TRANSPORT IN THE EUROPEAN COMMUNITIES

By B. T. Bayliss*

In 1962 Denys Munby commenced a paper [1] with the words: "Now that a common agricultural policy has been agreed, it may be expected that a common transport policy will provide one of the fairly major issues of policy making in the Common Market". Today, seventeen years later, not only has very little progress been made towards the realisation of a common 'transport policy', but additionally transport is certainly not conceived as "a major issue of policy making in the Common Market". It is the aim of this paper to consider some of the reasons why Munby's earlier expectations on transport in the European Communities were not realised.

HISTORICAL BACKGROUND

Although one refers to an economic union, it must not be forgotten that the overriding factors behind the creation of the first Community (the European Coal and Steel Community), and the desire of the United Kingdom to become a member of all three Communities, were political.

The signatories of the Paris Treaty "resolved to substitute for historic rivalries the merger of their essential interests; to lay, by establishing an economic community, the foundations of a broader and deeper community among peoples long divided by bloody conflicts; and to lay the groundwork of institutions able to give direction to a destiny henceforward shared" (Preamble to the Treaty setting up the European Coal and Steel Community). Likewise the European Movement (an umbrella organisation for all pro-European organisations in the United Kingdom, of which the leaders of the three main political parties were patrons) commenced its 1970 publication Britain and the Common Market with the words "The basic issue is political".

Because the pure economic case is neither established nor advocated as of overriding importance within the European Communities, Member States will go their individual ways where the underlying fabric of the Communities is not undermined by their actions. In other words, States will develop industrial policies to suit their own ends so long as this is not seen to be in contravention of the basic aims and tenets of the Treaties.

Two factors have made it possible for individual States to pursue very nationalistic policies with respect to transport. Firstly, looseness in the wording of the Transport Title of the Rome Treaty has permitted different interpretations of its aims and

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28
TRANSPORT IN THE EUROPEAN COMMUNITIES

B. T. Bayliss

therefore prolonged discussion; secondly, as long as there was no discrimination in transport rates on the basis of nationality, failure to arrive at a common transport policy was not perceived as preventing fulfilment of the basic aims of the Treaty.

Transport and agriculture were two sectors which the Founding Fathers considered unsuitable for regulation by the set of common rules covering all other sectors of the economy. These two sectors were thus given their own individual Titles in the Rome Treaty. The Agricultural Title was quite specific about main points of the common agricultural policy and gave individual Member States limited room for manoeuvre in pursuing individual nationalistic policies. But the Transport Title was nowhere near so specific, and was open to numerous interpretations.

Article 3 of the Rome Treaty states that, among other things, the activities of the Community shall include the inauguration of common agricultural and transport policies. The exclusion of transport from the detailed common integration measures of the Treaty was explained in Paragraph 124 of the First General Report of the Community: “The special structure inherited from its historical past, its social and strategic role, and scale of existing and future investments, the advent and rapid expansion of new means of transport and the far-reaching intervention exercised by the public authorities—all these explain why the negotiators of the Treaty of Rome were unable to lay down in detail the ways and means of integrating transport into the Common Market.”

The Transport Title is very vague. Thus, for instance, although Article 74 (the first article of the Transport Title) states that “the objectives of this Treaty shall, with regard to the subject covered by this Title, be pursued by Member States within the framework of a common transport policy”, it was only relatively recently that the Court gave a ruling on a dispute over such a basic issue as whether or not a common transport policy involved a common market in transport.

Until the Court ruled that a common market in transport was implied by the Treaty, the two dirigist States in relation to transport, Germany and France, had successfully opposed this interpretation for a decade and a half. Their argument had been simple: under Article 2 of the Principles Title a common market was not delineated as an aim of the European Economic Community but as a means of attaining the aims. Thus it was argued that as far as transport was concerned the objectives of the Treaty were to be pursued within the framework of a common transport policy, which did not of itself imply a common transport market.

Looseness of wording and translation is apparent throughout the Transport Title. Thus, for example, Article 81 refers to reducing rates “for the crossing of frontiers”, but the reference is apparently only to internal frontiers. Again, the French, Dutch and Italian texts of the Article refer to “transport charges”, thereby extending the Article to both passenger and freight traffic, while the German text speaks only of “Frachten”, a term limited to the carriage of merchandise.

1 Article 2 reads: “It shall be the aim of the Community, by establishing a Common Market and progressively approximating the economic policies of the Member States, to promote throughout the Community an harmonious development of economic activities, a continued and balanced expansion, an increased stability, an accelerated raising of the standards of living, and closer relations between its Member States”.

