

CHAPTER XVII COMMON TRANSPORT POLICY

A- THE TREATY FRAMEWORK (ARTS. 74-84)

According to article 74 the Transport Policy includes:

- a) common rules applicable to international transport to or from the territory of a member state or passing across the territory of one or more member states;
- b) the conditions under which non-resident carriers may operate transport services within a member state; and
- c) any other appropriate provisions

Other provisions of the Treaty are concerned with:

- a) aids for the co-ordination of transport or the discharge of social obligations in providing a public service,
- b) the abolition of discrimination taking the form of different rates charged by carriers and imposing different conditions for the carriage of the same goods over the same transport links on grounds of the country of origin or destination of the carried goods,
- c) the prohibition of the imposition by the member states, in respect of transport carried out within the Community, of rates and conditions involving any element of support or protection in the interest of one or more particular undertakings or industries unless authorized by the Commission;
- d) the regulation and reduction of charges or dues in respect of the crossing of frontiers that are collected by a carrier in addition to the transport rates, so that these should not exceed a reasonable level after taking into account the costs actually incurred.

These provisions are to apply to transport by rail, road and inland waterways but the Council may extend their application to sea and air transport.

B- IMPLEMENTATION

Initial implementation has been sluggish and confined to the harmonization of operational, technical and social aspects of transport.

The operational harmonization consists of tariff and non-tariff measures. The former provides for maximum and minimum charges bi-laterally agreed by the member states applicable to transport by rail, road and inland waterways¹. Non-tariff measures comprise the rules of competition and the various conditions for the operation of transport services.

The operation of the service is linked with compulsory insurance against civil liability arising from the use of motor vehicles on the road². The exercise of the profession of transport operator is subject to the freedom of the provision of services and the right of the establishment of the operator guaranteed by the EEC Treaty. Council Directives³ lay down rules regarding the professional formation of road haulage and road passenger transport operators as well as the recognition of their professional qualifications. However a member state may refuse the operator's licence to a person with a criminal record.

Technical harmonization regulates the technical standards of equipment, safety and comfort as well as the control of pollution. Directive 70/156⁴ concerns the type-approval of motor vehicles and trailers and Directive 74/150⁵ agricultural and forestry tractors.

Social harmonization consists of Council Regulations to establish common standards for working conditions in internal and inter-state transport. These standards apply to drivers irrespective of whether or not they are employees or independent traders; the resting periods laid down by the Regulation apply not only to drivers but also to employers when driving. Member States must ensure that the recording equipment prescribed by Regulation 1463/70⁶ is installed in certain types of vehicles.

The White Paper of 1985, envisaging the completion of the internal market, gave a new impetus to the harmonization process, as follows:

a) Inland Transport

Measures common to road, rail and inland waterways transport cover such matters as public service taxation, state intervention and state aids⁷ and competition⁸.

Measures regulating road transport, in particular, comprise provisions for a Community driving licence⁹, physical inspection and administrative formalities in respect of the carriage of goods between Member States¹⁰, insurance against civil liability arising from the use of motor vehicles on the roads¹¹, the use of vehicles hired without drivers for the carriage of goods¹², social legislation relating to road transport Reg. 3820/85¹³, the weight, dimensions and other technical characteristics of certain road vehicles¹⁴, standard procedures for the implementation of the Regulation on social matters¹⁵, the fixing of rates for the carriage of goods between member states¹⁶, the elimination of controls of road and inland water transport at the frontiers of Member States¹⁷, the harmonization of national laws relating to tread depths of tyres of certain categories of vehicles and trailers¹⁸, and vocational training for drivers of vehicles carrying dangerous goods by road¹⁹.

