

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(80) 906 final

Brussels, 20 January 1981.

Proposal for a
COUNCIL REGULATION (EEC)
setting the time limit and conditions for the achievement of financial
balance by railway undertakings

Proposal for a
COUNCIL REGULATION (EEC)
amending the Decision 73/327/EEC on the improvement of the situation
of railway undertakings and the harmonization of rules governing financial
relations between such undertakings and States

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EXPLANATORY MEMORANDUM

I. GENERAL PROVISIONS

1. Under Article 15(1) of the Council Decision of 20 May 1975 on the improvement of the situation of railway undertakings and the harmonization of rules governing financial relations between such undertakings and States¹, "Before 1.1.1980, the Commission taking account of the particular conditions affecting the role and importance of the railways in each State, shall submit to the Council such proposals as it deems necessary to fix the time limit and conditions for achieving the financial balance of railway undertakings".

Under Article 15(2) of the Decision, the Commission is required to submit proposals by the same date to take account, within the framework of the links which exist between transport and other economic and social sectors, of the obligations inherent in the concept of a public service." The two proposals are to be presented simultaneously.

2. In the light of the economic and financial situation of the railways, as described in the two-year reports², and consultations with government and rail experts and representatives of the trade unions, the Commission has proposed a multi-stage programme for the achievement of financial balance. In setting the time-limit, the Commission has opted to give the Member States a fairly lengthy period so that their measures can achieve their full effect. The Commission feels that it has thus displayed a realistic attitude and also shown its desire to reach a solution in this area.

3. In order to carry out this programme, a number of steps will have to be taken in the various stages leading up to the achievement of financial balance :

(a) clarification and harmonization of the financial relations between railways and States in order to pave the way towards a common approach to achieving balance between the railways' expenses and receipts;

¹ OJ L 152 of 12 June 1975, p. 3

² COM(77)295 final
COM(79)447 final

- (b) preparation, on this basis, of business and financial programmes which would be multiannual and follow common guidelines;
- (c) submission by the Commission of opinions on these programmes taking into account, among other things, the particular conditions of each railway;
- (d) setting of a common time-limit for the achievement of financial balance; after this date, arrangements for covering any losses would be submitted to the Commission in accordance with the general rules on aid.

4. In order to carry out this programme, the Commission is proposing a Regulation setting the time-limit and the conditions for achieving financial balance in respect of the railways. The Regulation consists of a number of sections describing the steps to be taken during the various stages leading up to the achievement of financial balance, in particular the clarification and harmonization of the financial relations between railways and States and the setting of a time-limit for the achievement of financial balance. In addition, in order to carry out some of these measures it will be necessary to make some changes to the Council Decision of 20 May 1975; these changes should be adopted at the same time as the proposal for a Regulation. They relate in particular :

- (a) to the structure of, and procedure for, preparing business and financial programmes,
- (b) to the conditions for the granting of deficit subsidies, and
- (c) to the contents of the two-yearly report on the implementation of the Decision.

5. In general, the Commission takes the view that it is essential that the Member States and the railways should take initiatives concerning the business and investment programmes in order to attain the objective set by this Regulation, particularly in the light of the present situation. In helping the railways to regain their financial balance, these steps might help to improve their competitiveness on the market. As can be seen from other existing measures and the Commission's proposals and communications, action by the Community and the Member States concerning inland transport is not confined to the railways. Progress is also needed concerning the proper implementation of the social provisions in force and the infrastructure policy.

II. PROVISIONS CONCERNING THE PROPOSAL FOR A REGULATION SETTING THE TIME-LIMIT AND CONDITIONS FOR THE ACHIEVEMENT OF THE FINANCIAL BALANCE OF RAILWAY UNDERTAKINGS

6. The clarification and harmonization of financial relations consists of defining financial balance as balance between expenses and revenue in the profit and loss account. Terminology for this is provided by Council Regulation (EEC) No 2830/77 on the measures necessary to achieve comparability between the accounting systems and annual accounts of railway undertakings¹. It also entails enumerating the various types of expenses and revenue to be included in respect of financial balance.