29
Discrimination in rate setting has been very extensive, but it was only in relation to international movements and nationality that it was seen by most Member States as likely to be prejudicial to the longer term aims of the Community.

**Discrimination in transport charges**

Broadly speaking, the rate manipulation was of three forms. Standard rates were reduced for export goods (export subsidy), increased for imported goods (external tariff), and reduced to aid certain regions, industries and classes of travellers.

In Germany, for example, all home-produced coal used to be carried under the special tariff AT 6B1, while all imported coal was carried under the normal tariff FK. This meant that home-produced coal was carried at rates between 10 per cent and 23 per cent lower, according to distance, than those applying to imported coal. In relation to exports, the special German tariff AT 24A applied to such things as wood, paper, artificial stones, and cellulose which were for export and provided for reductions of between 14 per cent and 22 per cent from the charge for internal movements.

It was also a policy to protect export markets by charging higher rates for goods in transit through a country. Thus merchandise, with certain exceptions, in transit through Italy was (under the terms of the special tariff 253) subject to increases in the normal tariff of between 20 per cent and 50 per cent, according to the nature of the merchandise and the distance travelled in Italy.

The manipulation of frontier charges was another possible way to assist exports or discriminate against imports. Frontier charges constitute remuneration for presenting merchandise at the customs office. In Belgium, for example, these extra charges for consignments between one and two tons in transit used to amount to only 6 per cent of the corresponding extra charges on import consignments; and in Italy the extra charges on metal and ferrous goods for export were only one-half of those levied on transit traffic, and only one-third of those levied on imports. As with normal external tariffs, there was extensive differentiation in the frontier charges according to the nature of the product. Thus in Belgium the extra charges that were levied on imported coal and steel were three times greater than those levied on imported fuels and ten times greater than those levied on imported materials, although there was no justification on the basis of cost. By contrast, the German frontier charges for imported products covered by the Coal and Steel Community (with the exception of metal and ferrous goods) were only one-half of the charges for goods in transit through Germany.

Rates were also manipulated to help certain regions and industries. In 1933 Germany, for instance, provided a special tariff (AT 8B7) to help the border district of Schleswig-Holstein, with reductions of between 5 per cent and 15 per cent in the normal tariff for different classes of merchandise. The tariff was valid for all carriage in excess of 100 kms from German stations, or from Italy and France, to stations lying north of the line from Eiden-Mündung to Rendsburg-Altenhof. In Italy a

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2The examples listed in the following paragraphs relate to the situation before Community legislation aimed at ending most, if not all, of them.

3Before this was prevented under E.C. legislation.
special tariff (No. 201) was introduced which provided for reductions of up to 37.5 per cent in rates for the carriage of all agricultural products in wagon loads from southern Italy and Sardinia. One of the measures intended to promote industrial development in southern Italy was the introduction of a rail tariff providing for a reduction in the normal tariff varying between 10 per cent and 50 per cent, according to distance, for the carriage of home produced or imported machinery and materials to southern Italy, Sardinia and the other islands.

Finally, special rail rates were introduced to help specific industries: (e.g. the special seaport tariffs in Germany provided for lower rates when merchandise was carried to the German seaports, so as to prevent traffic going to the cheaper Dutch ports) or specific groups of travellers: (e.g. most E.C. countries provided reduced rates for such groups as “workers”, forces, government officials, pensioners and young people).

Clearly, discrimination on the basis of nationality acted against the fundamental aims of the European Communities, and was removed by E.C. legislation at an early stage. Where, however, the discrimination was purely national in character, it has continued with the support in many instances of vastly increased State subsidisation.

Finally, of great importance is the principle enshrined in Article 75(3) of the Rome Treaty. This article provides for a permanent veto right in the Council of Ministers where proposed transport policies “might seriously affect the standard of living and the level of employment in certain regions and also the utilisation of transport equipment”. Ministers have insisted on reaching unanimous decisions, and this has greatly hampered progress towards a common policy.