By the end of 1992 certain other measures ought to be enacted, i.e. on driving licences, permitted blood alcohol concentration for drivers, insurance against civil liability of road users, speed limits for certain vehicles and the organization of the market for the carriage of goods by road, which would complement and extend the existing Community legislation.

b) Rail Transport

Legislation regarding rail transport covers financial relations between railway undertakings and member states²⁰, uniform costing principles for railway undertakings²¹, rates for the international carriage of goods by rail²² and the management by railways of their international passenger and luggage traffic²³. Proposals aim at establishing a network of high-speed trains and the development of Community railways.

c) Inland Waterways

Legislation in this area includes provisions for: Reciprocal recognition of navigability licences for vessels²⁴, technical requirements for inland waterway vessels²⁵, access to the arrangements for the navigation of the Rhine²⁶, access to the occupation of carrier of goods by inland waterways and the recognition of professional qualifications²⁷ and structural improvements in inland waterway transport²⁸.

d) Maritime Transport

Legislation so far includes provisions for the freedom to provide services to maritime transport between member states and third countries²⁹; the application of the competition rules to maritime transport³⁰; the unfair pricing practices in maritime transport³¹ and the free access to cargoes on ocean trades³².

It is proposed to establish a shipping register and to provide for the Community flag of sea-going vessels; a common definition of a Community shipowner; and to apply the principle of freedom to provide services to maritime transport between member states.

e) Air Transport

The regulation of air transport has proved to be controversial in view of its political implication and direct state involvement in the service. There is, however a consultation procedure on relations between member states and third countries and international organizations in this field³³; and co-operation and mutual assistance in the investigation of air accidents³⁴. Legislation includes measures concerning: The authorization of scheduled inter-regional services³⁵ the procedure for the application of competition rules³⁶; the application of article 85 (3) of the EEC Treaty to certain anti-competitive practices in the air transport sector³⁷, fares for scheduled air services between member states³⁸, the sharing of passenger capacity between air carriers on scheduled services between member states³⁹ and a code of conduct for computerised reservation systems⁴⁰.

It is expected that by the end of 1992 there will be legislation following the consultation and co-operation between Member States in the field of air traffic services, the

use of air space, the regulation of fares for scheduled services, access of carriers to scheduled intra-Community air service, mutual acceptance of personnel licences, consultation and authorization procedure for agreements concerning commercial aviation between member states and third countries, the operation of air cargo services and the further application of article 85 (3) of the Treaty to certain practices in the sector.

C- IMPLICATIONS FOR TURKEY^{40a}

Turkey would have to take on board the general principles and the implementing legislation affecting each sector as follows:

AIR TRANSPORT

In Turkey civil aviation is governed by the Civil Aviation Code 2920 of 1983⁴¹. It regulates civil aviation in accordance with Turkish interests in the context of its international obligations.

The Code is applicable to both state and private parties activities in this sector. It consists of six sections that deal with every aspect of civil aviation. However, it does not contain any specific consultation procedure with the member states of the EC. Any such consultation and exchange of information is done according to the international conventions which regulate the flight of civil aircraft in international airspace and to which Turkey is a party. Therefore, any such consultation procedure should be negotiated with the EC within the Association Council. In addition, the cooperation and mutual assistance in investigating air accidents is also to be dealt with within the Association Council.

The authorization body for the activities of the civil air carriers is the Ministry of Transport. The Code (Art. 31) provides that any commercial air transport will be carried out by Turkish air carriers. However, as regards the foreign air carriers, The Ministry of Transport has the authority to make bilateral or multilateral treaties on the principle of reciprocity. Therefore, any directive adopted by the EC to regulate the flow of air traffic between the member states will have no effect unless Turkey also becomes a member of the EC. However, bilateral or multilateral treaties concluded between the Member States and Turkey might have an equal effect, though this is unlikely, due to the protectionist stand which the national flag carriers maintain towards third countries.

As to the procedure for competition rules, the Code does not give any guidelines for a code of conduct between competing air carriers. Since there is as yet no Competition Code in Turkish legislation, the Commercial Code applies in disputes between air carriers. The relevant procedure for the application of competition rules and any exceptions from those rules can be found in the newly proposed Competition Code now before the Parliament. Still there will not be any provision that directly regulates the code of conduct of air carriers. The Ministry of Transport will have to make the relevant regulations in this respect.