The various rules and techniques applied in respect of capital movements may lead to profit and loss account situations which are not entirely comparable, in particular as regards depreciation and financial charges. Progress towards greater comparability should be achieved via the Advisory Committee set up under the abovementioned Regulation.

7. The Regulation specifies the railways' various sources of income : these are, in the first place, traffic revenue, financial and other revenue, exceptional profits and the contra of costs booked to other accounts and secondly, compensation paid in accordance with Council Regulation (EEC) No 1191/69, on action by Member States concerning the obligations inherent in the concept of a public service² and Council Regulation No 1192/69 on common rules for the normalization of the accounts of railway undertakings³.

8. The Regulation also provides that States may, where appropriate, grant other monies to railways :

8.1. Where a State obliges a railway to charge a general level of tariffs which differs from the general pricing policy measures and would be contrary to the commercial interests of the undertaking Article 9(2) of the abovementioned Council Decision provides for the harmonization of the methods of compensating such tariff obligations. The Commission proposal aiming at this objective could therefore be withdrawn⁴ if the present proposal is adopted.

¹ OJ L 334 of 29 December 1977, P. 13 ³ OJ L 156 of 28 June 1969, p. 8
² OJ L 156 of 28 June 1969, p. 1 ⁴ Doc. R/1174/79 (TRANS 89)

8.2. Where the situation as regards the charging of infrastructure costs results in extra expenses for the railway compared with the competing modes of transport. This eventuality is at present covered by Council Regulation (EEC) No 1107/70 on the granting of aids for transport by rail, road and inland waterway¹; this proposal supplements that Regulation by stressing that comparison with the other competing modes of transport is the decisive factor as regards the granting of aid, and by setting out, in an Annex, the guidelines for calculating such aid.

9. To ensure that total normalization of both obligatory and optional State financial intervention and to determine the actual deficit, the State would not be able to intervene financially to cover a deficit until it has exhausted all the other abovementioned possibilities, where such situations arise.

10. The proposed Regulation provides that, where appropriate, and without constituting a precondition for financial intervention to cover a deficit, the State may grant aid to facilitate research into and development of transport systems and technologies more economic for the community in general. Such aid is to be regarded as a source of income.

11. The Commission considers that by 31 December 1982 the Member States will be able to implement the first part of this Regulation, thus producing a clearer and more comparable situation at Community level.

12. The proposed Regulation provides that the railways should have achieved financial balance by 1 January 1990 at the latest. The Commission recognizes that after this date, States, in their capacity as owners or majority shareholders, will retain a degree of freedom in their rail investment policy. However, the Commission considers that it will be necessary to submit proposals before 1 January 1990 laying down allocation criteria. On the other hand, it will no longer be possible to award deficit subsidies, and State financial intervention arrangements to cover any deficit will have to be submitted to the Commission in accordance with the general rules of the Treaty. The Commission is therefore proposing that Article 4(1) of Regulation (EEC) No 1107/70 amended by Regulation (EEC) No 1473/75² should be amended.

¹ OJ L 130 of 15 June 1970, p.1

² OJ L 152 of 12 June 1975, p.1

III. PROVISIONS RELATING TO THE PROPOSED AMENDMENT TO THE COUNCIL DECISION OF 20 MAY 1975 ON THE IMPROVEMENT OF THE SITUATION OF RAILWAY UNDERTAKINGS AND THE HARMONIZATION OF RULES GOVERNING FINANCIAL RELATIONS BETWEEN SUCH UNDERTAKINGS AND STATES (75/327/EEC)

13. The railways' business and financial programmes are regarded in the Decision itself as essential means of enabling the railways to plan the measures designed to achieve financial balance. For this reason, and in order that the structure of and procedure for preparing these programmes can be better coordinated at Community level, it is proposed :

- (a) that the programmes should be multiannual, since the measures envisaged and their implications for the achievement of financial balance can only be assessed in a multiannual perspective;
- (b) that the Commission should be enabled to make a better assessment of the measures taken by each Member State taking account, as provided for in Article 15(1) of the 1975 Decision, of the particular conditions in each Member State. In addition, it is proposed that the Commission should be informed of these programmes before they are adopted in order to advise the Member States on the means of achieving financial balance;
- (c) that a common outline for the structure of these programmes, should be adopted by setting out, in an Annex to the Decision, the guidelines for drawing up business and financing programmes.