DEVELOPMENT OF A COMMON TRANSPORT POLICY

The two fundamental difficulties facing the development of a common transport policy have been the substantial divergences in the national transport policies of the Member States and the lack of both direction and powers in the Rome Treaty. In other sectors the way forward has been achieved through compromise, and compromise has been aimed at in transport proposals from the Commission. Compromise is a valid solution so long as there is net benefit; as has been previously argued, the net benefit is frequently conceived as being of a political nature. Failure to agree on a far-reaching common transport policy is not perceived by the Member States as being detrimental to the concept of the Communities, and “progress” through compromise is seen to result in net costs rather than net benefits. The point is quite simple: every Member State regards its own transport policy as being the most suitable for its own purposes; in the absence of any “Grand Design”, therefore,

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4In accordance with Article 25 of the Act of 29 July 1957.
5Decree No. 5272 of the Ministry of Transport, which entered into force on 2 May 1958.
6For example, Tariff AT 851 provided for reduced rates for the carriage of iron and steel goods to the German seaports.
7As early as 1844 in the United Kingdom every railway company was required to run one train a day which stopped at every station, and for which the charge could not exceed one penny per mile.
compromise can in the opinions of the Member States only make each one of them worse off.

The result of all this has been that in almost two decades practically no progress has been made towards the realisation of a common transport policy.

The basic aims of a common transport policy may be summarised as follows:

1. The free movement of transport services within the Community.
2. The harmonisation of operating conditions between modes.

Very little has been proposed by the Commission in relation to passenger transport. This is because there was very little constraint on the free movement of passenger traffic over internal Community borders, and the control of public passenger transport was very specific in relation to particular regions and towns. The main moves in this direction have been in relation to safety measures, subsidisation, and attempts to establish a system of infrastructure charging. The main weight of this paper is thus devoted to freight.

National transport policies must be the starting point of any discussion of the common transport policy. Present national policies have, of course, been very much determined by historical practices. Before the development of road transport, policy in most member countries\(^8\) had been directed at controlling a railway monopoly, and subsequently at the use of the railway as an instrument of state economic and social policy. There was a natural progression from one policy to the other. In order to prevent monopoly practices, governments controlled rates. It was, therefore, a relatively easy step to the position where governments manipulated rates to further their economic and social needs.

The policy of requiring the railway companies to undertake social service obligations was one which was very favourable to government budgets, for the system was in the main internally financed within the railways and based upon extensive cross-subsidisation. The railways were well suited to this purpose. They were very large undertakings, operating over large areas and sometimes nationally, and they ran scheduled services with published tariffs.

**Rail and road**

The system worked without substantial operational problems until the appearance of motorised road transport on a rapidly increasing scale in the years following the Great War. Road operators, under no social service obligations, began to exploit the most remunerative markets, thus depriving the railways of the surpluses necessary to cover their unremernerative operations. Governments had to choose their course of action: to abandon previous policies and allow the railways commercial freedom; to grant financial aid to the railways; or to control road transport, either with a view to preventing its competing with the railways or with a view to making it also an instrument of policy.

Governments exhibited no desire to discontinue their previous policies towards the railways; and it was generally decided that road passenger transport could serve as an instrument of state economic and social policy but that road haulage could not.

Many road passenger undertakings were relatively large and operated scheduled

\(^8\)An important exception was the Netherlands.
services with published tariffs over relatively large areas. It was, therefore, possible for governments to consider them in the same light as the railways. The road haulage industry, on the other hand, composed of numerous small units operating tramping services, was entirely unsuited to a policy which required central control, regulation of prices, scheduled services and cross-subsidisation.

Except in Italy, there was general reluctance to grant financial aid to the railways in the early days of road competition. The policy which was more generally favoured was that of protecting the railways from competition from the road haulage industry and aligning the road passenger industry with the railways as an instrument of policy.

It is indeed interesting to consider the views [2] of at least one of the railway companies on such a policy: "It would be possible for Parliament to remove a large number of statutory disabilities to which reference has been made, but such action would probably create confusion and be strongly opposed by the trading interests. From the railway companies’ point of view many of their disabilities could be best dealt with by regulation of road transport."

However, despite restrictions on road transport, rail deficits continued to grow and governments had also to provide substantial support for them—support which, in some countries, has continued to take an increasing share of public expenditure.

The degrees of protection and financial aid varied from country to country; and indeed in the Netherlands, where, because of the short distances and extensive network of inland waterways, the railway had never been in a monopoly position, no legislation to control road haulage was introduced until 1954. Legislation has, therefore, played a very important role in determining the relative importance of the different carriers. In Germany and France, where legislation is the most restrictive, only about two-fifths of the total ton/kms performed by the transport industry are by road, whereas in the United Kingdom, with a liberal system, the figure is about four-fifths. Clearly factors other than legislation have played important roles in determining the present modal split; but legislation has been an extremely important, and in the examples quoted above certainly the overriding, factor.