There is no price competition between the fares that are applied by commercial air carriers. It is the Ministry of Transport that decides. The abolition of such a rule may be carried out by the Competition Code but, it is unlikely to occur in the near future.

The sharing of passenger capacity between member states is basically subject to international obligations and reciprocity. However, until Turkey becomes a member it is highly unlikely that a flag carrier will be allowed to carry passengers on scheduled services between the member states of the EC. The code of conduct for computerized reservation systems that are applicable in all member states has not been adopted in Turkey. There are also no negotiations at present to apply this service in Turkey. It either has to be adopted in the Association Council or wait for Turkey's membership.

RAIL TRANSPORT

Compared with road transport, this mode of transport has been much neglected. The EC favours this type of transport because of its benefits to the environment and the efficiency of its operations. The monopoly in this mode of transport in Turkey belongs to the T.C.D.D. (Turkish Republic State Railways).

Decision 75/327 applicable to railway undertakings operating in the EC and the measures adopted under it - namely the improvement of operations, harmonizing the financial rules between railway undertakings - can be applied in Turkey only in the case of membership.

Taking into account the date of adoption - 1867 - of the code that regulates the railway transport in Turkey the costing principles will not be the same as in the EC.

Therefore, as regards Regulation 2183/78, it will be up to the Association Council to come up with a decision to calculate the cost principles of the railway undertakings in harmonized form.

Decision 83/418 purports to create common interests between the railway carriers of the EC. This is designed to provide commercial independence, cooperation in common objectives setting up common tariffs, revenue policies, etc.

Even though not within this sphere, T.C.D.D. had participated in the European Tourism Year 1990 by offering transport packages between EC and Turkey. As for fixing the rates of international carriage for goods by rail, again, it is the Association Council that has to take a decision regarding Turkey accepting certain standards set up by the EC. At present Turkey has bilateral and multilateral agreements governing prices, creating common objectives, revenue policies, etc.

ROAD TRANSPORT

Highway Traffic Code 2918 of 1983 regulates driving licenses, physical inspection as to roadworthiness of vehicles, administrative formalities applicable to the road transport within Turkey, civil liability insurance, weight dimensions and technical characteristics of motor vehicles. On accession it will have to be adapted to the relevant EC legislation.

The Traffic Code does not deal with social matters, rate fixing for the carriage of goods between member states the depth of tread of tyres and the vocational training for drivers. These matters too will have to be harmonized with EC requirements.

MARITIME TRANSPORT

Regulation 4055/86 provides for the establishment of a harmonious structure to be applied in all member states, freedom of services between themselves and a uniform code of conduct towards third countries. The application of such a regulation will be in question only if Turkey becomes member to the EC.

The regulation on the application of the competition rules to maritime transport and on the unfair pricing practices does not apply because there is in Turkey no

equivalent code to Articles 85 and 86 of the EEC Treaty. As legislation in this field is under consideration, the Ministry of Transport will have to decide on how competition rules shall be applied.

As to the free access to cargoes on ocean trade, it is the Association Council that needs to negotiate the applicability of that regulation to Turkish vessels.

Since the Code on Cabotage of 1926 and bilateral maritime agreements regulate this matter Turkey shall remain bound by international commitments. The Association Council needs to negotiate and harmonize all the above mentioned legislation unless and until these can be superseded by Community harmonizing measures.

INLAND WATERWAYS

Inland waterway transport is insignificant in Turkey. However, the Maritime Work Code 854 of 1967 deals with individuals working in this sector.

The EC legislation on reciprocal recognition of navigability licenses, technical requirements and Rhine navigation has at present no applicability for Turkey.

Even though EC places on emphasis on this mode of transport it is difficult to promote it in Turkey due to the fact that a considerable investment for the relevant infrastructure would be needed. The Turkish governments priorities on infrastructure building cover road, rail and air transport. Therefore, as to the access to the occupation, recognition of professional qualifications and structural improvements, a minimal harmonization might be needed.