14. In view of the connection between the business and financial programmes and the Regulation setting the time-limit and conditions for achieving financial balance, it is proposed that the two-yearly report on the operation of the 1975 Decision should also cover the application of this Regulation.

PROPOSAL FOR A COUNCIL
REGULATION SETTING THE TIME LIMIT AND CONDITIONS
FOR THE ACHIEVEMENT OF FINANCIAL BALANCE BY RAIL-
WAY UNDERTAKINGS

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
and in particular Articles 75 and 94 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, Article 15(1) of Council Decision 75/327/EEC of 20 May 1975 on the improvement of the situation of railway undertakings and the harmonization of rules governing financial relations between such undertakings and States¹, provides that the Commission will submit proposals designed to set the time limits and conditions for the achievement of financial balance by railway undertakings, which represents a primary objective for these undertakings,

Whereas this concept must be precisely defined and applied to all the activities of railway undertakings,

Whereas, this concept may be defined using the terminological basis of Council Regulation (EEC) No 2830/77 of 12 December 1977 on the measures necessary to achieve comparability between the accounting systems and annual accounts of railway undertakings²;

Whereas the expenses of an undertaking must be defined in this context, and its revenue must be specified by grouping together traffic and other revenue and the receipts from the various types of State intervention under Council Regulation (EEC) No 1191/69 of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway³, as last amended by⁴, and Council Regulation (EEC) No 1192/69 of 26 June 1969 on common rules for the normalization of the accounts of railway undertakings⁵, as last amended by⁶;

¹ OJ No L 152, 12.6.1975, p. 3.

² OJ No L 334, 24.12.1977, p. 13.

³ OJ No L 156, 28.6.1969, p. 1.

⁴ OJ No L

⁵ OJ No L 156, 28.6.1969, p. 8.

⁶ OJ No L

Whereas the actual deficit should be determined and aid to compensate for tariff obligations entailing the application of a general level of tariffs which would be contrary to the commercial interests of these undertakings should, where appropriate and in the event of a deficit, precede State financial intervention to cover the deficit;

Whereas the same applies to aid in respect of extra expenses in connection with infrastructure costs; whereas there should be a uniform method for the calculation thereof;

Whereas aid for facilitating research and development should, where appropriate, be regarded as revenue;

Whereas, pending adoption by the Council of the proposals to be made by the Commission before 1 January 1990 for determining the criteria for intervention under Article 5(1) of Decision 75/327/EEC, such intervention may continue to be freely effected; whereas, provision should therefore be made for amending Council Regulation (EEC) No 1107/70 of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway¹ as amended by Regulation (EEC) No 1473/75²;

Whereas financial balance should be achieved by 1 January 1990 at the latest, and after that date deficit subsidies should be abolished and, in the event of a deficit, State financial intervention arrangements to cover this deficit are to be communicated to the Commission in accordance with Article 93 of the Treaty,

HAS ADOPTED THIS REGULATION

¹ OJ No L 130, 15.6.1970, p. 1.

² OJ No L 152, 12.6.1975, p. 1.

Article 1

This Regulation shall apply to the railway undertakings listed in Article 1 of Decision 75/327/CEE.

Article 2

Within the meaning of this Regulation, financial balance in respect of railway undertakings shall be assessed by reference to their profit and loss accounts. It shall correspond to a situation in which, taking account of all its activities, the expenses of a railway undertaking are covered by its revenue each year.

Article 3

1. Expenses within the meaning of Article 2 shall correspond to the expenses listed in Annex III to Council Regulation (EEC) No 2830/77, exceptional losses and corporation tax.

2. Revenue within the meaning of Article 2 shall consist of :

(a) - traffic revenue, financial revenue, other revenue and exceptional profits and the contra of costs booked to other accounts within the meaning of the said Annex III;

- compensation pursuant to Council Regulation (EEC) No 1191/69;

- compensation pursuant to Council Regulation (EEC) No 1192/69.