Any attempt to control and restrict national operators would be of limited value if foreign hauliers had freedom of operation. International operation can, therefore, usually only be carried out by hauliers in possession of the requisite licence. In the past the number of licences has been fixed under bilateral agreements, but more recently multi-national agreements have been reached within the European Community and between the member states of the European Conference of Ministers of Transport. The huge bulk of international freight movement by road is, however, still determined by bilateral agreements, and these have varied according to the liberality of national legislation in negotiating countries. However, no agreement allows the right of "cabotage", i.e. the right of a foreign haulier to undertake purely national carriage within the territory of another country.

Proposals by the Commission for a common transport policy

It is only against the background of existing legislation in member states that one can appreciate the forms taken by the Commission's proposals for a common trans-

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9 As already mentioned, none of this applied to the Netherlands.
port policy. It is indeed interesting to note that the Commission’s proposals have changed significantly since the extension of membership of the Community to states with very liberal transport systems.

In April 1961 the Commission put forward its first thoughts on the development of a common transport policy in a Memorandum, and this was followed the next year by an Action Programme. The Commission commented at the time: “The key to the system is the following. Since competition is the main governing principle of the European Community, and since the special aspects of transport hinder the normal play of competition, action must be based on removing the special aspects or on neutralising their effects where they continue to exist”.

The policy was to have three objectives:

1. To eliminate obstacles which transport may put in the way of the establishment of the Common Market as a whole.

2. The integration of transport on the Community level (the free movement of transport services within the Community).

3. The general organisation of the transport system within the Community.

Eliminating discrimination

Objective (1) covers such items as discrimination on the grounds of nationality, taxation, technical regulations relating to frontier crossings, and State aid.

As has been already stated, rates discrimination on the basis of nationality in basic rates or border crossing rates was deemed to be incompatible with the spirit of the European Communities, and action was taken at an early stage to prevent it.

Rule 11 of July 1961 went a long way towards removing discrimination on the basis of nationality in spite of the infamous Saarland “als-ob” tariffs. Frontier crossing procedures have also been vastly simplified, and discrimination on the basis of nationality in frontier taxes and charges has been removed.

In order to ensure compliance with the regulation prohibiting discrimination on the basis of nationality, Rule 11 required transport documents to be kept for all carriage except where specifically exempted. These documents contain all the basic information in relation to both the consignment and the journey, including price. They must be kept for at least two years, and the Commission has right of access to all books and documents, and the right to demand explanation and verification. Fines, in cases of proven discrimination on the basis of nationality, can be up to twenty times the price demanded.

Aid which does not discriminate on the basis of nationality has, however, continued to exist on an increasing scale, despite efforts on the part of the Commission to control it.

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10 In 1964 and 1965 the German Government approved special rail tariffs providing for reductions of up to 40 per cent for consignments from the Saar to Southern Germany and the German seaports. The Germans argued that these were not discriminating support tariffs for the benefit of certain industries, but were based upon what the competitive commercial rates would need to be if the projected canal from the Saar to the Rhine were ever built. Hence the name “als-ob” or “as-if” tariffs.

11 Exempted traffic comprised: consignments not exceeding 5 tonnes sent by a consignor to the same consignee; national movements not exceeding 100 kms; international movements not exceeding 30 kms; and transport on own account.
In a Decision of the Council of 13 May 1965 it was declared that "one of the objectives of the common transport policy must be to eliminate disparities liable to cause substantial distortion in competition in the transport sector . . . measures should accordingly be taken . . . as regards State intervention\(^{12}\) in transport: to reduce public service obligations to a minimum; to provide fair compensation for financial burdens resulting from those obligations which are maintained and from those involving reductions in rates on social grounds; to normalise the accounts of railway undertakings; to make such undertakings financially autonomous; and to lay down rules governing aids for transport, taking account of the distinctive features of that sector".

The relevant articles of that Council Decision were Articles 5 to 8, and these are quoted below:

**Article 5**

1. Obligations inherent in the concept of a public service imposed on transport undertakings may be maintained only in so far as is essential in order to ensure the provision of adequate transport services.

Member States shall pursue this aim by means of concerted action in accordance with common principles, which shall be laid down before 1 July 1967.

2. Compensation in respect of financial burdens devolving upon transport undertakings by reason of the maintenance of the obligations referred to in paragraph 1 shall be made in accordance with common procedures.