NOTES :

- 1 Reg. 1174/68 replaced by Reg. 3568/83 (OJ.1983, L.359/1)
- 2 Dir. 72/166 (OJ.1972, 360); Dir.72/430 (OJ.1972, 77); Dir. 84/5 (OJ.1984, L.8/17)
- 3 Dir.74/561 (OJ.1974, L.308/18) amend. by Dir.80/1178 (OJ.1980, L.350/41)
- 4 OJ.1970, 96 amend. by Dir. 78/3/5 (OJ. 1978, L.81/1)
- 5 OJ.1974, L.84/10
- 6 OJ.1970, L.164/1, amend by Reg. 1787/73 (OJ.1973, L.181/1) and Reg. 2828/77 (OJ.1977, L.334/5) See Case 128/78 : EC Commission v United Kingdom (Re Tachograph) (1979) ECR 419
- 7 Reg. 1191/69 (OJ.1969, L.156/1 and Reg. 1107/70 (OJ.1970, L.130)
- 8 Reg. 1017/68 (OJ. 1968, L.175/1)
- 9 Dir. 80/1263 (OJ. 1980 L.375/1)
- 10 Dir. 83/643 (OJ. 1983, L.359/8)
- 11 Dir. 84/5, (OJ.1984, L.8/17)
- 12 Dir. 84/647 (OJ. 1984, L.335/72)
- 13 OJ. 1985, L.370/1
- 14 Dir. 85/3 (OJ. 1985, L.2/14)
- 15 Dir. 88/599, (OJ.1988, L.325/55)
- 16 Reg. 4058/89 (OJ. 1989, L.390/3)
- 17 Reg. 4060/89, (OJ. 1989, L.390/18)
- 18 Dir. 89/459, (OJ. 1989, L.226/4)
- 19 Dir. 89/684 (OJ. 1989, L.398/33)
- 20 Decision 75/327 (OJ. 1975, L.152/3)
- 21 Reg. 2183/78 (OJ. 1978, L.258/1)
- 22 Decision 82/529 (OJ. 1982, L.239/5)
- 23 Decision 83/418, (OJ. 1983, 237/33)
- 24 Dir. 76/135, (OJ. 1976, L.21/10)
- 25 Dir. 82/714, (OJ. 1982, L.201/1)
- 26 Reg. 2919/85, (OJ. 1985, L.280/5)
- 27 Dir. 87/540 (OJ. 1987, L.322/20)
- 28 Reg. 1101/89 (OJ. 1989, L.116/25) and Reg. 1102/89 (OJ. 1989, L.116/30)

- 29 Reg. 4055/86 (OJ. 1986, L.378/1)
- 30 Reg. 4056/86 (OJ. 1986, L.378/4) and Reg. 4260/88 (OJ. 1988, L.376/1)
- 31 Reg. 4057/86 (OJ. 1986, L.378/14)
- 32 Reg. 4058/86 (OJ. 1986, L.378/21)
- 33 Decision 80/50 (OJ. 1980, L.18/24)
- 34 Decision 80/1260 (OJ. 1980, L.375/32)
- 35 Dir. 83/416 (OJ. 1983, L.237)
- 36 Reg. 3975/87 (OJ. 1987, L.374/1) and Reg. 4261/88 (OJ. 1988, L.376/10)
- 37 Reg. 3976/87 (OJ. 1987, L.374/9); Commission Reg. 2671/88 (OJ. 1988, L.239/9); Commission Reg. 2672/88 (OJ. 1988, L.239/13); Commission Reg. 2673/88 (OJ. 1988, L.239/17)
- 38 Reg. 3976/87 (OJ. 1987, L.374/9)
- 39 Decision 87/602 (OJ. 1987, L.374/19)
- 40 Reg. 2299/89 (OJ. 1989, L.220/1)
- 40a Azmi Dölen
- 41 Official Gazette 19 October 1983, No.18196