(b) Where appropriate, aid to compensate under Article 3(2) of Regulation (EEC) No 1107/70, for tariff obligations imposed on a railway undertaking which do not arise from general pricing policy measures applying to all economic activities, and entail the application of a general level of tariffs which would be contrary to its commercial interests.

(c) Where appropriate, the aid provided for in Article 3(1)(b) of Regulation (EEC) No 1107/70.

3. Aid to facilitate research into the development of transport systems and technologies more economic for the community in general under Article 3(1)(c) of Regulation (EEC) No 1107/70 shall also be regarded as income within the meaning of Article 2, where appropriate.

Article 4

1. The intervention mentioned in Article 3(1)(b) shall be calculated according to the method set out in Article 11(1) of Regulation (EEC) No 1191/69.
2. The aid mentioned in Article 3(1)(c) shall be calculated according to the guidelines set out in the Annex.

Article 5

With effect from 1 January 1983, if financial balance within the meaning of Article 2 has not been achieved and subject to Article 6, State financial intervention to cover the deficit shall be authorized only if types of intervention referred to in Article 3(2) are inapplicable.

Article 6

Member States and railway undertakings shall take steps to ensure that financial balance is achieved by 1 January 1990 at the latest.

Article 7

Regulation (EEC) No 1107/70 is hereby amended as follows :

1. Article 4(1) is replaced by the following:
"1. Pending adoption by the Council of proposals to be made by the Commission before 1 January 1990 for determining the criteria for financial intervention in respect of railway undertakings in the context of their business plans in accordance with Article 5(1) of Decision 75/327/EEC, and without prejudice to Regulations (EEC) No 1191/69 and (EEC) No 1192/69, Article 3 shall not apply to such intervention.

Until 1 January 1990, and without prejudice to Regulations (EEC) No 1191/69 and (EEC) No 1192/69, Article 3 shall not apply to the deficit subsidies granted to railway undertakings in accordance with Article 13 of the above-mentioned Decision."

2. Article 5(2) is replaced by the following:

"2. The aid referred to in Article 4 shall be exempt from the procedure provided for in Article 93(3) of the Treaty until 1 January 1990. Such aid shall be communicated to the Commission in the form of estimates at the beginning of each year and subsequently, in the form of a report, after the end of the financial year."

Article 8

This Regulation shall enter into force

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

Done at Brussels,

For the Council

Guiding principles to be complied with in determining
 the aid granted to railway undertakings pursuant to
 Article 3(1)(b) of Council Regulation No 1107/70 of
 4 June 1970

The aid to be granted to railway undertakings if they cover all or part of their infrastructure expenditure while the competing transport undertakings do not bear such expenses or bear them only to a lesser extent will depend on the following two elements :

- the proportion of revenue from rail traffic competing with each of the other two modes of transport; this proportion will be calculated from the total for passenger and freight services;
- the extent to which infrastructure expenditure attributable to the activities of these modes of transport competing with the railways is covered.

Compensation will be the sum of the following two elements :

$$D_F \times \frac{R_1}{R} \left(\frac{D'_F}{D_F} - \frac{P_R}{D_R} \right)$$

and

$$D_F \times \frac{R_2}{R} \left(\frac{D'_F}{D_F} - \frac{P_N}{D_N} \right)$$

where :

D_F = the total infrastructure expenditure of the railway undertaking

D'_F = the infrastructure expenditure actually borne by the railway undertaking

D_R = the infrastructure expenditure attributable to road transport competing with the railways

D_N = the infrastructure expenditure attributable to inland waterway transport competing with the railways

F = total receipts from rail traffic, including compensation for public service obligations

R_1 = receipts from rail traffic faced with competition from road transport

R_2 = receipts from rail traffic faced with competition from inland waterway transport

P_R = proceeds from specific taxation on road transport competing with the railways

P_N = proceeds from specific taxation on inland waterway transport competing with the railways.

The infrastructure expenditure to be taken into consideration for each mode of transport is that recorded in the uniform accounting system for expenditure on transport infrastructure introduced by Council Regulation No 1108/70 of 4 June 1970, introducing an accounting system for expenditure on infrastructure in respect of transport by rail, road and inland waterway. These principles will be reviewed when charging for the use of infrastructures is gradually introduced for the three modes of transport.