**Article 6**

From 1 July 1967, compensation, determined in accordance with common procedures, shall be paid in respect of financial burdens devolving upon transport undertakings by reason of the application to passenger transport of rates and conditions of transport imposed by a Member State in the interests of one or more particular categories of person.

**Article 7**

Before 1 January 1969, accounts of railway undertakings shall be normalised on the basis of common rules.

The compensation payments which such normalisation may entail shall be made by Member States with effect from the same date.

**Article 8**

From 1 January 1968, provisions governing the financial relations between railway undertakings and States shall be progressively harmonised.

Such harmonisation shall be directed at making such undertakings financially autonomous and shall be completed by 31 December 1972 at the latest.

In pursuance of this Decision the Council in June 1969 passed Regulations 1191 and 1192.

Regulation 1191 relates to public service obligations. Article 1 of the Regulation contains the general provisions, and is quoted below in full:

**Article 1**

1. Member States shall terminate all obligations inherent in the concept of a public service as defined in this Regulation imposed on transport by rail, road and inland waterway.

\(^{12}\)Measures were also to be taken on taxation and on social provisions.
2. Nevertheless, such obligations may be maintained in so far as they are essential in order to ensure the provision of adequate transport services.
3. Paragraph 1 shall not apply, as regards passenger transport, to transport rates and conditions imposed by any Member State in the interests of one or more particular categories of person.
4. Financial burdens devolving on transport undertakings by reason of the maintenance of the obligations referred to in paragraph 2, or of the application of the transport rates and conditions referred to in paragraph 3, shall be subject to compensation made in accordance with common procedures laid down in this Regulation.

In the following Articles very broad outlines were given of the criteria for maintaining or inaugurating uneconomic services and the method for calculating the necessary compensation.

Regulation 1192 related to the normalisation of railway accounts. Basically it aimed at eliminating (in the words of its Preamble) "disparities which arise by reason of the imposition of financial burdens on, or the grant of benefits to, railway undertakings by public authorities, and which are consequently liable to cause substantial distortion in the conditions of competition". The main point at issue related to the size of the railway staff and the railway undertakings' social service obligations in relation to that staff. Frequently railway undertakings had been forced to act as a reserve employer of labour, and, because of the "public servant" nature of the appointments in many countries, the surplus labour could not subsequently be made redundant or dismissed. Also by virtue of the "public servant" nature of the appointments, the social service obligations of the railway undertakings (e.g. in non-contributory pension schemes and social insurance) were greater than those faced by other types of transport undertakings. Under the terms of the Regulation railway undertakings could be compensated for the difference between the payments they were required to make and those which other independent transport undertakings would be required to make.

In addition to the financial compensation allowable to railway undertakings under the two Regulations discussed above, a Regulation of June 1970 (Regulation 1107/70) also allowed compensation:

(b) until the entry into force of common rules on the allocation of infrastructure costs, where aid is granted to undertakings which have to bear expenditure relating to the infrastructure used by them, while other undertakings are not subject to a like burden. In determining the amount of aid thus granted account shall be taken of the infrastructure costs which competing modes of transport do not have to bear;
(c) where the purpose of the aid is to promote either:
   —research into transport systems and technologies more economic for the community in general; or
   —the development of transport systems and technologies more economic for the community in general.
Such aid shall be restricted to the research and development stage and may not cover the commercial exploitation of such transport systems and technologies;
(d) until the entry into force of Community rules on access to the transport
market, where aid is granted as an exceptional and temporary measure in order to eliminate, as part of a reorganisation plan, excess capacity causing serious structural problems, and thus to contribute towards meeting more effectively the needs of the transport market.\textsuperscript{13}

Under a Council Decision of May 1975 an attempt was made to provide greater autonomy to railway administrations of Member States. The general concept of the Decision is contained in Article 2:

\textit{Article 2}

1. Within the framework of the overall policies laid down by each State and the discharge of public service obligations by the undertaking, each railway undertaking shall have sufficient independence as regards management, administration and internal control over administrative, economic and accounting matters with a view to achieving financial balance, taking into particular account the application of Regulation (EEC) No 1191/69, of Council Regulation (EEC) No 1192/69 of 26 June 1969 on common rules for the normalisation of the accounts of railway undertakings, and of Regulation (EEC) No 1107/70.

This independence shall in any event include the separation of assets, budgets and accounts from those of the State.

2. Railway undertakings are to be managed in accordance with economic principles. This shall apply also to their public service obligations with the view, in particular, of providing efficient and appropriate services at the lowest possible cost for the quality of service required.

