft Grand-Ducal regulation is as follows :

1. The draft Grand-Ducal decree is intended to replace the Grand-Ducal decree of 12 February 1971 [4], on which the Commission had given a generally favourable Opinion [5] but with the following reservations :

(a) *On the organization of and procedure for carrying out checks :*

— the Grand-Ducal decree made reference only to the General Law of 12 June 1965 on road transport, which speaks only of the subsequent adoption of checking measures designed to ensure its proper implementation ;

— the checking measures laid down by the Grand-Ducal regulation were restricted to checks on carriers, whereas the compulsory nature of the tariff system made it necessary to be able to check on all parties connected with road transport operations.

In a further letter to the Commission, the Government of Luxembourg stated that no further checking measures were necessary as experience had shown that the measures laid down under the existing law were quite adequate. An undertaking was however given to extend checking to providers of ancillary transport services, the basic Law of 12 June 1965 making no provision for it to be extended to consignors and consignees.

(b) *In respect of penalties :*

the Commission suggested that the system of exclusively criminal penalties should be supplemented by administrative penalties on a scale graded according to the seriousness of the breach.

2. The provisions of the Grand-Ducal regulation are as follows :

— *Article 1* designates the member of Government in charge of the department dealing with road transport as competent authority for the purposes of Regulation (EEC) No 1174/68. It also delegates checking measures and scrutiny of special contracts, and the transmission for publication of these, to a Road Transport Control Department to be set up within the ministerial department dealing with road transport.

— *Article 2* designates the Chamber of Commerce as the body responsible for the publication of transport rates and conditions which depart from the published tariffs (special contracts).

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(1) OJ No L 194, 6. 8. 1968, p. 1.
(2) OJ No L 53, 4. 3. 1969, p. 1.
(3) OJ No L 349, 28. 12. 1974, p. 3.
(4) Memorial A No 12, 25. 2. 1971, p. 253.
(5) OJ No L 7, 9. 1. 1971, p. 12.

— *Article 3* sets out the number of consignment note copies to be completed, the information to be provided on all copies before the transport operation is carried out, and the information to be provided on the carrier's copy (control copy) after the operation has been carried out.

— *Article 4* lays down that carriers established in the Grand Duchy of Luxembourg shall maintain log books which will be carried in the vehicles and on which it will be compulsory to enter certain particulars which will enable a check to be made that the transport operation was carried out in accordance with the particulars entered on the consignment note.

— *Article 5* lays down procedures for the transmission of consignment notes and duplicate log-book sheets to the Road Transport Control Service.

— *Article 6* designates the persons entitled to carry out checking measures and specified the extent of their powers of inquiry.

— *Article 7* sets out the criminal penalties applicable to breaches of Regulation (EEC) No 1174/68. Offences are punishable by imprisonment of from eight days to five years and/or a fine of from ten thousand to a million francs. Certain offences can also result in forfeiture of the profit illegally obtained and confiscation of the vehicle used to commit the offence.

— *Article 8* lays down that breaches of the Grand-Ducal regulation will be punished in accordance with Article 8 of the Law of 12 June 1965 on road transport. This Law prescribes penalties of from eight days to three months imprisonment and/or a fine of from Bfrs 501 to Bfrs 30 000.

— *Article 9* stipulates that when a carrier has been found guilty of a breach of both the provisions of Regulation (EEC) No 1174/68 and of those of the Grand-Ducal regulation, the member of Government in charge of the ministerial department dealing with road transport may withdraw the carriers permit to carry on business as an international carrier for a period of from three months to ten years.

In cases of repeated breach if a carrier has, within three years of being penalized for a first offence or within three years of the end of the period of limitation, been found guilty of a third offence of the same type, the member of Government in charge of the department dealing with road transport will without further formality order the permanent withdrawal of such carrier's permit to carry on business as an international carrier.

3. The Commission finds that the draft Grand-Ducal regulation generally meets the wishes expressed in its Opinion of 4 December 1970.

On the organization of and procedure for carrying out checks it incorporates specific measures on the setting up of a control department, on the content of consignment notes and on the maintenance of log books giving details of individual transport operations. Moreover, as the officials of the control department are entitled to investigate and certify breaches of the regulation jointly with the officers already entitled to do so under the Law of 12 June 1965 the staff complement for this work is strengthened. The Government of Luxembourg has not however acted on the Commission's Opinion that checking measures should be extended to consignors and consignees.

In respect of penalties, the Government of Luxembourg has acceded to the Commission's wish by introducing administrative measures providing for temporary or permanent withdrawal of the carrier's permit, depending on the seriousness of the offence and the number of offences previously committed.

4. The Commission is therefore able to give a favourable opinion on the draft Grand-Ducal regulation while regretting that is has not been deemed advisable to extend checking measures to all parties connected with transport operations.

Done at Brussels, 28 May 1975.

For the Commission

The President

François-Xavier ORTOLI