PROPOSAL FOR A COUNCIL DECISION
AMENDING DECISION 75/327/EEC ON THE
IMPROVEMENT OF THE SITUATION OF RAILWAY UNDERTAKINGS
AND THE HARMONIZATION OF RULES GOVERNING FINANCIAL
RELATIONS BETWEEN SUCH UNDERTAKINGS AND STATES

HAS ADOPTED THIS DECISION :

Article 1

Decision 327/75/EEC is hereby amended as follows :

1. The text of the first indent of Article 3 is replaced by the following :

"- submit its multiannual business programmes, including its investment and financing plans, within the framework of the overall policy guidelines laid down by the State and taking account of national transport planning, particularly with regard to infrastructure",

2. The text of Article 4(1) is replaced by the following :

"1 The business programme submitted by a railway undertaking in accordance with Article 3 shall be adopted in the context of a procedure determined by the State and based on consultation between the State and the undertaking. The State shall forward this programme to the Commission, before it is adopted, and the Commission will advise the State of any comments it might have taking into account the particular conditions of each railway undertaking; the opinion given by the Commission shall be taken into account in the implementation of the programme.

This programme must be designed to achieve and subsequently maintain the financial balance of the undertaking and attain other technical, commercial and financial management objectives possibly by means of several programmes. It shall take account of the guidelines set out in the Annex. From 1 January 1983 it must be drawn up on the basis of the conditions set out in Regulation (EEC) No *

This programme shall also provide for the means of attaining the objectives mentioned in the second subparagraph.

* OJ No

The State shall keep the performance of this programme under review. Should the development of economic conditions jeopardize implementation of this programme or some unforeseen event occur or a government decision be made affecting a basic element thereof, the State and the railway undertaking shall, by the same process, review their objectives and the means of attaining them."

3. The first and second subparagraphs of Article 13 are replaced by the following :

"In conjunction with the railway undertaking, and in the context of the procedure for drawing up the business programme referred to in Article 4(1), the State shall draw up a multiannual financial programme aimed at the achievement of financial balance by the undertaking.

Under this programme the Member State may until 1 January 1990, and taking account of the conditions laid down in Regulation (EEC) No grant the railway undertaking deficit subsidies which must be distinct."

4. The text of the first subparagraph of Article 14(1) is replaced by the following :

"1. Every two years the Commission shall submit to the Council a report on the implementation by Member States of this Decision and of Regulations (EEC) No 1191/69, (EEC) No 1192/69, (EEC) No 1107/70 and (EEC) No

Article 2

This Decision shall apply with effect from 1 January 1982.

Article 3

This Decision is addressed to the Member States.

Done at Brussels,

For the Council

Guidelines for drawing up the business
and financial programmes of railway undertakings

1. The programmes are to be drawn up for periods of 3 to 5 years as part of an overall economic forecast taking into account the other modes of transport and interactions between modes.
 2. The programmes should indicate the main lines of action at railway management level for achieving financial balance.
 3. With this in mind, programmes will contain :
 - (a) an analysis, by sector, of existing and potential markets;
 - (b) an analysis of the means of production in question (investment, staff, organization).
 4. In accordance with these factors and the objective pursued, the programmes are to lay down the commercial policy to be followed and the pricing policy, both of which are to be determined in relation to market conditions. The programme should mention the criteria for changes in the general level of tariffs.
 5. As regards State intervention, the programmes are to indicate :
 - (a) the sources of revenue within the meaning of Article 13. Intervention in respect of public service obligations (Regulation No 1191/69) in respect of other Regulations ((EEC) No 1107/70 and (EEC) No 1192/69) is to be subdivided, as far as possible, by Regulation and by end-use;
 - (b) capital movements in the meaning of Article 5(1) and (2). In this connection, it should be stated that the programmes will mention, as far as possible, the scope for existing and future aids for :
 - (i) the restructuring of capital (Article 5(1))
 - (ii) the financing of new investment within the meaning of Article 5(1).
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