The basic position of the EC Commission is that it would, as a long-term objective, like to see railway undertakings which are managed on normal business principles, and which are independent of State financial support. In the shorter term the Commission is prepared to accept financial support so long as it is granted in such a manner so as not to distort competition between modes—hence Regulations 1107, 1191 and 1192. Unfortunately differences in interpretation and lack of effective control have considerably lessened their effect.

The level of railway deficits and the corresponding rise in subsidies (over £3 billion in the Federal Republic of Germany in the current year) has made many Member States very reluctant to support the Commission's attempts (discussed later) at liberalising the transport market.

\textbf{Integration of transport within the Community}

Objective (2) covers such factors as freedom of establishment, freedom of operation, and technical harmonisation within the Community. In the early 1960s the Council of Ministers agreed to a general programme dealing with freedom of establishment throughout the Community. In relation to transport, however, Section IV stated: "In matters concerning road, rail, and inland waterways the ending of restrictions will be accomplished according to the time-table of the general programme, and accompanied by those measures relative to the co-ordination of legal and administrative conditions of Member States concerning the access to the profession and its exercise which are necessary to avoid the distortions which could

\textsuperscript{13}From Article 3 of Regulation 1107/70.
result from the ending of restrictions. This co-ordination will be one of the elements of the common transport policy”. Nothing further has happened in relation to this.

The Commission has had some success in creating a quota of Community licences for road haulage which allow movement anywhere in the Community (but exclude the right of “cabotage”). The first multilateral Community quota of 1,200 licences was introduced for an experimental period of three years under Regulation 1018 in July 1968. At the end of the period the then Six could not agree on a definitive system, and the provisions of the original Regulation were extended. On the enlargement of the Community the quotas were further extended to include the three new Member States. In 1975 the quota was fixed at 2,363, an increase of 779 over the 1973 quota. In August 1977 the Commission proposed (as it had in 1975) a doubling of the quota to 4,726 for 1978. However, at the present time the huge bulk of international freight movements by road is undertaken under bilateral agreements, and only some 7.5 per cent of hire or reward operations or 3.8 per cent of total operations, including own account, is covered by Community authorisations.

The three most important areas of harmonisation fall under the fiscal, social and technical headings. On fiscal harmonisation in road haulage the only agreement so far has been in relation to fuel in tanks of vehicles undertaking international carriage within the Community. Problems of double taxation of road vehicles undertaking international carriage, and of infrastructure charging, have not been resolved.

In December 1967 the Council did agree in principle that infrastructure charges should reflect marginal social costs and meet a budgetary equilibrium requirement. Following this decision the Council agreed in 1970 to a Regulation creating a common accounting system for infrastructure expenditures for road, rail and inland waterways, and the first sets of accounts under this procedure were presented at the end of 1974. The Commission has, however, had no success as yet in developing an acceptable taxation system based upon marginal cost pricing.

Social harmonisation has similarly suffered through lack of effective control and unwillingness on the part of Member States to co-operate. Regulation 543/69, for instance, regulated drivers’ ages and working times; but, in spite of tachographs, implementation has proved difficult.

In relation to technical harmonisation the Council agreed to regulations on maximum weight, length, width and height, but has failed to agree on axle weight loadings and overhangs. Although at one time it appeared that the original Six were approaching agreement, the expansion of the Community has extended the range of disagreement. Technical harmonisation for the railways has to a large extent been achieved under the auspices of the U.I.C.; and for inland waterways agreement has been reached by the Community on common standards of new equipment.

**General organisation of transport**

Objective (3) covers the basic question of control of entry into the industry. Its only significance is in relation to road transport. In its Memorandum of 1961 and its resulting Action Programme the Commission argued that subjective conditions of entry (i.e. quality control) must be maintained and that quantity control was essential to the efficient operation of the road haulage industry. It came out, however, in favour of a flexible system in which the number of licences would be adjusted at regular intervals according to changes in supply and demand. It was intended
TRANSPORT IN THE EUROPEAN COMMUNITIES

B. T. Bayliss

that there should be a constant monitoring of the market in order to measure those changes. Another integral part of the proposed system of control was the introduction of forked tariffs for road haulage for hire or reward. In international transport a Community quota was proposed which would gradually take the place of the bilateral system of quotas.

In June 1965 the Council agreed in principle to a road haulage market organisation which provided, among other things, for regulations on access to market (of both quality and quantity type) and obligatory forked tariffs.

In June 1967 the Commission submitted a draft regulation to the Council on entrance to national road haulage markets. In view of the lack of progress on the draft regulation the Commission submitted a Note to the Council in the Autumn of 1971, followed by a revision of its original draft regulation.

In the Note the Commission spelt out the philosophy behind the draft regulation. The Note referred to the necessity of creating “a climate of healthy competition” and stated with reference to market entry: “The Commission is of the opinion that there is still a completely valid need for common rules to be introduced to provide for a harmonisation of the conditions in which the national markets operate and to enable, on the one hand, serious disturbances of the market resulting from excess of capacity to be avoided and, on the other hand, to promote the development of capacity in step with the requirement of the economy”.

A number of statements in the preamble to the draft regulation on the control of capacity in road haulage are also worthy of note. It is stated that regulations on access to the market are necessary on account of the “characteristics of the road haulage market, particularly those of a structural nature which are likely to cause imbalance between the supply of and demand for transport”, and that “it is advisable to divide the overall capacity thus determined between carriers already in the market and carriers wishing to enter the market for the first time, using criteria which favour the formation of undertakings of a more reasonable size”.

Excluded from the proposed system are light vehicles, “because of the slight effect which these have on the stability of the market”, and “certain small markets which have a purely local character and in which satisfactory conditions of balance between supply and demand may be achieved without the intervention of public authorities being necessary”.

It is important to note that the Commission is solely concerned with market equilibrium and stability. Its measures are to combat what it sees as an inherent instability in the road haulage market. In particular it is stated in the Preamble that capacity control “must, however, not include any arbitrary division of traffic between different means of transport nor the protection of any particular mode of transport”. The forked tariffs are also seen in this light; the minimum price is intended to prevent cut-throat competition, and the maximum price to prevent monopoly practices.

Under the modified draft regulation the market was to be divided into a short-distance zone (Zone A) and a long-distance zone (Zone B). In order to obtain initial access to Zone A the applicant was required to provide information on the transport services (in vehicle kms) he intended to operate within the capacity requested during the first year of activities, and also on the anticipated receipts. The applicant had to justify his statements through documentation, which in particular
was to include statements from customers. A licence was only to be granted if the anticipated costs and receipts compared favourably with “normal costs” and “normal receipts” as determined by the licensing authority.

Expansion of capacity in Zone A was only to be allowed if in relation to anticipated new traffic the same conditions as for a newcomer were fulfilled, and if existing operations compared favourably with the “norm” as determined by the licensing authority.

For Zone B applicants were expected to fulfil similar conditions to those required for Zone A, but in addition each member state was to set an overall capacity limit for the zone. This capacity limit was to be determined by reference to medium term economic policy, forecasts of traffic demand, and the development of highway infrastructure.

The regulations were not to apply to transport on own account, light vehicles, scheduled haulage services and very short-distance traffic.

Clearly, in the decade 1961–71 the basic philosophy of the Commission had not changed. Competition was to be the key to the system, but controls were necessary because of inherent disturbances in the market.

**Defects of the proposals**

The Council of Ministers failed to agree on the formulation of common rules on the basis of this proposal from the Commission. Although sympathy must be extended to a Commission which was battling with a Council which did not perceive failure to agree on a common transport policy as damaging to the European ideal, and indeed in some instances regarded the policy as detrimental to their own national interests, the Commission failed to justify its proposals on the basis of reasoned argument.

The assumption which underlay the proposals was that the road haulage industry, because of its structure, was inherently unstable. The Commission saw the small firm as the basic cause of instability and hoped to create larger units through a licensing system.

The Commission furnished no evidence to support that hypothesis. By contrast studies (reviewed in [3]) have shown no evidence of economies of scale in the industry, and two studies [4, 5] in the United Kingdom have shown that small firms are no less efficient than large ones.

Even supposing, however, the correctness of the basic hypothesis, the control measures proposed seem unsuited to fulfilling their purpose.

The proposed EEC zoning system was similar to that in Germany and France. The question must thus be asked: why can it be assumed that the short-distance market is in balance? As this is where the small operators are found in large numbers, this is precisely where, according to the Commission’s hypothesis, imbalance should be expected. Again, what was the justification for differentiating between a haul of up to 400 kms and one over this limit?

The concept of normal costs and receipts was borrowed from the Netherlands. However, in the Netherlands it is only one of a number of indicators used, whereas in the proposed EEC scheme it was of vital importance. Is it at all reasonable to suppose that each year Member States could have prepared details of model services (including costs and receipts) which would take into account not only the type of
vehicle but the “geographical and economic characteristics of the zones concerned, and the state of the market”?

The concept of an overall quota for long-distance road haulage which must not be exceeded was common to Italy, France and Germany. The regulation that this quota must be based upon an annual demand forecast was, however, novel. The difficulties of forecasting are well known, but in this instance it is difficult to see why it was necessary to meet the Commission’s objectives. An overall quota for a country means that, even if hauliers are able to show that they have sufficient potential customers to make a “normal profit”, an application for increased capacity to meet this demand will not be allowed if the overall quota level has already been reached. Given that supply and demand are matched at the individual firm level, there is clearly little point in having an overall quota intended to match supply and demand.

Finally, even if supply and demand have been equated to both the national level and the level of the firm, the Government was still free to argue on some other unstated ground that supply and demand were not equated. There were, therefore, three independent measures of market equilibrium, the second taking no account of the first, and the third taking no account of either the first or the second.

The role of the tariffs is also very questionable. It was suggested that tariffs be prepared for specific markets. Two questions arise from this. Firstly, how can cut-throat competition and monopoly be simultaneous features of a specific market? Secondly, if the haulier through agreements with potential customers has had to show what prices he is going to charge, what is the purpose of the tariff? It must be remembered that a haulier was only to be allowed sufficient capacity to meet the needs of customers declared in his application.

The transport on own account provision was borrowed from Italy. Again there seems little point in the regulation, for, as the firm can only carry its own goods, any excess vehicles would just sit in the garage. There was no provision for the own account operator to carry out limited hire or reward operations, as under the former B carriers’ licence in the United Kingdom.

In conclusion, then, it can be said that there was no evidence to support the Commission’s basic 1971 hypotheses, and that the policy proposed was made up of bits and pieces borrowed from the various Member States, presumably in an attempt to reach agreement.

**Liberalisation in the expanded Community**

In January 1973 the United Kingdom, Denmark and Ireland became Members of the European Communities. Each of the new Member States had very liberal transport policies; and it is interesting to note that by October 1973 the Commission had begun to modify its position. In a communication submitted to the Council it stood firmly by the declaration in its 1961 Memorandum that “transport undertakings and users should benefit from the advantages of competition”, but a certain softening on its previous position on licensing control was perceptible in the statement that “For goods transport, the common transport market will function freely subject to essential corrective measures”.14

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January 1979

JOURNAL OF TRANSPORT ECONOMICS AND POLICY

By 1975 the Commission had reached the point where as a general rule it did not see the necessity for capacity controls, and only saw the necessity of legislation to provide for them if market conditions at a specific time point were to warrant them. In particular the Commission commented: "The view may be taken, however, particularly in order to take account of features inherent to each Member State, that Community regulations may do no more than lay down the general principles on which national regulations are to be based, while leaving the Member States the necessary latitude to choose the means used".  

At the same time the Commission further suggested:

1. "In the field of road transport, the states must seek to provide a satisfactory balance between supply and demand for transport through a system of market supervision without recourse to quotas of authorisations or the imposition of any quantitative restriction."
2. "Existing restrictions must be removed gradually in conjunction with the progress planned for international transport operations."
3. "The right will be progressively given to non-resident hauliers to conduct domestic transport operations while performing an international transport operation—for a period to be determined (e.g. one month)."
4. "The trade will establish, with the involvement of the users, 'recommended' tariffs differing according to the type of goods and conditions of carriage. The choice between the various techniques available for fixing tariffs will be left to the judgment of the trade."

Member States were, however, expected to keep the market continually under supervision, and in the event of a serious disturbance appearing it was expected that the national Government would take measures in relation to capacity, rates, and conditions of carriage.

These liberalising proposals, however, were made at a time of mounting railway deficits and the most serious post-war depression that Europe had faced. In the circumstances individual Governments were hardly likely to favour liberalising policies.

THE WAY FORWARD

No great political advantage is seen by Member States to stem from agreement about a common transport policy, and consequently failure to agree is not perceived as damaging the European ideal. Compromise, which is regarded as disadvantageous by all parties, is not therefore the way forward as it has been in other policy areas. Progress has, therefore, been painfully slow.

The way forward would appear to be to concentrate on individual factors (it is in relation to harmonisation, Community quotas, border crossing formalities, and price discrimination that the Commission has been most successful) rather than on a grand global policy, and to persuade Member States through supporting evidence that the proposed changes will be to their advantage.

15Communication to Council, 1 October 1975.

42
REFERENCES


